

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

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**CHARLES C. LIU;  
XIN WANG a/k/a LISA WANG;  
PACIFIC PROTON THERAPY  
REGIONAL CENTER, LLC;  
PACIFIC PROTON EB-5 FUND, LLC;  
and BEVERLY PROTON CENTER,  
LLC f/k/a LOS ANGELES COUNTY  
PROTON THERAPY, LLC,**

**Defendants.**

**Case No.: SACV 16-00974-CJC(AGR<sub>x</sub>)**

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AGAINST  
DEFENDANTS LIU AND WANG**

1 **I. INTRODUCTION**

2  
3 Defendant Charles C. Liu formed and controlled three corporate entities, Beverly  
4 Proton Center, LLC (“Beverly Proton”), Pacific Proton EB 5 Fund LLC (“PPEB5  
5 Fund”), and Pacific Proton Therapy Regional Center (“Pacific Proton”) (together with  
6 PPEB5 Fund and Beverly Proton, “Corporate Defendants”), purportedly to build and  
7 operate a proton therapy cancer treatment center in southern California. Liu financed the  
8 cancer center with nearly \$27 million dollars of international investment through the EB-  
9 5 Immigrant Investor Program.

10  
11 Instead of pursuing proton therapy, Liu funneled over \$20 million of investor  
12 money to himself, his wife Defendant Xin Wang, and marketing companies associated  
13 with them. Millions of dollars were transferred shortly after Plaintiff Securities and  
14 Exchange Commission (“SEC”) subpoenaed Liu as part of the SEC’s initial investigation  
15 in February 2016.

16  
17 The SEC now seeks summary judgment against Liu and Wang. For the following  
18 reasons, the Court GRANTS the SEC’s motion. A judgment and permanent injunction  
19 shall issue forthwith.

20  
21 **II. FACTUAL BACKGROUND**

22  
23 Liu used the EB-5 Immigrant Investor Program to ostensibly develop and run a  
24 proton cancer therapy center in Montebello, California. (*See* Dkt. 7 [hereinafter  
25 “Regenstreif Decl.”] Ex. 1 at 10, 14, 36; Dkt. 200-1 ¶ 9.) Through that program,  
26 foreigners can obtain permanent residency in the United States by investing at least  
27 \$500,000 in a “Targeted Employment Area” and thereby creating at least ten full-time  
28

1 jobs for United States workers.<sup>1</sup> (Dkt. 200-1 ¶ 5; *see also* Dkt. 81 at 2 n.3.) Investments  
 2 are often administered by “regional centers,” which are designated and approved by the  
 3 United States Customs and Immigration Service (“USCIS”) as EB-5 eligible projects.  
 4 (Dkt. 200-1 ¶ 1.)

## 6 **1. Formation of Corporate Defendants and the EB-5 Offering**

8 Liu, along with his business partner Dr. John Thropay, formed three entities in  
 9 2010, Pacific Proton, PPEB5 Fund, and Beverly Proton,<sup>2</sup> to facilitate investment. (*See*  
 10 Dkt. 200-1 ¶¶ 10, 11; Dkt. 150-1 Ex. 1 (Pacific Proton Operating Agreement);  
 11 Regenstreif Decl. Ex. 5 [Private Offering Memorandum, hereinafter “POM”] at 475; Dkt.  
 12 81 at 2.) Ownership of Pacific Proton was originally split 75% for Liu and 25% for Dr.  
 13 Thropay, (Regenstreif Decl. Ex. 4 [hereinafter “EB-5 Application”] at 149; Regenstreif  
 14 Decl. Ex. 1 [hereinafter “Liu Questioning”] at 36); Beverly Proton was allocated the  
 15 same way with Liu as Beverly Proton’s President and Dr. Thropay as its CEO, (*see*  
 16 Regenstreif Decl. Ex 8; POM at 464–65, 471). Pacific Proton was PPEB5 Fund’s sole  
 17 manager. (POM at 475–76, 456.)

19 On November 19, 2010, Liu and Dr. Thropay applied to USCIS to designate  
 20 Pacific Proton as an EB-5 regional center. (EB-5 Application at 146.) Beverly Proton  
 21 purportedly would develop and operate the proton therapy treatment center; it was the  
 22 job-creating vehicle sponsored by Pacific Proton, the USCIS-approved regional center.  
 23 (Dkt. 200-1 ¶¶ 11–13; *see also* Liu Questioning at 38.) The USCIS application estimated  
 24

---

25 <sup>1</sup> Under this program, foreign investors who make requisite capital investments in eligible commercial  
 26 enterprises can file a I-526 Petition for conditional permanent residency status for a two year period.  
 27 (Dkt. 200-1 ¶ 2.) Thereafter, the foreign investor can apply to have the conditions removed and live and  
 work in the United States permanently. (*Id.* ¶ 6.)

28 <sup>2</sup> This entity was originally named Los Angeles County Proton Therapy, LLC. (Liu Questioning at 38.)  
 It was renamed Beverly Proton Center, LLC, for branding purposes in 2015. (*Id.*) For clarity, the Court  
 refers to it as Beverly Proton throughout this Order.

1 that the cancer treatment facility would create more than 4,500 new jobs and have an  
2 economic impact of \$728 million per year. (*Id.*) USCIS approved Pacific Proton’s  
3 application on June 28, 2012. (Dkt. 200-1 ¶ 14; Regenstreif Decl. Ex. 11.)  
4

5 Pacific Proton, PPEB5 Fund, and Beverly Proton each played an important role in  
6 Liu’s scheme. Foreign investors purchased shares in PPEB5 Fund, enabling them to  
7 petition USCIS for permanent residency in the United States. (Dkt. 81 at 2–3; Liu  
8 Questioning at 38.) Each share of PPEB5 Fund was \$500,000 (the “Capital  
9 Contribution”); investors also paid a \$45,000 “Administrative Fee” directly to Pacific  
10 Proton. (Dkt. 200-1 ¶ 37; Liu Questioning at 71; Dkt. 81 at 2; POM at 456; *see* EB-5  
11 Application at 152.) Investing members of PPEB5 Fund had limited rights to participate  
12 in its management; Pacific Proton had “full, exclusive and complete authority, power,  
13 and discretion” to run it. (POM at 475–76, 456.) PPEB5 Fund loaned investor money to  
14 Beverly Proton to support the development of the proton therapy center. (*See* Dkt. 200-1  
15 ¶ 47; Dkt. 81 at 3; EB-5 Application at 426–42 (Loan Agreement); Dkt. 84-1 (amended  
16 and restated loan agreement).)  
17

18 From October 1, 2014, to April 2016, at least fifty investors purchased shares of  
19 PPEB5 Fund.<sup>3</sup> (*See* Dkt. 200-1 ¶ 34; Dkt. 16 [hereinafter “Pearson Decl. II”] ¶ 12; Liu  
20 Questioning at 42 (indicating forty seven or forty eight investors).) Their investment  
21  
22

---

23 <sup>3</sup> In total, USCIS received fifty eight I-526 Petitions for this project and approved eight. (Dkt. 148-1 Ex.  
24 6 at 12.) Per Liu’s EB-5 Application and the POM, investor Capital Contributions would initially be  
25 placed in escrow. (EB-5 Application at 163, 412–15 (Escrow Agreement); POM at 457.) Liu’s EB-5  
26 Application stated that the funds would be released upon USCIS’ *approval* of an investor’s I-526  
27 petition. (EB-5 Application at 161, 163–64, 412.) Liu’s POM, given to investors, however, stated that  
28 the funds would be released from escrow and loaned to Beverly Proton upon an investor’s *filing* of their  
I-526 Petition. (POM at 474.) In addition, the EB-5 Application stated that if USCIS were to deny the  
investor’s application, the Capital Contribution and half of the Administrative Fee would be returned to  
the investor. (EB-5 Application at 152.) The POM, however, stated that the entire Application Fee and  
Capital Contribution would be refunded in the event of USCIS denial. (POM at 456, 457.)

1 constituted \$24,712,217 in Capital Contributions<sup>4</sup> and \$2,255,701 in Administrative Fees.  
2 (Pearson Decl. II ¶ 12.) No non-EB-5 funds were raised for the project. (Liu  
3 Questioning at 43.)  
4

5 The POM clearly delineated the purposes and legitimate uses of Capital  
6 Contributions and Application Fees. It stated that Liu and Corporate Defendants would  
7 use the entire Capital Contribution to create the proton therapy center. (See POM at 470  
8 (“Other expected uses of [Capital Contributions] include construction financing,  
9 architectural and other professional fees, working capital and fees for services required to  
10 obtain permits and satisfy regulatory requirements related to the project.”); *id.* at 470 n.2  
11 (“Offering expenses, commissions and fees incurred in connection with this Offering  
12 shall [not] be paid . . . from EB-5 Capital Contributions.”); *id.* at 468 (Beverly Proton  
13 “will use the [Capital Contributions] to partially finance the construction and operation of  
14 a proton therapy center.”).) In contrast, the POM explicitly stated that the Administrative  
15 Fee would be spent on, *inter alia*, offering expenses and marketing. (POM at 452  
16 (“PPEB5 charges an administrative fee . . . for payment of expenses incurred in  
17 connection with this Offering.”); *id.* at 456 (Administrative Fee to “pay for Offering  
18 Expenses, including legal, accounting and administration expenses, and commissions and  
19 fees related to this Offering.”); *id.* at 470 n.2 (same).)  
20

## 21 **2. Liu’s Diversion of Funds**

22

23 Liu did not adhere to the POM. Instead, he diverted approximately \$20 million of  
24 investor money to marketing companies, himself, and Wang.  
25

---

26  
27 <sup>4</sup> According to PPEB5 Fund general ledger, one investor had contributed a portion of the \$500,000 prior  
28 to October 1, 2014 (the date at which Pearson, SEC’s expert, began analysis). (Pearson Decl. II ¶ 15.)  
If the ledger is accurate, then the total Capital Contribution would be \$25,000,000, or fifty investments  
of \$500,000. (*Id.*)

1 i. Marketing Companies

2  
3 Payments were made of \$12,924,500 to three overseas marketing companies:  
4 Overseas Chinese Immigration Consulting Ltd. (“Overseas Chinese”), Hong Kong Delsk  
5 Business Co., Ltd. (“Delsk”), and United Damei Group, United Damei Investment  
6 Company, Ltd., and/or Beijing Pacific Damei Consulting Co. Ltd. (collectively, “UDG”).  
7 (Dkt. 200-1 ¶ 97; Dkt. 212 ¶ 97.)  
8

9 On March 8, 2013, Liu signed an agreement with Overseas Chinese to pay it  
10 \$800,000 per year and \$75,000 per successful investor. (Regenstreif Decl. Ex. 22; *see*  
11 Liu Questioning 85–89; Dkt. 15-2 Ex. 1.) Overseas Chinese received \$7,722,000 from  
12 Corporate Defendants and successfully solicited eleven investors. (Dkt. 200-1 ¶¶ 98,  
13 100; Pearson Decl. II ¶ 49(a); *see* Liu Questioning at 91 (indicating four or five  
14 successful investors).)  
15

16 In August 2013,<sup>6</sup> Liu signed an agreement with UDG promised to pay UDG  
17 \$80,000 per investor, \$500,000 immediately as a “document preparation fee,” and  
18 \$650,000 annually. (Regenstreif Decl. Ex. 28 § 2.1(a),(c)–(e); *see* Liu Questioning at  
19 89–91.) UDG received \$3,815,000 and successfully solicited ten investors. (Dkt. 200-1  
20 ¶¶ 102, 104; Pearson Decl. II ¶ 49(b); *see* Liu Questioning at 91 (indicating successful  
21 solicitation of twenty investors).)  
22

23 On September 24, 2014, Liu signed an agreement with Delsk to pay it \$75,000 per  
24 successful investor. (*See* Regenstreif Decl. Ex. 27; Liu Questioning 136–37, 139–41.)  
25

26  
27 <sup>5</sup> Overseas Chinese returned \$2,060,130 of this money. (Dkt. 6 ¶ 28.)

