

1 DAVID R. ZARO (BAR NO. 124334)
TED FATES (BAR NO. 227809)
2 TIM C. HSU (BAR NO. 279208)
ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
4 Los Angeles, California 90071-3309
Phone: (213) 622-5555
5 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com
6 tfates@allenmatkins.com
thsu@allenmatkins.com

7 Attorneys for Court-appointed Receiver
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.;
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;
20 MANNA HOLDING GROUP, LLC;
MANNA SOURCE INTERNATIONAL,
21 INC.; WCM RESOURCES, INC.;
AEON OPERATING, INC.; PMX
22 JEWELS, LTD.; TOPACIFIC INC.;
TO PACIFIC INC.; VINCENT J.
23 MESSINA; and INTERNATIONAL
MARKET VENTURES,

24 Relief Defendants.

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

NOTICE OF MOTION AND MOTION
FOR AUTHORITY TO PURSUE
CLAIMS AGAINST
GOVERNMENTAL IMPACT, INC.,
JAMES DANTONA, ZAYDA ABERIN,
AND ZHB INTERNATIONAL CORP.

Date: September 22, 2014
Time: 1:30 p.m.
Ctrm: 16
Judge: Hon. John F. Walter

25
26 TO ALL INTERESTED PARTIES:

27 PLEASE TAKE NOTICE that on September 22, 2014, at 1:30 p.m. in
28 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los

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 an order authorizing the Receiver to pursue claims against
8 Governmental Impact, Inc. ("GII"), James Dantona ("Dantona"), Zayda Aberin
9 ("Aberin") and ZHB International, Corp. ("ZHB") (collectively referred to herein as
10 "Proposed Defendants").

11 This Motion for Authority to Pursue Claims Against Proposed Defendants
12 (the "Motion") is based on this Notice of Motion and Motion, the attached
13 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
14 documents and pleadings already on file in this action, and upon such further oral
15 and documentary evidence as may be presented at the time of the hearing.

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

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

23 Dated: August 19, 2014

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

24
25
26 By: /s/ Tim C. Hsu

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

1 DAVID R. ZARO (BAR NO. 124334)
2 TED FATES (BAR NO. 227809)
3 TIM C. HSU (BAR NO. 279208)
4 ALLEN MATKINS LECK GAMBLE
5 MALLORY & NATSIS LLP
6 515 South Figueroa Street, Ninth Floor
7 Los Angeles, California 90071-3309
8 Phone: (213) 622-5555
9 Fax: (213) 620-8816
10 E-Mail: dzaro@allenmatkins.com
11 tfates@allenmatkins.com
12 thsu@allenmatkins.com

13 Attorneys for Court-appointed Receiver
14 KRISTA L. FREITAG

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 v.

22 WORLD CAPITAL MARKET INC.;
23 WCM777 INC.; WCM777 LTD. d/b/a
24 WCM777 ENTERPRISES, INC.; and
25 MING XU a/k/a PHIL MING XU,

26 Defendants,

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

Relief Defendants.

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

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AUTHORITY TO
PURSUE CLAIMS AGAINST
GOVERNMENTAL IMPACT, INC.,
JAMES DANTONA, ZAYDA ABERIN,
AND ZHB INTERNATIONAL CORP.

Date: September 22, 2014
Time: 1:30 p.m.
Ctrm: 16
Judge: Hon. John F. Walter

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

Page

- I. INTRODUCTION 2
- II. FACTS 3
 - A. Transfers to GII from the Receivership Entities 3
 - B. Subsequent transfers to Dantona or for his personal benefit 4
 - C. Subsequent transfers to Aberin and her company ZHB 4
 - D. The Proposed Defendants have refused the Receiver's demands for disgorgement 5
- III. ARGUMENT 6
 - A. The \$750,000 was fraudulently transferred to GII and no equivalent value has been provided in exchange 7
 - B. GII paid Dantona directly or made payments for his benefit in the amount of \$266,500..... 8
 - C. Aberin and ZHB are jointly and severally liable for disgorgement of funds received in the amount of \$325,000 9
 - D. The Receiver will endeavor to keep costs to a minimum and continue to evaluate the likely net benefit to the receivership of the proposed action..... 10
- IV. CONCLUSION 10

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

TABLE OF AUTHORITIES

Page

Cases

Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.,
205 F.3d 1107 (9th Cir. 1999)6

