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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

**EX PARTE APPLICATION FOR
 EXTENSION OF CLAIMS
 SUBMISSION DEADLINE**

Ctrm: 16
 Judge: Hon. John F. Walter

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,
4 Los Angeles, California 90012, Krista L. Freitag ("Receiver"), Court-appointed
5 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;
6 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
7 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
8 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
9 subsidiaries and affiliates ("Receivership Entities"), will and hereby does apply,
10 *ex parte*, to the Court for a 45-day extension of the Court-ordered November 9, 2015
11 deadline to submit claims to the Receiver.

12 This Application is made pursuant to Local Rule 7-19, *et seq.*, on the grounds
13 that, for a variety of reasons discussed further below, the investor response rate to
14 claim notices and the number of claims received from investors to date is
15 *substantially lower* than anticipated. The Receiver requests an extension of the
16 claims submission deadline in order to address the low response rate in several
17 ways, including further e-mail notices, a live telephone line for investor calls, an in-
18 person meeting to assist investors with submitting their claims in Los Angeles (and
19 possibly other cities where high concentrations of investors are located), and other
20 outreach efforts to contact and encourage investors with losses from the WCM777
21 Ponzi scheme to submit claims.

22 Counsel for the Securities and Exchange Commission ("Commission") was
23 notified of this Application in accordance with Local Rule 7-19.1. The Commission
24 has indicated it does not oppose this Application.

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

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6 Dated: October 23, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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8 By: /s/ Ted Fates

9 TED FATES
10 Attorneys for Receiver
11 KRISTA L. FREITAG
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND BACKGROUND FACTS**

3 On July 13, 2015, the Court granted the Receiver's Motion for Order
4 (1) Setting Claims Bar Date; (2) Approving Claim Forms; and (3) Approving
5 Engagement of Third Party Claims Administrator ("Claims Motion"). Dkt.
6 Nos. 341, 354. The Order ("Claims Order") authorized the Receiver to engage Epiq
7 Systems - Class Action & Mass Tort Solutions, Inc. ("Epiq") as claims administrator
8 and set the deadline to submit claims to the Receiver as November 9, 2015 ("Claims
9 Bar Date").

10 Pursuant to the process laid out in the Claims Motion, investors and other
11 creditors were to have 60 days to submit claims to the Receiver, and the claims
12 information, including the Claims Portal (as defined below), was to be provided in
13 five different non-English languages - Spanish, Portuguese, Mandarin, Taiwanese,
14 and Japanese. Accordingly, between entry of the Claims Order and September 9,
15 2015, the Receiver and Epiq prepared to activate the electronic claims submission
16 portal ("Claims Portal"), including constructing the Claims Portal
17 (www.wcm777claimsprocessing.com), preparing the Interactive Voice Response
18 ("IVR") system to provide telephone support to claimants (without live agents),
19 drafting and revising investor notices and instructions, drafting and revising answers
20 to frequently asked questions, and translating the full Claims Portal, the frequently
21 asked questions, the IVR, and all notices and information into the five languages
22 listed above. The IVR and the full Claims Portal, including the electronic claim
23 form and answers to approximately 40 frequently asked questions, can be read in
24 English and the five other languages by simply clicking the applicable button on the
25 top right corner of the first page of the Claims Portal.

26 On September 9, 2015, the claims notice was published in the USA Today
27 and the Wall Street Journal-Asia, the Receiver mailed physical notices to any other
28 known creditor of the Receivership Entities (approximately 1,100 notices), and Epiq

1 sent an e-mail blast to the e-mail addresses in the Receiver's possession (the
2 previously discussed Liquid Web database) believed to be (or potentially be)
3 associated with investors. Ultimately, the unreturned number of original email
4 notices totaled 98,838. The notices (physical and e-mail) included instructions on
5 how to submit claims to the Receiver and the e-mails contained a link to the Claims
6 Portal, www.wcm777claimsprocessing.com, which had been activated prior to the
7 physical and e-mail notices being sent. A notice and link to the Claims Portal were
8 also posted at the top of the receivership website used to provide other case
9 information to investors, www.worldcapitalmarketreceivership.com.