28 <sup>6</sup> Liu signed two identical contracts with UDG on August 13 and August 18, 2013. (*See* Regenstreif Decl. Exs. 23, 28.) Since the contract expressly supersedes all prior agreements, (*id.* § 8.1), the Court treats the August 18, 2013, contract as controlling.

1 (*Id.*) Delsk received \$1,387,500 and recruited thirty seven successful investors. (Dkt.  
2 200-1 ¶¶ 106, 108; Pearson Decl. II ¶ 49(c).)

3  
4 ii. Liu and Wang

5  
6 Liu received \$6,714,580 from Corporate Defendants and Wang received  
7 \$1,400,000 from Corporate Defendants, ostensibly as “salary.” In 2012, Liu signed five-  
8 year employment agreements with Pacific Proton and PPEB5 Fund with annual salaries  
9 of \$350,000<sup>7</sup> and \$200,000, respectively. (*See* Regenstreif Decl. Ex. 15 (Pacific Proton-  
10 Liu agreement); *id.* Ex. 14 (PPEB5 Fund-Liu agreement).)

11  
12 On January 19, 2016, Liu removed Dr. Thropay as Chief Executive Officer of  
13 Pacific Proton and elected himself as President and Treasurer and Wang as Secretary.  
14 (*See* Regenstreif Decl. Ex. 7.) The same day, Liu held a meeting of Beverly Proton with  
15 only himself in attendance at which he nominated himself and Wang as the sole directors.  
16 (*Id.* Ex. 8.) A few days later, on January 28, 2016, Wang signed a five-year employment  
17 agreement with Liu (acting for Beverly Proton), entitling her to compensation of  
18 \$250,000 annually retroactively from January 2011. (*Id.* Ex. 9 at 495.) According to  
19 Liu, she had recruited investors since 2011. (Liu Questioning at 28–29; *see also*  
20 Regenstreif Decl. Ex. 2 (Wang Questioning) at 28, 33.)

21  
22 In April 2016, two months *after* the SEC’s February 4, 2016, subpoena and shortly  
23 following his March 23, 2016, questioning by the SEC, Liu signed a five-year  
24 employment agreement with Beverly Proton. (*See* Regenstreif Decl. Ex. 13 at 519; *id.*  
25 Ex. 18 (subpoena).) His annual salary was \$550,000 retroactively from January 2011.<sup>8</sup>

26  
27 <sup>7</sup> The Pacific Proton employment agreement also promised Liu a bonus of eight percent of total capital  
28 raised once there were twenty investors. (*See* Regenstreif Decl. Ex. 15 at 528; Liu Questioning at 33.)  
<sup>8</sup> He was also promised a bonus of eight percent of total capital raised (with a maximum of  
\$28,000,000). (Regenstreif Decl. Ex. 13 at 511.)

1 (*See* Regenstreif Decl. Ex. 13 at 511; *but see* Liu Questioning (stating on March 23,  
2 2016, salary of \$750,000 from Beverly Proton).)

3  
4 The substantial majority of the money Liu and Wang directly received was  
5 transferred in 2016. Liu received \$5,000 between October 1, 2014, and December 31,  
6 2014; \$1,389,580 in 2015; and \$4,270,000 between January 1, 2016, and April 30, 2016).  
7 (Pearson Decl. II ¶ 20; *see also* Dkt. 200-1 ¶ 116; Dkt. 212 ¶ 116.) Wang received  
8 \$50,000 from October 1, 2014, to December 31, 2014; \$354,000 in 2015; and \$996,000  
9 in March 2016. (*Id.* ¶ 21; *see also* Dkt. 200-1 ¶ 117; Dkt. 212 ¶ 117.)<sup>9</sup>

10  
11 Wang and Liu were also deeply connected to UDG, which was paid \$3,815,000.  
12 (Dkt. 200-1 ¶¶ 102.) Wang’s business card listed her as the chairman and the company  
13 website includes her picture as part of the management team. (Regenstreif Decl. Exs. 10,  
14 32.) She is also identified in photos as UDG’s president;<sup>10</sup> Liu referred to UDG as “my  
15 wife’s company.” (*See* Dkt. 59-1 Ex. 10 at 62, 64; *id.* Ex. 8 at 55.)

16  
17 By all appearances, Wang’s mother, Ms. Yao Wenli, signed the marketing  
18 agreement between UDG and Liu in August 2013 on behalf of UDG.<sup>11</sup> (*See* Regenstreif  
19

20  
21 <sup>9</sup> According to the Monitor, Liu and Wang received \$10,878,545 (\$8,034,567 in cash to Liu, \$335,997  
22 in expenses (including tuition, rent, insurance, utilities), \$543,042 in credit card bills (all “with no  
23 identified business purpose”), \$357,245 of casino-related expenses, and \$1,607,694 in transfers to Wang  
24 or payments on her behalf). (Dkt. 146 at 9, Ex. B.) Additionally, over \$225,000 was paid for the lease  
25 and/or purchase of seemingly more than one automobile, but the Monitor did not locate any vehicles or  
26 records related to them. (*Id.* at 9–10.)

27 <sup>10</sup> It is possible that the underlying Chinese word is variously translated as President and Chairman. (*See*  
28 Regenstreif Decl. Ex. 2 at 58 (Wang questioning).) Clarifying the particulars is unnecessary since the  
underlying point, that Wang is a senior controlling member of UDG, does not turn on whether she is  
President or Chairman.

<sup>11</sup> When confronted with the contract by the SEC in March 2016 as part of his investigatory testimony,  
Liu claimed to have never spoken to Ms. Yao and that he did not know who she was. (*See* Liu  
Questioning at 117–18.) Wang stated it was impossible for her mother to work for UDG, since she lived  
with Liu and Wang raising and taking care of their children. (Regenstreif Decl. Ex. 2 at 50–52.) Ms.  
Yao does not speak or read English, the language of the contract; she denied signing it. (Regenstreif



1 Decl. Ex. 23 at 594.) UDG's public listing on the Chinese Government's website for  
2 Chinese companies named Ms. Yao as the person with ownership interest, UDG's  
3 executive director, and a shareholder until May 19, 2016. (Dkt. 59-1 Ex. 11 at 68 ¶¶ 6–8,  
4 82–83.) The same listing stated that Wang was UDG's manager until May 19, 2016. (*Id.*  
5 at 68 ¶ 8(e).) The individual who is currently listed as UDG's Supervisor is Liu's  
6 assistant. (Dkt. 59-1 Ex. 11 at 68 ¶ 9.)

### 7 8 **3. State of the Proton Therapy Center**

9  
10 Despite significant investment, nearly no construction on the proton therapy center  
11 has taken place. Instead, Liu burned through the millions left after payments to himself,  
12 Wang, and the marketers on half-hearted attempts to convey the illusion of progress.

13  
14 The original planned site of the project was land owned by Dr. Thropay. (Dkt. 37  
15 ¶ 19.) On April 17, 2013, Beverly Proton signed a thirty year lease with Dr. Thropay  
16 with rent of \$1,000,000 per year. (*Id.* Ex. 13.) The existing building on the land was  
17 only demolished in mid-2015. (Liu Questioning at 57–59.) According to filings, Beverly  
18 Proton spent \$315,487 improving Dr. Thropay's property and paid him \$838,500 in rent.  
19 (Dkt. 37 ¶¶ 19, 22; *id.* Exs. 12, 14.)

20  
21 However, in 2015, Liu decided to pursue a partnership with the City of Hope  
22 cancer hospital which would preclude Dr. Thropay's involvement in the project. (Liu  
23 Questioning at 47; Dkt. 37 Ex. 7 (copy of Memorandum of Understanding between City  
24 of Hope and Beverly Proton).) As a result, Dr. Thropay sought to cancel the lease and  
25  
26  
27

28 Decl. Ex. 3 at 8–9, 17–18.) Liu later submitted a correction to his testimony admitting that Ms. Yao is  
his mother in law, though he stated he does not believe she signed the contract. (*Id.* Ex. 19.)

1 reclaim the property, (Dkt. 37 ¶ 22);<sup>12</sup> Liu subsequently had to explore a second location  
2 for the center. (Liu Questioning at 57–59.)

3  
4 Liu paid Optivius, a California proton therapy unit manufacturer, \$368,100 for  
5 consulting services to design the center based on Dr. Thropay’s property and an Optivius  
6 proton therapy machine. (Dkt. 6 ¶ 20(f); Liu Questioning at 15–16, 61, 153–54.)  
7 However, Liu later decided to purchase a Mevion proton therapy machine instead; he  
8 made a \$3 million deposit in November 2015. (Dkt. 146 at 11; Liu Questioning at 136;  
9 *see* Regenstreif Decl. Ex. 21; Dkt. 31 Ex. 3 at 5 (Liu stating at SEC questioning that no  
10 investor solicitation had taken place since November 2015).) Liu then retained an  
11 entirely different architectural firm to design the center on the second location for a  
12 Mevion unit. (*See* Liu Questioning at 61, 136.) Unsurprisingly, no construction permits  
13 were ever obtained. (*Id.* at 60.)

#### 14 15 **4. Procedural History**

16  
17 On February 4, 2016, the SEC subpoenaed Liu to provide records and testimony.  
18 (*See* Regenstreif Decl. Ex. 18.) On May 26, 2016, the SEC filed the operative  
19 Complaint, naming Beverly Proton, Pacific Proton, PPEB5 Fund, Liu, and Wang as  
20 Defendants and alleging three counts of securities fraud. (Dkt. 1.)

21  
22 Simultaneously, the SEC filed an *ex parte* application for a Temporary Restraining  
23 Order (“TRO”) and an Order to Show Cause why a preliminary injunction should not be  
24 granted. (Dkt. 4.) Following a hearing on May 27, 2016, the Court issued a TRO and  
25 Order to Show Cause on May 31, 2016. (Dkts. 11, 14.) The SEC had sought repatriation  
26

27  
28 

---

<sup>12</sup> Dr. Thropay initiated an unlawful detainer proceeding against Beverly Proton and Liu on May 16,  
2016. (Dkt. 65 Ex. 1.) Those proceedings are stayed pending the outcome of this case. (Dkt. 146 at 7;  
Dkt. 65 Ex. 4 at 121–22.)

1 and accountings in their *ex parte* TRO, which the Court denied. (*Compare* Dkt. 4 at 4,  
2 Dkt. 4-1 at 6–7 *with* Dkt. 14.)

