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KRISTA L. FREITAG

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 WORLD CAPITAL MARKET INC.;  
16 WCM777 INC.; WCM777 LTD. d/b/a  
WCM777 ENTERPRISES, INC.; and  
17 MING XU a/k/a PHIL MING XU,

18 Defendants,

19 KINGDOM CAPITAL MARKET, LLC;  
MANNA HOLDING GROUP, LLC;  
20 MANNA SOURCE INTERNATIONAL,  
INC.; WCM RESOURCES, INC.;  
21 AEON OPERATING, INC.; PMX  
JEWELS, LTD.; TOPACIFIC INC.;  
22 TO PACIFIC INC.; VINCENT J.  
MESSINA; and INTERNATIONAL  
23 MARKET VENTURES,

24 Relief Defendants.  
25  
26  
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28

Case No. CV-14-2334-JFW-MRW

ASSIGNED FOR ALL PURPOSES TO  
Judge John F. Walter

EX PARTE APPLICATION FOR  
ORDER FREEZING REAL PROPERTY

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that as soon as the matter may be heard in  
3 Courtroom 6 of the above-entitled Court, located at 312 N. Spring Street, Los  
4 Angeles, CA 90012, Krista Freitag ("Receiver"), Court-appointed permanent  
5 receiver for Defendants World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd.  
6 d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom Capital Market,  
7 LLC; Manna Holding Group, LLC; Manna Source International, Inc.; WCM  
8 Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates  
9 (the "Receivership Entities"), will and hereby does apply, *ex parte*, to the Court for  
10 an Order to freeze the real property located at 6812 Sultana Ave., San Gabriel, CA  
11 91775 (the "Property").

12 This Application is made pursuant to Local Rule 7-19, *et seq.*, on the grounds  
13 that the Property was purchased with funds directly traceable to the Receivership  
14 Entities and there exists a legitimate concern that the Property may be sold,  
15 transferred or otherwise encumbered before the Receiver can pursue a separate  
16 action for disgorgement. Thus, a freeze order is necessary and appropriate to  
17 maintain the status quo while the Receiver seeks authority to pursue claims for  
18 recovery of the Property and other related assets.

19 Counsel for the Securities and Exchange Commission ("Commission"),  
20 Defendant "Phil" Ming Xu, and Relief Defendants Vincent J. Messina and  
21 International Market Ventures, as well as counsel for Sue Wang (the sister of Ming  
22 Xu), were notified of this Application in accordance with Local Rule 7-19.1, as  
23 described in more detail in the concurrently filed Declaration of Tim C. Hsu ("Hsu  
24 Decl.").

25 The Commission has indicated that it does not oppose this Application. As of  
26 the date of this filing, the Receiver's counsel has not received any indication from  
27 the other noticed parties as to whether they intend to oppose the Application. (Hsu  
28 Decl., ¶ 5-6.)

1 This Application is based upon this Notice of *Ex Parte* Application, the  
2 attached Memorandum of Points and Authorities, the Declaration of Krista L.  
3 Freitag (the "Freitag Decl."), the Hsu Decl., and all documents and pleadings  
4 already on file in this action, and upon such further oral and documentary evidence  
5 as may be presented at the time of the hearing.

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Dated: December 12, 2014

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
TED FATES  
TIM C. HSU

By:           /s/ Tim C. Hsu          

TIM C. HSU  
Attorneys for Court-appointed  
Receiver  
KRISTA L. FREITAG

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND RELEVANT FACTUAL HISTORY

3 In this Ex Parte Application, Krista Freitag ("Receiver"), Court-appointed  
4 permanent receiver for Defendants World Capital Market Inc. ("WCM"); WCM777  
5 Inc.; WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants  
6 Kingdom Capital Market, LLC; Manna Holding Group, LLC; Manna Source  
7 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their  
8 subsidiaries and affiliates (the "Receivership Entities"), applies for an order freezing  
9 the real property located at 6812 Sultana Ave., San Gabriel, CA 91775 (the  
10 "Property"), title to which is currently held in the name of Xiaomei Deng ("Deng"),  
11 the mother of Defendant Ming Xu ("Xu").

