

IN THE
Supreme Court of the United States

CHARLES C. LIU AND XIN WANG A/K/A LISA WANG,
Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

JOINT APPENDIX

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December 16, 2019

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**PETITION FOR A WRIT OF CERTIORARI FILED: MAY 31, 2019
CERTIORARI GRANTED: NOV. 1, 2019**

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix but may be found in the appendix to the petition for a writ of certiorari in this case:

Memorandum of the United States Court of Appeals for the Ninth Circuit, *SEC v. Liu, et al.*, No. 17-55849 (Oct. 25, 2018) 1a

Order Granting Plaintiff's Motion for Summary Judgment Against Defendants Liu and Wang of the United States District Court for the Central District of California, *SEC v. Liu, et al.*, No. SACV 16-00974-CJC (AGRx) (Apr. 20, 2017) 9a

Final Judgment and Permanent Injunction as to Defendants Liu and Wang of the United States District Court for the Central District of California, *SEC v. Liu, et al.*, No. SACV 16-00974-CJC (AGRx) (Apr. 20, 2017) 62a

Order of the United States Court of Appeals for the Ninth Circuit Denying Rehearing, *SEC v. Liu, et al.*, No. 17-55849 (Jan. 3, 2019) 65a

Statutory Provisions Involved:

Securities Act of 1933, 15 U.S.C. § 77a
et seq.:

§ 17(a)(2), 15 U.S.C. § 77q(a)(2) 66a

§ 20(b), 15 U.S.C. § 77t(b) 66a

§ 20(d), 15 U.S.C. § 77t(d) 67a

Securities Exchange Act of 1934, 15 U.S.C.
§ 78a *et seq.*:

§ 21(d), 15 U.S.C. § 78u(d) 70a

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SACV 16-00974-CJC (AGRx)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CHARLES C. LIU, ET AL.,
Defendants.

CIVIL DOCKET

Date	#	Docket Text
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Filed

5/26/16	1	COMPLAINT against Defendants Beverly Proton Center LLC, Charles C. Liu, Pacific Proton EB 5 Fund LLC, Pacific Proton Therapy Regional Center LLC, Xin Wang. Case assigned to Judge Cormac J. Carney for all further proceedings. Discovery referred to Magistrate Judge Alicia G. Rosenberg. (Filing fee \$400: NO FEE REQUIRED), filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Civil Cover Sheet) (et) (Entered: 05/27/2016)
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7/11/16	76	ORDER by Judge Cormac J. Carney granting 63 MOTION to Appoint Receiver and granting 15 MOTION
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for Order. For the foregoing reasons, the SEC's motion for a preliminary injunction, for repatriation of assets and an accounting, and for the appointment of a monitor are all GRANTED. An injunction and a monitorship order will issue concurrent with this order. (see document for details). (dro) (Entered: 07/11/2016)

- 7/11/16 77 PRELIMINARY INJUNCTION Against All Defendants by Judge Cormac J. Carney. IT IS SO ORDERED, this date of July 11, 2016 at 11:00 a.m, Pacific Standard Time. (see document for details). (dro) (Entered: 07/11/2016)
- 7/11/16 78 STATUS REPORT Regarding Preliminary Injunction Order filed by Plaintiff Securities and Exchange Commission. (Berry, John) (Entered: 07/11/2016)
- 7/11/16 79 ORDER Appointing a Monitor by Judge Cormac J. Carney. IT IS FURTHER ORDERED that Michael Grassmueck is appointed as a monitor (the "Monitor") for Defendants Pacific Proton Therapy Regional Center, LLC ("Pacific Proton"), Pacific Proton EB-5 Fund, LLC ("PPEB5 Fund"), and Beverly Proton Center, LLC f/k/a Los Angeles County Proton Therapy, LLC ("Beverly Proton"), and each of their subsidiaries and affiliates (collectively, the "Corporate Defendants"), with the powers set forth herein. The Monitor shall be immediately empowered, upon

entry of this Order: (see document for details). (dro) (Entered: 07/11/2016)

* * *

7/21/16 98 STIPULATION for Order RE: STAY OF ENFORCEMENT OF SECTIONS VIII AND IX OF PRELIMINARY INJUNCTION WITH RESPECT TO DEFENDANT XIN WANG AND SETTING BRIEFING SCHEDULE ON MOTION BASED ON ASSERTION OF FIFTH AMENDMENT RIGHTS filed by defendant Xin Wang. (Attachments: # 1 Proposed Order RE: STAY OF ENFORCEMENT OF SECTIONS VIII AND IX OF PRELIMINARY INJUNCTION WITH RESPECT TO DEFENDANT XIN WANG AND SETTING BRIEFING SCHEDULE ON MOTION BASED ON ASSERTION OF FIFTH AMENDMENT RIGHTS) (Steinberg, Lawrence) (Entered: 07/21/2016)

* * *

7/25/16 101 TRANSCRIPT for proceedings held on 7/11/2016 at 8:57 a.m. **** Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed,

and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date. ** Redaction Request due 8/15/2016. Redacted Transcript Deadline set for 8/25/2016. Release of Transcript Restriction set for 10/24/2016. (dhs) (Entered: 07/25/2016)

* * *

- 7/25/16 106 MONITOR'S REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 07/25/2016)
- 7/26/16 107 ORDER RE: Stay of Enforcement of Sections VIII and IX of Preliminary Injunction 98 by Judge Cormac J. Carney: FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED as follows:
(1) The motion (the Wang Fifth Amendment Motion) of defendant XIN WANG a/k/a LISA WANG (Ms. Wang) for relief from Sections VIII and IX of the Preliminary Injunction (Docket No. 77; hereinafter Preliminary Injunction) based on her assertion of Fifth Amendment rights shall be filed on July 26, 2016, with the same briefing schedule and hearing date that applies to the motion for the same relief to be filed by defendant CHARLES C. LIU;
(2) The enforcement of Sections VIII and IX of the Preliminary Injunction are stayed as to Ms. Wang. The stay will lift upon the Courts resolution of

the Wang Fifth Amendment Motion.
(lwag) (Entered: 07/26/2016)

7/26/16 108 NOTICE OF MOTION AND MOTION for Relief re Preliminary Injunction 77 filed by Defendants Charles C. Liu, Xin Wang. Motion set for hearing on 8/22/2016 at 01:30 PM before Judge Cormac J. Carney. (Attachments: # 1 Declaration of H. Gouraige with Exhibits, # 2 Proposed Order) (Steinberg, Lawrence) (Entered: 07/26/2016)

* * *

8/2/16 116 OPPOSITION to NOTICE OF MOTION AND MOTION for Relief re Preliminary Injunction 77 108 filed by Plaintiff Securities and Exchange Commission. (Berry, John) (Entered: 08/02/2016)

8/5/16 117 EX PARTE APPLICATION for Leave to file a Supplement to Its Opposition to Defendants' Motion for Relief from Sections VIII and IX of Preliminary Injunction filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Declaration of Gary Y. Leung, # 2 Proposed Order) (Leung, Gary) (Entered: 08/05/2016)

8/8/16 118 ORDER on Ex Parte Application for Leave to File 117 by Judge Cormac J. Carney: IT IS HEREBY ORDERED that the SEC is granted leave to file the proposed supplement in further support of its Fifth Amendment opposition. (lwag) (Entered: 08/08/2016)

8/8/16 119 SUPPLEMENT to EX PARTE APPLICATION for Leave to file a Supplement to Its Opposition to Defendants' Motion for Relief from Sections VIII and IX of Preliminary Injunction 117, NOTICE OF MOTION AND MOTION for Relief re Preliminary Injunction 77 108 (Supplement to SEC Opposition to Motion for Relief Re Preliminary Injunction) filed by Plaintiff Securities and Exchange Commission. (Leung, Gary) (Entered: 08/08/2016)

8/8/16 120 MONITOR'S REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 08/08/2016)

8/8/16 121 REPLY IN SUPPORT OF NOTICE OF MOTION AND MOTION for Relief re Preliminary Injunction 77 108 filed by Defendants Charles C. Liu, Xin Wang. (Attachments: # 1 Declaration of Herve Gouraige (with exhibits), # 2 Declaration of Donald K. Wise (with exhibits)) (Steinberg, Lawrence) (Entered: 08/08/2016)

* * *

8/9/16 125 NOTICE OF ERRATA filed by Defendants Charles C. Liu, Xin Wang. correcting Reply (Motion related), 121 (Steinberg, Lawrence) (Entered: 08/09/2016)

* * *

8/22/16 146 REPORT of MONITOR filed by Receiver Michael Grassmueck. (Attachments: # 1 Exhibit A and B, # 2 Proof of

Service) (Zaro, David) (Entered: 08/22/2016)

* * *

8/26/16 148 STATEMENT In Support of the Monitor's Written Report and Recommendation re: Report 146. (Attachments: # 1 Declaration In Support of Statement in Support of Monitor's Written Report and Recommendation) (Berry, John) (Entered: 08/26/2016)

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9/2/16 153 MINUTE ORDER IN CHAMBERS by Judge Cormac J. Carney: Accordingly, the Court takes the Monitors report under advisement and agrees that determination of next steps is appropriately considered at and following the hearing on September 19, 2016. The Court also notes that it expects the attendance of Counsel Morris at the September 19, 2016, hearing. See document for further information. (lwag) (Entered: 09/02/2016)

9/6/16 154 MONITOR'S REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 09/06/2016)

9/6/16 155 ANSWER to Complaint – (Discovery), 1 DEMAND FOR JURY TRIAL filed by defendant Charles C. Liu. (Steinberg, Lawrence) (Entered: 09/06/2016)

9/6/16 156 ANSWER to Complaint – (Discovery), 1 DEMAND FOR JURY TRIAL filed by defendant Xin Wang. (Steinberg, Lawrence) (Entered: 09/06/2016)

* * *

9/20/16 160 REPLY In Opposition to NOTICE OF MOTION AND MOTION for Relief re Preliminary Injunction 77 108 filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Declaration of Lorraine Pearson In Support of Plaintiff SEC's Surreply In Opposition to Defendants' Motion for Relief from Sections VIII and IX of Preliminary Injunction) (Leung, Gary) (Entered: 09/20/2016)

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10/4/16 168 MONITOR'S Supplemental Written REPORT filed by Receiver Michael Grassmueck. (Attachments: # 1 Exhibit A-B) (Farrell, Michael) (Entered: 10/04/2016)

* * *

10/5/16 172 STATEMENT OF INDIVIDUAL DEFENDANTS REGARDING: (1) MONITORS REPORTS (DOCKET NOS. 146, 168); AND (2) PLAINTIFFS STATEMENT IN SUPPORT OF MONITORS WRITTEN REPORT AND RECOMMENDATION (DOCKET NO. 148) filed by Defendants Charles C. Liu, Xin Wang re: Statement 148, Report 168, Report 146. (Attachments: # 1 Declaration of Herve Gouraige, # 2 Exhibit to Gouraige Declaration (Exhibits 1-7)) (Steinberg, Lawrence) (Entered: 10/05/2016)

10/7/16 173 MINUTES OF Hearing Re: Order to Show Cause; Application of Stanley C. Morris to Withdraw as Attorney 143; Interested Party's Ex Parte to Amend Order 164, held before Judge Cormac J. Carney. Hearings held. The Court confers with counsel regarding the parties various pending matters. The Court hears oral argument. The Court rules on the applications as follows: Application Of Stanley C. Morris To Withdraw As Attorney 143: GRANTED; Interested Party's Ex Parte To Amend Order 164: GRANTED; The Court hereby DISCHARGES WITHOUT PREJUDICE the Order to Show Cause Why Corporate Defendants Should Not Be Held In Civil Contempt. The Court GRANTS IN LIMITED PART AND DENIES IN SUBSTANTIAL PART the 108 Motion to Modify Preliminary Injunction. The Court sets an Evidentiary Hearing on November 4, 2016 @ 9:00 a.m. Court Reporter: Debbie Hino-Spaan. (dro) (Entered: 10/07/2016)

10/13/16 174 TRANSCRIPT for proceedings held on 10/7/2016 at 8:54 a.m. **** Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; Email, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or

through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date. ** Redaction Request due 11/3/2016. Redacted Transcript Deadline set for 11/14/2016. Release of Transcript Restriction set for 1/11/2017. (dhs) (Entered: 10/13/2016)

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10/17/16 179 AMENDED AND RESTATED PRE-LIMINARY INJUNCTION by Judge Cormac J. Carney: See document for further information. (lwag) (Entered: 10/18/2016)

10/25/16 180 MONITOR'S REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 10/25/2016)

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10/28/16 183 STATUS REPORT on the November 4, 2016 hearing filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Declaration) (Leung, Gary) (Entered: 10/28/2016)

* * *

12/7/16 192 MONITOR'S REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 12/07/2016)

12/8/16 193 STATUS REPORT (JOINT) filed by Plaintiff Securities and Exchange

Commission. (Leung, Gary) (Entered: 12/08/2016)

* * *

12/19/16 195 MONITOR'S Second Supplemental Written REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 12/19/2016)

* * *

12/21/16 197 MINUTE ORDER (IN CHAMBERS) by Judge Cormac J. Carney ORDER NOTIFYING SECURITIES AND EX-CHANGE COMMISSION AND MONITOR OF RECEIPT OF MONITOR'S REPORTS AND INVITATION TO FILE APPROPRIATE MOTIONS. The Court has received and reviewed the Monitor's two reports filed in the past two weeks. (192, 195) The Court invites the Monitor and/or the Securities and Exchange Commission to file any motions they deem necessary to convert the monitorship into a receiv-ership. (ig) (Entered: 12/21/2016)

* * *

1/4/17 199 NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG filed by Plaintiff Securities and Exchange Commission. Motion set for hearing on 2/6/2017 at 01:30 PM before Judge Cormac J. Carney. (Attachments: # 1 Memorandum OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION

FOR SUMMARY JUDGMENT AGAINST DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG, # 2 Declaration OF GARY Y. LEUNG IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSIONS MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS LIU AND WANG) (Leung, Gary) (Entered: 01/04/2017)

- 1/4/17 200 NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 (Attachments: # 1 Memorandum / STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT) (Leung, Gary) (Entered: 01/04/2017)
- 1/4/17 201 NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 (Attachments: # 1 Proposed Order GRANTING SUMMARY JUDGMENT AS TO DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG) (Leung, Gary) (Entered: 01/04/2017)

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- 1/17/17 211 MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Summary Judgment as to

DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 filed by Defendants Charles C. Liu, Xin Wang. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Gouraige, Herve) (Entered: 01/17/2017)

- 1/17/17 212 STATEMENT of Genuine Disputes of Material Facts and Counter-Statement of Uncontested Facts in opposition to Plaintiff Securities and Exchange Commissions (the SEC) Motion for Summary Judgment NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 filed by Defendants Charles C. Liu, Xin Wang. (Gouraige, Herve) (Entered: 01/17/2017)
- 1/23/17 214 REPLY IN SUPPORT OF NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Supplement DECLARATION OF GARY Y. LEUNG IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSIONS MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANTS LIU AND WANG) (Leung, Gary) (Entered: 01/23/2017)
- 1/23/17 215 RESPONSE TO DEFENDANTS COUNTER-STATEMENT OF UN-

CONTROVERTED FACTS re NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 filed by Plaintiff Securities and Exchange Commission. (Leung, Gary) (Entered: 01/23/2017)

1/26/17 216 OBJECTIONS to Motion Related Document, 215 Plaintiff SEC's Response to Defendants' Counter-Statement of Uncontroverted Facts filed by Defendants Charles C. Liu, Xin Wang. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2 (Part 1), # 3 Exhibit 2 (Part 2)) (Gouraige, Herve) (Entered: 01/26/2017)

* * *

2/6/17 218 MINUTES OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 PLAINTIFF'S MOTION FOR ORDER FOR APPOINTING RECEIVER AND TERMINATING MONITORSHIP 202 HEARING RE: ORDER TO SHOW CAUSE WHY DEFENDANTS LIU AND WANG SHOULD NOT BE HELD IN CIVIL CONTEMPT held before Judge Cormac J. Carney: Hearings held. The Court confers with counsel regarding the parties various pending matters. The Court hears oral argument. The Court GRANTS Plaintiff's Motion For Order For Appointing Receiver And Termination.

