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 8 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.;
 WCM777 INC.; WCM777 LTD. d/b/a
 16 WCM777 ENTERPRISES, INC.; and
 MING XU a/k/a PHIL MING XU,
 17 Defendants,
 18 KINGDOM CAPITAL MARKET, LLC;
 19 MANNA HOLDING GROUP, LLC;
 MANNA SOURCE INTERNATIONAL,
 20 INC.; WCM RESOURCES, INC.;
 21 AEON OPERATING, INC.; PMX
 JEWELS, LTD.; TOPACIFIC INC.;
 22 TO PACIFIC INC.; VINCENT J.
 MESSINA; and INTERNATIONAL
 MARKET VENTURES,
 23 Relief Defendants.

Case No. CV-14-2334-JFW-MRW
 NOTICE OF MOTION AND MOTION
 FOR AUTHORITY TO PURSUE
 CLAIMS AGAINST SUE WANG aka
 SU E. WANG; JIANJUN WANG;
 XIAOMEI DENG; MANA FASHION
 INC.; JJ SPARKLES, INC.; AND
 YUANHAO, INC.
 Date: January 26, 2015
 Time: 1:30 p.m.
 Ctrm: 16
 Judge: Hon. John F. Walter

25 **TO ALL INTERESTED PARTIES:**

26 **PLEASE TAKE NOTICE** that on January 26, 2015, at 1:30 p.m. in
 27 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los
 28

1 Angeles, California 90012, Krista L. Freitag (the "Receiver"), the Court-appointed
2 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;
3 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
4 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
5 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
6 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
7 does move the Court for authority to pursue claims against Sue Wang aka Su E.
8 Wang ("Sue Wang"); Jianjun Wang; Xiaomei Deng; MaNa Fashion Inc.; JJ
9 Sparkles, Inc.; and Yuanhao Inc.

10 The Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
12 documents and pleadings already on file in this action, and upon such further oral
13 and documentary evidence as may be presented at the time of the hearing.

14 **Procedural Requirements:** If you oppose this Motion, you are required to
15 file your written opposition with the Office of the Clerk, United States District
16 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same
17 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

18 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
19 above date, the Court may grant the requested relief without further notice. This
20 Motion is made following the conference of counsel pursuant to L.R. 7-3.

21
22 Dated: December 19, 2014

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

23
24
25 By: /s/ TIM C. HSU
26 TIM C. HSU
27 Attorneys for Court-appointed
28 Receiver KRISTA L. FREITAG

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<u>Page</u>
I.	INTRODUCTION	1
II.	RELEVANT FACTS	3
	A. The \$1 Million Transfer to MaNa Fashion	3
	B. \$730,000 of the Funds Transferred to MaNa Fashion is Used to Purchase Real Property in Xu's Mother's Name	5
	C. JJ Sparkles and Yuanhao Each Receive \$500,000	6
III.	ARGUMENT	8
	A. The Outstanding Amount of \$1,055,085 Is Subject To Disgorgement	9
	B. The Proposed Defendants are Jointly and Severally Liable for Disgorgement of Funds Received in the Amount of \$1,055,085	11
	C. The Receiver Will Endeavor to Keep Costs to a Minimum and Continue to Evaluate the Likely Benefit to the Receivership Estate	11
IV.	CONCLUSION	12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.,
205 F.3d 1107 (9th Cir. 1999)9

Donell v. Kowell,
533 F.3d 762 (9th Cir. 2007) 10

In re AFI Holding, Inc.,
525 F.3d 700 (9th Cir. 2008) 10

In re Cohen,
199 B.R. 709 (B.A.P. 9th Cir. 1996) 10

SEC v. Capital Consultants,
LLC, 397 F.3d 733 (9th Cir. 2005).....8

SEC v. Elliot,
953 F.2d 1560 (11th Cir. 1992)8

SEC v. Hardy,
803 F.2d 1034 (9th Cir. 1986)8

SEC v. Wencke,
622 F.2d 1363 (9th Cir. 1980)8

Statutes

California Civil Code § 34399

California Civil Code § 3439.04(a)..... 10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Having investigated transfers made from the Receivership Entities to various entities and individuals, the Receiver seeks authority to proceed with an action for fraudulent transfer, constructive trust and unjust enrichment against certain immediate family members of Defendant Ming Xu ("Xu") and their related entities that received transfers, directly or indirectly, from the Receivership Entities, including: Sue Wang; Jianjun Wang; Xiaomei Deng; MaNa Fashion Inc. ("MaNa Fashion"); JJ Sparkles, Inc. ("JJ Sparkles"); and Yuanhao Inc. ("Yuanhao") (collectively, the "Proposed Defendants"). Sue Wang is Xu's sister, owns MaNa Fashion, is corporate secretary of JJ Sparkles, Inc., and signed checks written on the bank accounts of JJ Sparkles and Yuanhao. Jianjun Wang is the president of JJ Sparkles. Xiaomei Deng is Xu and Sue Wang's mother.