12 The Property was purchased with funds that are directly traceable to investor  
13 proceeds raised in connection with the alleged Ponzi-scheme, and no value was  
14 provided to the Receivership Entities in return. Specifically, the Receivership Entity  
15 ToPacific, Inc. ("ToPacific") transferred \$1 million to MaNa Fashion, Inc. ("MaNa  
16 Fashion"), a company owned by Xu's sister, Sue Wang ("Wang"). The \$1 million  
17 transfer was made on February 28, 2014, less than a month prior to the Commission  
18 filing this action. On March 14, 2014, MaNa Fashion wired \$730,000 of the funds  
19 received from ToPacific to Xu's mother, Deng, for the purchase of the Property.  
20 The amount Deng paid for the Property was the exact same amount she received  
21 from MaNa Fashion -- \$730,000. On the same day Deng received the \$730,000, she  
22 sent a total of \$725,000 to escrow for the purchase of the Property—as further  
23 described below. Deng wired the remainder of the purchase price to escrow a few  
24 days later, after which the sale closed and title to the Property was transferred to  
25 Deng. Furthermore, MaNa Fashion and Deng had virtually no other funds in their  
26 accounts before and after the relevant transfers so there is no doubt the same funds  
27 that came from ToPacific passed through each of their accounts and went to  
28 purchase the Property.

1 The Receiver intends to pursue an action against Deng, Wang and MaNa  
2 Fashion to recover the Property. The Receiver will file a motion for authority to  
3 pursue such claims in the next 10 days. In the meantime, however, given the high  
4 risk that the Property may be sold, transferred, or otherwise encumbered to the  
5 detriment of the receivership estate, the Receiver requests an immediate freeze on  
6 the Property in order to maintain the status quo and preserve the Receiver's ability to  
7 recover the Property pending judgment in the anticipated action.

8 **II. RELEVANT FACTS**

9 **A. \$1 Million Of Receivership Funds Were Transferred To MaNa**  
10 **Fashion Under The Guise Of A Purported Purchase Of Garments.**

11 Early in her investigation, the Receiver identified a \$1 million transfer from  
12 ToPacific to MaNa Fashion on February 28, 2014. The Receiver asked Xu about  
13 the transfer, which he stated was for the purchase of jeans and other garments. Xu  
14 referenced an invoice purporting to show that ToPacific purchased \$1,000,286  
15 worth of garments from MaNa Fashion. (Freitag Decl., ¶¶ 2-3.) Xu stated the  
16 garments purchased were still being held by MaNa Fashion. Xu did not disclose  
17 that MaNa Fashion was owned by his sister, Sue Wang. (*Id.*)

18 The Receiver and her counsel immediately attempted to contact Wang and  
19 serve subpoenas on her and her company, including leaving multiple messages with  
20 purported employees of MaNa Fashion and attempting to serve subpoenas over a  
21 number of days. (*Id.* at ¶ 5.) The Receiver received no response to her early  
22 attempts to contact Wang until the Receiver was able to reach Wang's accountant,  
23 Dong & Associates, CPA and serve the accountant with a subpoena. (*Id.* at ¶¶ 5-6.)  
24 With information obtained from the accountant, the Receiver contacted Wang via  
25 email and finally received an acknowledgement from Wang on May 23, 2014. (*Id.*)

26 In June 2014, Wang engaged the Law Offices of Gary Hollingsworth as her  
27 counsel. (*Id.*) Over the course of a month and a half, Wang, through Hollingsworth,  
28 produced a few documents purportedly related to the sale of garments to ToPacific.