- nating Monitorship 202. The Court HOLDS IN ABEYANCE Plaintiffs the Motion for Summary Judgment 199 and the Order to Show Cause Why Corporate Defendants Should Not Be Held In Civil Contempt. The Court sets the following supplemental briefing schedule regarding civil penalties: Plaintiffs Supplemental Brief due no later than: February 8, 2017. Defendant's Response in Opposition due no later than: February 15, 2017 Court Reporter: Debbie Hino-Spaan. (es) (Entered: 02/06/2017)
- 2/6/17 219 ORDER by Judge Cormac J. Carney: Granting MOTION Appointing Receiver and Terminating Monitorship 202. (mt) (Entered: 02/06/2017)
- 2/8/17 220 SUPPLEMENT to NOTICE OF MOTION AND MOTION for Summary Judgment as to DEFENDANTS CHARLES C. LIU AND XIN (LISA) WANG 199 filed by Plaintiff Securities and Exchange Commission. (Attachments: # 1 Proposed Order on Plaintiff SEC's Motion for Summary Judgment and Supplemental Briefing as to Civil Penalties Against Defendants Charles C. Liu and Xin (Lisa) Wang, # 2 Proposed Order on Final Judgment as to Defendants Charles C. Liu and Xin (Lisa) Wang) (Berry, John) (Entered: 02/08/2017)
- 2/15/17 221 MEMORANDUM in Opposition to the Plaintiff's Supplemental Brief Regard-

ing Civil Penalties filed by Defendants Charles C. Liu, Xin Wang. (Attachments: # 1 Declaration of Herve Gouraige, # 2 Exhibit 1) (Gouraige, Herve) (Entered: 02/15/2017)

- 2/24/17 222 Joint STIPULATION for Leave to Escrow Potential Settlement Funds filed by PLAINTIFF Securities and Exchange Commission. (Attachments: # 1 Proposed Order ON STIPULATION REGARDING SETTLEMENT FUNDS TRANSFER TO SILLS CUMMIS & GROSS P.C.) (Leung, Gary) (Entered: 02/24/2017)
- 2/24/17 223 ORDER by Judge Cormac J. Carney on Stipulation Regarding Settlement Funds Transfer 222. (see document for details). (dro) (Entered: 02/24/2017)

* * *

- 3/20/17 235 STATUS REPORT Regarding Settlement filed by Plaintiff Securities and Exchange Commission. (Leung, Gary) (Entered: 03/20/2017)

- 3/21/17 236 STATEMENT of Non-Opposition to SEC's Request for the Court to Decide the Pending and Fully Briefed Summary Judgment Motion Based on the Papers Previously Submitted by the Parties re: Status Report 235. (Gouraige, Herve) (Entered: 03/21/2017)

* * *

- 4/20/17 238 ORDER by Judge Cormac J. Carney granting 199 Plaintiff's Motion for Summary Judgment Against Defen-

dants Liu and Wang. For the foregoing reasons, the SEC's motion for summary judgment is GRANTED. A judgment and permanent injunction consistent with this Order will issue forthwith. The Order to Show Cause regarding civil contempt is DISCHARGED AS MOOT. (see document for details). (dro) (Entered: 04/20/2017)

- 4/20/17 239 FINAL JUDGMENT AND PERMANENT INJUNCTION AS TO DEFENDANTS LIU AND WANG by Judge Cormac J. Carney. This matter came before the Court on Plaintiff Securities and Exchange Commission ("SEC" or "Commission")'s motion for summary judgment as to Defendants Charles C. Liu and Xin Wang. (Dkt. 199.) On April 7, 2017, the Court issued an Order granting the SEC's motion. In accordance with the Court's Order, IT IS HEREBY ORDERED that judgment is entered in favor of the SEC. Defendants Liu and Wang are jointly and severally liable for disgorgement of \$26,733,018.81 and prejudgment interest thereon in the amount of \$89,110.06. Defendant Liu is further liable for a civil penalty of \$6,714,580 and Defendant Wang is further liable for a civil penalty of \$1,538,000. (see document for details). (dro) (Entered: 04/20/2017)
- 4/20/17 240 MINUTES (IN CHAMBERS) ORDER DIRECTING PLAINTIFF TO SHOW CAUSE WITHIN FOURTEEN DAYS

WHY THIS CASE SHOULD NOT BE DISMISSED WITHOUT PREJUDICE by Judge Cormac J. Carney. In light of these developments fulfilling the SEC's Prayer for Relief in substantial part, the Court ORDERS Plaintiff to SHOW CAUSE within fourteen days why the preliminary injunction should not be converted into a permanent injunction as to the Corporate Defendants, why the receivership should not be dissolved, and why this case should not be dismissed without prejudice. (see document for details). (dro) (Entered: 04/20/2017)

* * *

- 5/3/17 244 Receiver's Report and Recommendation REPORT filed by Receiver Michael Grassmueck. (Farrell, Michael) (Entered: 05/03/2017)
- 5/4/17 245 STATEMENT Regarding Receiver's Report and Recommendation filed by Defendants Charles C. Liu, Xin Wang re: Report 244. (Attachments: # 1 Exhibit A-C) (Gouraige, Herve) (Entered: 05/04/2017)
- 5/4/17 246 RESPONSE filed by Plaintiff Securities and Exchange Commission to Minutes of In Chambers Order/ Directive – no proceeding held, Order to Show Cause, 240 (Leung, Gary) (Entered: 05/04/2017)

* * *

5/22/17 251 ABSTRACT of Judgment issued in favor of Plaintiff Securities and Exchange Commission and against Xin Wang aka Lisa Wang in the principal amount of \$1,538,000.00, interest in the amount of \$00, attorneys fees of \$00, costs of \$00. RE: Judgment, Permanent Injunction, 239 (twdb) (Entered: 05/22/2017)

5/22/17 252 ABSTRACT of Judgment issued in favor of Plaintiff Securities and Exchange Commission and against Charles C. Liu in the principal amount of \$6,714,580.00, interest in the amount of \$00, attorneys fees of \$00, costs of \$00. RE: Judgment, Permanent Injunction, 239 (twdb) (Entered: 05/22/2017)

* * *

5/24/17 254 ABSTRACT of Judgment issued in favor of Plaintiff Securities and Exchange Commission and against Charles C. Liu, Xin Wang jointly and severally, in the principal amount of \$26,733,018.81, interest in the amount of \$89,110.06, attorneys fees of \$00, costs of \$00. RE: Judgment, Permanent Injunction, 239 (twdb) (Entered: 05/24/2017)

* * *

6/15/17 259 NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendants Charles C. Liu, Xin Wang. Appeal of Judgment, Permanent Injunc-

- tion, 239, Order on Motion for Summary Judgment, 238. (Appeal Fee – \$505 Fee Paid, Receipt No. 0973-20023593.) (Attachments: # 1 Exhibit A – Order Granting Summary Judgment, # 2 Exhibit B – Final Judgment, # 3 Proof of Service) (Gouraige, Herve) (Entered: 06/15/2017)
- 6/15/17 260 REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals, 259. (Attachments: # 1 Proof of Service) (Gouraige, Herve) (Entered: 06/15/2017)
- 6/19/17 261 NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 17-55849 assigned to Notice of Appeal to 9th Circuit Court of Appeals, 259 as to Defendants Charles C. Liu, Xin Wang. (shb) (Entered: 06/19/2017)
- * * *
- 7/24/17 266 TRANSCRIPT for proceedings held on 2/6/2017 at 1:36 p.m. **** Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are

also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date. ** Redaction Request due 8/14/2017. Redacted Transcript Deadline set for 8/24/2017. Release of Transcript Restriction set for 10/23/2017. (dhs) (Entered: 07/24/2017)

* * *

2/5/18 275 ORDER by Judge Cormac J. Carney: granting 271 Receiver's MOTION Regarding Terminating Receivership. The Court will enter the proposed consent judgment in a concurrent order. (twdb) (Entered: 02/05/2018)

2/5/18 276 ORDER ON RENEWED MOTION FOR ORDER TERMINATING RECEIVERSHIP AND DISCHARGING AND RELEASING RECEIVER UPON COMPLETION OF FINAL CLOSING TASKS by Judge Cormac J. Carney. (twdb) (Entered: 02/05/2018)

* * *

10/25/18 280 MEMORANDUM from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 259 filed by Xin Wang, Charles C. Liu. CCA # 17-55849. The decision of the District Court is AFFIRMED. (iv) (Entered: 10/26/2018)

11/2/18 281 ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 259 filed by Xin Wang, Charles C. Liu. CCA

17-55849. The parties' Requests for Publication, filed with this court on October 30, 2018, are DENIED. (mat) (Entered: 11/05/2018)

- 1/16/19 282 ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 259 filed by Xin Wang, Charles C. Liu. CCA # 17-55849. Appellants' motion to stay the mandate, filed January 9, 2019, is GRANTED. The mandate is stayed for a period of 90 days from the date of this order. [See document for all details.] (mat) (Entered: 01/17/2019)
- 3/28/19 283 ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 259 filed by Xin Wang, Charles C. Liu. CCA # 17-55849. Appellants' motion to stay the mandate pending the filing of a petition for a writ of certiorari, filed March 25, 2019, is GRANTED. (iv) (Entered: 03/29/2019)

* * *

- 11/1/19 285 Appeal Document from the Supreme Court to the 9th CCA re: Notice of Appeal to 9th Circuit Court of Appeals, [259]. The petition for a writ of certiorari is granted. (mat) (Entered: 11/04/2019)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-55849
(D.C. No. 8:16-cv-00974-CJC-AGR)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

v.

CHARLES C. LIU, XIN WANG A/K/A LISA WANG,
Defendants-Appellants,

and

PACIFIC PROTON THERAPY REGIONAL
CENTER LLC; ET AL.,
Defendants.

Date Docket Text
Filed

6/19/17 1 DOCKETED CAUSE AND ENTERED
APPEARANCES OF COUNSEL.
SEND MQ: Yes. The schedule is set
as follows: Mediation Questionnaire
due on 06/26/17. Transcript ordered
by 07/17/17. Transcript due 10/13/17.
Appellants Charles C. Liu and Xin
Wang opening brief due 11/22/17.
Appellee Securities and Exchange
Commission answering brief due
12/22/17. Appellant's optional reply
brief is due 21 days after service of
the answering brief. [10478085] (RT)
[Entered: 06/19/2017 09:40 AM]

* * *

- 12/21/17 13 Submitted (ECF) excerpts of record. Submitted by Appellants Charles C. Liu and Xin Wang. Date of service: 12/21/17. [10699573] [17-55849] (Gouraige, Herve) [Entered: 12/21/17 01:12 PM]
- 12/21/17 14 Submitted (ECF) Opening Brief for review. Submitted by Appellants Charles C. Liu and Xin Wang. Date of service: 12/21/17. [10699577] [17-55849] (Gouraige, Herve) [Entered: 12/21/17 01:15 PM]
- 12/21/17 15 Filed (ECF) Appellants Charles C. Liu and Xin Wang Motion to supplement record on appeal. Date of service: 12/21/17. [10700084] [17-55849] (Gouraige, Herve) [Entered: 12/21/17 03:49 PM]

* * *

- 1/2/18 19 Filed (ECF) Appellee Securities and Exchange Commission response opposing motion ([15] Motion (ECF Filing), [15] Motion (ECF Filing) motion to supplement record on appeal). Date of service: 01/02/18. [10708799] [17-55849] (Dingle, Kerry) [Entered: 01/02/18 09:23 AM]
- 1/9/18 20 Filed (ECF) Appellants Xin Wang and Charles C. Liu reply to response (motion to supplement record on appeal). Date of service: 01/09/18. [10718764] [17-55849] (Gouraige, Herve) [Entered: 01/09/18 03:05 PM]

* * *

2/21/18 24 Submitted (ECF) Answering Brief for review. Submitted by Appellee Securities and Exchange Commission. Date of service: 02/21/18. [10771373] [17-55849] (Berger, Jeffrey) [Entered: 02/21/2018 11:34 AM]

2/21/18 25 Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Securities and Exchange Commission. Date of service: 02/21/18. [10771376] [17-55849] (Berger, Jeffrey) [Entered: 02/21/18 11:36 AM]

* * *

3/14/18 29 Submitted (ECF) further excerpts of record. Submitted by Appellants Charles C. Liu and Xin Wang. Date of service: 03/14/18. [10798635] [17-55849] (Gouraige, Herve) [Entered: 03/14/18 03:44 PM]

3/14/18 30 Submitted (ECF) Reply Brief for review. Submitted by Appellants Charles C. Liu and Xin Wang. Date of service: 03/14/18. [10798641] [17-55849] – [COURT UPDATE: Attached corrected brief. 3/22/2018 by TYL] (Gouraige, Herve) [Entered: 03/14/18 03:46 PM]

