

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
LUCA INTERNATIONAL GROUP, LLC <sup>1</sup>	§	CASE NO. 15-34221-H2-11
	§	
	§	Joint Administration Pending
	§	Judge Jones
Debtors	§	

**MOTION PURSUANT TO 11 U.S.C. §365 TO REJECT CERTAIN EXECTORY  
CONTRACTS, EFFECTIVE NUNC PRO TUNC TO AUGUST 14, 2015**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE OUR RESPONSE WITHIN 23 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**IF YOU HAVE RECEIVED THIS MOTION AND ARE A CONTRACT-COUNTERPARTY TO AN AGREEMENT WITH THE DEBTORS, PLEASE REVIEW EXHIBIT A, ATTACHED HERETO, TO DETERMINE IF THIS MOTION AFFECTS YOUR AGREEMENT AND YOUR RIGHTS THEREUNDER.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

LUCA International Group, LLC (“LIG”) LUCA Operation, LLC (“LO”) and LUCA International Group (Texas), LLC (“LIGTX”) (collectively “Debtors”), debtors and debtors in

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<sup>1</sup> The Debtors in these cases, along with the last four digits of their respective taxpayer ID numbers, are Luca International Group LLC (1086), Luca Operation LLC (0343), Luca International Group (Texas) LLC (5577), Luka Barnett Shale Joint Venture, LLC (5340), Luca Energy Fund LLC (0677), Luca Energy Resources LLC (tbd), Luca Resources Group LLC (1699), Luca I, LP (4104), Luca II, LP, (9778), Luca Oil LLC (8161), Luca To-Kalon Energy LLC (3922), Luca Oil II Joint Venture (6604).

possession, file this Motion to Reject Certain Executory Contracts (the "Motion"), *nunc pro tunc* to August 14, 2015, and in support thereof, respectfully state as follows:

**I. SUMMARY OF RELIEF REQUESTED**

1. These cases were each filed on August 6, 2015 (the "Petition Date"). Pursuant to section 365(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors request authorization to reject certain executory contracts (the "**Executory Contracts**")<sup>2</sup>. A list identifying and describing the Executory Contracts is attached hereto as **Exhibit A**. A proposed form of order (the "**Order**") is attached hereto as **Exhibit B**.

2. The Debtors request that the rejection of those Executory Contracts be effective as of August 14, 2015.

**II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. §157(b)(2)(A) and (O). The relief requested herein is authorized under Sections 365 of the Bankruptcy Code. Venue of the Debtors' Chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408(1) and (2).

**III. BACKGROUND INFORMATION**

**A. Overview of the Debtors**

4. The above captioned Chapter 11 bankruptcy cases were each filed on August 6, 2015 under Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§101 et sq. (the "Bankruptcy Code"). The Debtors continue to manage their respective property as a debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. Joint administration of these cases has

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<sup>2</sup> For the avoidance of doubt, by this Motion, the Debtors seek to reject the Executory Contracts and all of their amendments, modifications and predecessors.

been requested.

5. No trustee or examiner has been appointed in the Debtors' bankruptcy cases. An official committee of unsecured creditors has not yet been established.

6. A detailed factual background of the Debtors' business and operations, as well as the commencement of these Chapter 11 cases, is more fully set forth in the *Affidavit of Loretta R. Cross* in Support of the Debtors' Chapter 11 Petitions and Requests for First-Day Relief filed contemporaneously herewith and incorporated herein by reference. A brief summary of the factual background is listed below.

7. The Debtors are engaged in the exploration and production of natural gas, petroleum and related hydrocarbons. Bingqing Yang ("Yang") is the sole member for Debtors. Debtors obtained money's from investors that was placed into various entities that were utilized in the operations of other entities.

8. LO has a draft reserve report that was prepared in March by Gustavson Associates. The reserve report indicates that LO has proved developed non-producing and proved behind pipe net reserves of approximately 3.2 billion cubic feet of gas and 450 million barrels of oil. The reserve report did not address proved undeveloped, probable or possible reserves.

9. On July 6, 2015, under Case No. 15-cv-03101, the Securities and Exchange Commission ("SEC") filed a lawsuit against several LUCA entities, including the Debtors, other Debtor affiliates, Yang and certain other individuals in the United States District Court of the Northern District of California, San Francisco Division ("SEC lawsuit"). The SEC lawsuit alleged securities fraud against the defendants for a scheme targeting the Chinese American community as well as investors in Asia to invest in the various unregistered offerings. There are SEC allegations of funds being used for Bingqing Yang's personal expense. The SEC has sought the

appointment of a receiver, and this matter remains pending.