10 During the three weeks following September 9, 2015, approximately 9,000
11 unique users (identified by the IP address of their computer) visited the Claims
12 Portal. Of that number, approximately 900 submitted a claim. These numbers are
13 substantially lower than anticipated based on the number of unique e-mails
14 addresses and the number of e-mails that were actually opened from the Receiver's
15 initial October 2014 e-mail blast (approximately 30,000). Based on the statistics
16 from the initial October 2014 e-mail blast, the Receiver had estimated the range of
17 investor claims to be between 24,000 and 96,000. Dkt. No. 341. The reasons for
18 the uncertainty regarding the estimated number of potential investor claims are
19 many and have been detailed in prior filings, but primarily stem from the lack of a
20 complete or trustworthy company database, the location of many investors outside
21 the United States, the fact that a significant number of investors gave their money to
22 other individuals who pooled the funds with those of other investors before
23 investing with the Receivership Entities, and the issuance and trading of "points."
24 *Id.*

25 In light of the lower than expected investor response rate and to discourage
26 investors from procrastinating in submitting claims, on October 8, 2015, the
27 Receiver directed Epiq to prepare, translate, and send a second reminder e-mail blast
28 to all e-mail addresses. This reminder has generated a significant bump in unique

1 user visits to the Claims Portal and claims submitted. As of October 16, 2015,
2 approximately 16,500 unique users had visited the Claims Portal and approximately
3 2,600 claims had been submitted (approximately 1,100 of which were submitted
4 during the week following the reminder e-mail blast).

5 As of October 16, 2015, Epiq had received over 500 e-mail messages sent to
6 the e-mail address dedicated to questions about claims,
7 info@wcm777claimsprocessing.com. The Receiver had received over 250
8 additional e-mail messages sent directly to her staff. From these e-mail messages,
9 certain common reasons and themes for investors not submitting claims to date have
10 emerged. The most common reasons are as follows:

11 1) **Distrust of Claims Portal** – some investors seem to believe the Claims
12 Portal is another scam or an unauthorized attempt to get their personal information.
13 Other investors seem to believe that the government will be watching them if they
14 submit a claim. This latter concern is likely to be particularly applicable to
15 undocumented immigrant investors.

16 2) **Belief in Ming Xu** – some investors seem to believe in Defendant Ming
17 Xu's "vision" and request the companies be returned to his control.

18 3) **Difficulty with Claims Process** – some investors are having problems
19 submitting claims for one or more of the following reasons:

- 20 • They do not have or do not remember their investment information.
- 21 • They think the Receiver should have their information and they should
22 not have to provide it.
- 23 • They do not understand the instructions for submitting claims.
- 24 • They do not have access to a computer or scanner to submit documents.

25 Although it may be unlikely investors who believe in Ming Xu's "vision" or
26 who are fearful of being watched by the government will change their minds and
27 submit claims, investors who are confused, need further instruction, lack access to
28 technology, and/or lack documentation of their investments may well submit claims

1 with further instruction and explanation. The Receiver believes all reasonable and
2 cost-effective efforts should be made to contact and encourage these investors to do
3 so, as further discussed below. The Receiver is holding in excess of \$20 million in
4 cash and expects to recover additional amounts, including through the sale of the
5 remaining real property assets as well as pending recovery actions and collection
6 efforts. The receivership estate, therefore, will be able to provide a meaningful
7 recovery to investors with allowed claims. Indeed, the primary purpose of the
8 receivership is to provide as much recovery as possible to as many defrauded
9 investors as possible.