The Proposed Defendants acted in concert and as each other's alter egos to receive and transfer among themselves a total of at least \$2 million in investor funds transferred from Relief Defendant ToPacific, Inc. ("ToPacific") within 30 days of this case being filed. A summary chart showing the various transfers to the Proposed Defendants is as follows:

<u>Date</u>	<u>Amount</u>	<u>Recipient</u>	<u>Related Party</u>	<u>Source</u>
February 28, 2014	\$1,000,000	MaNa Fashion	Sue Wang (Owner)	ToPacific
March 3, 2014	\$500,000	JJ Sparkles	Jianjun Wang (President); Sue Wang (Secretary)	ToPacific
March 3, 2014	\$500,000	Yuanhao	Sue Wang (signatory)	ToPacific

1 These transfers were apparently part of an attempt to stash investor monies
2 with Xu's immediate family members before they could be frozen or seized. The
3 funds were funneled through MaNa Fashion, JJ Sparkles and Yuanhao (all of which
4 appear to be controlled by Sue Wang) and, among other things, used to purchase
5 real property in Xu's mother's name. Although \$2 million was transferred to the
6 Proposed Defendants, some of the funds were returned prior to the receivership and
7 an additional amount has been recovered by the Receiver. The Receiver's
8 investigation shows that \$650,000 of the \$1 million transferred to JJ Sparkles and
9 Yuanhao (\$500,000 each) was later returned to ToPacific as described further
10 below. In addition, garments turned over to the Receiver by Sue Wang were sold by
11 the Receiver, with permission from the Court, for \$294,915 (Dkt. 247). Therefore,
12 the unrecovered and outstanding balance owed by the Proposed Defendants is
13 \$1,055,085.

14 Based on the above, the Receiver seeks authority to pursue claims against the
15 Proposed Defendants to recover at least \$1,055,085. However, because the
16 Receiver's investigation and forensic accounting into the complicated series of
17 transfers is ongoing, and because it appears there may be other Xu family members
18 and affiliated entities who received additional transfers directly or indirectly from
19 the Receivership Entities, the Receiver requests 60 days from entry of the Court's
20 Order approving this Motion to file her complaint. The additional time will allow
21 the Receiver to obtain additional bank records, determine whether additional
22 persons or entities should be named as defendants, and file a more complete and
23 effective complaint.

24 The Receiver and her counsel have met and conferred with counsel for Sue
25 Wang and Xiaomei Deng in connection with the filing of this motion and discussed
26 the potential for settlement. If an appropriate settlement can be agreed upon before
27 the resolution of this motion or the filing of the proposed complaint, the Receiver
28 will notify the Court and seek approval of the settlement terms via noticed motion.

1 **II. RELEVANT FACTS**

2 **A. The \$1 Million Transfer to MaNa Fashion.**

3 MaNa Fashion, a California corporation controlled by Sue Wang, received \$1
4 million from ToPacific on February 28, 2014. (Declaration of Krista L. Freitag filed
5 herewith ("Freitag Decl."), ¶¶ 3, 8.) Early in her investigation, the Receiver asked
6 Xu about the transfer, which he stated was for the purchase of jeans and other
7 garments (described by Xu as "products"). (*Id.* at ¶ 8.) Xu referenced an invoice
8 purporting to show ToPacific purchased \$1,000,286 worth of garments from MaNa
9 Fashion. (*Id.*) Xu did not disclose that MaNa Fashion's owner, Sue Wang, is Xu's
10 sister. (*Id.* at ¶¶ 8, 10.)