1 (*Id.*) Notably, this production failed to provide any bank records pertaining to the  
2 transfer of the \$1 million or any information regarding where the funds were  
3 subsequently directed. (*Id.*) After further research, correspondence and inquiries,  
4 the Receiver learned in September 2014, that Wang was Xu's sister. (*Id.* at ¶ 7.)  
5 The Receiver also learned that although the garments had been purportedly sold to  
6 ToPacific, Wang was the only individual who knew where the garments were stored  
7 or had any access to the garments. (*Id.* at ¶ 8.) Per bank records and other  
8 information subsequently provided by Wang, it became clear to the Receiver that  
9 the \$1 million transferred from ToPacific funded the entirety of MaNa Fashion's  
10 bank account at JPMorgan Chase which contained exactly zero dollars prior to he  
11 transfer. (*Id.*)

12 In early October 2014, in response to the Receiver's repeated demands for  
13 more information, Wang engaged new counsel, Marilyn Bednarski, who, along with  
14 Wang, met the Receiver on October 13, 2014 for an inspection of the garments at  
15 their stored location. Wang agreed to turn over the garments to the Receiver so they  
16 could be sold. (*Id.* at ¶ 9.) As previously reported in the Receiver's ex parte  
17 application to sell the garments (Dkt. No. 245), this visit revealed that the garments  
18 were mostly stored in disorganized fashion, and consisted of approximately 100,000  
19 individual, non-branded articles of apparel of mixed sizes and styles, most of which  
20 appeared to have been designed for previous seasons. (*Id.*) Furthermore, Wang  
21 admitted the garments were purchased by her in 2011, 2012 and 2013.

22 Based on the Receiver's experience in the garment industry and her belief the  
23 garments were more readily suitable to a bulk-sale to apparel wholesalers, the  
24 Receiver applied for authority to sell the garments, which application was granted  
25 on November 6, 2014 [Dkt. No. 247], and subsequently sold the garments for  
26 approximately \$300,000. (*Id.* at ¶ 10.)

27 Therefore, the purported sale of the garments to ToPacific, if in fact the sale  
28 really occurred, did not provide the Receivership Entities with anything close to \$1



1 million worth of garments. Furthermore, based on the nature and timing of the  
2 purported sale (which occurred on February 28, 2014, less than a month before the  
3 filing of this action), the fact that the garments purportedly sold never MaNa  
4 Fashion's control, and the subsequent transfer of \$730,000 to Deng for the purchase  
5 of the Property, the purported garment sale appears to be a sham used to funnel  
6 investor monies out of the Receivership Entities to purchase the Property in Xu's  
7 mother's name. (*Id.* at ¶ 16.) Thus, the Receiver will file a motion seeking authority  
8 to pursue a disgorgement action against Wang, MaNa Fashion and Deng for return  
9 of the funds they obtained from ToPacific, including recovery of the Property.<sup>1</sup>  
10 (*Id.*)

11 **B. The Receivership Funds Paid To MaNa Fashion Was Immediately**  
12 **Wired To Deng To Fund The Purchase Of The Property.**

13 On March 13, 2014, shortly after the \$1 million was transferred to MaNa  
14 Fashion, MaNa Fashion attempted to wire \$730,000 directly to Olympus Escrow  
15 Corporation ("Escrow") to fund the purchase of the Property. (Freitag Decl., ¶ 11.)  
16 This wire was rejected by Escrow because the transferor of the funds, MaNa  
17 Fashion, did not match the name of the buyer, Deng. (*Id.* at ¶ 12.) The next day, on  
18 March 14, 2014, MaNa Fashion wired the \$730,000 to Deng's East West Bank  
19 account instead. (*Id.*) On the same day, Deng transferred \$700,000 to Escrow from  
20 her East West account toward the \$730,000 purchase price of the Property. (*Id.*)  
21 Deng also paid Escrow an additional \$25,000 by check (written on the East West  
22 Bank account ending x5531) on the same day, and later wired an additional  
23