* * *

8/9/18 41 Filed clerk order (Deputy Clerk: WL): Appellants Motion to Supplement Record on Appeal, filed December 21, 2017, is DENIED. [10972382] (WL) [Entered: 08/09/18 04:26 PM]

* * *

9/14/18 43 Filed (ECF) Appellee Securities and Exchange Commission citation of supplemental authorities. Date of service: 09/14/18. [11011725] [17-55849] (Dingle, Kerry) [Entered: 09/14/18 10:07 AM]

* * *

9/19/18 45 Filed (ECF) Appellants Charles C. Liu and Xin Wang citation of supplemental authorities. Date of service: 09/19/18. [11017792] – [COURT ENTERED FILING to correct entry [44].] (RY) [Entered: 09/19/18 02:09 PM]

* * *

9/28/18 47 Filed (ECF) Appellee Securities and Exchange Commission citation of supplemental authorities. Date of service: 09/28/18. [11028396] [17-55849] (Dingle, Kerry) [Entered: 09/28/18 09:33 AM]

* * *

9/28/18 49 Filed (ECF) Appellants Charles C. Liu and Xin Wang citation of supplemental authorities. Date of service: 09/28/18. [11029030] – [COURT ENTERED FILING to correct entry [48].] (SLM) [Entered: 09/28/18 02:06 PM]

10/11/18 50 ARGUED AND SUBMITTED TO PAUL J. WATFORD, JOHN B. OWENS and GREGORY A. PRESNELL. [11043226] (DJW) [Entered: 10/11/18 12:14 PM]

10/12/18 51 Filed Audio recording of oral argument. Note: Video recordings of public argument calendars are available on the Court's website, at [http://www.ca9.uscourts.gov/media/\[11045223\]](http://www.ca9.uscourts.gov/media/[11045223]) (DJW) [Entered: 10/12/18 01:22 PM]

10/25/18 52 FILED MEMORANDUM DISPOSITION (PAUL J. WATFORD, JOHN B. OWENS and GREGORY A. PRESNELL) AFFIRMED. FILED AND ENTERED JUDGMENT. [11059824] (MM) [Entered: 10/25/18 10:28 AM]

* * *

12/7/18 56 Filed (ECF) Appellants Charles C. Liu and Xin Wang petition for rehearing en banc (from 10/25/18 memorandum). Date of service: 12/07/18. [11114308] [17-55849] (Gouraige, Herve) [Entered: 12/07/18 03:02 PM]

1/3/19 57 Filed order (PAUL J. WATFORD, JOHN B. OWENS and GREGORY A. PRESNELL): The panel unanimously votes to deny the petition for panel rehearing. Judges Watford and Owens vote to deny the petition for rehearing en banc, and Judge Presnell so recommends. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, filed December 7, 2018, is DENIED. [11139754] (AF) [Entered: 01/03/19 08:58 AM]

- 1/9/19 58 Filed (ECF) Appellants Charles C. Liu and Xin Wang Motion to stay the mandate. Date of service: 01/09/19. [11147147] [17-55849] (Gouraige, Herve) [Entered: 01/09/19 02:27 PM]
- 1/16/19 59 Filed order (PAUL J. WATFORD, JOHN B. OWENS and GREGORY A. PRESNELL) Appellant motion to stay the mandate, filed January 9, 2019, is GRANTED. The mandate is stayed for a period of 90 days from the date of this order. If Appellants file a petition for writ of certiorari in the United States Supreme Court during the period of the stay, the stay shall continue until final disposition by the Supreme Court. See Fed. R. App. P. 41. [11155216] (WL) [Entered: 01/16/19 11:27 AM]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SACV 16-00974-CJC (AGRx)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CHARLES C. LIU, ET AL.,
Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission (“SEC”) alleges:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a). Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), because certain of the transactions, acts, practices and courses of conduct constituting violations

of the federal securities laws occurred within this district. In addition, venue is proper in this district because Defendants Charles C. Liu and Xin Wang reside in this district.

SUMMARY

3. This case involves an ongoing fraudulent scheme perpetrated by defendant Charles C. Liu (“Liu”) and his wife, defendant Xin Wang, a/k/a Lisa Wang (“Wang”), to defraud Chinese investors in the federal “EB-5 Immigrant Investor Program,” which is administered by the United States Citizenship and Immigration Service (“USCIS”). To date, the defendants have defrauded at least 50 Chinese investors of almost \$27 million by falsely claiming that their monies would be invested in a program that met the requirements of the EB-5 program, and would be used to build and operate a proton therapy cancer treatment center in Southern California.

4. The EB-5 Immigrant Investor Program was created to stimulate the U.S. economy with capital investment from foreign investors. Under the program, foreign investors can receive a permanent visa to live and work in the U.S. if they make a capital investment that satisfies certain conditions over a two-year period, including the creation of jobs. Under the program’s regulations, the foreign investors must put “the required amount of capital at risk for the purpose of generating a return.”

5. From at least October 2014 to the present, the defendants have offered and sold, and continue to offer, EB-5 investments to Chinese investors, allegedly to fund the development and operation of the cancer treatment center. The investors made their investment in two parts: a \$500,000 “Capital Contribution,” which was to be escrowed for use in developing and operating the center, and a \$45,000 “Administrative Fee.”

6. Rather than invest the investors' Capital Contributions as promised—and as required for the investors to meet the EB-5 program requirements—the defendants misappropriated or diverted approximately \$17.4 million from the accounts where the contributions were deposited. Liu misappropriated at least \$6,285,000 for himself, and his wife and co-defendant, Wang, misappropriated at least \$1,400,000. Liu also transferred over \$11,845,000 to three marketing firms in China, including \$3,500,000 to a firm of which Wang is CEO and chairman of the board. Liu also allowed most of the Administrative Fees to be used for undisclosed purposes. As a result, the EB-5 eligible cancer treatment center that the defendants represented would be constructed with investor funds has not been built. Liu and Wang have carried out this fraud through a number of entities, three of which are named as defendants.

7. The defendants' fraud is still ongoing. The majority of the funds dissipated by the defendants were transferred as recently as February and March 2016, shortly after the SEC subpoenaed Liu for investigative testimony. Also, the website primarily used to offer the EB-5 investments to Chinese investors remains active, and continues to market and promote the investments in a materially misleading manner.

8. By engaging in this conduct, the defendants have violated, and continue to violate, the antifraud provisions of Sections 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. 240.10b-5(a) & 240.10b-5(c), and Liu and the corporate defendants have violated, and continue to violate Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b). Liu is also violating Section

10(b) and Rule 10b-5 as a control person of each of the corporate defendants.

THE DEFENDANTS

9. **Charles C. Liu (“Liu”)** resides in Laguna Niguel, California. He holds an MFA degree in Arts Administration. From 2004 to 2009, Liu sold medical equipment relating to proton therapy for a company based in Hong Kong. Liu controls each of the three corporate defendants.

10. **Xin Wang a/k/a Lisa Wang (“Wang”)** is Liu’s wife and resides with him in Laguna Niguel, California. Wang was trained in China as a pharmacist, and worked in China as a pharmacist for approximately one year. Wang holds key positions at the corporate defendants and is CEO and chairman of the board of one of the China-based firms that solicited investors for the defendants.

11. **Pacific Proton Therapy Regional Center, LLC (“Pacific Proton”)** is a California limited liability company, headquartered in Laguna Niguel, California. Liu controls Pacific Proton and is its president. On June 28, 2012, USCIS approved Pacific Proton’s application to become a regional center under the EB-5 program.

12. **Pacific Proton EB-5 Fund, LLC (“PPEB5 Fund”)** is a Delaware limited liability company formed on November 15, 2010 and headquartered in Montebello, California. In its offering materials, PPEB5 Fund claimed that it offered an EB-5-eligible investment that used investor proceeds to loan funds to develop and operate a proton therapy cancer treatment center in Los Angeles County. Pacific Proton is the sole manager of the PPEB5 Fund.

13. **Beverly Proton Center, LLC f/k/a Los Angeles County Proton Therapy, LLC (“Beverly**

Proton”) is a California limited liability company, headquartered in Laguna Niguel, California. Liu co-founded Beverly Proton to develop and operate a proton therapy cancer treatment center using funds raised by the PPEB5 Fund. Liu is president of Beverly Proton, and is its treasurer and managing member. Wang is Beverly Proton’s “Vice President in Marketing of Asia [sic].”

THE FRAUDULENT SCHEME

A. The EB-5 Immigrant Investor Program

14. The EB-5 Immigrant Investor Program sets aside EB-5 visas for participants who invest in commercial enterprises associated with regional centers approved by USCIS based on proposals for promoting economic growth.

15. Under the EB-5 Immigrant Investor Program, foreign investors who invest capital in a “commercial enterprise” in the United States may petition the USCIS (called an “I-526 Petition”) and receive conditional permanent residency status for a two-year period. USCIS defines a “commercial enterprise” as any for-profit activity formed for the ongoing conduct of lawful business.

16. The EB-5 Immigrant Investor Program requires a showing that the foreign investor has placed the required amount of capital at risk for “the purpose of generating a return” on the capital placed at risk. The foreign investor must invest at least \$500,000 in a “Targeted Employment Area” and thereby create at least ten full-time jobs for United States workers. If the foreign investor satisfies these and other conditions within the two-year period, the foreign investor may apply to have the conditions removed from his or her visa and live and work in the United States permanently.

17. Many EB-5 investments are administered by entities called “regional centers.” EB-5 regional centers are designated by USCIS to administer the EB-5 investment projects based on proposals for promoting economic growth.

18. Regional center investment vehicles are typically offered as limited partnership interests or limited liability company units, which are managed by a person or entity other than the foreign investor, who acts as a general partner or managing member of the investment vehicle. To become a regional center, the entity must demonstrate, with supporting economic and statistical studies, how it will promote economic growth, including job creation.

B. Designation Of Defendant Pacific Proton As A Regional Center

19. On or about November 19, 2010, Liu applied to USCIS, on behalf of Pacific Proton, for its designation as a “regional center” under the EB-5 immigrant investor program.

20. Liu signed the application on behalf of Pacific Proton as its president. Liu reviewed the application before it was submitted to USCIS.

21. In the application, Liu made the following representations, among others:

(a) Pacific Proton had formed the PPEB5 Fund to serve as the investment vehicle for its first project. EB-5 investors would make their qualifying investment in the PPEB5 Fund, which would then pool the funds and make a loan to Beverly Proton (then known as Los Angeles County Proton Therapy, LLC), to partially finance the development and operation of a proton therapy center and commercial office space.

(b) Beverly Proton would develop and operate an innovative new cancer treatment center using proton

beam radiation for treatment of oncology patients in Montebello, California. In addition to the proton therapy center, the building was expected to contain 125,000 square feet of medical office space and ancillary facilities. Beverly Proton would also develop and construct a new 30,000 square foot office building in Monterey Park, California, which would contain a restaurant, pharmacy, and radiation therapy office and multiple-use medical office space.

(c) Each investor would be required to invest \$500,000 as a “Capital Contribution” in the PPEB5 Fund and to pay an “Administrative Fee” of approximately \$45,000 before applying to USCIS for their I-526 petition. Pacific Proton would use an escrow account to hold the foreign investor’s \$500,000 Capital Contribution. Once the escrow agent receives confirmation that the investor’s I-526 Petition was approved, the escrowed funds would be released to the PPEB5 Fund for deployment to Beverly Proton. If USCIS were to deny the I-526 Petition, then the \$500,000 Capital Contribution investment would be returned to the investor, together with 50% of the Administrative Fee.

(d) According to an economic report included with the application, the project would “create an estimated 4,775 permanent new jobs, boost output by \$728 million per year, and increase labor (household) income by \$217 million per year.”

(e) Pacific Proton and the project would have a “transformative effect” and “a substantial and ongoing economic impact” on the counties of Los Angeles, Orange, Riverside and San Bernardino, “creating over 4,500 permanent, full-time jobs and yielding an economic impact of nearly \$728 million per year once completed.”

22. On June 28, 2012, USCIS approved the designation of Pacific Proton as a regional center under the EB-5 Immigrant Investor Program.

C. Liu and Wang's Roles in the Corporate Defendants

23. Liu has been the president of the regional center, Pacific Proton, since 2010. Until recently, Liu owned 75% of the membership interests in Pacific Proton.

24. Liu receives \$350,000 a year in compensation from Pacific Proton.

25. From about January 19, 2016 to April 4, 2016, Wang was the secretary of Pacific Proton. Wang was "elected" to this position by her husband, Liu.

26. Beverly Proton is the purported job-creating vehicle sponsored by Pacific Proton in connection with Pacific Proton's status as a USCIS-approved regional center. It is the entity that is supposed to develop and operate the proton therapy cancer treatment center.

27. Liu co-founded Beverly Proton with Dr. John Thropay, a radiation oncologist. Liu has been Beverly Proton's president since 2010, and is its treasurer and managing member. He owns 75% of its membership interests.

28. On January 19, 2016, Liu and Wang were elected by Liu as the two sole directors of Beverly Proton. Wang has also been Beverly Proton's "Vice President in Marketing of Asia [sic]" since 2011.

29. Liu receives \$550,000 a year in compensation from Beverly Proton.

30. On January 28, 2016, Wang entered into an agreement with Beverly Proton pursuant to which she is to receive a \$280,000 annual salary from Beverly Proton, going back to 2011. Liu signed the

employment agreement with Wang on behalf of Beverly Proton.

31. Once released from escrow, the PPEB5 Fund received the Capital Contributions paid by the investors, and then loaned the pooled Capital Contributions to Beverly Proton. Pacific Proton received the Administrative Fees paid by investors. Liu, through his control of Pacific Proton, is the sole manager of the PPEB5 Fund, and has been its manager since 2010.

32. Liu receives \$200,000 a year in compensation from the PPEB5 Fund.

33. During the entire relevant period, up to and including the present, Liu has been the sole signatory on all bank accounts held in the name of each entity defendant, except that Dr. Thropay, was also a signatory on the Beverly Proton account from October 2015 until Liu caused passage of a board resolution on January 19, 2016, removing Thropay from the account.

D. The EB-5 Offering

34. From at least October 1, 2014 to the present, the defendants have offered and sold investments in the form of limited liability company, or “LLC,” units in the PPEB5 Fund. To date, the defendants have raised at least \$26,967,918 from at least 50 investors in China.

35. Of that amount, at least \$24,712,217 was raised as “Capital Contributions” through an offering of the LLC units in the PPEB5 Fund. The remainder, or at least \$2,255,701, was received by Pacific Proton as required “Administrative Fees.”