3  
4 On June 3, 2016, the SEC filed a motion asking the Court to order the Defendants  
5 to provide accountings of their assets and repatriate assets held in foreign locations by  
6 them and by UDG. (Dkt. 15 at 1.) On July 1, 2016, the SEC moved for the Court to  
7 appoint a monitor over Corporate Defendants. (Dkt. 63.)

8  
9 On July 11, 2016, following a hearing, (Dkt. 101), the Court issued a preliminary  
10 injunction against all defendants, (Dkt. 77). The preliminary injunction echoed the  
11 TRO’s provisions. (*See id.* at 1–7.) That same day, the Court appointed a monitor,  
12 Michael Grassmueck, over Corporate Defendants. (Dkt. 79.)

13  
14 At the July 11, 2016, hearing, the Court emphasized that constitutional rights may  
15 be implicated by the preliminary injunction and the SEC’s desire to have the Monitor  
16 interview Liu and Wang.<sup>13</sup> Perhaps inspired by the Court, on July 26, 2016, Liu and  
17 Wang filed a motion seeking permanent relief from the Court-ordered repatriation,  
18 document production, and accounting based on their Fifth Amendment rights. (Dkt.  
19 108.) Following briefing, (Dkts. 116, 119, 121, 160, 161), and a hearing on October 7,<sup>14</sup>  
20 2016, the Court denied Liu and Wang’s motion in substantial part and issued an amended  
21 preliminary injunction on October 17, 2016, (Dkts. 173, 179).

22  
23  
24 <sup>13</sup> Contemporaneous with Liu and Wang’s advancement of their Fifth Amendment arguments, Liu and  
25 Wang both moved to dismiss the case for lack of jurisdiction on July 12, 2016. (Dkts. 81, 86.)  
26 Following briefing (Dkts. 113, 115 (SEC oppositions); Dkts. 122, 123 (Liu and Wang replies)), the  
27 Court denied those motions on August 17, 2016, (Dkts. 140, 141).

28 <sup>14</sup> The hearing was originally set for August 22. (*See* Dkt. 108.) On August 9, Liu and Wang filed an  
unopposed *ex parte* application to continue the hearing to September 12, (Dkt. 126), which the Court  
granted, (Dkt. 137). The parties then stipulated to continue the hearing to September 19. (Dkts. 142,  
147.) The parties then stipulated again to continue the hearing, which was reset to October 7. (Dkts.  
157, 158.)

1 The amended preliminary injunction ordered Liu and Wang to repatriate  
2 \$26,967,918 by November 18, 2016. (Dkt. 179 § VIII.) Repatriation was ordered  
3 because, as of June 3, 2016, Corporate Defendants had only \$234,899.19 in their  
4 accounts,<sup>15</sup> (Dkt. 163 ¶ 27), and the SEC’s investigation revealed that Liu repeatedly  
5 transferred millions of dollars from his domestic accounts to China Merchants Bank,  
6 (Pearson Decl. II ¶¶ 46, 48).<sup>16</sup>

7  
8 The amended preliminary injunction also set a hearing for November 4, 2016, at  
9 which Liu and Wang were ordered to appear and be examined “as to their financial  
10 condition and affairs” and at which Liu and Wang were welcome to assert their Fifth  
11 Amendment rights. (Dkt. 179 § X.) Citing a medical emergency precluding travel to the  
12 United States, on October 28, 2016, Liu and Wang filed an *ex parte* application to  
13 continue the November 4, 2016, hearing to January 6, 2017, and the repatriation deadline  
14 from November 18, 2016, to fourteen days after the hearing. (Dkt. 184.) Following  
15 briefing, (Dkts. 185, 186), on November 1, 2016, the Court granted their application in  
16 limited part, ordering Liu and Wang to appear for a videoconference deposition within  
17 ten days. (Dkt. 187.) The repatriation deadline of November 18, 2016, remained  
18 unchanged. (*Id.*)

19  
20 Liu and Wang’s depositions occurred on November 10 and November 9,  
21 respectively. Liu asserted his Fifth Amendment right and refused to answer many  
22  
23

---

24 <sup>15</sup> The Monitor reports that the aggregate cash held by Corporate Defendants as of October 4, 2016, was  
25 \$244,844. (Dkt. 168 at 5.)

26 <sup>16</sup> Liu transferred \$3,750,000 to China Merchants Bank between April 2015 and April 2016—\$500,000  
27 in October 2015 from PPEB5 Fund account and the balance, \$3,250,000, from his personal account in  
28 nine large transfers between February 26, 2016, and April 5, 2016. (Dkt. 15-1 at 6 (citing Pearson Decl.  
II ¶¶ 46, 48).) For example, on March 11, 2016, a day after taking \$1.8 million from PPEB5 Fund and  
Beverly Proton accounts, Liu transferred \$750,000 to China Merchants Bank. (*See* Pearson Decl. II ¶  
48(d).) Then, the day after Liu’s March 23, 2016, SEC testimony, he made a lump-sum transfer of  
\$250,000 from his personal account to a China Merchants Bank account. (*See id.*; Liu Questioning.)

1 questions,<sup>17</sup> including (1) did Pacific Proton investors have an expectation of profit, (2)  
2 were offering proceeds intentionally not used or expended consistently with the POM, (3)  
3 should he have known, under a reasonable standard of care, that the descriptions of how  
4 proceeds would be used in the POM were false, and (4) did he engage in a scheme to  
5 misappropriate investor funds by failing to disclose the true uses of the funds.  
6 (Dkt. 199-2 Ex. 4 at 78–93; Dkt. 194-2 Ex. 2; Dkt. 208 Ex. 3.)

7  
8 Wang also asserted her Fifth Amendment right and refused to answer many  
9 questions, including: (1) did she control any accounts of Corporate Defendants at any  
10 time, (2) did she engage in a scheme to misappropriate investor money by failing to  
11 disclose to investors the true use of their money, and (3) did investors have an  
12 expectation of profit. (Dkt. 199-2 Ex. 5 at 97–107; Dkt. 194-2 Ex. 3; Dkt. 208 Ex. 2.)

13  
14 Liu and Wang failed to comply with the Court’s repatriation order. (*Id.* (“Counsel  
15 have advised the SEC that defendant Liu is attempting to obtain loans in China in order to  
16 settle this case and repatriate funds to the Monitor.”).) Shortly thereafter, the Court  
17 directed Liu and Wang to show cause why they should not be held in civil contempt for  
18 (1) failure to respond to the Government’s interrogatories and requests for admissions,<sup>18</sup>  
19 (2) refusal to answer questions regarding their finances, and (3) failure to comply with

20  
21  
22  
23  
24 

---

<sup>17</sup> In the interest of brevity, a full summary of the interrogatories and deposition questions to which Liu  
and Wang asserted their Fifth Amendment rights is appended to this Order.

25 <sup>18</sup> These were originally due November 21, 2016. (Dkt. 199-1 Exs. 1, 2, 6, 7.) At Liu and Wang’s  
26 request, the SEC extended the deadline to December 2, after Liu and Wang requested a forty-five day  
27 extension. (Dkt. 214-1 ¶ 3; Dkt. 194-2 Ex. 6.) Neither Liu nor Wang timely answered or objected to the  
28 requests for admission and interrogatories, nor were answers or objections served as of January 23,  
2017. (Dkt. 214-1 ¶ 3.) Liu and Wang argue that the Court should not deem the SEC’s requests for  
admissions admitted even though they failed to comply with Federal Rule of Civil Procedure 36(a)(3) by  
not responding to them. (Dkt. 211 at 19–20.) The Court does not rely on any of the requests for  
admission in its analysis.

1 this Court's orders, including repatriation. (Dkt. 196.) The SEC filed the instant motion  
2 for summary judgment on January 4, 2017. (Dkt. 199.)<sup>19</sup>

3  
4 After briefing was received, (Dkts. 207, 211, 214), at a hearing on February 6,  
5 2017, the parties represented that settlement could be imminent. Accordingly, the Court  
6 converted the monitorship into a receivership, held the order to show cause regarding  
7 civil contempt and the SEC's motion for summary judgment in abeyance for three weeks,  
8 and ordered supplemental briefing as to civil penalties. (*Id.*; Dkt. 219.) The parties filed  
9 a joint stipulation for leave to escrow potential settlement funds on February 24, 2017;  
10 the deadline set was March 17, 2017. (Dkt. 223.)

11  
12 On March 20, 2017, the SEC filed a status report indicating that, despite Liu and  
13 Wang's agreement to transfer \$26,967,918, they failed to do so and accordingly asked the  
14 Court to rule on its pending summary judgment motion. (Dkt. 235.) Liu and Wang filed  
15 a statement the following day in which their attorney stated, "Counsel are advised by  
16 Defendant Liu that despite diligent efforts to make arrangements for transfer of the  
17 settlement funds by on or before March 17, 2017 (and a last-minute agreement by the  
18 SEC to accept an irrevocable letter of credit issued to the firm of Defendants' counsel on  
19 or about March 20, 2017), and further communications between counsel and Defendant  
20 Liu up to about 12:37 p.m. EDT today, Defendants are unable to transfer the settlement  
21 funds without the grant of additional time. . . . Accordingly, Counsel for Defendants  
22 hereby advise the Court that we do not oppose the request by the SEC (Docket No. 235)  
23 for the Court to decide the pending and fully briefed summary judgment motion based  
24 upon the papers previously submitted by the parties." (Dkt. 236 at 1–2.)

25  
26  
27  
28 

---

<sup>19</sup> Liu and Wang filed an *ex parte* application for an extension of time to respond to the motion on the grounds that settlement discussions were ongoing. (Dkt. 204.) The Court denied their motion. (Dkt. 206.)

1 **III. LEGAL STANDARD**

2  
3 The Court may grant summary judgment on “each claim or defense—or the part of  
4 each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a).  
5 Summary judgment is proper where the pleadings, the discovery and disclosure materials  
6 on file, and any affidavits show that “there is no genuine dispute as to any material fact  
7 and the movant is entitled to judgment as a matter of law.” *Id.*; *see also Celotex Corp. v.*  
8 *Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial  
9 burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp.*,  
10 477 U.S. at 325. A factual issue is “genuine” when there is sufficient evidence such that  
11 a reasonable trier of fact could resolve the issue in the nonmovant’s favor. *Anderson v.*  
12 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” when its resolution  
13 might affect the outcome of the suit under the governing law, and is determined by  
14 looking to the substantive law. *Id.* “Factual disputes that are irrelevant or unnecessary  
15 will not be counted.” *Id.* at 249.

16  
17 Where the movant will bear the burden of proof on an issue at trial, the movant  
18 “must affirmatively demonstrate that no reasonable trier of fact could find other than for  
19 the moving party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).  
20 In contrast, where the nonmovant will have the burden of proof on an issue at trial, the  
21 moving party may discharge its burden of production by either (1) negating an essential  
22 element of the opposing party’s claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S.  
23 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the  
24 nonmoving party’s case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the  
25 party resisting the motion must set forth, by affidavit, or as otherwise provided under  
26 Rule 56, “specific facts showing that there is a genuine issue for trial.” *Anderson*, 477  
27 U.S. at 256. A party opposing summary judgment must support its assertion that a  
28 material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the

1 moving party's materials are inadequate to establish an absence of genuine dispute, or  
2 (iii) showing that the moving party lacks admissible evidence to support its factual  
3 position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the  
4 material cited by the movant on the basis that it “cannot be presented in a form that  
5 would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). But the opposing party must  
6 show more than the “mere existence of a scintilla of evidence”; rather, “there must be  
7 evidence on which the jury could reasonably find for the [opposing party].” *Anderson*,  
8 477 U.S. at 252.