11 Upon learning these facts, the Receiver and her counsel promptly attempted
12 to contact Sue Wang and serve subpoenas on her and her company. (*Id.* at ¶ 9.) The
13 Receiver received no response to her attempts to contact Sue Wang until the
14 Receiver was able to reach Sue Wang's accountant, Dong & Associates, CPA, and
15 serve the accountant with a subpoena. (*Id.*) With information obtained from the
16 accountant, the Receiver contacted Sue Wang via e-mail and finally received an
17 acknowledgement from Sue Wang on May 23, 2014. (*Id.*)

18 In June 2014, Sue Wang engaged the Law Offices of Gary Hollingsworth as
19 her counsel. (*Id.* at ¶ 10.) Over the course of a month and a half, Sue Wang,
20 through Hollingsworth, produced a few documents purportedly related to the sale of
21 garments to ToPacific. (*Id.*) Notably, this production failed to provide any
22 requested bank records pertaining to the transfer of the \$1 million or any
23 information regarding where the funds were subsequently directed. (*Id.*) After
24 further research, the Receiver learned that although the garments had been
25 purportedly sold to ToPacific, Sue Wang was the individual who knew where the
26 garments were stored and had access to the garments. (*Id.*) Per bank records and
27 other information subsequently provided by Sue Wang, it became clear the \$1
28 million transferred from ToPacific funded the entirety of MaNa Fashion's bank

1 account at JPMorgan Chase, which contained zero dollars prior to receipt of the
2 transfer from ToPacific. (*Id.*)

3 In early October 2014, after the Receiver's repeated demands for information,
4 Sue Wang engaged new counsel, Marilyn Bednarski, who, along with Sue Wang,
5 met the Receiver on October 13, 2014 for an inspection of the garments at their
6 stored location. Sue Wang agreed to turn over the garments to the Receiver so they
7 could be sold. (*Id.* at ¶ 11.) As previously reported in the Receiver's ex parte
8 application to sell the garments (Dkt. No. 245), this visit revealed that the garments
9 were mostly stored in disorganized fashion, and consisted of approximately 100,000
10 individual, non-branded articles of apparel of mixed sizes and styles, most of which
11 appeared to have been designed for previous seasons. (*Id.*) Furthermore, Sue Wang
12 admitted the garments were purchased by her in 2011, 2012 and 2013. (*Id.*)

13 Based on the Receiver's experience in the garment industry and her belief the
14 garments were more readily suitable to a bulk-sale to apparel wholesalers, the
15 Receiver applied for authority to sell the garments, which was granted on
16 November 6, 2014 (Dkt. No. 247), and subsequently sold the garments for
17 \$294,915. (*Id.* at ¶ 12.)

18 Therefore, the purported sale of the garments to ToPacific, if in fact the sale
19 really occurred, did not provide the Receivership Entities with anything close to
20 \$1 million paid to MaNa Fashion and Sue Wang. Furthermore, based on the nature
21 and timing of the purported sale (which occurred on February 28, 2014, less than a
22 month before the filing of this action), the fact that the garments purportedly sold
23 never left Sue Wang and MaNa Fashion's control, and the subsequent transfer of
24 \$730,000 to Xu and Sue Wang's mother, Xiaomei Deng, to fund the purchase of real
25 property (see Section B below), the purported garment sale appears to be a sham
26 transaction.

27
28

B. \$730,000 of the Funds Transferred to MaNa Fashion is Used to Purchase Real Property in Xu's Mother's Name.

As discussed in the Receiver's Ex Parte Application for Order Freezing Real Property (Dkt. No. 259.), following MaNa Fashion's receipt of \$1 million from ToPacific in February 2014, MaNa Fashion transferred \$730,000 to fund the purchase of the real property located at 6812 Sultana Ave., San Gabriel, CA 91775 (the "Property"). In particular, on March 13, 2014, MaNa Fashion attempted to wire \$730,000 directly to Olympus Escrow Corporation ("Escrow") to fund the purchase of the Property. (Freitag Decl., ¶ 13.) This wire was rejected by Escrow because the transferor of the funds, MaNa Fashion, did not match the name of the buyer, Xiaomei Deng. (*Id.*) The next day, MaNa Fashion wired the \$730,000 to Xiaomei Deng's East West Bank account instead. (*Id.*) On the same day, Xiaomei Deng transferred \$700,000 to Escrow from her East West account toward the \$730,000 purchase price of the Property. (*Id.* at ¶ 14.) Xiaomei Deng also paid Escrow an additional \$25,000 by check¹ on the same day, and later wired an additional \$8,581.07 to Escrow on March 18, 2014, both from the same East West account, to cover the remainder of the purchase price and other costs associated with closing the sale. (*Id.*)

Xiaomei Deng's East West account statements show this account contained only approximately \$1,000 in the beginning of March 2014, and was drained of its funds following these transactions, leaving an ending balance on March 31, 2014 of approximately \$670. (*Id.* at ¶ 15.) All other deposits during this period totaled approximately \$40,000. (*Id.*) Thus, the vast majority, if not all of the funds used to purchase the Property are directly traceable to the payment from ToPacific to MaNa Fashion. (*Id.*)