36. Liu and the PPEB5 Fund provided offering materials to each investor consisting of: (1) a private offering memorandum (“POM”) dated May 1, 2013; (2) an Escrow Agreement attached to the POM as

Appendix A; (3) an Operating Agreement attached to the POM as Appendix B; and (4) a Subscription Agreement attached to the POM as Appendix C.

37. The POM states that the PPEB5 Fund is offering the LLC units for \$500,000 each, and can offer up to 300 LLC units (one per each accredited investor) for a maximum offering of \$150 million.

38. The POM further states that each \$500,000 investment, or “Capital Contribution,” would be held in escrow until notice was given to the PPEB5 Fund that the investor’s I-526 Petition had been filed with USCIS.

39. The POM that was provided to investors differs from the original POM provided to and approved by USCIS in at least two material respects. First, the amount of the offering had been reduced from \$193 million to \$150 million. Second, the POM provided to investors states that the investor’s Capital Contribution will be released from escrow when the investor files an I-526 Petition for residency with USCIS, rather than when that application is approved.

40. The POM further states that, once released from escrow, the offering proceeds were to be loaned from the PPEB5 Fund to Beverly Proton to develop and operate a proton therapy center in Los Angeles County under the medical direction of Dr. Thropay. The POM states that Beverly Proton “intends to use the proceeds from this Offering to finance development and operation” of the proton therapy center.

41. Additionally, the POM states that the PPEB5 Fund would charge investors an “Administrative Fee” of \$45,000 to pay for “Offering Expenses, including legal, accounting and administration expenses, and commissions and fees related to this Offering.” Investors paid the Administrative Fee directly to Pacific Proton.

42. The POM explicitly states that “Proceeds of this Offering do not include Administrative Fees. Offering expenses, commissions and fees incurred in connection with this Offering shall be paid from the proceeds of Administrative Fees and not from EB-5 Capital Contributions.”

43. Liu provided the information contained in the POM, and reviewed and approved it.

44. The investments in the PPEB5 Fund were securities. In fact, the POM refers to the investments as “securities,” even noting that “these securities have not been registered under the Securities Act of 1933” [capitalized in original].

45. The investments in the PPEB5 Fund were investments of money. As set forth in the POM, each investor was required to invest a minimum of \$500,000 as a “Capital Contribution” for one LLC unit. As required by USCIS regulations, the investor’s investment money must be “at risk for the purpose of generating a return on such capital.”

46. The investments in the PPEB5 Fund were also investments in a common enterprise. The investors’ \$500,000 Capital Contributions were pooled together in a single escrow account, and, once released from that account were pooled together in a single account held by the PPEB5 Fund. The PPEB5 Fund, in turn, lent those funds to Beverly Proton in order to develop and operate a proton therapy center. The investor funds were pooled together in a single account held by Beverly Proton.

47. According to the POM, Beverly Proton is to pay the PPEB5 Fund an annual interest payment of 0.25% on the loan (comprised of the investors’ Capital Contributions).

48. Any profits from investments in the PPEB5 Fund were to be derived from the efforts of others.

Liu solely manages the PPEB5 Fund; the investors have no management role. The POM further provides that Pacific Proton is the sole manager of the PPEB5 Fund, and that investors will have limited involvement in the management of PPEB5 Fund.

49. Additionally, the POM emphasizes that the success of the PPEB5 Fund and Beverly Proton is principally dependent on current management personnel for operation of the business. In particular, the POM states that Beverly Proton “is dependent upon the continued involvement of Dr. Thropay and Mr. Liu in this Project personally. The loss of services of either Dr. Thropay or Mr. Liu would have a material adverse effect on PPEB5 [Fund]’s and the Borrower’s business, financial condition and results of operations.”

50. The POM further states that Beverly Proton “will be required to hire and retain skilled employees at all levels of operations in a market where such qualified employees are in high demand and are subject to receiving competing offers. The inability to hire needed employees on a timely basis . . . could have a material adverse effect on the ability to meet the schedules of the strategic plan.” Investors are therefore dependent on the efforts of others to ensure that the venture is profitable.

E. The Sales Efforts

51. Liu retained at least three China-based marketing firms to solicit investors: (a) Overseas Chinese Immigration Consulting Ltd. (“Overseas Chinese”), based in Hong Kong; (b) United Damei Group, United Damei Investment Company, Ltd. and/or Beijing Pacific Damei Consulting Co. Ltd. (collectively, “UDG”), based in China; and (c) Hong Kong Delsk Business Co., Ltd. (“Delsk”), based in Hong Kong or China.

52. Wang is CEO and chairman of the board of UDG. The UDG website describes Wang in different places as “CEO” and “Chairman” (as also stated on her business card). It also includes her picture at the top of a group of pictures of the “Executive Team.”

53. As alleged below, Oversees Chinese, UDG and Delsk received substantial sums of investor funds.

54. Liu personally participated in the offer and sale of investments in the PPEB5 Fund to Chinese investors. Liu met investors a number of times at the proposed site for the proton center in Southern California.

55. Wang also participated in the sales effort on behalf of Beverly Proton and UDG. She held the title of “Vice President in Marketing of Asia [sic]” for Beverly Proton. Her responsibilities included promotions and marketing, and attracting patients from overseas for cancer treatment.

56. With Liu’s knowledge, Wang spoke about the project to potential investors and patients at multiple meetings organized in China in 2014 and 2015, including in Beijing, Shanghai and Guangzhou. Wang was aware when she spoke to potential patients that the Beverly Proton proton therapy cancer treatment center was not completed. Wang also met with investors and answered questions about living in the United States, such as questions about schools, taxes and the real estate market.

57. In 2015, Liu and Wang attended a meeting about proton therapy in Beijing organized by UDG, which had an audience of about 200 people, including potential investors.

F. The UDG Promotional Materials

58. UDG has an active website that continues to promote the investments in the PPEB5 Fund.

59. The website touts the proton therapy cancer treatment center that was to be constructed and operated with investor funds.

60. For example, UDG's website states that the Beverly Proton therapy center project "is a secure and reliable investment project."

61. The UDG website also states: "Among the various American EB-5 programs currently, the advantages of Los Angeles Proton Therapy Center are quite outstanding, and our company has a very professional case processing team and customer service team, application process of clients are quite smooth, and there have been [sic] good news frequently, we will continue sharing these good news with you!"

62. UDG's website also claims that the Beverly Proton project is using the proton therapy technology of Optivus Proton Therapy, Inc. ("Optivus"). UDG's website has descriptions of the Optivus technology, including that it was used by Loma Linda University, and a description of Loma Linda University's cancer treatment program. The website touts the Optivus proton therapy technology, stating that "Optivus is the equipment supplier of Los Angeles Proton Therapy Center. It is . . . the most effective, reliable, precise and environmental proton therapy system in the market currently . . . LAPTC will use new Optivus Conforma 3000 System . . ."

63. UDG's website also includes a section entitled "Government Support," which includes pictures of government officials, including former president George Herbert Walker Bush and former California Governor Arnold Schwarzenegger, accompanied by copies of letters from each of them.

64. Wang understood that the photograph of former Governor Schwarzenegger, which was also

hanging at UDG's offices, was maybe there "for promotional purposes."

65. The letter from former President Bush (dated April 2008 and addressed to the "Party Secretary of Shanghai City") and the letter from then-Governor Schwarzenegger (dated July 2007 and also to the "Shanghai Party Secretary") both touted Optivus and its technology. While the letters appear to be letters of support for proton therapy in general at the time they were written, they are completely unrelated to the Beverly Proton project and predated its formation. Nevertheless, the UDG website presents them under the heading and on a specific page entitled "Government Support."

G. The Stalled Therapy Center Project

66. Dr. Thropay owned a medical office building on the site where the proton therapy center was purportedly to be built with PPEB5 Fund investor monies. Liu caused that office building to be demolished in or about mid-2015 but there is presently no construction at that site for the new Beverly Proton treatment center. In fact, no construction permits have been obtained for the project.

67. Liu knows that construction for the new therapy center has not begun. He has personally toured the site, both before and after the demolition of the office building. Similarly, Wang is aware that construction is not complete.

68. Beverly Proton also paid Optivus approximately \$368,100 for Optivus equipment. However, in 2015, Liu decided to purchase radiation therapy equipment from a competing manufacturer. No Optivus equipment was ever delivered to the project. Nor has any equipment from the competitor been delivered to the project site.

69. Furthermore, on March 18 and 22, 2016, respectively, counsel for Optivus and Loma Linda University wrote separate letters to the PPEB5 Fund in care of Liu, protesting the defendants' continued use of their names, and instructing that their names not be used in conjunction with the project.

70. The Optivus letter stated that Optivus viewed it as "highly inappropriate" for Pacific Proton and Beverly Proton to suggest that Optivus is involved in the project on an ongoing basis or to use Optivus' name and reputation for purposes of promoting the proposed facility. It also stated that, to the extent Pacific Proton or Beverly Proton have held themselves out to any investors as affiliated, associated or otherwise endorsed by Optivus, "any such representation is false and misleading and must be properly addressed, by (without limitation) the immediate notification to any investors that Optivus has no ongoing involvement" in the project.

71. Similarly, Loma Linda University stated in its letter that the use of its name, logo and health care services "are presented in a manner that is likely to confuse visitors to the [Pacific Proton] website into believing that there is an affiliation or sponsorship between [Pacific Proton/Beverly Proton] on the one hand, and [the University and its medical center] on the other." It also states that, to the extent that Pacific Proton or Beverly Proton have held themselves out to investors as being affiliated, associated or otherwise endorsed by the university, "any such representation was, and is, false and misleading, and [Pacific Proton and Beverly Proton] must promptly address such misrepresentations by, without limitation, immediately notifying investors that [Loma Linda University] and its affiliates, including [its medical center], have no sponsorship or affiliation" with the project.

H. The Removal of Dr. Thropay

72. Liu has also recently made a series of management changes that significantly diminished Dr. Thropay's role in the project.

73. In late October 2015, Liu entered into a memorandum of understanding with a southern California cancer treatment hospital, to develop a proton therapy center. In connection with this agreement, Liu stated that the hospital would operate the Beverly Proton therapy center and be able to name the center's medical director, which appears to have ended Dr. Thropay's role as medical director of the treatment facility as set forth in the offering documents.

74. While the hospital had been negotiating a letter of intent with Liu, the negotiations stalled and eventually ceased. Thus, as of now, there is no clearly designated medical director of the proposed proton therapy center.

75. Earlier this year, Liu then reorganized Pacific Proton and Beverly Proton to diminish Dr. Thropay's role and interest in those entities. On January 19, 2016, Liu, as the member holding 75% of the membership interests of Pacific Proton, removed Dr. Thropay as an officer of the regional center, and appointed himself president and treasurer/chief financial officer, and appointed Wang secretary. That same day, at the annual meeting for Beverly Proton, Liu, as the member holding 75% of the membership interests, nominated and elected himself and Wang as the sole directors of Beverly Proton, and authorized himself, as managing member, to execute documents, agreements and instruments.

76. On April 4, 2016, after being subpoenaed and providing investigative testimony to the SEC, Liu reorganized the companies again. He purportedly

sold 50% of Pacific Proton to a former salesperson of a company that sold proton therapy equipment, for \$1 per unit. No payments have been made by this person for the purchase of Pacific Proton, however. At that time, the former salesman allegedly replaced Liu as Pacific Proton's president and treasurer, and Liu replaced Wang as its secretary.

77. In purportedly selling part of Pacific Proton to this former salesman, Liu diluted Dr. Thropay's interest in Pacific Proton from 25% to 12.5% by giving the putative purchaser a 50% ownership, Liu a 37.5% ownership, and Dr. Thropay only a 12.5% ownership. Before this purported change in ownership structure, Liu owned 75% of the membership interests in Pacific Proton.

I. Delsk's Letter to Liu

78. Delsk understood that they were the exclusive marketing agent in the Chinese region for the Beverly Proton EB-5 project after September 24, 2014, and Liu was aware that Delsk had that understanding.

79. In or after November 3, 2015, Delsk sent Liu a letter expressing its concerns that its exclusive sales agency agreement with Pacific Proton was still valid, and that "the project and all relevant materials provided by Pacific Proton . . . for promotion of EB-5 project in Chinese region must be authentic, timely, complete and comply with the relevant laws and regulations of the United States and China."

80. In the letter, Delsk stated that: "Due to the capital structure problem (namely, the absence of equity capital), in [the project]," in September 2015, Delsk had formally requested that Liu suspend promotional activities for the project in China, "while we wait for legal proof from you demonstrating that the capital structure problem has been solved," and that it met with Liu "again regarding the capital

structure of this project on November 3, 2015.” Delsk concluded by stating, that in its view, the PPEB5 Fund needed to issue a written document to inform all of its investors of, among other things: “the current status of capital raised by [the] project company,” “explaining the progress of construction,” and “[e]xplaining the status of the capital of all investors (in which account their funds are currently deposited, and whether the funds have been embezzled or misappropriated.”

81. Notwithstanding that Delsk’s letter placed Liu on notice that additional disclosure to investors was necessary regarding the material facts of the progress of construction and the use of their monies, no such further disclosure has been provided investors.

J. The Misappropriation of Investor Funds

82. Approximately \$24 million in Capital Contributions were raised from the investors, but at least \$17.4 million (net of funds returned by Overseas Chinese as alleged below) was not used to develop or construct the proton therapy center, as represented in the POM sent to investors. Instead, these funds were misappropriated by Liu, Wang and the three corporate defendants.

83. Specifically, at least \$19,530,000 was diverted to Liu, Wang and the three China-based marketing firms; Overseas Chinese returned \$2,060,130 of these funds to the PPEB5 Fund and Beverly Proton. Thus, at least \$17,469,870 was misappropriated or otherwise diverted for uses other than those disclosed in the investor disclosures. Most of these funds came from the investors’ Capital Contributions.

84. Liu personally received at least \$6,285,000 from the accounts where investor proceeds were deposited. Of that amount, \$4,270,000 was trans-

ferred to him as recently as February and March 2016, shortly after he was subpoenaed to give investigative testimony to the SEC.

85. Wang personally received at least \$1,400,000 from the accounts where investor proceeds were deposited. Of that amount, \$996,000 was transferred to her in March 2016.

86. Liu also transferred over \$11,845,000 to the three marketing firms in China (Overseas Chinese, UDG and Delsk) from the accounts where investor proceeds were deposited.