Donell v. Kowell,
533 F.3d 762 (9th Cir. 2007) 7, 8

In re AFI Holding, Inc.,
525 F.3d 700 (9th Cir. 2008)7

In re Cohen,
199 B.R. 709 (B.A.P. 9th Cir. 1996)7

SEC v. Capital Consultants, LLC,
397 F.3d 733 (9th Cir. 2005)6

SEC v. Elliot,
953 F.2d 1560 (11th Cir. 1992)6

SEC v. Hardy,
803 F.2d 1034 (9th Cir. 1986)6

SEC v. Wencke,
622 F.2d 1363 (9th Cir. 1980)6

Statutes

California Civil Code § 34397

California Civil Code § 3439.04(a).....7

California Civil Code § 3439.08(b)(2).....8

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 During the 60 days preceding the Receiver's appointment, GII received
4 \$750,000 from the Receivership Entities for purported consulting services that were
5 never provided. Specifically, in January 2014, Defendant Phil Ming Xu ("Xu")
6 entered into an agreement with GII for purported consulting and governmental
7 advocacy services. In exchange for the contemplated services, Xu caused
8 Receivership Entity ToPacific Inc. ("ToPacific") to transfer \$750,000 to GII. Of the
9 funds transferred, approximately \$266,500 was subsequently disbursed to GII's
10 principal, Dantona, or for his benefit and \$325,000 was disbursed to Aberin and her
11 company, ZHB. Dantona has admitted that no services were provided under the
12 agreement.

13 The Receiver, through her counsel, demanded that GII and Dantona return the
14 full \$750,000. The Receiver, through counsel, also demanded that Aberin return the
15 funds that went to her and ZHB. Both have refused the Receiver's demands without
16 providing any factual basis for the refusal or any evidence to show the funds were
17 received in good faith or that any value was provided in exchange. Accordingly, the
18 Receiver requests authority to pursue claims against Proposed Defendants to recover
19 the full \$750,000 from GII, as well as claims against Dantona, Aberin and ZHB for
20 recovery of the amounts they each received.

21 Although the Preliminary Injunction Order authorizes the Receiver to
22 "institute, pursue, and prosecute all claims and causes of action" on behalf of the
23 Receivership Entities, commencing lawsuits involves considerable time and
24 expense. Accordingly, the Receiver seeks specific authority to proceed with an
25 action against the Proposed Defendants for recovery of the \$750,000.

26
27
28

1 **II. FACTS**

2 **A. Transfers to GII from the Receivership Entities.**

3 On or about January 30, 2014, Dantona, through his company GII, entered
4 into a Consulting Agreement with Xu to provide purported consulting and
5 governmental advocacy services (the "Agreement"). (Freitag Decl., ¶ 4, Ex. A.)
6 The Agreement states that GII would provide specific advocacy services on Xu's
7 behalf, including but not limited to, helping locating and securing legislators,
8 obtaining access to such legislative leaders in California and Washington D.C., and
9 communicating and recommending advocacy strategies and effective public
10 relations programs with the government. (Freitag Decl., ¶¶ 4-5, Ex. A.) These
11 services were to be provided in exchange for \$750,000, with \$500,000 payable upon
12 signing of the Agreement and another \$250,000 due on April 30, 2014. (*Id.*) Xu
13 made the \$500,000 payment to GII by check disbursed from ToPacific's bank
14 account dated January 30, 2014. The \$250,000 payment, although not due until
15 April 30, 2014, was made on March 1, 2014, also by check from the ToPacific
16 account. (Freitag Decl., ¶ 6.)

17 The Receiver's counsel issued a subpoena to Dantona for records relating to
18 the above-payments and held a conference call with him, his counsel and her
19 counsel. The records and information obtained indicate the following:

- 20 • No services were performed under the Agreement;
- 21 • GII subsequently paid Dantona, or made payments for his benefit, in
22 the approximate amount of \$266,500;
- 23 • GII also paid Aberin and her company ZHB a combined total of
24 \$325,000 of the funds, purportedly as a fee for referring Xu to GII; and
- 25 • Xu transferred another \$100,000 from the ToPacific account to
26 Baseballers Against Drugs ("BAD"), a charitable organization run by
27 Dantona.

28 (Freitag Decl., ¶ 7.)

B. Subsequent transfers to Dantona or for his personal benefit.

Of the funds transferred to GII, approximately \$266,500 was subsequently transferred to Dantona or paid for his personal benefit through a series of transfers and payments as follows:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
February 7, 2014	7169	Dantona	\$75,000
February 12, 2014	7171	Bamieh&Erickson	\$100,000
February 19, 2014	7172	Jenny Dantona	\$1,000
March 9, 2014	7176	Jenny Dantona	\$500
March 11, 2014	7191	Dantona	\$20,000
April 6, 2014	7202	Dantona	\$10,000
April 24, 2014	7205	Bamieh&Erickson	\$9,500
April 24, 2014	7206	Jenny Dantona	\$500
April 28, 2014	7207	Dantona	\$20,000
May 6, 2014	7208	Dantona	<u>\$30,000</u>
		Total:	\$266,500

(Freitag Decl., ¶ 8.)