9  
10 In considering a motion for summary judgment, the court must examine all the  
11 evidence in the light most favorable to the non-moving party, and draw all justifiable  
12 inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W.*  
13 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir. 1987).  
14 The Court does not make credibility determinations, nor does it weigh conflicting  
15 evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).  
16 But conclusory and speculative testimony in affidavits and moving papers is insufficient  
17 to raise triable issues of fact and defeat summary judgment. *Thornhill Pub. Co., Inc. v.*  
18 *GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The evidence the parties present must be  
19 admissible. Fed. R. Civ. P. 56(c). “If the court does not grant all the relief requested by  
20 the motion, it may enter an order stating any material fact—including an item of damages  
21 or other relief—that is not genuinely in dispute and treating the fact as established in the  
22 case.” Fed. R. Civ. P. 56(g).

#### 23 24 **IV. DISCUSSION**

25  
26 Before the Court is the SEC's motion for summary judgment against Liu and  
27 Wang. (Dkt. 199.) The Court's analysis addresses Liu and Wang's threshold challenge  
28



1 to the SEC’s motion, then considers the SEC’s claims against Liu and Wang, and finally  
2 turns to the SEC’s request for remedies.

### 3 4 **1. Threshold Issue**

5  
6 Liu and Wang raise a threshold argument that federal securities law does not apply  
7 to the EB-5 investments in this case. (*See* Dkt. 211 at 14–17.) Liu and Wang are  
8 attempting to revive their previously-asserted argument that the EB-5 investments are not  
9 securities and accordingly the securities laws do not apply. (*Cf.* Dkts. 81, 86.)

10  
11 “Congress’ purpose in enacting the securities laws was to regulate investments, in  
12 whatever form they are made and by whatever name they are called.” *S.E.C. v. Edwards*,  
13 540 U.S. 389, 393 (2004) (quoting *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990)). “To  
14 that end, it enacted a broad definition of ‘security,’ sufficient to encompass virtually any  
15 instrument that might be sold as an investment.” *Id.* Both the Securities and Exchange  
16 Acts define “security” as meaning, among other things, “any . . . investment contract.”  
17 15 U.S.C. § 77b(a)(1); 15 U.S.C. § 78c(a)(10). An investment is an investment contract  
18 if it is (1) an investment of money (2) in a common enterprise (3) with the expectation of  
19 profits (4) generated from the efforts of others. *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293,  
20 298–99 (1946); *see also* Section 2(a)(1) of the Securities Act, 15 U.S.C. § 77b(a)(1).

21  
22 Liu and Wang’s argument challenges the applicability of the third prong. They  
23 argue that there is not an expectation of profits because EB-5 investors “may put . . .  
24 money at risk, even if [they] expect[] a loss, so long as [they] get [their] green card and  
25 U.S. citizenship.” (Dkt. 211 at 16; *see id.* at 17 (“Capital contributions made by EB-5  
26 investors to acquire a green card are not securities as defined by federal law. They are  
27 the price paid by foreign citizens in exchange for being granted permanent residency in  
28 the United States.”).)

1 Contrary to Liu and Wang’s argument, “while the subjective intent of the  
2 purchasers may have some bearing on the issue of whether they entered into investment  
3 contracts, [the Court] must focus [its] inquiry on what the purchasers were offered or  
4 promised.” *Warfield v. Alaniz*, 569 F.3d 1015, 1021 (9th Cir. 2009). The POMs refer to  
5 the investments as securities, specify the interest rate PPEB5 Fund will earn on Capital  
6 Contributions loaned to the project LLCs, and describe investors’ return on investment.  
7 (E.g., POM at 452.) As this Court previously stated, investors expected profits, albeit  
8 small ones. (Dkt. 139 at 8; *see also* POM at 466 (stating that “the primary motive of  
9 investors should be for long-term appreciation”).) Furthermore, “nobody would dispute  
10 that EB-5 investors are motivated in significant part by obtaining lawful permanent  
11 residency in the United States. But the fact that the acquisition of EB-5 shares comes  
12 with unrelated benefits does not somehow convert the shares from securities into  
13 something else.” (Dkt. 139 at 10 (citing *S.E.C. v. Goldfield Deep Mines Co. of Nevada*,  
14 758 F.3d 459, 464 (9th Cir. 1985) (investors had expectation of profits even though the  
15 investment was ‘promoted primarily for the tax benefits which would accrue as a result of  
16 anticipated initial losses’)).) Accordingly, securities laws applies to PPEB5 Fund  
17 offering and Liu and Wang’s conduct.

## 18 19 **2. Securities Fraud Claims**

20  
21 The SEC’s Complaint alleges three securities fraud causes of action against Liu  
22 and Wang: (1) violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities  
23 Act, 15 U.S.C. §§ 77q(a)(1),(2),(3), (Dkt. 1 ¶¶ 122–25); (2) violations of Section 10(b) of  
24 the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17  
25 C.F.R. §§ 240.10b-5(a),(c), (*id.* ¶¶ 126–30); and (3) violations of Section 10(b) of the  
26 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-  
27 5(b), against Liu only, (*id.* ¶¶ 131–35). As the Court finds that the SEC is entitled to  
28 summary judgment on its Section 17(a)(2) of the Securities Act claim against Liu and

1 Wang, which is a sufficient basis for the remedies the SEC seeks, it is unnecessary to  
2 reach the SEC's other claims.

3  
4 Section 17(a)(2) of the Securities Act prohibits "any person in the offer or sale of  
5 any securities . . . to obtain money or property by means of any untrue statement of a  
6 material fact or any omission to state a material fact necessary in order to make the  
7 statements made, in light of the circumstances under which they were made, not  
8 misleading." 15 U.S.C. § 77q(a)(2). Liu and Wang need not make or omit the untrue  
9 statement to be liable. *See Sec. & Exch. Comm'n v. Husain*, No. 216CV03250ODWE,  
10 2017 WL 810269, at \*8 (C.D. Cal. Mar. 1, 2017).

11  
12 There is no dispute that Liu and Wang received \$6,714,580 and \$1,538,000 of  
13 investor monies. (Dkt. 200-1 ¶¶ 116–17; Dkt. 212 ¶¶ 116–17.) There is also no dispute  
14 that UDG received \$3,815,000. (Dkt. 200-1 ¶ 121; Dkt. 212 ¶ 121.) In addition, the  
15 parties agree that the POM states that "[o]ffering expenses, commissions, and fees  
16 incurred in connection with this Offering shall be paid from the proceeds of  
17 Administrative Fees and not from EB-5 Capital Contributions." (Regenstreif Decl. Ex. 4  
18 at 470 n.2; Dkt. 200-1 ¶ 51; Dkt. 212 ¶ 51.) Capital Contributions, in contrast, were to be  
19 used "to finance development and operation" of the proton therapy center. (Regenstreif  
20 Decl. Ex. 4 at 470; Dkt. 200-1 ¶ 48; Dkt. 212 ¶ 48.)

21  
22 Liu and Wang argue that they cannot be liable for violations of Section 17(a)(2)  
23 because there were no untrue statements or omissions in the POM. Liu and Wang are  
24 wrong. Their actions contravene the POM's clear delineation between appropriate uses  
25 of Capital Contributions (development and operation of the project) and Administrative  
26 Fees (commissions, fees, and marketing). Liu reached agreements with marketers that  
27 inherently violated the POM. Liu promised Overseas Chinese \$800,000 per year and  
28 \$75,000 per investor and he promised UDG \$650,000 annually and \$35,000 per investor.

1 (*Id.* Ex. 22 at 581; Ex. 23.) It is *impossible* for those payments to not include an  
2 investor’s Capital Contribution, since the Administrative Fee was only \$45,000. Indeed,  
3 marketers received \$12,924,500. (Dkt. 200-1 ¶ 97; Dkt. 212 ¶ 97.)  
4

5 Liu also failed to inform investors that he would award himself and Wang  
6 “salaries” totaling \$6,714,580 and \$1,538,000. (Dkt. 200-1 ¶¶ 116–17; Dkt. 212 ¶¶ 116–  
7 17.) In the context of the marketing agreements that account for more than 100% of the  
8 Administrative Fees, any compensation, and certainly such exorbitant remuneration,  
9 would have to come from Capital Contributions, not Administrative Fees. That fact is  
10 wholly absent from the POM’s description of Capital Contributions.  
11

12 Liu and Wang argue that their compensation and the marketing fees do not render  
13 the POM untrue, relying on the POM’s statements that estimated uses of Capital  
14 Contributions “are based on current information . . . which could change as the Project  
15 moves forward” and that PPEB5 Fund has “broad discretion to adjust the . . . allocation  
16 of the proceeds of this Offering in order to address changed circumstances and  
17 opportunities.” (Dkt. 211 at 7–8 (citing POM at 470).) Their argument is unavailing. As  
18 a threshold matter, Liu and Wang do not identify a single “changed circumstance,” let  
19 alone one so radical that could excuse over 75% of funds going to Liu, Wang, and  
20 marketers. Fundamentally, residual acknowledgement that PPEB5 Fund had some  
21 limited discretion to adapt to unforeseen future circumstances does not negate the entirety  
22 of the POM, which conveys to investors that their investments will be used in a manner  
23 compliant with the EB-5 program and in furtherance of the proton therapy project. Liu  
24 and Wang’s ignoring the plain language of the POM and appropriating investor funds for  
25 exorbitant personal enrichment, (*see* POM at 456 (stating that PPEB5 Fund’s manager is  
26  
27  
28

1 entitled to a management fee of 3%, or approximately \$800,000 total), and enticing  
2 additional investors renders the terms of the POM untrue.<sup>20</sup>

3  
4 Liu and Wang also argue that the Court cannot determine on summary judgment  
5 whether any untrue statements or omissions were material because materiality should be  
6 left to the trier of fact. (Dkt. 211 at 11.) A fact is “material” if there is “a substantial  
7 likelihood that the disclosure of the omitted fact would have been viewed by the  
8 reasonable investor as having significantly altered the ‘total mix’ of information made  
9 available.” *S.E.C. v. Phan*, 500 F.3d 895, 908 (9th Cir. 2007) (quoting *Basic Inc. v.*  
10 *Levinson*, 485 U.S. 224, 231–32 (1988)). While the Supreme Court has recognized that  
11 materiality determinations require “delicate assessments of the inferences a ‘reasonable  
12 shareholder’ would draw from a given set of facts and the significance of those inferences  
13 to him,” thereby rendering materiality a task suited to the jury, it also acknowledged that  
14 materiality can be resolved as a matter of law when established omissions are “so  
15 obviously important to an investor[] that reasonable minds cannot differ on the question  
16 of materiality.” *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976) (quotation  
17 omitted). This is just such a case. No reasonable investor would consider \$21 million—  
18 approximately three quarters of the \$27 million invested—going to Liu, Wang, and  
19 marketers insignificant on their investment decision.