10 Accordingly, after consulting with Epiq and her counsel, the Receiver
11 recommends the following actions as the most efficient and effective means to
12 increase the number of investor claims submitted:

- 13 • Extend the Claims Bar Date by 45 days to December 24, 2015, to allow
14 investors more time to submit claims. The claim form requires that
15 investors submit supporting documentation. Although 60 days should
16 be enough time to gather such documentation, the e-mails received to
17 date indicate that a lack of supporting documentation is an issue for
18 many investors. Moreover, the additional 45 days will give the
19 Receiver sufficient time to take the other steps laid out below.
- 20 • Send e-mail blasts to investors every seven to 10 days to not only
21 remind investors to submit a claim, but also to address common
22 inquiries and themes in investor correspondence. As discussed above,
23 the reminder e-mail blast sent out on October 8, 2015, generated a
24 significant bump in visits to the website and claims submitted.
25 Although subsequent e-mail blasts may not generate as great of a
26 bump, they are still a very efficient way of reminding and encouraging
27 investors to submit claims. The cost of each e-mail blast is
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- 1 approximately \$2,000 to \$3,000, depending on the amount of
2 translation necessary.
- 3 • Open a live telephone line for investor calls to efficiently answer
4 questions, to guide investors through the claims process, and to gain
5 investor confidence in the claims process. Through October 16, 2015,
6 over 1,100 calls were made into the IVR (non-live telephone system).
7 With a live telephone line, investors will be able to have their calls
8 taken in English, Spanish, Portuguese, Mandarin, Taiwanese, or
9 Japanese. The English calls will go directly to the Receiver's staff¹ and
10 calls in all other languages will be handled by Epiq. Epiq's estimated
11 cost for the live telephone line through December 24, 2015, is
12 approximately \$28,000. If the Court approves, the next e-mail blast
13 will announce to investors that the deadline to submit claims has been
14 extended, supporting documentation can be sent in by mail (as
15 discussed below), and the live telephone line is open.
 - 16 • Allow investors to mail in their supporting documentation to Epiq's
17 designated post office box. The Receiver has received numerous calls
18 and e-mails from investors who are unable to upload their supporting
19 documentation to the Claims Portal because they do not have access to
20 the necessary technology. Many of them can complete the claim form
21 on their smart phones, but do not have access to a scanner and/or do not
22 know how to upload documents. The estimated cost of allowing
23 supporting documents to be submitted by mail is \$1,200. Note,

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27 ¹ Because of the complexity and large variety of investor inquiries, the Receiver's
28 staff has already been handling the majority of investor e-mails sent to
info@wcm777claimsprocessing.com. Accordingly, it will be more efficient for
English calls to go directly to the Receiver's staff, rather than being routed
through Epiq.

1 investors must still submit their claims via the Claims Portal; only
2 supporting documents will be accepted by mail.

- 3 • Capture physical addresses available from investor checks, which
4 checks number approximately 1,400, and mail physical notices to
5 investors at those addresses. Data from Epiq indicates that only about
6 585 investors who made payments to the Receivership Entities by
7 check have submitted claims as of October 16, 2015. Although it is
8 unknown how many of the remaining approximately 815 investors who
9 made payments by check may have already received e-mail notice,
10 investors who made payments by check are very likely to have allowed
11 claims (as opposed to investors who may have given cash to another
12 investor or "leader").
- 13 • Hold an in-person meeting in Los Angeles and possibly other cities
14 with a high concentration of investors to help investors without access
15 to technology or who are confused about how to submit claims. The
16 Receiver proposes inviting (via e-mail) all investors located in Southern
17 California to an in-person meeting to help them submit claims at
18 electronic tablet stations and answer their questions. The Receiver,
19 along with representatives from Epiq and her staff, will rent a hotel
20 ballroom, set up electronic tablet stations, and assist investors through
21 the claims submission process. If the initial meeting in Los Angeles is
22 productive in terms of increasing the number of claims submitted, the
23 Receiver will consider scheduling meetings in Northern California
24 (Bay Area), Dallas, New York, and South Florida. These are the five
25 geographic areas in the United States with the highest concentrations of
26 investors. The Receiver estimates the cost of the Los Angeles meeting
27 to be approximately \$8,900 to \$16,800, including time and expenses.
28 A breakdown of the cost range, which is dependent on the number of

1 attendees, is attached hereto as Exhibit A. Meetings in other cities
2 would likely be a little more expensive due to the added travel costs.