87. The three firms also received a substantial amount of the Administrative Fees paid by the investors.

88. Liu also misused a portion of the Administrative Fees, taking at least \$1,600,000 for his and Wang's personal use.

a. Overseas Chinese Was Paid Over \$7.7 Million

89. Liu knew that, pursuant to an agreement he reviewed, approved and signed on or about March 8, 2013, on behalf of Beverly Proton with Overseas Chinese, Overseas Chinese was being paid \$75,000 for each investor it obtained, plus an annual marketing fee of \$800,000. The agreement further provided that Overseas Chinese would return all marketing fees plus a \$1,000,000 penalty within 36 months if funds less than \$50,000,000 are raised by Overseas Chinese in 36 months.

90. Overseas Chinese solicited 11 investors who invested in the PPEB5 Fund.

91. Overseas Chinese was paid a total of \$7,722,000—the vast majority of which came from investor Capital Contributions—to recruit the 11 investors.

92. Subsequently, Overseas Chinese returned \$2,060,130 it apparently owes Beverly Proton, apparently as a result of its failure to raise the required \$50 million. It appears that Liu has dissipated most of the funds returned by Overseas Chinese. Overseas Chinese currently retains \$5,661,870 in investor funds.

b. UDG Was Paid \$3,815,000

93. Liu knew that, pursuant to identical agreements he signed on behalf of Pacific Proton on or about August 18 and August 12, 2013, with, respectively, United Damei Investment Co. Ltd. and Beijing Pacific Damei Consulting Co. Ltd., which had identical addresses in Beijing, UDG was to be paid a net present value “interest fee” by Beverly Proton (who was not a party to the agreement) of \$35,000 for each investor it obtained, the entire \$45,000 Administrative Fee, an immediate “document preparation fee” of \$500,000 upon signing of the Agreement, and a \$650,000 annual marketing fee.

94. The agreement with UDG was signed by Wenli Yao on behalf of United Damei Investment Co. Ltd. Ms. Yao is Wang’s mother and Liu’s mother-in-law. Ms. Yao lives with Liu and Wang in Laguna Niguel. She does not speak or read English, the language in which the Agreement is written.

95. UDG solicited 10 investors who invested in the PPEB5 Fund.

96. UDG was paid a total of \$3,815,000—the vast majority of which came from Capital Contributions—to recruit the ten investors. All of these monies were paid to International and Commercial Bank of China, in Hong Kong.

c. Delsk Was Paid \$1,387,500

97. Liu also caused fees to be paid to Delsk, based in China, which was another entity he hired to solicit investors.

98. Delsk solicited 37 investors who invested in the PPEB5 Fund.

99. Delsk was paid a total of \$1,387,500—the vast majority of which came from Capital Contributions—to recruit the 37 investors. All of these monies were paid to Hang Seng Bank, in Hong Kong.

K. The Defendants' State of Mind in Carrying Out the Fraud

100. At all relevant times, Liu and Wang knowingly, recklessly and/or negligently engaged in a fraudulent scheme by misappropriating the Capital Contributions and Administrative Fees paid by investors, so that most of these funds have not been used as represented in the POM and other disclosures to investors.

101. As president of Pacific Proton and Beverly Proton, and, through Pacific Proton, the sole manager of the PPEB5 Fund, Liu's state of mind is imputed to each of these entities.

102. Liu understood that the sole source of funds for the offering expenses, including legal, accounting and administrative expenses, and commissions and fees relating to the offering would come from the \$45,000 Administrative Fee, paid by each investor, and not the \$500,000 Capital Contribution each investor made. He further understood that the Administrative Fee was paid by the investor directly to the regional center, Pacific Proton, and not the investment fund, PPEB5 Fund.

103. Liu also understood that the investors were investing in the PPEB5 Fund, which then made a loan to Beverly Proton, the purpose of which was to

fund and develop the project by partially financing construction and operation of a proton therapy center. Liu further understood that all of the investor funds from the PPEB5 Fund, consisting of each investor's \$500,000 Capital Contribution, were to be paid towards this loan.

104. Notwithstanding Liu's understanding that the Capital Contributions were to be used, according to the POM and other investor disclosures, to develop and operate the therapy center and that commissions and fees relating to the offering were required to be paid from the Administrative Fees and not the Capital Contributions, Liu knew that (a) he and Wang received millions of dollars from the Capital Contributions and Administrative Fees and (b) both Pacific Proton, which received the Administrative Fee, and Beverly Proton, which received the loan consisting of the investors' Capital Contributions, were paying commissions to the three Chinese firms.

105. Also, during the relevant time, Liu was, and is, the signatory on the relevant bank accounts of the three corporate defendants through which the misappropriation of investor funds took place.

106. Wang acted negligently, at a minimum, with respect to the misleading UDG website statements. She marketed the proton therapy to investors and patients, and she and her husband received millions of dollars from the project. Given that, and her role at the corporate defendants and UDG, Wang should have known that investor money was being misused, contrary to the claims on UDG's website.

107. Wang was also UDG's CEO and chairman, and thus should have known that its website was materially misleading in the way it touted the success of the project, and did so with photographs and letters of government officials, which Wang understood were used for promotional reasons.

108. Wang acted at least negligently in obtaining at least \$1.4 million of investor money by means of these misleading claims.

L. The Misrepresentations and Omissions

109. In addition to their fraudulent scheme, the defendants have made materially false and misleading statements and omissions to the PPEB5 Fund investors, and have obtained investor proceeds by means of these misstatements and omissions.

110. As alleged above, the POM states that Capital Contributions from investors would be placed at risk, for the purpose of satisfying the EB-5 program criteria, in order to fund the development and operation of a proton therapy center in Los Angeles, and that the Administrative Fees paid by investors would be used for administrative expenses.

111. These representations were materially false and misleading because the majority of the Capital Contributions were not used for that stated purpose. Instead, they were misappropriated by Liu and Wang, and dispersed to the three Chinese firms. In addition, as alleged above, the Administrative Fees were misused.

112. Also, even though construction of the treatment center has not even begun, and the investor funds set aside for that construction have largely been misappropriated and dissipated, Liu and the three corporate defendants have omitted, and not disclosed, this material information to investors and potential investors.

113. In addition, notwithstanding that the POM states that the project “is dependent upon the continued involvement of Dr. Thropay” and that the “loss of services” of Dr. Thropay “would have a material adverse effect on PPEB5 [Fund]’s and [Beverly Proton’s] business, financial condition and

results of operations,” Liu and the three corporate defendants have omitted, and not disclosed to actual and potential investors that Dr. Thropay has been effectively removed from the project and that there is, currently, no medical director.

114. At all relevant times, Liu, who is ultimately responsible for the POM and other disclosures to investors, knew, or was reckless and negligent in not knowing, that these representations and omissions were false and misleading. His state of mind is imputed to Pacific Proton, Beverly Proton and the PPEB5 Fund, due to his control and/or management of them.

115. In addition, UDG’s website misleadingly implies that the proton therapy project is going well and is a “safe and reliable” investment.

116. The website also misleadingly implies the project will use the Optivus proton therapy technology, including letters touting that specific technology from former President Bush and then-Governor Schwarzenegger, when, in fact, the Beverly Proton project is no longer using that specific technology. Moreover, the website presents these letters as “support” for the project, but they are completely unrelated to the Beverly Proton project and are dated before the project was ever formed.

117. UDG’s website was therefore materially misleading because the project has stalled and is not being constructed, the investor proceeds were being dissipated and misused, and the Optivus technology was not being used at the site.

118. At all relevant times, Wang, who is the CEO and chairman of the board of UDG, was, and is, at least negligent in not knowing that these misleading representations were and are being made on UDG’s website to actual and potential investors.

M. The Ongoing Fraud

119. UDG's website, which markets and promotes the investment in the PPEB5 Fund, is still active and thus continues to promote and encourage investments in the fund.

120. Of the at least \$17,469,870 misappropriated and dissipated by defendants, \$5,266,000 was diverted from the project as recently as February and March 2016, shortly after the SEC subpoenaed Liu for investigative testimony.

121. Specifically, in February and March 2016, \$4,270,000 was transferred to Liu and \$996,000 was transferred to Wang. The overwhelming majority of these funds came from investor Capital Contributions.

FIRST CLAIM FOR RELIEF**Fraud in the Offer or Sale of Securities****Violations of Section 17(a) of the Securities Act
(against all Defendants)**

122. The SEC realleges and incorporates by reference paragraphs 1 through 121 above.

123. By engaging in the conduct described above, each of the defendants, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

124. Each of the defendants knew, or was reckless in not knowing, that he, she or it employed devices, schemes and artifices to defraud. Each of the defendants knew, or was reckless or negligent in not knowing, that he, she or it obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

125. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2), & 77q(a)(3).

SECOND CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities

**Violations of Section 10(b) of the Exchange Act
and Rules 10b-5(a) and 10b-5(c) Thereunder
(against all Defendants as primary violators,
and, alternatively, against Liu as a control
person under Section 20(a) of the Exchange Act)**

126. The SEC realleges and incorporates by reference paragraphs 1 through 121 above.

127. By engaging in the conduct described above, each of the defendants, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

128. Each of the defendants knew, or was reckless in not knowing, that he, she or it employed devices, schemes and artifices to defraud; and engaged in acts, practices or courses of conduct that operated as a fraud on the investing public by the conduct described in detail above.

129. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

130. Defendant Liu was a control person of defendants Pacific Proton, PPEB5 Fund and Beverly Proton because he possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of each of these entities. Accordingly, pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), defendant Liu is liable to the SEC to same extent as each of these corporate defendants for those defendants' violations of Section 10(b) and Rules 10b-5(a) and (c) thereunder.

THIRD CLAIM FOR RELIEF

Fraud in Connection with the Purchase or Sale of Securities

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder

**(against Defendants Liu, Pacific Proton, PPEB5
Fund and Beverly Proton as primary violators,
and, alternatively, against Liu as a control
person under Section 20(a) of the Exchange Act)**

131. The SEC realleges and incorporates by reference paragraphs 1 through 121 above.

132. By engaging in the conduct described above, defendant Liu, Pacific Proton, PPEB5 Fund and Bev-

erly Proton, and each of them, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

133. Defendants Liu, Pacific Proton, PPEB5 Fund and Beverly Proton, and each of them, knew, or was reckless in not knowing, that he or it made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

134. By engaging in the conduct described above, defendants Liu, Pacific Proton, PPEB5 Fund and Beverly Proton violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

135. Defendant Liu was a control person of defendants Pacific Proton, PPEB5 Fund and Beverly Proton because he possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of each of these entities. Accordingly, pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), defendant Liu is liable to the SEC to same extent as each of the entity defendants for those defendants' violations of Section 10(b) and Rule 10b-5(b) thereunder.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that defendants committed the alleged violations.

II.

Issue orders, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, temporarily, preliminarily and permanently enjoining defendants Liu, Wang, Pacific Proton, PPEB5 Fund and Beverly Proton, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the orders by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Issue orders, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, temporarily, preliminarily and permanently enjoining defendants Liu, Wang, Pacific Proton, PPEB5 Fund and Beverly Proton, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the orders by personal service or otherwise, and each of them, from, directly or indirectly, participating in the offer or sale of any security which constitutes an investment in a “commercial enterprise” under the United States Government EB-5 visa program administered by the USCIS, including engaging in activities with a broker, dealer, or issuer, or a Regional Center designated by the USCIS, for

purposes of issuing, offering, trading, or inducing or attempting to induce the purchase or sale of any such EB-5 investment.

IV.

Issue in a form consistent with Fed. R. Civ. P. 65, a temporary restraining order and a preliminary injunction freezing the funds and assets of defendants; ordering repatriation of any funds or assets transferred overseas; prohibiting each of the defendants from destroying documents; and ordering accountings by each of the defendants.

V.

Order defendants to disgorge all funds received from their illegal conduct, together with prejudgment interest thereon, and to repatriate any funds or assets they caused to be sent overseas.

VI.

Order defendants to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: May 26, 2016

/s/ John W. Berry
John W. Berry
Attorney for Plaintiff
Securities and Exchange Commission

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SACV 16-00974-CJC (AGRx)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CHARLES C. LIU, ET AL.,
Defendants.

**DEFENDANT CHARLES C. LIU'S
ANSWER TO PLAINTIFF'S COMPLAINT**

DEMAND FOR JURY TRIAL

For himself alone, and for no other defendant, CHARLES C. LIU ("Liu"), as his Answer to the Complaint (Docket No. 1; hereinafter "Complaint") filed herein by plaintiff SECURITIES AND EXCHANGE COMMISSION, answers, denies, and alleges as follows:

JURISDICTION AND VENUE

1. Liu admits that he has made use of the United States mails and of instrumentalities of interstate commerce regarding the business alleged in the Complaint, and declines to respond to the remaining allegations of paragraph 1 as legal conclusions requiring no response.

2. Liu admits that venue is proper in this district because he resided in this district during part of the time period alleged in the Complaint, and denies the remaining allegations of paragraph 2 except to the extent they are legal conclusions requiring no response.

SUMMARY

3. Liu admits that through the corporate defendant Pacific Proton he sponsored an EB-5 Immigrant Investor Program to build a proton therapy cancer treatment center in Southern California that met the requirements of the EB-5 program administered by the United States Citizenship and Immigrant Service (USCIS), and denies the remaining allegations of paragraph 3.

4. Liu admits that the EB-5 Immigrant Investor Program was created to stimulate the U.S. economy with capital investment from foreign investors, that such investors under certain conditions can receive a permanent visa to live and work in the U.S., and that the investors' capital under the regulations must be at risk for generating a return. Liu denies the remaining allegations of paragraph 4 and refers the court to the USCIS regulations for a full description of the EB-5 Program.

5. Liu admits that from in or about October 2014 to in or about December 2015, through defendant Pacific Proton, LLC, as manager of the defendant PPEB5 Fund, he caused the offering and sale of EB-5 investments to Chinese investors who were required to make a capital contribution of \$500,000 and pay an Administrative Fee of \$45,000, and except as admitted denies the remaining allegations of paragraph 5.

6. Liu denies the allegations of paragraph 6.

7. Liu admits that he transferred investor funds in or about February and March 2016 from defendant Pacific Proton EB-5 Fund LLC to defendant Beverly Proton Center, LLC per the Loan Agreement, and denies the remaining allegations of paragraph 7.

8. Liu denies the allegations of paragraph 8.

THE DEFENDANTS

9. Liu admits the allegations of paragraph 9 except to deny that he currently resides in Laguna, California and currently controls the three corporate defendants.

10. Liu admits that defendant XIN WANG, a/k/a LISA WANG, is his wife, formerly resided in Laguna Niguel, California, went to the School of Pharmacy in Qindao, China, and worked for a local hospital for one year, and denies the remaining allegations of paragraph 10.