¹ Although this check was issued from the account of Xiaomei Deng, it was apparently signed by Sue Wang. (Freitag Decl., ¶ 14.) Xiaomei Deng's signature appears to be the only one authorized for the account. (*Id.*)

1 On March 21, 2014, escrow closed and a final settlement statement was
2 issued, reflecting the above-described transfers and the final purchase price of
3 \$730,000—the exact amount transferred to Xiaomei Deng to fund the purchase of
4 the Property. (*Id.* at ¶ 16.) A grant deed was also issued transferring title to the
5 Property to Xiaomei Deng. (*Id.*) Based on the above, the Court issued an Order on
6 December 15, 2014 freezing the Property pending further orders from this Court.
7 (Dkt. No. 260)

8 **C. JJ Sparkles and Yuanhao Each Receive \$500,000.**

9 On or around March 3, 2014, ToPacific transferred \$500,000 to JJ Sparkles, a
10 California corporation. (Freitag Decl., ¶ 17.) The bank records for JJ Sparkles
11 obtained by the Receiver reflect that Sue Wang is corporate secretary and Jianjun
12 Wang is president. (*Id.*) On March 3, 2014, ToPacific transferred another \$500,000
13 to Yuanhao. (*Id.*) Bank records reflect that Sue Wang controlled JJ Sparkles and
14 Yuanhao: Among other things, Sue Wang signed checks written on JJ Sparkles and
15 Yuanhao bank accounts. (*Id.*)

16 When the Receiver first identified these transfers, she noted that there did not
17 appear to be any documents in the Receivership Entities' files to explain the nature
18 or purpose of these transfers. (*Id.* at ¶ 18.) There did, however, exist separate
19 documents which purport to show a March 6, 2014 bill of sale, signed by Xu on
20 ToPacific's behalf, for the sale of \$450,000 worth of antique Chinese furniture to JJ
21 Sparkles. (*Id.*) The bill of sale was countersigned by Jianjun Wang on behalf of JJ
22 Sparkles. (*Id.*) The Receiver conferred with Xu about this transaction, and Xu
23 stated that this was for sale of certain furniture stored at the residential property
24 (specifically in the detached garage) in Monrovia, California owned by the
25 Receivership Entities.² (*Id.*) Xu did not disclose to the Receiver that JJ Sparkles is
26 connected to his sister. (*Id.*)

27 _____
28 ² This property was purchased in the name of Defendant Manna Holding Group, LLC, and was sold by the Receiver with the Court's approval. (Dkt. Nos. 130,

1 The Monrovia property consists of three separate buildings, the main
2 residence, a guest/pool house and a detached garage. (*Id.* at ¶ 19.) At takeover,
3 furniture and artwork items were located in the main residence and the detached
4 garage. (*Id.*) In initially securing the Monrovia Property, one of the Receiver's
5 vendors witnessed the removal of furniture and art work from the main residence by
6 a third-party upon his arrival. (*Id.*) The Receiver promptly directed contact with the
7 Monrovia police department and made a report. (*Id.*) The Receiver further
8 investigated the removal of art and furniture, demanded its return from Xu and
9 ultimately recovered the items taken from the main residence.

10 Additionally, although the Receiver had all locks replaced and otherwise
11 secured the Monrovia property, including the detached garage, when the Receiver
12 returned to retrieve the furniture from the detached garage, her moving company
13 discovered the furniture located in the detached garage had been removed. (*Id.* at ¶
14 20.) The Receiver promptly contacted the Monrovia police department and made a
15 report. (*Id.*) She also immediately investigated the removal and inquired with Xu
16 about this incident. (*Id.*) A few days later, with no explanation, Xu informed the
17 Receiver that he had "found" the furniture, although it had been dismantled and
18 damaged. (*Id.*) The furniture was thereafter recovered from a U-Haul trailer located
19 in a Knights Inn parking lot in Rosemead, California, but as explained in the
20 Receiver's motion to sell the furniture (along with other personal property items),
21 the Receiver's appraisal of the furniture (and other artwork items) indicated it was
22 worth no more than \$10,000. (*Id.*; Dkt. No. 193.)

23 During this time, the Receiver, through her counsel, also attempted to serve
24 subpoenas on JJ Sparkles and Jianjun Wang, but was unable to locate them and
25 received no response to her attempts to contact them. (*Id.* at ¶ 21.) The Receiver
26 has also confirmed that a portion of the two \$500,000 March 3, 2014 transfers to JJ
27

28 203.)