20  
21 Liu and Wang’s argument that EB-5 investors would not find such  
22 misappropriation to be material because they care only about their visas, (Dkt. 211 at 12–  
23

24  
25 <sup>20</sup> Liu and Wang’s argument that investors were advised that their investment would be used to market  
26 the project is entirely frivolous and does not create a genuine dispute of material fact. (Dkt. 211 at 8.)  
27 The support for that argument is a particularly convoluted portion of Liu’s deposition in which he  
28 admitted that such advisement was not contained in any written materials and that he believed brokers  
who sought out investors had been advised of the marketing use of proceeds, though he did not actually  
tell the brokers that fact. (Dkt. 211 Ex. 1 at 106–09.) Needless to say, there is no genuine dispute of  
material fact that investors were not in any way informed that their Capital Contributions would go to  
marketers tasked with enticing additional investors.

1 13), is also unavailing. Such vast misappropriation is fundamentally inconsistent with the  
2 EB-5 program and would drastically undermine the project's viability and therefore  
3 threaten investors' ability to obtain visas. (*See* Dkt. 221 Ex. 1 (USCIS termination of  
4 Liu's EB-5 offering).) Therefore, there is no genuine dispute that any reasonable EB-5  
5 investor would deem the omissions and misrepresentations in the POM material.

6  
7 Finally, the SEC must show that Liu and Wang were negligent in order for them to  
8 be liable under Section 17(a)(2). *S.E.C. v. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th  
9 Cir. 2001). The touchstone of negligence is the departure from the standards of ordinary  
10 care. Liu and Wang's receipt of millions of dollars of investor funds was unequivocally  
11 negligent. No reasonable party managing the development of a EB-5-compliant proton  
12 therapy center in accordance with the representations made to investors would allow  
13 construction to languish while funneling millions of dollars to themselves, to foreign  
14 entities they controlled,<sup>21</sup> and to foreign entities tasked with enticing more investors.

15  
16 Summary judgment is GRANTED in favor of the SEC as to their Section 17(a)(2)  
17 claim against Liu and Wang. As that violation is sufficient to trigger imposition of the  
18 remedies the SEC seeks, it is unnecessary to consider the SEC's remaining claims against  
19 them.

20  
21  
22 <sup>21</sup> Liu and Wang contest whether they controlled at least one of the UDG entities. (*See* Dkt. 212 ¶¶ 62–  
23 64.) However, both asserted their Fifth Amendment rights when asked whether either of them control or  
24 have controlled UDG or have the authority to direct its decision-making on its management, operations,  
25 and policies. (Dkt. 199-2 Ex. 4 at 80–83; *id.* Ex. 5 at 97–99.) An adverse inference from those  
26 statements—that they control UDG—is appropriate given that the SEC has produced numerous pieces  
27 of evidence, discussed above, to that effect. There is also a substantial need for information about UDG  
28 and there is not another less burdensome way of obtaining it. *See Doe ex rel. Rudy–Glanzer v. Glanzer*,  
232 F.3d 1258, 1264–65 (9th Cir. 2000). Finally, the fact that Wang self-servingly claimed in her first  
deposition to not be the chairman UDG, (Regenstreif Decl. Ex. 2 at 59), does not create a genuine  
dispute of material fact given the extensive evidence presented by the SEC and her subsequent refusal to  
answer questions about her relationship with UDG. *See Nigro v. Sears, Roebuck & Co.*, 784 F.3d 495,  
497 (9th Cir. 2015).

1           **3. Remedies**

2  
3           The SEC’s motion asks the Court to permanently enjoin Liu and Wang, order them  
4 to disgorge their ill-gotten gains and pay prejudgment interest, and impose civil penalties.  
5 (Dkt. 199 at 19–25.) Liu and Wang do not object to prejudgment interest, (Dkt. 221 at  
6 17), so the Court considers the other remedies in turn.

7  
8                   i. Permanent Injunction

9  
10           Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the  
11 Exchange Act, 15 U.S.C. § 78u(d), authorize permanent injunctions where there is a  
12 reasonable likelihood of a future violation of the securities laws. *S.E.C. v. Murphy*, 626  
13 F.2d 633, 639 (9th Cir. 1980); *U.S. S.E.C. v. Fehn*, 97 F.3d 1276, 1295 (9th Cir. 1996).  
14 Factors to be considered include “(1) the degree of scienter involved; (2) the isolated or  
15 recurrent nature of the infraction; (3) the defendant’s recognition of the wrongful nature  
16 of his conduct; (4) the likelihood, because of defendant’s professional occupation, that  
17 future violations might occur; (5) and the sincerity of his assurances against future  
18 violations.” *Fehn*, 97 F.3d at 1295–96 (quoting *Murphy*, 626 F.2d at 655).

19  
20           The totality of the circumstances support imposition of a permanent injunction  
21 prohibiting Liu and Wang from engaging in any further EB-5-related investor  
22 solicitation. There is overwhelming evidence that Liu and Wang acted with a high  
23 degree of scienter. Liu set up various corporate entities, all under his control, and  
24 expended extensive effort over several years to have the Corporate Defendants qualify  
25 under the EB-5 investor program. (*See* Dkt. 200-1 ¶¶ 12–14; Dkt. 212 ¶¶ 12–14.) After  
26 Liu reorganized Pacific Proton Beverly Proton to marginalize Dr. Thropay and elevate  
27 himself and Wang, Liu and Wang signed employment agreements entitling them to  
28 exorbitant retroactive salaries. (Regenstreif Decl. Exs. 7, 8, 9, 13.) Liu’s personal bank

1 account received numerous transfers of funds from the Corporate Defendants, and  
2 transferred significant sums were immediately thereafter transferred to Wang, foreign  
3 bank accounts, and accounts associated with United MPH Ventures, Liu’s holding  
4 company. (Pearson Decl. II ¶¶ 27–29.) Wang’s personal bank accounts also received  
5 repeated transfers of funds from the Corporate Defendants and disbursed funds to Liu,  
6 United MPH Ventures, and to cover personal expenses, including school tuition and real  
7 estate. (*See id.* ¶¶ 32–39.) Liu personally met with investors, Wang gave speeches  
8 encouraging investment, and they organized and attended a meeting in Beijing in 2015  
9 with approximately 200 people to solicit investors. (Dkt. 200-1 ¶¶ 59–61; Dkt. 212  
10 ¶¶ 59–61.)

11  
12 Liu and Wang’s high degrees of scienter are further confirmed by adverse  
13 inferences based on their assertion of the Fifth Amendment in their depositions. “[T]he  
14 Fifth Amendment does not forbid adverse inferences against parties to civil actions when  
15 they refuse to testify in response to probative evidence offered against them.” *Baxter v.*  
16 *Palmigiano*, 425 U.S. 308, 318 (1976). The Ninth Circuit has delineated that, since there  
17 is “tension between one party’s Fifth Amendment rights and the other party’s right to a  
18 fair proceeding,” adverse inferences may only be taken when certain conditions are met.  
19 *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264–65 (9th Cir. 2000).  
20 Specifically, courts must “analyz[e] each instance where the adverse inference was  
21 drawn, or not drawn, on a case-by-case basis under the microscope of the circumstances  
22 of that particular civil litigation. . . . In each particular circumstance, the competing  
23 interests of the party asserting the privilege[] and the party against whom the privilege is  
24 invoked must be carefully balanced. Because the privilege is constitutionally based, the  
25 detriment to the party asserting it should be no more than is necessary to prevent unfair  
26 and unnecessary prejudice to the other side. In that light, no negative inference can be  
27 drawn against a civil litigant’s assertion of his privilege against self-incrimination unless  
28 there is a substantial need for the information and there is not another less burdensome



1 way of obtaining that information.” *Id.* at 1265 (quotation omitted); *see also Nationwide*  
2 *Life Ins. Co. v. Richards*, 541 F.3d 903, 911–12 (9th Cir. 2008); *S.E.C. v. Jasper*, 678  
3 F.3d 1116, 1125–26 (9th Cir. 2012). In addition, “an adverse inference can be drawn  
4 [only] when silence is countered by *independent evidence* of the fact being questioned.”  
5 *Glanzer*, 232 F.3d at 1264 (emphasis in original).<sup>22</sup>

6  
7 In their depositions, Liu and Wang asserted their Fifth Amendment rights and  
8 refused to answer the question “Did you engage in [a scheme to misappropriate Pacific  
9 Proton investor funds] with fraudulent intents?” (Dkt. 208 Ex. 3 at 86; *id.* Ex. 2 at 61–  
10 62). Liu also refused to answer, based on the Fifth Amendment: (1) “Is it true that you  
11 intended to have the Pacific Proton offering proceeds used or expended in a manner that  
12 was inconsistent with the terms and disclosures of the Pacific Proton offering  
13 memoranda?” (*id.* Ex. 3 at 90); (2) “Is it true that you knew false statements concerning  
14 the Pacific Proton offering and the use of proceeds from that offering were being made to  
15 investors in the Pacific Proton offering?” (*id.* Ex. 3 at 92–93); and (3) “Is it true that you  
16 intended not to disclose to investors in the Pacific Proton offering that offering proceeds  
17 would be used in a manner that was inconsistent with the terms and disclosures of the  
18 Pacific Proton offering memoranda?” (*id.* Ex. 3 at 91).

19  
20 The adverse inferences from these assertions of the Fifth Amendment are that Liu  
21 and Wang engaged in a scheme to misappropriate investor funds with fraudulent intent,  
22 that Liu intended to have the investor funds used inconsistently with the POM, that Liu  
23 intentionally failed to tell investors that, and that Liu knew the POM made false  
24

---

25 <sup>22</sup> Liu and Wang argue that, because they cooperated with the SEC earlier in its investigation, they  
26 should categorically not be prejudiced by an adverse inference. (Dkt. 211 at 18–19.) Categorical  
27 inoculation from adverse inferences is directly contrary to the context-driven analysis mandated by *Doe*  
28 *ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258 (9th Cir. 2000). As demonstrated in the following  
analysis, the Court takes each adverse inference being sensitive to prejudice to Liu and Wang and  
having found that the inference is supported by independent evidence, there is a substantial need for the  
information, and no alternative less burdensome method to obtain it.

1 statements. These adverse inferences are justified because they are supported by the  
2 independent evidence of scienter discussed above. There also is a substantial need for the  
3 information, as scienter is a factor relevant to the Court’s consideration of whether to  
4 impose a permanent injunction against Liu and Wang.