10. In order to restore credibility to the operation, the Debtors, pursuant to various consents executed by Yang, retained Loretta R. Cross of Stout Risius Ross, Inc as Chief Restructuring Officer (the “CRO”) of the Debtors with full authority to operate the Debtors. Ms. Cross has served in that capacity since July 16, 2015.

#### **IV. THE EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

11. The Debtors are currently undergoing a comprehensive review of their executory contracts to determine which contracts to assume and which to reject. Because the Debtors have reduced operations and anticipate selling substantially all of their physical assets, the Debtors no longer require certain executory contracts and will seek to reject those contracts that provide no meaningful value or benefit to the Debtors’ estates. The Debtors have reviewed the Executory Contracts that are the subject of this Motion and have determined, in the exercise of their sound business judgment, that continuing the Executory Contracts would be burdensome and would provide no corresponding benefit or utility to the Debtors’ estates. **Exhibit A** provides the name of the debtor party, a description of the Executory Contract, and the name of the counter-party.

12. The Executory Contracts include: (1) two automobile leases for vehicles that are not being utilized by the Debtors and (2) certain office lease space that is no longer necessary for the Debtors’ operations. By this Motion, the Debtors are notifying the automobile lessors that they are free to retrieve their vehicles.

13. The Debtors’ primary business purpose at this stage in their chapter 11 cases is to sell assets through a 363 transaction or as part of a Plan in an efficient and cost-effective manner to maximize the value of the recovery for their creditors. The Executory Contracts are not necessary for the Debtors’ continuing business operations or the administration of the Debtors’ estates, and

maintaining the Executory Contracts would impose unnecessary costs and burdens on the Debtors' estates. The Debtors have also explored the possibility of marketing the Executory Contracts, but have determined that doing so would provide no meaningful benefit or value to the Debtors' estates. Accordingly, the Debtors submit this Motion to reject the Executory Contracts.

**A. Rejection of the Executory Contracts Reflects Debtors' Sound Business Judgment**

14. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *see also In re Lavigne*, 114 F.3d 379, 386 (2d Cir. 1997). "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property.' " *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993), *cert. dismissed*, 511 U.S. 1026 (1994).

15. Courts defer to a debtor's business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. *See Bildisco & Bildisco*, 465 U.S. at 523 (recognizing the "business judgment" standard used to approve rejection of executory contracts and unexpired leases); *Nostas Assocs. v. Costich (In re Klein Sleep Products, Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996) (recognizing the "business judgment" standard used to approve rejection of executory contracts); *In re Minges*, 602 F.2d 38, 42-43 (2d Cir. 1979) (holding that the "business judgment" test is appropriate for determining when an executory contract can be rejected); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff'd*, 187 B.R. 111 (S.D.N.Y. 1995) (approving rejection of license by debtor because such rejection satisfied the

“business judgment” test); *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (stating that a debtor may assume or reject an unexpired lease under § 365(a) in the exercise of its “business judgment”).

16. The “business judgment” standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. *See In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 1996) (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’”) (citation omitted); *In re Balco Equities, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) (“In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.”) (quoting *G Survivor*, 171 B.R. at 757)). Further, under the business judgment standard, “[a] debtor’s decision to reject an executory contract must be summary affirmed unless it is the product of ‘bad faith, or whim or caprice’ ” *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

17. As noted above, the Debtors have reviewed the Executory Contracts and have determined that in light of the sale of substantially all of the Debtors’ physical assets and subsequent wind-down, the Executory Contracts are no longer necessary for or beneficial to the Debtors’ ongoing business, and create unnecessary and burdensome expenses for the Debtors’ estates. In addition, the Debtors have determined that no meaningful value would be realized by the Debtors if the Executory Contracts were assumed and assigned to third parties. Accordingly, the Executory Contracts should be rejected.

#### **B. Nunc Pro Tunc Relief is Appropriate**

18. Bankruptcy courts are empowered to grant retroactive rejection of a contract or lease under Bankruptcy Code sections 105(a) and 365(a). *See Thinking Machs. Corp. v. Mellon Fin.*

*Servs. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028-29 (1st Cir. 1995) (indicating “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively” to the motion filing date); *see also Pacific Shore Dev., LLC v. At Home Corp. (In re At Home Corp.)*, 392 F.3d 1064, 1067 (9th Cir. 2004) (same); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004). (“[T]he court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a).”).