24 <sup>1</sup> As further described in the Receiver's Second Interim Report (Dkt. No. 129), the  
25 \$1 million transfer to MaNa Fashion was part of a series of transfers to MaNa  
26 Fashion, JJ Sparkles, Inc. ("JJ Sparkles") and Yuanhao, Inc. ("Yuanhao") totaling  
27 \$2 million (JJ Sparkles and Yuanhao each received \$500,000 from ToPacific).  
28 There are no records explaining what the transfers to JJ Sparkles and Yuanhao  
were for or any documents to suggest equivalent value was provided to the  
Receivership Entities in exchange. (*See* Receiver's Second Interim Report, Dkt.  
No. 129.) Thus, in addition to seeking disgorgement against Deng, Wang and  
MaNa Fashion, the Receiver also intends to seek authority to pursue  
disgorgement claims against JJ Sparkles, Yuanhao, and their owners/operators.

1 \$8,581.07 to Escrow on March 18, 2014, both from the same East West account, to  
2 cover the remainder of the purchase price and other costs associated with closing the  
3 sale. (*Id.* at ¶ 13.) Deng's East West account statements show this account  
4 contained only approximately \$1,000 in the beginning of March 2014, and was  
5 drained of its funds following these transactions, leaving an ending balance on  
6 March 31, 2014 of approximately \$670. (*Id.* at ¶ 14.) As shown on Deng's bank  
7 statement, all other deposits during this period totaled approximately \$40,000. (*Id.*)  
8 Thus, the vast majority, if not all of the funds used to purchase the Property are  
9 directly traceable to the payment from ToPacific to MaNa Fashion. (*Id.*)

10 On March 21, 2014, escrow closed and a final settlement statement was  
11 issued, reflecting the above-described transfers and the final purchase price of  
12 \$730,000—the exact amount transferred to Deng to fund the purchase of the  
13 Property. (*Id.* at ¶ 13.) A grant deed was also issued transferring title to the  
14 Property to Deng. (*Id.*)

15 **C. The Property Is At Risk Of Being Sold, Transferred Or Otherwise**  
16 **Encumbered.**

17 The Receiver's counsel has proposed a stipulated freeze of the Property to  
18 Xu's counsel, Michael Volkov, and Wang's counsel, Marilyn Bednarski, in an  
19 attempt to ensure the Property is not sold, transferred or encumbered pending the  
20 Receiver's pursuit of claims against Deng, Wang and MaNa Fashion. (Hsu Decl.,  
21 ¶ 3.) As of the date of this filing, neither Xu nor Wang has agreed to the proposed  
22 freeze. (*Id.*) The Receiver's counsel attempted to contact Deng directly, but the  
23 phone number available for her is no longer in service. (*Id.* at ¶ 4.) This  
24 Application was sent to Deng to the Property and delivered by messenger on  
25 December 12, 2014. (*Id.*)

26 Based on the Receiver's investigation, her experience and review of the  
27 numerous improper transfers of investor funds both domestic and abroad in  
28 connection with this alleged Ponzi scheme, including the subject transfer of the \$1

1 million to MaNa Fashion under the guise of the purported garment purchase, the  
2 Receiver submits that absent a stipulation or Court order, there is a high risk the  
3 Property may be sold, transferred to another Xu associate or family member, or  
4 encumbered and the derived proceeds transferred overseas or elsewhere in order to  
5 avoid disgorgement. (Freitag Decl., ¶ 17.) Thus, the Receiver believes a Court  
6 order freezing the Property is necessary to preserve the Property for the benefit of  
7 the Receivership Estate pending her pursuit of a fraudulent transfer and  
8 disgorgement action. (*Id.*)

9 **III. ARGUMENT**

10 **A. District Courts Have Broad Equitable Powers To Administer**  
11 **Receiverships**

12 The power of a district court to impose a receivership or grant other forms of  
13 ancillary relief does not in the first instance depend on a statutory grant of power  
14 from the securities laws. Rather, the authority derives from the inherent power of a  
15 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
16 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
17 and efficient administration of the estate by the district court for the benefit of  
18 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
19 of a receiver is authorized by the broad equitable powers of the court, any  
20 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953  
21 F.2d 1560, 1569 (11th Cir. 1992).