5  
6 Finally, there is also no alternative, less burdensome method to obtain information  
7 about Liu and Wang’s scienter. Direct evidence of scienter, “a mental state embracing  
8 intent to deceive, manipulate, or defraud,” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185,  
9 193 n.12 (1976), consists of an individual’s testimony. Therefore, there is no alternative  
10 less burdensome method of obtaining direct evidence of Liu and Wang’s scienter other  
11 than adverse inferences from their deposition. As for additional circumstantial evidence  
12 beyond the evidence summarized above, Liu and Wang have consistently stymied,  
13 thwarted, and stonewalled the SEC’s attempts to obtain business records, such as emails,  
14 that could confirm their high degrees of scienter. (*See, e.g.*, Dkt. 106 at 4 (Monitor’s  
15 June 25, 2016, report that Liu and Wang provided only minimal information as to the  
16 locations of corporate records, including Liu’s computer); Dkt. 146 at 3, 4 (Monitor’s  
17 August 22, 2016, report that “[t]he corporate offices were devoid of records one would  
18 typically find in a business of this nature” and “the corporate computers were removed  
19 from the Laguna Niguel office before the Monitor was given access”); Dkt. 168 at 3–4  
20 (Monitor’s October 4, 2016, report that “the circuitous manner of the production through  
21 corporate counsel, when combined with Mr. Liu’s refusal to answer substantive questions  
22 about corporate documents or operations, made it impossible for the monitor to verify  
23 that Mr. Liu had in fact turned over all documents in his possession”); Dkt. 174 at 8–9,  
24 12–13 (SEC at October 7, 2016, hearing reporting that no emails or text messages had  
25 been produced by Defendants); *id.* at 34 (the Monitor stating that accessing emails or text  
26 messages were “the only way to get any hope” of recovering assets); Dkt. 208 Ex. 2 at  
27 76, 78, 80, 89–90 (Wang testifying that she has not performed any search for electronic  
28 files and that she does not recall whether she sent emails in connection with Beverly

1 Proton); *id.* Ex. 3 at 109–30 (Liu testifying that he used email pervasively, that no emails  
2 or electronic files had been produced, and that his email account had been hacked in June  
3 2016, wiping out all of his emails.) For these reasons, the adverse inferences as to Liu  
4 and Wang’s high degrees of scienter are appropriate.

5  
6 The remaining *Fehn* factors also support injunctive relief. To date, Liu and Wang  
7 have not recognized the wrongfulness of their conduct. (*Cf.* Dkt. 221 at 16 (Liu and  
8 Wang acknowledging only that Liu “made some mistakes by failing to dot the i’s and  
9 cross the t’s of his business operations,” failed “to be sensitive to the conflict of interests  
10 [sic] issues raised by his wife’s involvement with UDG,” and failed to “properly  
11 document compensation being paid to himself and his wife”).) Their conduct also  
12 extended over a period of years and impacted many investors. As this was their  
13 professional occupation—marketing the project and soliciting EB-5 investors—there is  
14 reason to believe that they could violate securities laws in the context of EB-5 offerings  
15 again. Finally, all Liu and Wang offer about future violations is their lawyers’ unsworn  
16 statement that their belief is that Liu and Wang do not intend to participate in the EB-5  
17 program in the future. (*See* Dkt. 221 at 16 n.1.) That falls far short of a sincere assurance  
18 from the perpetrator that future violations will not occur. A permanent injunction will  
19 issue forthwith.

20  
21 ii. Disgorgement

22  
23 This Court has broad, discretionary equitable power to order the disgorgement of  
24 ill-gotten gains to deprive a wrongdoer of unjust enrichment and to deter others from  
25 violating securities laws. *S.E.C. v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1113 (9th  
26 Cir. 2006); *see also SEC v. Colello*, 139 F.3d 674, 679 (9th Cir. 1998) (“To order  
27 disgorgement, the district court . . . need find only that [the defendant] has no right to  
28 retain the funds illegally taken from the victims.”). If disgorgement is appropriate, there

1 is further discretionary authority in the amount to be disgorged; a “disgorgement  
2 calculation requires only a ‘reasonable approximation of profits causally connected to the  
3 violation.’” *JT Wallenbrock*, 440 F.3d at 1113 (quoting *S.E.C. v. First Pac. Bancorp*,  
4 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)).

5  
6 Liu and Wang do not directly argue that disgorgement is inappropriate here; rather  
7 they challenge the amount the SEC requests. (*See* Dkt. 211 at 23–25; Dkt. 221.) Indeed,  
8 disgorgement is necessary and appropriate in the wake of a massive fraud implicating  
9 scores of victims. The SEC seeks disgorgement of the total amount raised, \$26,967,918,  
10 an amount Liu and Wang do not dispute, offset by the \$234,899.19 that remained in  
11 corporate accounts on June 3, 2016. (Dkt. 199 at 21; *see also* Dkt. 163 ¶ 26.) Liu and  
12 Wang propose offsetting by the amount in the corporate accounts as of April 30, 2016  
13 (\$527,614). Since the temporary restraining order issued May 31, 2016, the Court sees  
14 no reason to ignore asset transfers between April 30, 2016, and June 3, 2016, and Liu and  
15 Wang present none. (*See* Dkt. 221 at 4–5; Dkt. 149-2 at 5, 6 (Liu and Wang’s June 9,  
16 2016, resignation letters resigning from all positions in Corporate Defendants).)

17  
18 While Liu and Wang argue extensively that disgorgement should also be offset by  
19 their “legitimate” business expenses, (*id.* at 4–10), the Ninth Circuit has indicated that the  
20 proper amount of disgorgement is the entire proceeds from a scheme minus amounts paid  
21 to investors, *see JT Wallenbrock*, 440 F.3d at 1113. “[I]t would be unjust to permit the  
22 defendants to offset against the investor dollars they received the expenses of running the  
23 very business they created to defraud those investors into giving the defendants the  
24 money in the first place.” *Id.* at 1114. Liu and Wang’s attempt to distinguish Ninth  
25 Circuit authority on the grounds that those cases dealt with entirely fraudulent enterprises  
26 whereas their project was at least partially legitimate is futile. (*See* Dkt. 221 at 4–10.)  
27 The contracts with overseas marketers and a significant portion of Liu’s compensation  
28 were set at the inception of the project. Given extensive evidence of a thorough, long-

1 standing scheme to defraud investors, the Court agrees with the SEC that a reasonable  
2 approximation of the profits causally connected to Liu and Wang’s violation is the total  
3 investment minus funds remaining, or \$26,733,018.81.

4  
5 iii. Civil Penalties

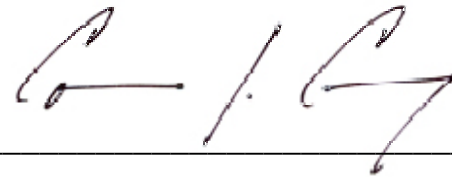
6  
7 Finally, the SEC urges the Court to impose civil penalties. The Exchange Act and  
8 the Securities Act authorize three tiers of penalties, and the penalty amount is to be  
9 “determined by the court in light of the facts and circumstances.” 15 U.S.C. §§  
10 78u(d)(3)(B), 77t(d). First tier penalties can be imposed for any violation of the act;  
11 second tier penalties are appropriate if the violation involves “fraud, deceit, manipulation,  
12 or deliberate or reckless disregard of a regulatory requirement;” and third tier penalties  
13 apply to violations that qualify for second tier penalties and “directly or indirectly  
14 resulted in substantial losses or created a significant risk of substantial losses to other  
15 persons.” *Id.* The Court agrees with the SEC that third tier penalties are appropriate.  
16 The factors considered above regarding permanent injunctive relief apply to this analysis  
17 and unquestionably support imposition of civil penalties. *See Sec. & Exch. Comm’n v.*  
18 *Lee*, No. CV 14-06865-RGK (EX), 2015 WL 12751703, at \*7 (C.D. Cal. Oct. 28, 2015).

19  
20 The amount of the civil penalty imposed is within a court’s discretion. *See* 15  
21 U.S.C. §§ 78u(d)(3)(B), 77t(d). The SEC suggests \$6,714,580 for Liu, the undisputed  
22 amount that he took for himself. (Dkt. 220 at 3–4; Dkt. 200-1 ¶ 116; Dkt. 212 ¶ 116.)  
23 The Court agrees that the money Liu personally took from investors is the appropriate  
24 amount of civil penalty to impose. As for Wang, the SEC suggests \$5,353,000, made up  
25 of the undisputed \$1,538,000 she was paid and the \$3,815,000 UDG was paid. (Dkt. 220  
26 at 4; Dkt. 200-1 ¶ 116; Dkt. 212 ¶ 116.) While Wang was deeply involved in UDG, the  
27 Court believes the appropriate civil penalty to impose is her direct personal gain from  
28 investors, \$1,538,000.

1 **V. CONCLUSION**

2  
3 For the foregoing reasons, the SEC's motion for summary judgment is  
4 GRANTED. A judgment and permanent injunction consistent with this Order will issue  
5 forthwith. The Order to Show Cause regarding civil contempt is DISCHARGED AS  
6 MOOT.

7  
8 DATED: April 20, 2017



---

10 CORMAC J. CARNEY  
11 UNITED STATES DISTRICT JUDGE

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

## APPENDIX

Details of the Interrogatories, Requests for Admission,  
and Liu and Wang's Assertion of Fifth Amendment Privilege  
at their Depositions

1           The SEC deposed Liu and Wang in November 2016 and served them with  
2 interrogatories and requests for admission. The interrogatories and requests for  
3 admission were propounded to Liu and Wang on October 18, 2016. (Dkt. 199-1 Exs. 1,  
4 2, 6, 7.) Liu's request for admissions sought admissions regarding his and Wang's  
5 relationship to Pacific Proton, PPEB5 Fund, Beverly Proton, UDG, and Ms. Yao. (*Id.*  
6 Ex. 1 at 10–13.) It also asked him to admit knowledge of the EB-5 program, the total  
7 investment proceeds, and that he received at least \$6,714,580 from October 2014 to April  
8 2016, including at least \$4,270,000 from February to March 2016. (*Id.* at 13–14.)  
9 Admissions were also sought regarding the receipt of funds by Wang, Overseas Chinese,  
10 UDG, and Delsk, Liu's funds transfers, his intentional deviations from the POM, and the  
11 veracity of various exhibits. (*Id.* at 14–23.) Finally, Liu was asked to admit that he was  
12 capable of complying with the repatriation order. (*Id.* at 19.) Wang's request for  
13 admissions sought substantially equivalent admissions. (*See id.* Ex. 2 at 35–48.)  
14

15           The SEC also propounded eighteen interrogatories on Liu and Wang. (*Id.* Exs. 6,  
16 7.) The interrogatories asked:

- 17
- 18       1. The nature of Liu and Wang's financial interest in various entities including  
19 Corporate Defendants and the Chinese marketers as of January 1 in 2014, 2015,  
20 2016, and July 1, 2016.
- 21       2. Their titles as employees, officers, managers, or directors of various entities  
22 including Corporate Defendants and the Chinese marketers.
- 23       3. Pacific Proton's proceeds, including the total amount of Capital Contributions  
24 and Administrative Fees.
- 25       4. Amount of Pacific Proton's proceeds distributed or transferred, directly or  
26 indirectly, to Ms. Yao, Liu, Wang, or their children.
- 27       5. Amount of Pacific Proton's proceeds distributed or transferred, directly or  
28 indirectly, to the Chinese marketers.