11. Liu denies that he currently controls defendant Pacific Proton and is its president, and admits that defendant Pacific Proton is a California limited liability company and was approved as a regional center under the EB-5 program. Except as admitted, Liu denies the remaining allegations of paragraph 11.

12. Liu admits the allegations in paragraph 12.

13. Liu admits that defendant Beverly Proton is a California limited liability company that was co-founded by Liu and Dr. John Thropay to develop and operate a proton therapy cancer treatment center by borrowing funds to do so, and except as admitted Liu denies the remaining allegations of paragraph 13.

THE FRAUDULENT SCHEME**A. The EB-5 Immigrant Investor Program**

14. Liu admits the allegations of paragraph 14.

15. Liu admits the allegations of paragraph 15.

16. Liu admits the allegations of paragraph 16.

17. Liu admits the allegations of paragraph 17.

18. Liu admits the allegations of paragraph 18.

B. Designation Of Defendant Pacific Proton As A Regional Center

19. Liu admits the allegations of paragraph 19.

20. Liu declines to respond to the allegations in paragraph 20 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 20.

21. Liu declines to respond to the allegations in paragraph 21 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 21.

22. Liu admits the allegations in paragraph 22.

C. Liu and Wang's Roles in the Corporate Defendants

23. Liu declines to respond to the allegations in paragraph 23 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 23.

24. Liu denies that he currently receives compensation from defendant Pacific Proton.

25. Liu declines to respond to the allegations in paragraph 25 and invokes his rights against self-incrimination under the Fifth Amendment of the

United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 25.

26. Liu admits the allegations in paragraph 26.

27. Liu admits that he co-founded defendant Beverly Proton with Dr. John Thropay and declines to respond to the remaining allegations in paragraph 27 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the remaining allegations in paragraph 27.

28. Liu declines to respond to the allegations in paragraph 28 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 28.

29. Liu denies that he currently receives compensation from defendant Beverly Proton.

30. Liu declines to respond to the allegations in paragraph 30 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 30.

31. Liu declines to respond to the allegations in paragraph 31 of the Complaint and invokes his

rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 31.

32. Liu denies that he currently receives compensation from defendant PPEB5 Fund.

33. Liu declines to respond to the allegations in paragraph 33 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 33.

D. The EB-5 Offering

34. Liu declines to respond to the allegations in paragraph 34 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 34.

35. Liu declines to respond to the allegations of paragraph 35 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 35.

36. Liu declines to respond to the allegations in paragraph 36 and invokes his rights against self-

incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 36.

37. Liu declines to respond to the allegations in paragraph 37 and refers the court to the POM for its terms.

38. Liu declines to respond to the allegations in paragraph 38 and refers the court to the POM for its terms.

39. Liu declines to respond to the allegations in paragraph 39 and refers the court to the POM for its terms.

40. Liu declines to respond to the allegations in paragraph 40 and refers the court to the POM for its terms.

41. Liu declines to respond to the allegations in paragraph 41 and refers the court to the POM for its terms.

42. Liu declines to respond to the allegations in paragraph 42 and refers the court to the POM for its terms.

43. Liu declines to respond to the allegations in paragraph 43 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 43.

44. Liu denies that the investments in the PPEB5 Fund were “securities,” and declines to respond to the remaining allegations in paragraph 44 of the

Complaint and refers the court to the POM for its terms.

45. Liu denies that the investments in the PPEB5 Fund were “securities,” and declines to respond to the remaining allegations in paragraph 45 and refers the court to the POM for its terms.

46. Liu admits the allegations in paragraph 46.

47. Liu admits that defendant Beverly Proton was to pay the PPEB5 Fund an annual interest of 0.25% on the loan, and denies the remaining allegations in paragraph 47.

48. Liu admits that profits from the PPEB5 Fund were to be derived from the efforts of others, that Liu and Pacific Proton were the managers of the PPEB5 Fund, refers the court to the POM for its terms, and denies the remaining allegations in paragraph 48.

49. Liu declines to respond to the allegations in paragraph 49 and refers the court to the POM for its terms.

50. Liu declines to respond to the allegations in paragraph 50 and refers the court to the POM for its terms.

E. The Sales Efforts

51. Liu admits that he retained three China-based firms to solicit investors: (a) Overseas Chinese Immigration Consulting Ltd. (Overseas Chinese), based in Hong Kong; (b) Beijing Pacific Damei Consulting Co., Ltd., based in Beijing, China (Pacific Damei); and (c) Hong Kong Delsk Business Co., Ltd., based in Hong Kong (Delsk), and denies the remaining allegations of paragraph 51.

52. Liu declines to respond to the allegations in paragraph 52 directed to another defendant and is without sufficient knowledge or information to form a

belief as to the truth of the allegations in paragraph 52 and, on that basis, denies, generally and specifically, each of said allegations.

53. Liu admits that Overseas Chinese, Delsk, and Pacific Damei received substantial sums of broker and marketing fees, and denies the remaining allegations of paragraph 53.

54. Liu declines to respond to the allegations in paragraph 54 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 54.

55. Liu declines to respond to the allegations in paragraph 55 directed to another defendant and is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 55 and, on that basis, denies, generally and specifically, each of said allegations.

56. Liu declines to respond to the allegations in paragraph 56 directed to another defendant, is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 56 and, on that basis, denies, generally and specifically, each of said allegations. Regarding the allegation about Liu's knowledge, Liu declines to respond to this allegation and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegation in paragraph 56.

57. Liu admits that in 2015 he attended a meeting about proton therapy in Beijing organized by Delsk which had about 200 people in attendance, including potential investors, and denies the remaining allegations in paragraph 57.

F. The UDG Promotional Materials

58. Liu denies the allegations in paragraph 58.

59. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 59 and, on that basis, denies, generally and specifically, each of said allegations.

60. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 60 and, on that basis, denies, generally and specifically, each of said allegations.

61. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 61 and, on that basis, denies, generally and specifically, each of said allegations.

62. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 62 and, on that basis, denies, generally and specifically, each of said allegations.

63. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 63 and, on that basis, denies, generally and specifically, each of said allegations.

64. Liu declines to respond to the allegations in paragraph 64 directed to another defendant, is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 64 and, on that basis, denies, generally and specifically, each of said allegations.

65. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations

in paragraph 65 and, on that basis, denies, generally and specifically, each of said allegations.

G. The Stalled Therapy Center Project

66. Liu admits that he caused a building or property leased from Dr. Thropay to be demolished to build a proton therapy center, is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 66 and, on that basis, denies, generally and specifically, each of said allegations.

67. Liu admits that he has toured the site and construction of the cancer therapy center is not complete, is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 67 and, on that basis, denies, generally and specifically, each of said allegations.

68. Liu admits that defendant Beverly Proton paid Optivus about \$498,000 as a technology consulting fee for construction of the center and for the proton equipment machine before deciding to proceed with another proton equipment therapy machine for which Beverly Proton made a nonrefundable deposit of \$3 million and would have to make additional payments before the equipment installation construction was started, and denies the remaining allegations in paragraph 68.

69. Liu declines to respond to the allegations in paragraph 69 and refers the court to the March 18 and 22, 2016 letters for their terms.

70. Liu declines to respond to the allegations in paragraph 70 and refers the court to the March 18 and 22, 2016 letters for their terms.

71. Liu declines to respond to the allegations in paragraph 71 and refers the court to the March 18 and 22, 2016 letters for their terms.

H. The Removal of Dr. Thropay

72. Liu states that Dr. Thropay had requested that his sister be appointed as the administrator of the project and be paid 8% of gross revenue, that Liu declined that request and replaced Dr. Thropay with Beverly Hospital as the new administrator, and denies the remaining allegations in paragraph 72.

73. Liu admits that defendant Beverly Proton in or about October 2015 entered into an MOU with Beverly Hospital, refers the court to the MOU for its terms, and denies the remaining allegations in paragraph 73.

74. Liu admits that there is currently no designated medical director for the proton therapy cancer center, and denies the remaining allegations in paragraph 74.

75. Liu admits the allegations in paragraph 75.

76. Liu admits that on or about April 4, 2016 Mike Cogswell agreed to buy an interest in defendant Pacific Proton and was appointed its new president and treasurer, that Liu became secretary of Pacific Proton, and denies the remaining allegations in paragraph 76.

77. Liu admits upon information and belief that as of April 4, 2016 the ownership interests in defendant Pacific Proton were as alleged in paragraph 77, and denies the remaining allegations in paragraph 77.

I. Delsk's Letter to Liu

78. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 78 and, on that basis, denies, generally and specifically, each of said allegations.

79. Liu declines to respond to the allegations in paragraph 79 and refers the court to the November 3, 2015 letter from Delsk.

80. Liu declines to respond to the allegations in paragraph 80 and refers the court to the November 3, 2015 letter from Delsk.

81. Liu declines to respond to the allegations in paragraph 81 characterizing the Delsk letter and refers the court to that letter for its terms, and to the extent the remaining allegations in paragraph 81 state a legal conclusion about Liu's obligation to make disclosure to investors in response to the Delsk letter they require no response.

J. The Misappropriation of Investor Funds

82. Liu denies the allegations in paragraph 82.

83. Liu denies the allegations in paragraph 83.

84. Liu admits that he received compensation for his work in the proton therapy cancer project and declines to respond to the remaining allegations in paragraph 84 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the remaining allegations in paragraph 84.

85. Liu declines to respond to the allegations in paragraph 85 directed to another defendant.

86. Liu admits that the three Chinese marketing firms he hired were paid compensation, and declines to respond to the remaining allegations in paragraph 86 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the remaining allegations in paragraph 86.

87. Liu admits that the three firms he hired received substantial fees.

88. Liu declines to respond to the allegations in paragraph 88 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 88.

a. Overseas Chinese Was Paid Over \$7.7 Million

89. Liu declines to respond to the allegations in paragraph 89 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 89.

90. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 90 and, on that basis, denies, generally and specifically, each of said allegations.

91. Liu declines to respond to the allegations in paragraph 91 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 91.

92. Liu declines to respond to the allegations in paragraph 92 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the

Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 92.

b. UDG Was Paid \$3,815,000

93. Liu declines to respond to the allegations in paragraph 93 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 93.

94. Liu declines to respond to the allegations in paragraph 94 and invokes his rights under the Fifth Amendment of the United States Constitution against self-incrimination, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations contained in Paragraph 94.

95. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 95 and, on that basis, denies, generally and specifically, each of said allegations.

96. Liu declines to respond to the allegations in paragraph 96 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 96.

c. Delsk Was Paid \$1,387,500

97. Liu admits the allegations in paragraph 97.

98. Liu is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 98 and, on that basis, denies, generally and specifically, each of said allegations.

99. Liu declines to respond to the allegations in paragraph 99 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 99.

K. The Defendants' State of Mind in Carrying Out the Fraud

100. Liu denies the allegations in paragraph 100.

101. Liu declines to respond to the allegations in paragraph 101 as legal conclusions requiring no response.

102. Liu declines to respond to the allegations in paragraph 102 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 102.

103. Liu declines to respond to the allegations in paragraph 103 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 103.

104. Liu declines to respond to the allegations in paragraph 104 and invokes his rights against self-

incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 104.

105. Liu admits that he was a signatory on the corporate defendants' bank accounts along with Dr. John Thropay who was a signatory on the defendant Beverly Proton bank account and denies the remaining allegations in paragraph 105.

106. Liu denies that he misused investor money and declines to respond to the allegations in paragraph 106 directed to another defendant, is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 106 and, on that basis, denies, generally and specifically, each of said allegations.

107. Liu declines to respond to the allegations in paragraph 107 directed to another defendant, is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 107 and, on that basis, denies, generally and specifically, each of said allegations.

108. Liu declines to respond to the allegations in paragraph 108 directed to another defendant, is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 108 and, on that basis, denies, generally and specifically, each of said allegations.

L. The Misrepresentations and Omissions

109. Liu denies that he engaged in a fraudulent scheme, and declines to respond to the allegations in paragraph 109 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the

Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the remaining allegations in paragraph 109.

110. Liu declines to respond to the allegations in paragraph 110 and refers the court to the POM for its terms.

111. Liu denies the allegations in paragraph 111.

112. Liu admits that construction of the proton therapy cancer center has not been completed, denies that he misappropriated investor Capital Contributions, and declines to respond to the remaining allegations in paragraph 112 making legal conclusions.

113. Liu declines to respond to the allegations in paragraph 113 and refers the court to the POM for its terms, admits that Dr. Thropay has been removed from a managerial role in the project, and declines to respond to the remaining allegations in paragraph 113 making legal conclusions about Liu's disclosure obligations.

114. Liu denies the allegations in paragraph 114 and declines to respond to the remaining allegations making legal conclusions about imputed knowledge.

115. Liu is without sufficient information to form a belief as to the truth of the allegations in paragraph 115 and, on that basis, denies, generally and specifically, each of said allegations.

116. Liu is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 116 and, on that basis, denies, generally and specifically, each of said allegations.

117. Liu denies investor funds were misused, is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 117 and, on that basis, denies, generally and specifically, each of said allegations.

118. Liu declines to respond to the allegations in paragraph 118 directed to another defendant.

M. The Ongoing Fraud

119. Liu is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 119 and, on that basis, denies, generally and specifically, each of said allegations.

120. Liu denies that he misappropriated investor funds, and declines to respond to the remaining allegations in paragraph 120 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the remaining allegations in paragraph 120.

121. Liu declines to respond to the allegations in paragraph 121 and invokes his rights against self-incrimination under the Fifth Amendment of the United States Constitution, and requests that the Court, in accordance with *National Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924 (7th Cir. 1983), treat such invocation as a specific denial of the allegations in paragraph 121.