1 Sparkles and Yuanhao were returned to ToPacific. (*Id.*) Specifically, on or about
2 March 7, 2014, \$450,000 was wired to ToPacific by JJ Sparkles, and on March 14,
3 2014, Yuanhao wired \$200,000 to ToPacific. (*Id.*) Thus, based on the above, and
4 the information the Receiver has obtained thus far, the net transfers to JJ Sparkles
5 and Yuanhao total \$350,000. (*Id.*)

6 The Receiver is continuing to investigate this complicated series of transfers
7 and the sources and ultimate destination of the ToPacific (and other Receivership
8 Entity) funds. She will revise her proposed complaint to add additional claims and
9 parties as appropriate based on the information obtained. (*Id.* at ¶ 22-23.) Based on
10 the information gathered thus far, the Receiver believes that there is a strong basis
11 for a fraudulent transfer and disgorgement action against the Proposed Defendants
12 and requests authority to pursue these claims. (*Id.*)

13 **III. ARGUMENT**

14 "The power of a district court to impose a receivership or grant other forms of
15 ancillary relief does not in the first instance depend on a statutory grant of power
16 from the securities laws. Rather, the authority derives from the inherent power of a
17 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
18 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
19 and efficient administration of the estate by the district court for the benefit of
20 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
21 of a receiver is authorized by the broad equitable powers of the court, any
22 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
23 953 F.2d 1560, 1569 (11th Cir. 1992).

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

28 A district court's power to supervise an equity receivership
and to determine the appropriate action to be taken in the

1 administration of the receivership is extremely broad. The
2 district court has broad powers and wide discretion to
3 determine the appropriate relief in an equity receivership.
4 The basis for this broad deference to the district court's
5 supervisory role in equity receiverships arises out of the
6 fact that most receiverships involve multiple parties and
7 complex transactions. A district court's decision
8 concerning the supervision of an equitable receivership is
9 reviewed for abuse of discretion.

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

13 **A. The Outstanding Amount of \$1,055,085 Is Subject To**
14 **Disgorgement.**

15 The Receiver seeks authority to pursue claims against the Proposed
16 Defendants to recover assets of the Receivership Entities that were made for no
17 legitimate business purpose, without equivalent value and, in some cases, for no
18 consideration whatsoever. The transfers were made immediately prior to the
19 Commission filing this action in what appears to have been an effort to hide assets
20 for the benefit of Xu and his immediate family members, including his sister, Sue
21 Wang, and their mother, Xiaomei Deng. (Freitag Decl., ¶¶ 3-7, 8, 13-17.) There are
22 no records to indicate that any value was provided to the Receivership Entities in
23 exchange for the transfers. Accordingly, the Receiver believes that there is a strong
24 basis for an action for recovery of fraudulent transfers and disgorgement of ill-
25 gotten gains against the Proposed Defendants. (*Id.* at ¶ 23.)

26 Based on the above, the Receiver seeks authority to pursue claims against the
27 Proposed Defendants under California's Uniform Fraudulent Transfer Act
28 ("CUFTA"), Cal. Civ. Code § 3439 *et seq.*, constructive trust and unjust enrichment

1 for recovery of the full remaining outstanding balance of ToPacific funds in the
2 amount of \$1,055,085. (*Id.* at ¶ 22.) A true and correct copy of the draft complaint
3 the Receiver intends to file against the Proposed Defendants is appended to the
4 Receiver's declaration filed concurrently herewith. (*Id.*)

5 Under the CUFTA, a transfer is subject to avoidance and recovery when
6 made with (1) actual intent to defraud, or (2) constructive fraudulent intent based on
7 the lack of reasonably equivalent value provided in exchange. Cal. Civ. Code
8 § 3439.04(a). Intent to defraud is presumed when the payments were made from
9 entities operating a Ponzi scheme. *In re Cohen*, 199 B.R. 709,717 (B.A.P. 9th Cir.
10 1996); *see also Donell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2007); *In re AFI*
11 *Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008). Federal equity receivers have
12 standing to pursue fraudulent transfer claims on behalf of entities in receivership.
13 *Donell*, 533 F.3d at 776-777.