- 1 6. Amount of Pacific Proton’s proceeds expended to develop, construct, manage, or  
2 operate the cancer treatment facility.
- 3 7. Amount of Pacific Proton’s proceeds they caused to be transferred, directly or  
4 indirectly, to foreign accounts.
- 5 8. Whether all of Pacific Proton’s proceeds were expended or used consistent with  
6 the POM’s terms.
- 7 9. Whether Liu, Wang, or Ms. Yao has or used to have a financial interest in UDG  
8 and the time period and nature of such interest.
- 9 10. Whether Liu, Wang, or Ms. Yao has or used to have any control over UDG and  
10 the time period and nature of such control.
- 11 11. Whether they intended Pacific Proton’s proceeds to be used in a manner  
12 inconsistent with the POM, and if so approximately when such intent formed.
- 13 12. Whether they intended to disclose to investors that the proceeds would not be  
14 used in a manner consistent with the POM, and if so approximately when such  
15 intent formed.
- 16 13. How the full amount of Pacific Proton’s proceeds were disbursed, with dates,  
17 amounts, and recipients.
- 18 14. Whether they have the ability or financial means to transfer \$26,967,818. If not,  
19 to identify all facts and evidence supporting that assertion.
- 20 15. Whether they can cause Overseas Chinese or UDG to repatriate Pacific Proton’s  
21 proceeds.<sup>23</sup>

---

22  
23  
24 <sup>23</sup> Attached to their briefing on the issuance of a preliminary injunction, Liu submitted declarations from  
25 Walter Wang, “an authorized representative and one hundred percent . . . equity owner of Overseas  
26 Chinese,” (Dkt. 31-1 ¶ 1), stating that Overseas Chinese would return all marketing fees in \$500,000  
27 monthly payments beginning in May 2016, (*id.* ¶ 5). They also attached a declaration from Chen  
28 Xiaojun, “the managing director and one hundred percent . . . equity owner of” UDG, (Dkt. 31-4),  
stating that UDG had agreed to return “Marketing and Other Fees” of \$3,150,000 by December 31, 2016  
and that “[n]one of the Marketing and Other Fees or agent fees paid to UDG was paid directly or  
indirectly to” Liu or Wang, (*id.* ¶ 5). They did not provide a letter from Delsk; the briefing noted that  
the total Delsk allegedly received was less than the amount of investor Administrative Fees for the thirty  
seven investors Delsk allegedly recruited, implying any refund was unnecessary. (*See* Dkt. 31 at 10.)

1 16. Identify all documents or communications that they contend demonstrate that  
2 they did not defraud investors, that they did not misappropriate proceeds, that  
3 they did not obtain money by making false statements, that the SEC's Complaint  
4 is not true, or that they do not have the ability or financial means to satisfy a  
5 monetary judgment.

6 17. Identify all witnesses they contend could or would testify that they did not  
7 defraud investors, that they did not misappropriate proceeds, that the  
8 Complaint's allegations are not true, or that they do not have the ability or  
9 financial means to satisfy a monetary judgment.

10 18. Identify all financial accounts of every nature held in their name or in which  
11 they have a direct or indirect beneficial interest, including institution name,  
12 address, account number, and account type.

13  
14 (*Id.* Ex. 6 at 115–18; *id.* Ex. 7 at 130–33.) Liu and Wang's discovery responses were  
15 originally due November 21, 2016. At their request, the SEC extended the deadline to  
16 December 2. (Dkt. 214-1 ¶ 3; Dkt. 194-2 Ex. 6 (including Liu and Wang's initial request  
17 for a forty five day extension).) Neither Liu nor Wang timely answered or objected to the  
18 requests for admission and interrogatories, nor were answers or objections served as of  
19 January 23, 2017. (Dkt. 214-1 ¶ 3.)

20  
21 The SEC also took Liu and Wang's depositions on November 10 and November 9,  
22 respectively. Liu asserted his Fifth Amendment right and refused to answer the following  
23 questions regarding:

24  
25 1. The total value of all funds and other assets under his control, his net worth, the  
26 value of cash under his control, the value of assets under his control that can be  
27 readily converted to cash, and whether he controls funds or other assets,  
28

- 1 including assets that can be readily converted to cash, having a total value of at  
2 least \$26,967,918.
- 3 2. His ability to transfer or cause to be transferred \$26,967,918 in overseas funds  
4 into the bank account of the Court-appointed Monitor by November 18, 2016 or  
5 at any point in time within the next year.
- 6 3. His ability to transfer or cause to be transferred \$26,967,918 in funds into the  
7 bank account of the Court-appointed Monitor by November 18, 2016 or at any  
8 point in time within the next year.
- 9 4. His ability and preparation to comply with the repatriation section of the  
10 Preliminary Injunction.
- 11 5. Whether there is any reason why compliance with the repatriation section is  
12 impossible or why he cannot comply.
- 13 6. The largest amount of funds he could transfer on or by November 18, 2016, or  
14 within the next year.
- 15 7. That he could transfer at least \$6,714,580 on or by November 18, 2016.
- 16 8. That he caused \$6,714,580 of investor funds to be transferred into his control.
- 17 9. That he is able to transfer at least \$8,252,580 to the Monitor by November 18,  
18 2016.
- 19 10. That he caused \$1,538,000 of investor funds to be transferred to Wang.
- 20 11. That he misappropriated at least \$8,252,580 from Pacific Proton investors and  
21 that he never disclosed to any investors that he would transfer at least  
22 \$8,252,580 to his control.
- 23 12. His personal knowledge of Wang's financial condition, how he knows about  
24 her financial condition, Wang's ability to comply with the repatriation order,  
25 and any reason why she cannot comply with it.
- 26 13. That he was able to have Overseas Chinese return all funds paid to it and that he  
27 was able to deposit such funds in the Monitor's account.
- 28

- 1 14. That Overseas Chinese has agreed to return \$5,710,025, that he played some  
2 role in that agreement, and that he caused Overseas Chinese to agree.
- 3 15. Whether the Overseas Chinese declaration was true and accurate, whether he  
4 had seen it in its draft form, whether he had a role in editing any drafts of the  
5 declaration, whether he had any input into the content of the declaration,  
6 whether he caused Overseas Chinses to sign the declaration, requested the  
7 signature, and whether he understands the agreement described in the  
8 declaration to be binding on Overseas Chinese.
- 9 16. Whether he was able to cause UDG to return all funds or deposit all funds in the  
10 Monitor's bank account.
- 11 17. Whether UDG agreed to return at least \$3,150,000.
- 12 18. Whether he negotiated the agreement with UDG, caused UDG to agree, his  
13 relationship with the Declarant who claimed to be the 100% equity owner of  
14 UDG, and whether he caused the Declarant to become the 100% equity owner  
15 of UDG.
- 16 19. Whether he had seen the UDG declaration in draft form, whether he edited the  
17 declaration, had input into its content, caused the Declarant to sign it, request  
18 that the Declarant sign it, and whether he understood the agreement described in  
19 the declaration to be binding on UDG.
- 20 20. Whether he or Wang controls UDG, has the authority to direct its decision-  
21 making, management, operations, and policies, whether Wang ever controlled  
22 UDG, had or has the authority to direct its decision-making, management,  
23 operations, and policies, was ever UDG's CEO, President, chairman of the  
24 board.
- 25 21. Identify each and every bank in which he had an account, use of an account, or  
26 had a financial or ownership interest in an account for the last twenty years.  
27  
28

- 1 22. Identify the account numbers, how much money is currently in the accounts,  
2 whether he has overseas bank accounts, and the overseas banks in which he has  
3 an account, use of an account, or a financial or ownership interest in an account.
- 4 23. Whether he holds, uses, or has a financial interest in any account at China  
5 Merchants Bank and the account numbers of such accounts.
- 6 24. How much money is currently in overseas bank accounts that he holds, uses, or  
7 in which he has a financial or ownership interest.
- 8 25. Credit cards that he currently uses, their account numbers, and who pays the  
9 balances on them.
- 10 26. Identify each and every brokerage firm in which he had an account, used an  
11 account, or had a financial or ownership interest in an account, for the last  
12 twenty years, the account numbers, and the current approximate value of each  
13 account.
- 14 27. His financial interest in bonds of any kind.
- 15 28. Whether he owns or has an ownership interest in any Certificates of Deposit,  
16 stocks, mutual funds, or any other kind of investment fund.
- 17 29. Whether he has any retirement accounts and if so their current value.
- 18 30. Whether he owns any life insurance and the cash surrender value of each life  
19 insurance policy.
- 20 31. Identify all real property that he has owned or in which he has had a financial or  
21 ownership interest in the last twenty years.
- 22 32. Whether he owned real property outside of the United States, in China, in Hong  
23 Kong, or Grenada in the last twenty years, whether he has sold any of those real  
24 properties, the sale proceeds from such sales, and what he did with those  
25 proceeds.
- 26 33. Identify all real property he currently owns, their locations, and their present  
27 fair market value.
- 28

- 1 34. Whether he has ever transferred real property to a trust in the last twenty years,  
2 the identity of such trusts.
- 3 35. Whether he receives any rental income or owns any rental properties.
- 4 36. Whether he had overseas bank accounts during the SEC's investigation,  
5 whether they are frozen, and their account numbers.
- 6 37. Whether he transferred funds from his domestic personal bank account to a  
7 China Merchants Bank account which he controls.
- 8 38. Whether he had accessed funds maintained at any non-United States financial  
9 institution since May 31, 2016.
- 10 39. Whether he pays any money in monthly living expenses.
- 11 40. Amount of income received from his trade or profession or other sources during  
12 each of the last ten years.
- 13 41. Whether he currently owns any businesses, has owned any businesses in the last  
14 ten years, has been an officer, director, or registered agent for any company in  
15 the last ten years, and the name and his title at each businesses.
- 16 42. Whether and how much cash is in his residence.
- 17 43. That more than \$20 million of the capital raised was paid to him, Wang, or  
18 overseas marketers.
- 19 44. Whether he has an interest in any type of trust or receives trust income.
- 20 45. Whether he holds assets outside the United States and their descriptions.
- 21 46. Whether he made a gift to anyone since 2010, the value of such gifts, and the  
22 recipients.
- 23 47. Whether any money is held on his behalf by someone else.
- 24 48. Whether there were at least 58 investors and whether the total amount of money  
25 raised in connection with Pacific Proton was at least \$31,160,000.
- 26 49. Whether investors in Pacific Proton depend on the entrepreneurial or  
27 managerial skill of him or others to generate returns on their investment.
- 28 50. Whether Pacific Proton investors had an expectation of profit.

- 1 51. Whether he transferred at least \$3.25 million from personal bank accounts in  
2 the United States to China Merchants Bank from February to April 2016.
- 3 52. That offering proceeds were not used or expended consistently with the POM.
- 4 53. Whether he engaged in a scheme to misappropriate investor funds by failing to  
5 disclose the true uses of the funds.
- 6 54. Whether he engaged in said scheme with fraudulent intents.
- 7 55. Whether he dealt directly with investors or communicated with them about their  
8 investment.
- 9 56. That Pacific Proton investors would have considered it to be a significant piece  
10 of information that he was using their funds in the manner in which he did.
- 11 57. Whether he knew false statements concerning the offering and use of proceeds  
12 were being made to investors.
- 13 58. The identity and location of all personal property worth more than \$500, the  
14 approximate value of such property, and whether he owns any jewelry,  
15 paintings, art, or collectables, including a coin or stamp collection
- 16 59. That Pacific Proton offering proceeds were not used or expended consistent  
17 with the POM.
- 18 60. That he intended to have the offering proceeds used or expended in a manner  
19 inconsistent with the POM.
- 20 61. That he intended not to disclose to investors that proceeds would be used or  
21 expended in a manner inconsistent with the POM.
- 22 62. That he made false statements concerning the Pacific Proton offering and the  
23 use of proceeds to investors.
- 24 63. That the POM's description of how proceeds would be used was false.
- 25 64. That he should have known, under a reasonable standard of care, that the  
26 descriptions of how proceeds would be used in the POM were false.
- 27 65. That he knew false statements concerning the offering and use of proceeds were  
28 being made to investors.