22 District courts have the broad power of a court of equity to determine the  
23 appropriate action in the administration and supervision of an equity receivership.  
24 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
25 Circuit explained:

26 A district court's power to supervise an equity receivership and  
27 to determine the appropriate action to be taken in the  
28 administration of the receivership is extremely broad. The  
district court has broad powers and wide discretion to determine  
the appropriate relief in an equity receivership. The basis for

1 this broad deference to the district court's supervisory role in  
2 equity receiverships arises out of the fact that most  
3 receiverships involve multiple parties and complex transactions.  
A district court's decision concerning the supervision of an  
equitable receivership is reviewed for abuse of discretion.

4 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107,  
5 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory  
6 role, and 'we generally uphold reasonable procedures instituted by the district court  
7 that serve th[e] purpose' of orderly and efficient administration of the receivership  
8 for the benefit of creditors."). Accordingly, this Court has broad equitable powers  
9 and discretion in determining the administration of this receivership estate.

10 **B. An Order Freezing The Property Is Appropriate And Necessary.**

11 Federal courts have inherent equitable authority to freeze assets pursuant to its  
12 "inherent equitable power to issue provisions remedies ancillary to its authority to  
13 provide final equitable relief." *Reebok Int'l, Ltd. v. Marnatech Enterprises, Inc.*, 970  
14 F.2d 552, 559 (9th Cir. 1992); *SEC v. Wencke, supra*, 622 F.2d at 1369. These  
15 powers include the authority to freeze assets of both parties and non-parties. *SEC v.*  
16 *Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003); *SEC v. Int'l Swiss Invs. Corp.*, 895  
17 F.2d 1272, 1276 (9th Cir. 1990). Courts use freeze orders to prevent waste and  
18 dissipation of assets and to ensure their availability for disgorgement for the benefit  
19 of victims of the fraud. *See, Hickey*, 322 F.3d at 1132; *SEC v. Manor Nursing*, 458  
20 F.2d 1082, 1105-06 (2d Cir. 1972). Indeed, the Ninth Circuit has found that "the  
21 public interest in preserving the illicit proceeds [of a defendant's fraud] for  
22 restitution to the victims is great." *FTC v. Affordable Media, LLC*, 179 F.3d 1228,  
23 1236 (9th Cir. 1999). Courts have similarly recognized that a disgorgement order  
24 will often be rendered meaningless unless an asset freeze is imposed prior to the  
25 entry of final judgment. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir.  
26 1990).

27 "A party seeking an asset freeze must show a likelihood of dissipation of the  
28 claimed assets, or other inability to recovery monetary damages if relief is not

1 granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). Courts  
2 consider a defendant's prior unlawful acts and the location of the assets in  
3 considering whether an asset freeze is warranted. *See, e.g., id.* at 1085; *Affordable*  
4 *Media*, 179 F.3d at 1236 ("district court's finding regarding the likelihood of  
5 dissipation is far from clearly erroneous" where defendant had "history of spiriting  
6 their commissions away to a Cook Islands trust."); *Manor Nursing*, 458 F.2d at 1106  
7 ("uncertainty existed with respect to the total amount of proceeds received and their  
8 location," thus asset freeze was warranted).