14 Here, the Proposed Defendants either directly or indirectly received a total of
15 at least \$2 million from ToPacific without providing any value in return. Although
16 \$650,000 was subsequently returned and the Receiver was able to recover an
17 additional \$294,915 through the sale of the garments, \$1,055,085 remains
18 outstanding. The Receiver's investigation indicates no value was provided by the
19 Proposed Defendants in exchange for the transfers. (Freitag Decl., ¶¶ 3-7.)

20 The timing of the transfers in relation to the filing of the Commission's
21 complaint as well as the recipients of the transfers (Xu's immediate family
22 members) are strong evidence of Xu's intent to hinder and defraud creditors by
23 transferring the funds. Xu's intent to defraud will also likely be presumed in
24 connection with the transfers based on the underlying Ponzi-scheme. The
25 Commission submitted compelling evidence of a Ponzi scheme when it filed its
26 complaint. The Court determined the Commission had made a *prima facie* case and
27 immediately appointed the Receiver. Defendants have not disputed the
28 Commission's allegations of a Ponzi scheme.

1 Finally, the Receiver's investigation and findings to date support and confirm
2 the allegations that the Defendants were operating a Ponzi scheme. ToPacific was
3 one of the entities used to receive funds raised from investors in the overall Ponzi
4 scheme. Therefore, under applicable case law, the transfers to the Proposed
5 Defendants will likely be presumed to have been made with actual intent to defraud.

6 Accordingly, the entire remaining outstanding balance of \$1,055,085 is
7 subject to disgorgement as a fraudulent transfer. Likewise, because the Proposed
8 Defendants have been unjustly enriched, they hold the \$1,055,085 in constructive
9 trust for the Receivership Entities.

10 **B. The Proposed Defendants are Jointly and Severally Liable for**
11 **Disgorgement of Funds Received in the Amount of \$1,055,085.**

12 The Proposed Defendants appear to have acted in concert in funneling
13 investor money out of the Receivership Entities through entities they control and for
14 the purchase of real estate and other assets held in their names. Sue Wang, Xiaomei
15 Deng, and Jianjun Wang have either been confirmed to be or the facts indicate they
16 are immediate family members of Xu. The bank records reflect a rapid series of
17 transfers between and among the Proposed Defendants once the funds were received
18 from ToPacific. There should be no distinction drawn between the funds transferred
19 to each of the Proposed Defendants as they acted in concert with and as alter egos of
20 one another to accomplish a common objective.

21 Thus, the Receiver's proposed complaint will include alter ego allegations
22 against the Proposed Defendants, and will seek judgment against each of them,
23 jointly and severally, for the full outstanding balance of ToPacific funds transferred
24 in the amount of \$1,055,085.

25 **C. The Receiver Will Endeavor to Keep Costs to a Minimum and**
26 **Continue to Evaluate the Likely Benefit to the Receivership Estate.**

27 The Receiver has consulted with her counsel, Allen Matkins, and believes the
28 legal fees for the action could be as low as \$15,000 in the event of a prompt

1 settlement, and as much as \$250,000 in the event of a full trial. (Freitag Decl.,
 2 ¶ 24.) The Receiver believes a trial is highly unlikely and the case will likely be
 3 resolved via settlement or summary judgment with legal fees of \$150,000 or less.
 4 (*Id.*) As with all matters, the Receiver and Allen Matkins will make every effort to
 5 minimize administrative expenses associated with the proposed action. (*Id.*)
 6 Throughout the litigation, the Receiver and Allen Matkins will continue to
 7 monitor the costs and potential net benefit to the receivership estate. (*Id.* at ¶ 25.)
 8 In her discretion, the Receiver may conduct asset investigations regarding the
 9 Proposed Defendants to aid in assessing collectability of a judgment. (*Id.*) The
 10 Court has already frozen the Property, which was purchased on March 21, 2014 for
 11 \$730,000. (Dkt. No. 260.) The Receiver's investigation indicates Proposed
 12 Defendants have additional assets from which the Receiver can recover. (Freitag
 13 Decl., ¶ 25.) Thus, the records and information obtained to date suggests that a
 14 judgment will likely be collectable. (*Id.*)

15 **IV. CONCLUSION**

16 Based on the foregoing, the Receiver respectfully requests an order
 17 authorizing her to pursue claims against the Proposed Defendants.

18 Dated: December 19, 2014

19 ALLEN MATKINS LECK GAMBLE
 20 MALLORY & NATSIS LLP
 21 DAVID R. ZARO
 22 TED FATES
 23 TIM C. HSU

24 By: /s/ TIM C. HSU
 25 TIM C. HSU
 26 Attorneys for Court-appointed
 27 Receiver KRISTA L. FREITAG
 28