Through her correspondences with Dantona's counsel, Dantona has admitted that no services on the Agreement were ever performed. (Freitag Decl., ¶ 9.) Thus, the Receivership Entities received no value in exchange for the initial transfer to GII of \$750,000, and similarly no value was provided in exchange by Dantona for the subsequent payments made to him or for his benefit.

C. Subsequent transfers to Aberin and her company ZHB.

As with Dantona, Aberin and her Company ZHB received \$325,000, or nearly half of the funds paid to GII by ToPacific. These funds were paid to Aberin and ZHB by GII as follows:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
February 4, 2014	7167	Aberin	\$100,000

1	February 4, 2014	7168	ZHB	\$100,000
2	March 4, 2014	7174	ZHB	<u>\$125,000</u>
3			Total:	\$325,000

4 (Freitag Decl., ¶ 10.)

5 The Receiver, through counsel, also issued a subpoena to Aberin for
6 information and records pertaining to the above-payments. (Freitag Decl., ¶ 11.) In
7 response, Aberin provided some records and met with the Receiver's counsel on
8 June 17, 2014 to discuss the payments. (*Id.*) Notably, of the records and
9 information produced, there is no documentation to indicate that any equivalent
10 value was provided by either Aberin or her company ZHB in exchange for these
11 payments. (*Id.*)

12 In addition, based on the bank records provided by Aberin and ZHB, the
13 \$325,000 was transferred and commingled among Aberin and ZHB's bank accounts
14 at Wells Fargo, and most, if not all, of the \$325,000 has been paid out of the
15 accounts for Aberin's personal benefit; including a payment made out of ZHB's
16 account for Aberin's personal home mortgage in excess of \$240,000. (*Id.* at ¶ 12.)

17 **D. The Proposed Defendants have refused the Receiver's demands for**
18 **disgorgement.**

19 Based on the above, the Receiver, through counsel, demanded that GII and
20 Dantona return the full \$750,000, that Aberin return the \$325,000 subsequently
21 disbursed to her and ZHB, and that BAD return the \$100,000 received from
22 ToPacific. (Freitag Decl., ¶ 13.) GII and BAD initially agreed to put into escrow
23 with the Receiver a total of \$140,466.18 -- the full \$100,000 that went to BAD and
24 \$40,466.18, the amount GII claimed it still held of the \$750,000 it received. BAD
25 then agreed to return the full \$100,000, leaving the \$40,466.18 from GII in escrow.
26 (*Id.* at ¶ 14.)

27 Dantona claims the \$750,000 is not subject to disgorgement because it was
28 fully earned upon receipt—even though he admits no work was performed under the

1 Agreement. (Freitag Decl., ¶ 15.) Likewise, Aberin has not agreed to return the
2 funds she received. (*Id.*)

3 **III. ARGUMENT**

4 "The power of a district court to impose a receivership or grant other forms of
5 ancillary relief does not in the first instance depend on a statutory grant of power
6 from the securities laws. Rather, the authority derives from the inherent power of a
7 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
8 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
9 and efficient administration of the estate by the district court for the benefit of
10 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
11 of a receiver is authorized by the broad equitable powers of the court, any
12 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
13 953 F.2d 1560, 1569 (11th Cir. 1992).

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

18 A district court's power to supervise an equity receivership
19 and to determine the appropriate action to be taken in the
20 administration of the receivership is extremely broad. The
21 district court has broad powers and wide discretion to
22 determine the appropriate relief in an equity receivership.
23 The basis for this broad deference to the district court's
24 supervisory role in equity receiverships arises out of the
25 fact that most receiverships involve multiple parties and
26 complex transactions. A district court's decision
27 concerning the supervision of an equitable receivership is
28 reviewed for abuse of discretion.

24 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
25 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
26 deference' to the court's supervisory role, and 'we generally uphold reasonable
27 procedures instituted by the district court that serve th[e] purpose' of orderly and
28 efficient administration of the receivership for the benefit of creditors.").

1 Accordingly, the Court has broad equitable powers and discretion in the
2 administration of the receivership estate and disposition of receivership assets.

3 Here, the Receiver seeks authority to pursue actions against the Proposed
4 Defendants to recover assets of the Receivership Entities that were transferred
5 without any equivalent value provided in exchange. Neither Dantona nor Aberin
6 have articulated a legal or factual basis for their refusal to turn over the \$750,000
7 paid to GII, or the subsequent transfers and payments made to Dantona, Aberin and
8 her company ZHB. The Receiver has demanded return of the funds, but both
9 Dantona and Aberin have refused the Receiver's request. Accordingly, the Receiver
10 believes further negotiations will not be fruitful and that an action for disgorgement
11 against the Proposed Defendants is necessary to recover the funds transferred.
12 (Freitag Decl., ¶ 16.)