19. The equities of these cases favor rejection of the Executory Contracts *nunc pro tunc* to August 14, 2015. Rejection *nunc pro tunc* will permit the Debtors to reduce the burdensome cost and avoid additional, unnecessary administrative charges incurred under the agreements that are not necessary to the Debtors’ operations or chapter 11 efforts. Furthermore, the counter-parties will not be unduly prejudiced if the Executory Contracts are rejected *nunc pro tunc* because the Debtors have ceased using the vehicles and no longer occupy the office space. Further, the vehicle lessors may immediately retrieve possession of the vehicles subject to the Executory Contracts prior to September 1, 2015 (when the next monthly payment may become due). To eliminate potential administrative claims against their estates and avoid further obligations accruing under the Executory Contracts, the Debtors respectfully submit that rejecting the Executory Contracts as of August 14, 2015 is appropriate.

#### V. NOTICE

20. Notice of this Motion has been provided to parties in interest in accordance with Local Bankruptcy Rule 9013(d), and to all counter-parties to the Executory Contracts as identified on Exhibit A. The Debtors submit that such notice is sufficient and no other or further notice need be provided.

Dated: August 6, 2015

Respectfully submitted,

HOOVER SLOVACEK LLP

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PROPOSED ATTORNEYS FOR DEBTORS



**EXHIBIT A**

**Executory Contracts**

<u>Debtor Name</u>	<u>Description</u>	<u>Counter-Party</u>	<u>Address</u>	
Luca International Group (Texas) LLC	Office space	Texas Tower Limited	600 Travis Street, Suite B1.009	Houston, TX 77002
Luca Operation LLC	Vehicle lease CSOOW4	Fletcher Jones Motorcars of Fremont	5760 Cushing Parkway	Fremont, CA 94538
Luca Operation LLC	Vehicle lease S550V	Fletcher Jones Motorcars of Fremont	5760 Cushing Parkway	Fremont, CA 94538

**EXHIBIT B**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE:	§	Chapter 11
	§	
LUCA INTERNATIONAL GROUP, LLC <sup>3</sup>	§	CASE NO. 15-34221-H__-11
	§	
	§	Joint Administration Pending
	§	
Debtors	§	

**ORDER ON MOTION PURSUANT TO 11 U.S.C. §365 TO REJECT CERTAIN  
EXECUTORY CONTRACTS NUNC PRO TUNC TO AUGUST 14, 2015**

[RELATED TO DOC. # \_\_\_]

Upon the motion, dated August 6, 2015 (the “**Motion**”) of LUCA International Group, LLC (“LIG”) LUCA Operation, LLC and LUCA International Group (Texas), LLC (“LIGT”) (collectively “Debtors”) and, as debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to section 365(a) of title 11, United States Code (the “**Bankruptcy Code**”), for entry of an order authorizing the Debtors to reject certain executory contracts *nunc pro tunc* to August 14, 2015, all as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that each of the Executory Contracts listed on **Annex I** attached hereto is an executory contract capable of being rejected under section 365 of the Bankruptcy Code; and it is further

ORDERED that the rejection of the Executory Contracts, as set forth herein, (1) constitutes an exercise of sound business judgment by the Debtors, made in good faith and for legitimate commercial reasons; (2) is appropriate and necessary under the circumstances described in the Motion; and (3) is warranted and permissible under sections 105 and 365 of the Bankruptcy Code and Bankruptcy Rule 6006; and it is further

ORDERED that pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the rejection of the Executory Contracts listed on **Annex I** attached hereto and all

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<sup>3</sup> The Debtors in these cases, along with the last four digits of their respective taxpayer ID numbers, are Luca International Group LLC (1086), Luca Operation LLC (0343), Luca International Group (Texas) LLC (5577), Luka Barnett Shale Joint Venture, LLC (5340), Luca Energy Fund LLC (0677), Luca Energy Resources LLC (tbd), Luca Resources Group LLC (1699), Luca I, LP (4104), Luca II, LP, (9778), Luca Oil LLC (8161), Luca To-Kalon Energy LLC (3922), Luca Oil II Joint Venture (6604).

related amendments and supplements thereto is hereby authorized and approved, effective as of August 14, 2015; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

DATE:

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David R. Jones  
Chief United States Bankruptcy Judge

**ANNEX I**

**Executory Contracts**

<u>Debtor Name</u>	<u>Description</u>	<u>Counter-Party</u>	<u>Address</u>	
Luca International Group (Texas) LLC	Office space	Texas Tower Limited	600 Travis Street, Suite B1.009	Houston, TX 77002
Luca Operation LLC	Vehicle lease CSOOW4	Fletcher Jones Motorcars of Fremont	5760 Cushing Parkway	Fremont, CA 94538
Luca Operation LLC	Vehicle lease S550V	Fletcher Jones Motorcars of Fremont	5760 Cushing Parkway	Fremont, CA 94538