1 66. That he recklessly disregarded that false statements were being made to  
2 investors in the POM.

3 67. Whether he disclosed to the SEC every bank account, investment brokerage  
4 account, or financial institution account held in Corporate Defendants' name,  
5 controlled by Corporate Defendants, or in which Corporate Defendants have a  
6 beneficial interest.

7 68. Identify all bank accounts, investment brokerage accounts, or financial  
8 institution accounts held in Corporate Defendants' name, controlled by  
9 Corporate Defendants, or in which Corporate Defendants have a beneficial  
10 interest.

11 69. Whether Corporate Defendants have bank, brokerage, or financial institution  
12 account records that they have not produced to the SEC

13  
14 (Dkt. 199-2 Ex. 4 at 78–93; Dkt. 194-2 Ex. 2.) Liu also stated that he intended to assert  
15 his Fifth Amendment privilege in response to any questions about (1) funds and assets  
16 under his or Wang's control, (2) his or Wang's ability to comply with the repatriation  
17 order, (3) his ability to cause Overseas Chinese to return investor funds, (4) his ability to  
18 cause UDG to return investor funds, (5) his United States and overseas bank accounts, his  
19 brokerage accounts, his investments, and his retirement accounts, (6) real property owned  
20 and sold in the last twenty years, (7) real property that he currently owns, uses, or has an  
21 ownership or financial interest in, (8) real estate trusts, (9) money or assets held by  
22 another person on his behalf, (10) his ability to cause UDG to return funds, (11) any  
23 questions concerning his control of UDG, (12) Wang's control of UDG, (13) money or  
24 assets held by another person on his behalf, (14) rental properties, (15) current living  
25 expenses, and (16) assets he holds outside the United States. (*See* Dkt. 199-2 Ex. 4 at  
26 78–93; Dkt. 194-2 Ex. 2.)

27  
28 //



1 Wang asserted her Fifth Amendment right and refused to answer the following  
2 questions regarding:

- 3
- 4 1. Whether she controls assets having a total value of at least \$26,967,918.
- 5 2. Her approximate net worth, the value of all cash under her control, the value of  
6 all assets under her control that can be readily converted into cash.
- 7 3. That she has control over at least \$26,967,918 in funds, that she could transfer  
8 \$26,967,918 in overseas funds to the Monitor's account by November 18, 2016.
- 9 4. That she is able to comply with the repatriation order.
- 10 5. Whether there is any reason why it would be impossible or that she is unable to  
11 comply with the repatriation order.
- 12 6. The largest amount of funds she would be able to transfer or cause to be  
13 transferred to the Monitor's account by November 18, 2016, or at any point in  
14 the next year.
- 15 7. That she is able to transfer at least \$6,714,580, \$1,538,000, and \$8,252,580 to  
16 the Monitor's account by November 18, 2016.
- 17 8. Her personal knowledge of Liu's financial condition, whether he controls funds  
18 or other assets having a total value of at least \$26,967,918, the total value of all  
19 funds and assets under his control.
- 20 9. Liu's ability to comply with the repatriation order, any reason that it would be  
21 impossible for him to comply, and that Liu can transfer \$26,967,918 in overseas  
22 funds to the Monitor's account by November 18, 2016.
- 23 10. That Liu caused to be transferred to accounts under his control at least  
24 \$6,714,580 of investor funds.
- 25 11. That Liu caused to be transferred to accounts under her control at least  
26 \$1,538,000 in investor funds.
- 27
- 28

- 1 12. If she is familiar with Overseas Chinese, that she is able to cause Overseas  
2 Chinese to return all funds, that she can transfer such funds to the Monitor's  
3 account.
- 4 13. Whether Overseas Chinese has agreed to return \$5,710,025 and whether she  
5 negotiated the agreement.
- 6 14. Her familiarity with UDG, her ability to cause UDG to return all funds, and her  
7 ability to deposit such funds in the Monitor's account.
- 8 15. Whether UDG agreed to return \$3.15 million in fees, that she negotiated the  
9 agreement to do so, and that she caused UDG to agree to return at least \$3.15  
10 million in fees.
- 11 16. Whether she or Liu controls UDG, has the authority to direct its decision  
12 making concerning its management, operations and policies, and whether she  
13 was UDG's CEO or chairman of the board.
- 14 17. Identification of every bank and each foreign bank in which she had had an  
15 account, used an account, or had a financial interest in an account for the last  
16 twenty years, and the amount of money currently in those accounts.
- 17 18. Whether she has any bank accounts outside the United States, the amount of  
18 money currently in foreign accounts that she holds, uses, or has a financial or  
19 ownership interest in.
- 20 19. The amount of money currently in United States bank accounts that she holds,  
21 uses, or has a financial or ownership interest in.
- 22 20. Identify all her credit cards.
- 23 21. Identify each and every brokerage firm in which she had an account, use of an  
24 account, or financial or ownership interest in an account in the last twenty  
25 years, the account numbers, and the current approximate value of each account.
- 26 22. Whether she owns any bonds, mutual funds, or an interest in any other kind of  
27 investment fund.
- 28

- 1 23. Whether she owns any Certificates of Deposit or life insurance, the cash  
2 surrender value of the life insurance policies, whether she holds any retirement  
3 accounts, their account numbers, and their current value.
- 4 24. Whether she owns her apartment, whether there are mortgages on her  
5 apartment, expenses associated with living there, and the source of the funds  
6 from which she pays such expenses.
- 7 25. Identify all real property that she has owned or in which she has had a financial  
8 interest in the last twenty years, whether she has sold any of those properties,  
9 the sales proceeds, and what she did with the sales proceeds.
- 10 26. Whether she has owned property in China, Hong Kong, or Grenada.
- 11 27. Identify all real property that she currently owns, their location, their present  
12 fair-market value for each.
- 13 28. Identify all real property that she currently owns located in the United States.
- 14 29. Whether she has ever transferred or caused to be transferred real property to a  
15 trust in the last twenty years, and the identity of each trust.
- 16 30. Whether she receives any rental income.
- 17 31. Her monthly living expenses, how she pays those expenses, how much she  
18 pays each month on a mortgage or for rent, food, utilities, phone service, cable  
19 and internet, insurance, medical expenses, child care, and entertainment.
- 20 32. Whether she was an officer of Beverly Proton and whether she had control over  
21 Beverly Proton's bank accounts at any point between 2010 and 2016.
- 22 33. Whether she controlled bank accounts for Pacific Proton at any point between  
23 2010 and 2016.
- 24 34. Whether she controlled bank accounts of PPEB5 Fund LLC at any point from  
25 2010 to 2016.
- 26 35. That she controls the corporate bank accounts from 2010 to the present,  
27 including during the time that investor funds were being raised.
- 28 36. That she caused Corporate Defendants to misappropriate investor funds.

- 1 37. Her income in each of the last 15 years in connection with her professional  
2 work.
- 3 38. Her current sources of income, and her income from working at the cultural  
4 department of China and at a hospital pharmacy.
- 5 39. That she misappropriated funds invested by investors in PPEB5 Fund.
- 6 40. That she engaged in a scheme to misappropriate investor money by failing to  
7 disclose to investors the true use of their money.
- 8 41. That she acted with fraudulent intent when engaging in that scheme.
- 9 42. That she, Liu, and Corporate Defendants raised at least \$26,967,918 from  
10 investors.
- 11 43. That she directly interacted with investors when soliciting their investment.
- 12 44. Whether she knew that investors would have found the misappropriation of  
13 their money a significant piece of information relevant of their investment.
- 14 45. That investors invested with the expectation of profit.
- 15 46. Whether she currently owns or has a financial interest in any businesses, has  
16 owned any other businesses in the last ten years, and whether she has been an  
17 officer, director, or registered agent for any company in the last ten years.
- 18 47. Whether she has an interest in any type of trust or receives trust income.
- 19 48. Whether she holds any assets outside the United States and descriptions of all  
20 assets she holds that are located outside the United States.
- 21 49. Whether any money is held by someone else on her behalf.
- 22 50. Identify all personal property currently in her possession worth more than \$500,  
23 where it is located, and the approximate value of each piece of personal  
24 property.
- 25 51. Whether she owns jewelry worth more than \$500, collectables, art,  
26 automobiles, boats, or aircrafts.
- 27 52. Whether she has made a gift of any of her real or personal property to anyone  
28 since 2010 and the value and recipient of each gift.

- 1 53. Whether she receives any money from others to help support herself or her  
2 dependents.
- 3 54. Whether she was a corporate officer of Pacific Proton of Beverly Proton, or  
4 director of Beverly Proton.
- 5 55. The location of Pacific Proton's books and records, that not all of their books  
6 and records have been produced to the Monitor or the SEC.
- 7 56. Whether she sent emails in her capacity as an officer of Beverly Proton and  
8 whether Liu searched for electronically stored information that is Pacific  
9 Proton's corporate property.
- 10 57. That not all of Beverly Proton's books and records had been produced and the  
11 basis of her claim that she did not have any of Beverly Proton's books or  
12 records in her possession.
- 13 58. That not all of PPEB5 Fund's books and records had been produced to the  
14 Monitor or to the SEC.
- 15 59. Who updated Pacific Proton's books and records.
- 16 60. Whether she has ever destroyed any of Pacific Proton's, Beverly Proton's, or  
17 PPEB5 Fund's books and records, electronic or physical.
- 18 61. Whether she has disclosed to the SEC every bank account, investment  
19 brokerage account, or financial institution account held in the name of or  
20 controlled by Corporate Defendants that she knew about, the identities of such  
21 accounts, whether she has any such accounts in her possession, custody, or  
22 control, whether she has destroyed records for any such account, whether she  
23 has any records in her possession for such accounts that she has not produced,

24  
25 (Dkt. 199-2 Ex. 5 at 97–107; Dkt. 194-2 Ex. 3; Dkt. 208 Ex. 2.) Wang also stated that  
26 she intended to assert her Fifth Amendment privilege in response to any questions about  
27 (1) her or Liu's ability to comply with the repatriation order, (2) her or Liu's ability to  
28 transfer or cause the transfer of funds to the Monitor's account, (3) her ability to cause

1 Overseas Chinese to return investor funds, (4) her ability to cause UDG to return investor  
2 funds, (5) her control of UDG, (6) Liu's control of UDG, (7) her foreign and United  
3 States bank accounts, (8) her credit cards, brokerage accounts, retirement accounts, and  
4 any type of account at any type of financial institution, (9) her financial investments, (10)  
5 her personal residence, (11) real property that she currently owns or has a financial  
6 interest in, (12) real estate trusts (13) use and misappropriation of investor funds by  
7 Corporate Defendants, (14) her assets outside the United States, (15) her personal  
8 property, (16) funds and assets under her or Liu's control, (17) her living expenses, (18)  
9 involvement in any businesses over the last ten years, including any compensation  
10 received, (19) her sources of income, past and present, and (20) her possession, custody,  
11 or control of financial account records of Corporate Defendants. (*See* Dkt. 199-2 Ex. 5 at  
12 97–107; Dkt. 194-2 Ex. 3; Dkt. 208 Ex. 2.)

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28