13 Based on the above, the Receiver intends to pursue claims against the
14 Proposed Defendants under California's Uniform Fraudulent Transfer Act
15 ("CUFTA"), Cal. Civ. Code § 3439 *et seq.* for disgorgement of the full \$750,000
16 transferred from ToPacific. (Freitag Decl., ¶ 16, Ex. B.) A true and correct copy of
17 the draft complaint the Receiver intends to file against the Proposed Defendants is
18 appended to the Receiver's declaration filed concurrently herewith. (*Id.*)

19 **A. The \$750,000 was fraudulently transferred to GII and no**
20 **equivalent value has been provided in exchange.**

21 Under the CUFTA, a transfer is subject to disgorgement when the transfer is
22 made with (1) actual intent to defraud, or (2) constructive fraudulent intent based on
23 the lack of reasonably equivalent value provided in exchange. Cal. Civ. Code
24 § 3439.04(a). Intent to defraud is presumed when the payments were made from
25 entities operating a Ponzi scheme. *In re Cohen*, 199 B.R. 709, 717 (B.A.P. 9th Cir.
26 1996); *see also Donell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2007); *In re AFI*
27 *Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008). Federal equity receivers have
28

1 standing to pursue fraudulent transfer claims on behalf of entities in receivership.
2 *Donell*, 533 F.3d at 776-777.

3 Here, GII received \$750,000 from the Receivership Entities without providing
4 any services in return. Thus, the Receivership Entities have received no value or
5 consideration, directly or indirectly, in exchange. It is also likely that intent to
6 defraud will be presumed in connection with the transfers to GII. The Securities and
7 Exchange Commission ("Commission") submitted compelling evidence of a Ponzi
8 scheme when it filed its complaint. The Court determined the Commission had
9 made a *prima facie* case and immediately appointed the Receiver. Defendants have
10 not disputed the Commission's allegations of a Ponzi scheme. Finally, the
11 Receiver's investigation and findings to date support and confirm that the
12 Defendants were operating a Ponzi scheme. ToPacific was one of the entities used
13 to receive funds raised from investors in the scheme. Therefore, the transfers to GII
14 will likely be presumed to have been made with actual intent to defraud.

15 Accordingly, the entire \$750,000 in funds paid to GII is subject to
16 disgorgement as a fraudulent or constructively-fraudulent transfer. Likewise,
17 because GII has been unjustly enriched, it holds the \$750,000 in constructive trust
18 for the Receivership Entities.

19 **B. GII paid Dantona directly or made payments for his benefit in the**
20 **amount of \$266,500.**

21 As a subsequent transferee of the fraudulently transferred funds, Dantona is
22 liable for disgorgement unless he can prove that he is a good faith transferee and
23 that he has provided equivalent value in exchange. Cal. Civ. Code § 3439.08(b)(2).
24 Here, Dantona does not dispute that no services were provided under the
25 Agreement, and has provided no documents or information to suggest that any value
26 was provided to the Receivership Entities. As the principal of GII, he cannot assert
27 that he accepted the subsequent transfers to himself without knowing the
28

1 circumstances under which GII obtained the funds or that GII did not provide any
2 value in return.

3 **C. Aberin and ZHB are jointly and severally liable for disgorgement**
4 **of funds received in the amount of \$325,000.**

5 As with Dantona, Aberin and ZHB are subject to liability for disgorgement of
6 the \$325,000 subsequently transferred to them from GII. Aberin introduced Xu to
7 GII and Dantona, and therefore cannot assert that she received from transfers from
8 GII without knowing the circumstances under which GII obtained the funds.
9 Further, Aberin did not provide any value to GII or ToPacific in exchange for the
10 funds she received.

11 In addition, there should be no distinction drawn between the funds
12 transferred to Aberin as opposed to ZHB because they are mere alter egos of the
13 other. As explained above, the bank records provided by Aberin for herself and
14 ZHB show that the \$325,000 transferred was commingled and that most of the funds
15 were paid out of the accounts for Aberin's personal benefit. Thus, there is a
16 sufficient unity of interest and ownership between Aberin and her company ZHB,
17 such that the separate personalities of the two do not in reality exist. Accordingly, it
18 would be inequitable to recognize ZHB's corporate form since Aberin has personally
19 benefitted from the \$325,000, including the pay down of her personal mortgage in
20 excess of \$240,000.

21 Thus, the Receiver's proposed complaint will include alter ego allegations
22 against Aberin and her company ZHB, and will seek judgment against both of them,
23 jointly and severally, for the full \$325,000 transferred. Moreover, because Aberin
24 and ZHB have been unjustly enriched, they hold the \$325,000 in constructive trust
25 subject to disgorgement.

26
27
28