9 Here, the Property was purchased with funds derived from the alleged Ponzi  
10 scheme and funneled through Xu's sister's company to purchase the Property in Xu's  
11 mother's name. The series of transfers from ToPacific to MaNa Fashion to Deng to  
12 Escrow occurred within a month of the Commission initiating this case, at a time  
13 when Xu knew civil enforcement and/or criminal actions would likely be filed  
14 against him and the Receivership Entities imminently. The purported garment sale  
15 was nothing more than a sham. The garments, which were a disorganized mix of  
16 old inventory from prior seasons being stored by Wang, never left her possession or  
17 control, and were not worth anything close to \$1,000,000. Indeed, the Receiver's  
18 efforts to market and sell the garments, even at a time of high demand during this  
19 holiday season, proved to be difficult and the sale of the garments only generated  
20 approximately \$300,000. Accordingly, there is a high likelihood the Court will  
21 determine the transfers from ToPacific to MaNa Fashion to Deng to Escrow were  
22 fraudulent transfers and order that the funds be disgorged and title to the Property  
23 transferred to the Receiver.

24 In addition, the Receiver submits there is a high likelihood that the Property  
25 will be sold, transferred or encumbered and the proceeds dissipated. (*Id.* at ¶ 17.)  
26 Indeed, this entire action involves an alleged Ponzi scheme in which Defendants  
27 have a demonstrated history of transferring funds among multiple accounts and  
28 persons to avoid detection and hinder recovery, including large transfers to accounts

1 overseas and various attempts to stash large sums of money with attorneys and other  
2 individuals shortly before this case was filed. (*See, generally*, Commission's Ex  
3 Parte Application for TRO [Dkt. no. 5].) Further, when Xu was asked specifically  
4 about the \$1 million transfer from ToPacific to MaNa Fashion, he did not disclose  
5 that MaNa Fashion is owned by his sister or that the majority of the money was then  
6 used to buy a home in his mother's name.

7 Deng, Wang and MaNa Fashion have operated in much the same way in that  
8 they cooperated with the sham garment purchase; failed to disclose the true nature  
9 of the purported purchase; failed to disclose Wang's and Deng's immediate familial  
10 relationship with Xu; failed to provide details of the garment purchase or allow  
11 access to the garments until months after the Receiver first contacted Wang; and  
12 failed to disclose the transfer of funds to Deng or the purchase of the Property in her  
13 name. (Freitag Decl., ¶¶ 4, 6-7, 11-14.) Furthermore, Xu, Wang, and Deng have  
14 not agreed to the Receiver's proposed freeze of the Property to preserve the status  
15 quo pending the outcome of her anticipated recovery action.

16 Accordingly, absent an order freezing the Property, there is a high likelihood  
17 the Property will be sold, transferred or encumbered and the proceeds further  
18 dissipated or transferred overseas, making recovery, if any recovery can be obtained,  
19 substantially more complicated, time consuming, and expensive.

20 **C. Immediate Relief Is Necessary And Appropriate.**

21 As explained above, the Receiver's counsel has reached out to counsel for Xu  
22 and Wang to request that they, and their mother Deng, stipulate to a freeze of the  
23 Property pending the Receiver's pursuit of a fraudulent transfer/disgorgement claim.  
24 (Hsu Decl., ¶ 3.) As of the date of this filing, the Receiver has received no  
25 affirmative response to her request. (*Id.*) As it currently stands, there is nothing  
26 that prevents Xu, Wang, and Deng from transferring or encumbering the Property or  
27 that otherwise protects the Receiver's ability to recover the Property. Thus, an  
28 immediate freeze is necessary and appropriate. If Xu, Wang, and/or Deng believe

1 they have grounds, they can seek to modify or terminate the freeze and the Court  
2 can consider their arguments at that time.

3 **IV. CONCLUSION**

4 For the reasons set forth herein, the Receiver requests entry of an order  
5 immediately freezing the Property and prohibiting any sale, transfer or encumbrance  
6 of the Property until such time as the Receiver is able to bring an action for  
7 disgorgement as it relates to the Property and the Receiver's claims have been finally  
8 adjudicated by the Court.

9

10 Dated: December 12, 2014

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
TED FATES  
TIM C. HSU

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By:           /s/ Tim C. Hsu

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TIM C. HSU  
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