FIRST CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

**Violations of Section 17(a) of the Securities Act
(Against all Defendants)**

122. Liu incorporates his responses to paragraphs 1 through 121 above.

123. Liu declines to respond to the allegations in paragraph 123 as legal claims requiring no response.

124. Liu denies the allegations in paragraph 124.

125. Liu declines to respond to the allegations in paragraph 125 as legal claims requiring no response.

SECOND CLAIM FOR RELIEF**Fraud in Connection with the Purchase
or Sale of Securities****Violations of Section 10(b) of the Exchange Act
and Rules 10b-5(a) and 10b-5(c) Thereunder
(Against all Defendants as primary violators,
and, alternatively, against Liu as a control
person under Section 20(a) of the Exchange Act)**

126. Liu incorporates his responses to paragraphs 1 through 125 above.

127. Liu declines to respond to the allegations in paragraph 127 as legal claims not requiring a response.

128. Liu denies the allegations in paragraph 128.

129. Liu declines to respond to the allegations in paragraph 129 as legal claims not requiring a response.

130. Liu declines to respond to the allegations in paragraph 130 as legal claims not requiring a response.

THIRD CLAIM FOR RELIEF**Fraud in Connection with the Purchase
or Sale of Securities****Violations of Section 10(b) of the Exchange Act
and Rule 10b-5(b) Thereunder****(Against Defendants Liu, Pacific Proton,
PPEB5 Fund and Beverly Proton as primary
violators, and, alternatively, against Liu as
a control person under Section 20(a)
of the Exchange Act)**

131. Liu incorporates his responses to paragraphs 1 through 130 above.

132. Liu declines to respond to the allegations in paragraph 132 as legal claims not requiring a response.

133. Liu denies the allegations in paragraph 133.

134. Liu declines to respond to the allegations in paragraph 134 as legal claims not requiring a response.

135. Liu declines to respond to the allegations in paragraph 135 as legal claims not requiring a response.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Subject Matter Jurisdiction)

136. The court lacks subject matter jurisdiction because the primary purpose of the PPEB5 Fund investments by the Chinese investors was not to earn a monetary return on the invested funds but was for the non-monetary purpose of obtaining a permanent U.S. visa and ultimately becoming U.S. citizens. [Since the court has denied a motion raising this issue, the defense is raised to preserve Liu's legal position.]

SECOND AFFIRMATIVE DEFENSE

(Failure To Make Necessary Allegation)

137. The Complaint fails to state a claim because it fails to allege that the primary purpose of investments in the PPEB5 Fund by Chinese investors was the monetary purpose of obtaining a monetary return on the investments rather than the non-monetary purpose of becoming U.S. citizens. [Since the court has denied a motion raising this issue, the defense is raised to preserve Liu's legal position.]

THIRD AFFIRMATIVE DEFENSE

(Good Faith)

138. Plaintiff's claims are barred, in whole or in part, because Liu at all times acted in good faith.

FOURTH AFFIRMATIVE DEFENSE
(Failure To Plead Fraud With Particularity)

139. The Complaint fails to plead fraud with particularity, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FIFTH AFFIRMATIVE DEFENSE
(No Scienter)

140. The Complaint is barred, in whole or in part, because Liu did not act with scienter.

Liu reserves the right to assert additional affirmative defenses as appropriate based upon facts or issues disclosed during the course of additional investigation or discovery.

WHEREFORE, Liu respectfully requests that this Court enter judgment in his favor and against Plaintiff (i) dismissing Plaintiff's Complaint with prejudice, (ii) awarding Liu his costs and expenses, and (iii) granting Liu such other and further relief as the Court deems just and proper.

DATED: September 6, 2016

Respectfully submitted,
BUCHALTER NEMER
A Professional Corporation

By /s/ Lawrence B. Steinberg
Attorneys for defendants
CHARLES C. LIU and
XIN WANG a/k/a LISA WANG

SILLS CUMMIS & GROSS P.C.
By /s/ Hervé Gouraige
Attorneys for defendants
CHARLES C. LIU and
and XIN WANG a/k/a LISA WANG

DEMAND FOR TRIAL BY JURY

Liu hereby demands trial by jury of all issues so triable.

DATED: September 6, 2016

BUCHALTER NEMER
A Professional Corporation

By /s/ Lawrence B. Steinberg
Attorneys for defendants
CHARLES C. LIU and
XIN WANG a/k/a LISA WANG

SILLS CUMMIS & GROSS P.C.
By /s/ Hervé Gouraige
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CHARLES C. LIU and
and XIN WANG a/k/a LISA WANG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SACV 16-00974-CJC (AGR_x)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CHARLES C. LIU, ET AL.,
Defendants.

**DEFENDANT XIN WANG'S
ANSWER TO PLAINTIFF'S COMPLAINT
DEMAND FOR JURY TRIAL**

For herself alone, and for no other defendant, XIN WANG a/k/a LISA WANG ("Wang"), as her Answer to the Complaint (Docket No. 1; hereinafter "Complaint") filed herein by plaintiff SECURITIES AND EXCHANGE COMMISSION, answers, denies, and alleges as follows:

JURISDICTION AND VENUE

1. Wang admits that she has made use of the United States mails and of instrumentalities of interstate commerce regarding the business alleged in the Complaint, and declines to respond to the remaining allegations of paragraph 1 as legal conclusions requiring no response.

2. Wang admits that venue is proper in this district because she resided in this district during part of the time period alleged in the Complaint, and denies the remaining allegations of paragraph 2 except to the extent they are legal conclusions requiring no response.

SUMMARY

3. Wang admits that corporate defendant Pacific Proton sponsored an EB-5 Immigrant Investor Program to build a proton therapy cancer treatment center in Southern California that met the requirements of the EB-5 program administered by the United States Citizenship and Immigrant Service (USCIS), and denies the remaining allegations of paragraph 3.

4. Wang admits upon information and belief that the EB-5 Immigrant Investor Program was created to stimulate the U.S. economy with capital investment from foreign investors, that such investors under certain conditions can receive a permanent visa to live and work in the U.S., and that the investors' capital under the regulations must be at risk for generating a return. Wang denies the remaining allegations of paragraph 4 and refers the court to the USCIS regulations for a full description of the EB-5 Program.

5. Wang admits that before December 2015 she served as a Vice President in Asia Marketing for defendant Beverly Proton Center, LLC to market the proton therapy project in China, and except as admitted here and above is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 5 and, on that basis, denies, generally and specifically, each of said allegations.

6. Wang denies the allegations in paragraph 6 directed to her, and as to the allegations directed to other defendants is without sufficient information or knowledge to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each of said allegations.

7. Wang denies the allegations in paragraph 7 directed to her, and as to the allegations directed to other defendants is without sufficient information or knowledge to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each of said allegations.

8. Wang denies the allegations in paragraph 8.

THE DEFENDANTS

9. Wang declines to respond to the allegations in paragraph 9 directed to another defendant.

10. Wang admits that she is the wife of defendant CHARLES C. LIU, formerly resided in Laguna Niguel, California, went to the School of Pharmacy in Qindao, China, and worked for a local hospital for one year, and denies the remaining allegations in paragraph 10.

11. Wang declines to respond to the allegations in paragraph 11 directed to other defendants.

12. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 12 and, on that basis, denies, generally and specifically, each of said allegations.

13. Wang admits that she served as a Vice President in Asia Marketing for defendant Beverly Proton Center, LLC in China for a period of time, is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 13 and, on that basis, denies, generally and specifically, each of said allegations.

THE FRAUDULENT SCHEME

A. The EB-5 Immigrant Investor Program

14. Wang, upon information and belief, admits the allegations in paragraph 14.

15. Wang, upon information and belief, admits the allegations in paragraph 15.

16. Wang, upon information and belief, admits the allegations in paragraph 16.

17. Wang, upon information and belief, admits the allegations in paragraph 17.

18. Wang, upon information and belief, admits the allegations in paragraph 18.

B. Designation Of Defendant Pacific Proton As A Regional Center

19. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 19 and, on that basis, denies, generally and specifically, each of said allegations.

20. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 20 and, on that basis, denies, generally and specifically, each of said allegations.

21. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 21 and, on that basis, denies, generally and specifically, each of said allegations.

22. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 22 and, on that basis, denies, generally and specifically, each of said allegations.

C. Liu and Wang's Roles in the Corporate Defendants

23. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 23 and, on that basis, denies, generally and specifically, each of said allegations.

24. Wang is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 24 and, on that basis, denies, generally and specifically, each of said allegations.

25. Wang admits that from in or about January 19, 2016 to in or about April 4, 2016 she was the corporate secretary of defendant Pacific Proton, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 and, on that basis, denies, generally and specifically, each of said allegations.

26. Wang, upon information and belief, admits the allegations in paragraph 26.

27. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, on that basis, denies, generally and specifically, each of said allegations.

28. Wang admits that on or about January 19, 2016 she was elected a director of defendant Beverly Proton Center, LLC and before that served as Vice President in Asia Marketing for Beverly Proton, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 and, on that basis, denies, generally and specifically, each of said allegations.

29. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and, on that basis, denies, generally and specifically, each of said allegations.

30. Wang admits that she had an employment agreement with defendant Beverly Proton at an annual salary of \$280,000 and refers the court to that agreement for its terms, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 30 and, on that basis, denies, generally and specifically, each of said allegations.

31. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, on that basis, denies, generally and specifically, each of said allegations.

32. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, on that basis, denies, generally and specifically, each of said allegations.

33. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and, on that basis, denies, generally and specifically, each of said allegations.

D. The EB-5 Offering

34. Wang admits that she marketed investments in the EB-5 Fund proton project, and denies the remaining allegations in paragraph 34.

35. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 and, on that basis, denies, generally and specifically, each of said allegations.

36. Wang declines to respond to the allegations in paragraph 36 directed to another defendant.

37. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and, on that basis, denies, generally and specifically, each of said allegations.

38. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and, on that basis, denies, generally and specifically, each of said allegations.

39. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, on that basis, denies, generally and specifically, each of said allegations.

40. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and, on that basis, denies, generally and specifically, each of said allegations.

41. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and, on that basis, denies, generally and specifically, each of said allegations.

42. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and, on that basis, denies, generally and specifically, each of said allegations.

43. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and, on that basis, denies, generally and specifically, each of said allegations.

44. Wang denies that the investments in the PPEB5 Fund were “securities,” and declines to respond to the remaining allegations in paragraph 44 as legal conclusions and refers the court to the POM for its terms.

45. Wang denies that the investments in the PPEB5 Fund were “securities,” and declines to respond to the remaining allegations in paragraph 45 as legal conclusions and refers the court to the POM for its terms.

46. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and, on that basis, denies, generally and specifically, each of said allegations.

47. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and, on that basis, denies, generally and specifically, each of said allegations.

48. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and, on that basis, denies, generally and specifically, each of said allegations.

49. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and, on that basis, denies, generally and specifically, each of said allegations.

50. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, on that basis, denies, generally and specifically, each of said allegations.

E. The Sales Efforts

51. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, on that basis, denies, generally and specifically, each of said allegations.

52. Wang denies that she is CEO and chairman of the board of “UDG,” and that there is a registered company in China named “UDG” or “United Damei Group.” Upon information and belief, Beijing Pacific Damei Consulting Co., Ltd. was involved in marketing EB-5 investments. United Damei Investment Co., Ltd. was engaged in the business of promoting a Grenada Resort and agreed to work with the proton therapy Center on a patient referral program with a medical insurance company in China when the center was built. Wang was a diplomat from Grenada in China who worked to promote Grenada in China while also promoting the proton therapy center. Wang was a well-known TV hostess in Qindao, China, and, to use her name and reputation for promotional purposes, Wang was allowed to use the corporate titles. Upon information and belief, Wang was not paid as a corporate officer of either of these two companies.

53. Wang denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and, on that basis, denies, generally and specifically, each of said allegations.

54. Wang declines to respond to the allegations in paragraph 54 directed to another defendant.

55. Wang admits to participating in marketing efforts on behalf of defendant Beverly Proton, being a vice president in marketing for Beverly Proton in Asia, seeking to attract patients for Beverly Proton, and denies the remaining allegations in paragraph 55.

56. Wang admits to the allegations directed at her conduct in paragraph 56, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 56 and, on that basis, denies, generally and specifically, each of said allegations.

57. Wang admits that in 2015 she attended a meeting about proton therapy in Beijing organized by Delsk which had about 200 people in attendance, including potential investors, and denies the remaining allegations in paragraph 57.

F. The UDG Promotional Materials

58. Wang denies the allegations in paragraph 58.

59. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 59 and, on that basis, denies, generally and specifically, each of said allegations.

60. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 60 and, on that basis, denies, generally and specifically, each of said allegations.

61. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 61 and, on that basis, denies, generally and specifically, each of said allegations.

62. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 62 and, on that basis, denies, generally and specifically, each of said allegations.

63. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 63 and, on that basis, denies, generally and specifically, each of said allegations.

64. Wang admits there was a photograph of former Governor Schwarzenegger hanging at a corporate office that was placed there to promote proton therapy and the Optivus equipment.

65. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 65 and, on that basis, denies, generally and specifically, each of said allegations.

G. The Stalled Therapy Center Project

66. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 66 and, on that basis, denies, generally and specifically, each of said allegations.

67. Wang admits that construction of the cancer therapy center is not complete, is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 67 and, on that basis, denies, generally and specifically, each of said allegations.

68. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 68 and, on that basis, denies, generally and specifically, each of said allegations.

69. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 69 and, on that basis, denies, generally and specifically, each of said allegations.

70. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 70 and, on that basis, denies, generally and specifically, each of said allegations.

71. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 71 and, on that basis, denies, generally and specifically, each of said allegations.

H. The Removal of Dr. Thropay

72. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 72 and, on that basis, denies, generally and specifically, each of said allegations.

73. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 73 and, on that basis, denies, generally and specifically, each of said allegations.

74. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 74 and, on that basis, denies, generally and specifically, each of said allegations.

75. Wang admits that she was appointed corporate secretary of defendant Pacific Proton and director of defendant Beverly Proton, is without sufficient knowledge or information to form a belief as to the

truth of the remaining allegations in paragraph 75 and, on that basis, denies, generally and specifically, each of said allegations.

76. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 76 and, on that basis, denies, generally and specifically, each of said allegations.

77. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 77 and, on that basis, denies, generally and specifically, each of said allegations.

I. Delsk's Letter to Liu

78. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 78 and, on that basis, denies, generally and specifically, each of said allegations.

79. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 79 and, on that basis, denies, generally and specifically, each of said allegations.

80. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 80 and, on that basis, denies, generally and specifically, each of said allegations.

81. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 81 and, on that basis, denies, generally and specifically, each of said allegations.

J. The Misappropriation of Investor Funds

82. Wang denies the allegations in paragraph 82.
83. Wang denies the allegations in paragraph 83.
84. Wang declines to respond to the allegations in paragraph 84 directed to another defendant.
85. Wang admits to having received compensation for her work marketing the proton therapy center in Asia and seeking to recruit patients for the center.
86. Wang declines to respond to the allegations in paragraph 86 directed to another defendant.
87. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 87 and, on that basis, denies, generally and specifically, each of said allegations.
88. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 88 and, on that basis, denies, generally and specifically, each of said allegations.

a. Overseas Chinese Was Paid Over \$7.7 Million

89. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 89 and, on that basis, denies, generally and specifically, each of said allegations.

90. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 90 and, on that basis, denies, generally and specifically, each of said allegations.

91. Wang is without sufficient knowledge or information to form a belief as to the truth of the

allegations in paragraph 91 and, on that basis, denies, generally and specifically, each of said allegations.

92. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 92 and, on that basis, denies, generally and specifically, each of said allegations.

b. UDG Was Paid \$3,815,000

93. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 93 and, on that basis, denies, generally and specifically, each of said allegations.

94. Wang admits that Wenli Yao is her mother, lived with her and defendant Liu in Laguna Niguel, California, and does not speak or read English, Wang is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 94 and, on that basis, denies, generally and specifically, each of said allegations.

95. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 95 and, on that basis, denies, generally and specifically, each of said allegations.

96. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 96 and, on that basis, denies, generally and specifically, each of said allegations.

c. Delsk Was Paid \$1,387,500

97. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 97 and, on that basis,

denies, generally and specifically, each of said allegations.

98. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 98 and, on that basis, denies, generally and specifically, each of said allegations.

99. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 99 and, on that basis, denies, generally and specifically, each of said allegations.

K. The Defendants' State of Mind in Carrying Out the Fraud

100. Wang denies the allegations in paragraph 100.

101. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 101 and, on that basis, denies, generally and specifically, each of said allegations. Wang also declines to respond to the allegations in paragraph 101 as legal conclusions requiring no response.

102. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 102 and, on that basis, denies, generally and specifically, each of said allegations.

103. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 103 and, on that basis, denies, generally and specifically, each of said allegations.

104. Wang denies that she knew the exact source of her compensation payments, is without sufficient knowledge or information to form a belief as to the

truth of the remaining allegations in paragraph 104 and, on that basis, denies, generally and specifically, each of said allegations.

105. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 105 and, on that basis, denies, generally and specifically, each of said allegations.

106. Wang denies that she acted negligently and that she should have known the source of her compensation payments, Wang is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 106 and, on that basis, denies, generally and specifically, each of said allegations.

107. Wang denies that she was “UDG’s CEO and chairman,” denies sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 107 and, on that basis, denies, generally and specifically, each of said allegations.

108. Wang denies the allegations in paragraph 108.

L. The Misrepresentations and Omissions

109. Wang denies the allegations in paragraph 109.

110. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 110 and, on that basis, denies, generally and specifically, each of said allegations.

111. Wang denies the allegations in paragraph 111.

112. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 112 and, on that basis,

denies, generally and specifically, each of said allegations.

113. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 113 and, on that basis, denies, generally and specifically, each of said allegations.

114. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 114 and, on that basis, denies, generally and specifically, each of said allegations. Wang also declines to respond to the allegations as legal conclusions about imputed knowledge requiring no response.

115. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 115 and, on that basis, denies, generally and specifically, each of said allegations.

116. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 116 and, on that basis, denies, generally and specifically, each of said allegations.

117. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 117 and, on that basis, denies, generally and specifically, each of said allegations.

118. Wang denies that she was negligent and that she is the CEO and chairman of the board of “UDG,” is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 118 and, on that basis, denies, generally and specifically, each of said allegations.

M. The Ongoing Fraud

119. Wang is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 119 and, on that basis, denies, generally and specifically, each of said allegations.

120. Wang denies that she misappropriated investor funds, is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 120 and, on that basis, denies, generally and specifically, each of said allegations.

121. Wang admits that she received compensation in or about February and March 2016, is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 121 and, on that basis, denies, generally and specifically, each of said allegations.

FIRST CLAIM FOR RELIEF**Fraud in the Offer or Sale of Securities****Violations of Section 17(a) of the Securities Act
(Against all Defendants)**

122. Wang incorporates her responses to paragraphs 1 through 121 above.

123. Wang declines to respond to the allegations in paragraph 123 as legal claims requiring no response.

124. Wang denies the allegations in paragraph 124.

125. Wang declines to respond to the allegations in paragraph 125 as legal claims requiring no response.

SECOND CLAIM FOR RELIEF**Fraud in Connection with the Purchase
or Sale of Securities**

**Violations of Section 10(b) of the Exchange Act
and Rules 10b-5(a) and 10b-5(c) Thereunder
(Against all Defendants as primary violators,
and, alternatively, against Liu as a control
person under Section 20(a) of the Exchange Act)**

- 126. Wang incorporates her responses to paragraphs 1 through 125 above.
- 127. Wang declines to respond to the allegations in paragraph 127 as legal claims requiring no response.
- 128. Wang denies the allegations in paragraph 128.
- 129. Wang declines to respond to the allegations in paragraph 129 as legal claims requiring no response.
- 130. Wang declines to respond to the allegations in paragraph 130 as legal claims directed to another defendant and requiring no response.

THIRD CLAIM FOR RELIEF**Fraud in Connection with the Purchase
or Sale of Securities**

**Violations of Section 10(b) of the Exchange Act
and Rule 10b-5(b) Thereunder
(Against Defendants Liu, Pacific Proton,
PPEB5 Fund and Beverly Proton as primary
violators, and, alternatively, against Liu as
a control person under Section 20(a)
of the Exchange Act)**

- 131. Wang incorporates her responses to paragraphs 1 through 130 above.
- 132. Wang declines to respond to the allegations in paragraph 132 directed to other defendants.

133. Wang declines to respond to the allegations in paragraph 133 directed to other defendants.

134. Wang declines to respond to the allegations in paragraph 134 directed to other defendants.

135. Wang declines to respond to the allegations in paragraph 135 directed to other defendants.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Subject Matter Jurisdiction)

136. The court lacks subject matter jurisdiction because the primary purpose of the PPEB5 Fund investments by the Chinese investors was not to earn a monetary return on the invested funds but was for the non-monetary purpose of obtaining a permanent U.S. visa and ultimately becoming U.S. citizens. [Since the court has denied a motion raising this issue, the defense is raised to preserve Wang's legal position.]

SECOND AFFIRMATIVE DEFENSE

(Failure To Make Necessary Allegation)

137. The Complaint fails to state a claim because it fails to allege that the primary purpose of investments in the PPEB5 Fund by Chinese investors was the monetary purpose of obtaining a monetary return on the investments rather than the non-monetary purpose of becoming U.S. citizens. [Since the court has denied a motion raising this issue, the defense is raised to preserve Wang's legal position.]

THIRD AFFIRMATIVE DEFENSE

(Good Faith)

138. Plaintiff's claims are barred, in whole or in part, because Wang at all times acted in good faith.

FOURTH AFFIRMATIVE DEFENSE
(Failure To Plead Fraud With Particularity)

139. The Complaint fails to plead fraud with particularity, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FIFTH AFFIRMATIVE DEFENSE
(No Scienter)

140. The Complaint is barred, in whole or in part, because Wang did not act with scienter.

Wang reserves the right to assert additional affirmative defenses as appropriate based upon facts or issues disclosed during the course of additional investigation or discovery.

WHEREFORE, Wang respectfully requests that this Court enter judgment in her favor and against Plaintiff (i) dismissing Plaintiff's Complaint with prejudice, (ii) awarding Wang her costs and expenses, and (iii) granting Wang such other and further relief as the Court deems just and proper.

DATED: September 6, 2016

Respectfully submitted,
BUCHALTER NEMER
A Professional Corporation

By /s/ Lawrence B. Steinberg
Attorneys for defendants
CHARLES C. LIU and
XIN WANG a/k/a LISA WANG

SILLS CUMMIS & GROSS P.C.
By /s/ Hervé Gouraige
Attorneys for defendants
CHARLES C. LIU and
and XIN WANG a/k/a LISA WANG

DEMAND FOR TRIAL BY JURY

Wang hereby demands trial by jury of all issues so triable.

DATED: September 6, 2016

BUCHALTER NEMER
A Professional Corporation

By /s/ Lawrence B. Steinberg
Attorneys for defendants
CHARLES C. LIU and
XIN WANG a/k/a LISA WANG

SILLS CUMMIS & GROSS P.C.
By /s/ Hervé Gouraige
Attorneys for defendants
CHARLES C. LIU and
and XIN WANG a/k/a LISA WANG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SACV 16-00974-CJC (AGRx)

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

CHARLES C. LIU, ET AL.,
Defendants.

**PLAINTIFF SECURITIES AND EXCHANGE
COMMISSION'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANTS CHARLES C. LIU
AND XIN (LISA) WANG**

* * *

III. ARGUMENT

* * *

[20]

* * *

**E. Liu and Wang Should Be Ordered To Pay
Monetary Remedies**

**1. Liu and Wang should disgorge their illegal
gains**

In the Ninth Circuit, it is well-settled that this Court has broad equity powers to order the disgorgement of ill-gotten gains obtained through a defendant's violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable. *SEC v. Platforms*

Wireless, 617 F.3d 1072, 1096 (9th Cir. 2010); *SEC v. J.T. Wallenbrock & Assocs.*, 440 F.3d 1109, 1113 (9th Cir. 2006); *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998); *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993) (disgorgement is an appropriate equitable remedy for violations of the securities laws); *SEC v. Olins*, 762 F. Supp. 2d 1193, 1197 (N.D. Cal. 2011).

To prove an appropriate disgorgement amount, the SEC need only show a “reasonable approximation” of profits causally connected to the violation. *Platforms Wireless*, 617 F.3d at 1096; *J.T. Wallenbrock*, 440 F.3d at 1113-14. Once the SEC has made such a showing, the burden then shifts to the defendant to “demonstrate that the disgorgement figure was not a reasonable approximation.” *Platforms Wireless*, 617 F.3d at 1096 (quoting *SEC v. First City Financial Corp., Ltd.*, 890 F.2d 1215, [21] 1232 (D.C. Cir. 1989)). As the Ninth Circuit observed, “the risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.” *Id.* (quoting *First City Financial*, 890 F.2d at 1231, 1232).

No such uncertainty exists here. Liu and Wang admit that they raised at least \$26,967,918 from 50 Chinese investors. SUF at ¶ 34. Not a single dime was ever paid to any of those investors, and only a small portion – \$234,899.19 – remains. The defendants’ ill-gotten gains from their offering fraud is therefore the gross proceeds from the Pacific Proton offering, less the small amount that remains in the corporate accounts, or \$26,733,018.81. That is the is [sic] the appropriate amount of disgorgement.⁴

⁴ This calculation is in fact conservative given other evidence that the total amount raised by Liu and Wang may in fact exceed \$31 million. See SUF at ¶ 35 (Pacific Proton-produced

Moreover, Liu’s and Wang’s claim that they may offset “legitimate” business expenses arising from their scheme to misappropriate more than \$20 million in investor funds is without merit. *See* Dkt. No. 121. To start, the vast majority of expenses that Liu and Wang have previously claimed to be “legitimate” simply aren’t. The \$12.9 million Liu paid to overseas marketers was transferred in contravention of the plain language of the POM. Thus, factual premise for the individual defendants’ claim of a “legitimate expenses” offset is without merit.

Moreover, Liu’s and Wang’s legal premise for an offset has been repeatedly rejected by the Ninth Circuit. In this circuit, the proper disgorgement amount for an offering fraud like this one equals the total amount of proceeds fraudulently raised from the investors, less whatever may have been paid back to investors. *JT Wallenbrock & Associates*, 440 F.3d at 1111-13 (affirming disgorgement award of \$139.4 million, which represented “the entire proceeds from the scheme less amounts paid to investors”); *Platforms Wireless*, 617 F.3d at 1096-97 (affirming disgorgement [22] award of about \$1.75 million, which equaled the total “amount of proceeds obtained from” illegal offering); *SEC v. Interlink Data Network of Los Angeles, Inc.*, Civ. A. No. 93-3073 R1993 WL 603274, at *12-13 (C.D. Cal. Nov. 15, 1993) (where defendants engaged in “boiler-room” operation to fraudulently raise money in illegal stock offering, holding “each defendant should be held jointly and

investor list showing 58 investors indicates \$31.6 million was raised). The \$26.9 million in gross proceeds is based on the SEC’s analysis of the bank records obtained during its investigation, which ran from October 2014 to April 2016. It is not inclusive of any amounts potentially raised prior to that time-frame.

severally liable for the return of the entire amount raised,” which was \$12,285,035); *see also SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1104 (2d Cir. 1972) (“it was appropriate for the district court to order [defendants] to disgorge the proceeds received in connection with the [securities] offering”); *SEC v. Sahley*, No. 92 Civ. 8842 (JSM), 1994 WL 9682 (S.D.N.Y. Jan. 10, 1994) (“The investors who lost their entire investment are entitled to an order of disgorgement of the full amount raised through those fraudulent statements.”); *SEC v. Watermark Financial Services Group, Inc.*, No. 08-CV-361S, 2012 WL 501450, at *8 (W.D.N.Y. Feb. 14, 2012) (finding defendants liable for offering fraud and setting disgorgement at \$5.2 million, which was “the total amount still owed [to investors]”); *SEC v. Pittsford Capital Income Ptrs., LLC*, No. 06 Civ. 6353 T(P), 2007 WL 2455124, at *16 (W.D.N.Y. Aug. 23, 2007) (same, and setting disgorgement at \$11.7 million by subtracting amount returned to investors from total amount raised in fraudulent offering).

Consequently, it is of no moment that defendants may no longer have all of the \$26.9 million they fraudulently raised from investors. “A person who controls the distribution of illegally obtained funds is liable for the funds he or she dissipated as well as the funds he or she retained.” *Platforms Wireless*, 617 F.3d at 1098. As the Ninth Circuit succinctly explained:

[It] would be unjust to permit the defendants to offset against the investor dollars they received the expenses of running the very business they created to defraud those investors into giving the defendants the money in the first place.

JT Wallenbrock, 440 F.3d at 1114; *see also Platform Wireless*, 617 F.3d at 1097-98 (“[t]he manner in which

[the defendant] chose to spend the illegally obtained funds [23] has no relevance to the disgorgement calculation.") (quoting *JT Wallenbrock*, 440 F.3d at 1113) (internal quotations omitted). This Court should accordingly find Liu and Wang jointly and severally liable for disgorgement in the amount of \$26,733,018.81.

* * *

Dated: January 4, 2017

/s/ Gary Y. Leung

John W. Berry
Gary Y. Leung
Attorneys for Plaintiff
Securities and Exchange Commission

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

SCOTT S. HARRIS
Clerk of the Court
(202) 479-3011

November 1, 2019

Mr. Michael K. Kellogg
Kellogg, Hansen, Todd,
Figel & Frederick, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036

Re: Charles C. Liu, et al.
v. Securities and Exchange Commission
No. 18-1501

Dear Mr. Kellogg:

The Court today entered the following order in the
above-entitled case:

The petition for a writ of certiorari is granted.

Sincerely,
/s/ SCOTT S. HARRIS
Scott S. Harris, Clerk