3 The Receiver estimates that the total expenses associated with these efforts
4 will be approximately \$58,100 to \$73,000 (with another \$10,000 to \$20,000 for each
5 additional in-person meeting, depending on the number of attendees). A breakdown
6 of the total costs is attached hereto as Exhibit B. The Receiver expects that Epiq's
7 total fees for Phase I will come in under the budgeted cap for Phase I (\$166,032).
8 The costs of the additional outreach efforts described herein, however, were not
9 included in the Phase I budget.

10 **II. ARGUMENT**

11 **A. District Courts Have Broad Equitable Powers to Administer**
12 **Receiverships**

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

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

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

11 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
12 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
13 and 'we generally uphold reasonable procedures instituted by the district court that
14 serve th[e] purpose' of orderly and efficient administration of the receivership for
15 the benefit of creditors."). Accordingly, this Court has broad equitable powers and
16 discretion in determining the administration of this receivership estate.

17 Here, the Court has discretion to extend the Claims Bar Date and authorize
18 the Receiver to take the proposed actions described above to encourage investors to
19 submit claims. The Receiver believes this relief will advance the goal of providing
20 a recovery from the receivership estate to as many defrauded investors as possible.
21 The Receiver has considered many different options and strategies for trying to
22 increase the investor response rate and believes the actions proposed herein are the
23 best in terms of having the maximum impact with the least consumption of
24 receivership estate resources.

25 **B. Ex Parte Relief is Necessary and Appropriate**

26 As explained above, the Receiver's counsel has contacted counsel for the
27 Commission, who has no opposition to the proposed extension. It is important that
28 the Receiver take action to address the low response rate as soon as possible so as
not to unduly delay the claims process. Accordingly, relief on an *ex parte* basis is
necessary and appropriate under the circumstances.

1 **III. CONCLUSION**

2 For the reasons set forth herein, the Receiver requests entry of an order
3 extending the Claims Bar Date by 45 days to December 24, 2015, and authorizing
4 her to take the actions described above to increase the number of investor claims
5 submitted.

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7 Dated: October 23, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

8
9 By: /s/ Ted Fates

TED FATES
Attorneys for Receiver
KRISTA L. FREITAG

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EXHIBIT A

ESTIMATED COST RANGE FOR LOS ANGELES INVESTOR MEETING

| | Low | High | Notes |
|--|----------------|-----------------|--|
| Estimated Number of Investor Attendees | 200 | 400 | |
| Minutes per Investor | 12 | 12 | Realistic estimate - will endeavor to keep each investor to 10 minutes or less. If 10 minutes - the low and high become approx. \$7,700 and \$14,400 . |
| Total Minutes Needed to Handle Investors | 2,400 | 4,800 | |
| Minutes Available Per Staff Member | 600 | 600 | Assumes 10 Hours |
| Total Staff Members Needed | 4 | 8 | |
| Median Price Per Hour Per Staff Member | \$185 | \$185 | |
| Total Estimated Personnel Costs | \$7,400 | \$14,800 | |
| Tablets/Scanners | 500 | 1,000 | |
| Est Cost of Ballroom | 1,000 | 1,000 | |
| Total Estimate | \$8,900 | \$16,800 | |

EXHIBIT B

ESTIMATED TOTAL COSTS

| | Low | High | |
|--|-----------------|-----------------|---|
| Email Blast Reminders | \$10,000 | \$15,000 | \$2,000 - \$3,000 per blast – 5 total |
| Live Telephone Line | 28,000 | 28,000 | Does not include Receiver's staff time (at \$157.50 per hour) to answer English calls |
| Mail in Supporting Documents | 1,200 | 1,200 | No Receiver time necessary |
| Mail Notices to Investors who Paid with Checks | 10,000 | 12,000 | Includes Receiver and her staff's time |
| Los Angeles In-Person Meeting | 8,900 | 16,800 | Includes Receiver and her staff's time |
| Total | \$58,100 | \$73,000 | |