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9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **WESTERN DIVISION**

12 KRISTA L. FREITAG, Court-Appointed
 Permanent Receiver for World Capital
 13 Market Inc.; WCM777 Inc.;
 WCM777 Ltd. d/b/a WCM777
 14 Enterprises, Inc.; Kingdom Capital
 Market, LLC; Manna Holding
 15 Group, LLC; Manna Source
 International, Inc.; WCM Resources, Inc.;
 16 ToPacific Inc.; To Pacific Inc.; and their
 subsidiaries and affiliates,

Case No. 2:15-CV-2147-JFW-MRW
 STATEMENT OF DECISION

17 Plaintiff,

18 v.

19 SUE WANG aka SU E. WANG;
 20 JIANJUN WANG; XIAOMEI DENG;
 HUAJIAN WU; MANA FASHION
 21 INC., a California corporation;
 JJ SPARKLES, INC., a California
 22 corporation; YUANHAO, INC., a
 California corporation; SAZA
 23 INVESTMENT LLC, a California limited
 liability company; GENERGEIA INC., a
 24 California corporation; and DOES 1
 through 10, inclusive,

25 Defendants.
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1 Having reviewed the pleadings and papers on file in connection with the
2 Motion for Summary Judgment ("Motion") filed by Plaintiff Krista L. Freitag
3 ("Receiver"), Court-appointed permanent-receiver for World Capital Market Inc.;
4 WCM777 Inc.; WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; Kingdom Capital
5 Market, LLC; Manna Holding Group, LLC; Manna Source International, Inc.;
6 WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and
7 affiliates (the "Receivership Entities"), the Court hereby finds that there is no
8 genuine issue of material fact and the Receiver is entitled to summary judgment
9 against Defendants Huajian Wu ("Wu") and Yuanhao, Inc. ("Yuanhao") (together,
10 the "Wu Defendants") as a matter of law.

11 **FINDINGS OF FACT**

12 The Court finds that the following facts are undisputed:

- 13 1. On or about March 27, 2014, the Commission initiated the SEC Action
14 against the Receivership Entities, Ming Xu a/k/a Phil Ming Xu ("Ming Xu"), a
15 principal of the Receivership Entities, and others, alleging violations of federal
16 securities laws. (Statement of Uncontroverted Facts and Conclusions of Law
17 ("SUF"), ¶ 1.)
- 18 2. The Commission petitioned for the Receiver's appointment, and on
19 March 27, 2014, the Court appointed the Receiver as temporary receiver. (SUF,
20 ¶ 2.)
- 21 3. On April 10, 2014, the Court entered a Preliminary Injunction
22 appointing the Receiver as permanent receiver for the Receivership Entities. (SUF,
23 ¶¶ 3-4.)
- 24 4. ToPacific Inc. and To Pacific Inc. were added as Relief Defendants to
25 the SEC Action on May 7, 2014 and on May 21, 2014, the Court entered an order
26 extending the Receiver's appointment over Relief Defendants ToPacific Inc., and To
27 Pacific Inc. (SUF, ¶¶ 3-4.)

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1 5. Investor deposits were the primary source of virtually all funds
2 distributed to the investors, and the Receivership Entities, including ToPacific,
3 commingled their funds such that the Receivership Entities operated as a unitary
4 enterprise. (SUF, ¶ 5.)

5 6. There was no significant source of revenue for the Receivership
6 Entities, other than deposits associated with Ponzi scheme. (SUF, ¶¶ 7-10.)

7 7. Virtually all of the funds of the Receivership Entities, including those
8 held by ToPacific, are ill-gotten gains of the fraudulent WCM777 offering,
9 generated through the operation of the Ponzi scheme. (SUF, ¶ 10.)

10 8. In the SEC Action, this Court previously found that "[t]he SEC has
11 presented undisputed evidence that the only significant source of funds in
12 Defendants' bank accounts, including the relevant ToPacific account, were proceeds
13 from the unregistered and fraudulent WCM777 offering...." (SUF, ¶ 11.)

14 9. The Commission's investigation into Ming Xu's activities dates back to
15 October 2013. (SUF, ¶ 12.)

16 10. Ming Xu's Ponzi scheme was also the subject of independent
17 investigations by the Massachusetts Securities Division, the State of California
18 Department of Business Oversight, and the Colorado Division of Securities, which
19 resulted in the entry of a Consent Order on November 14, 2013 (Mass.), a Desist
20 and Refrain Order in January 8, 2014 (Cal.), and a Consent Cease and Desist Order
21 on January 21, 2014 (Colo.). (SUF, ¶ 13.)

22 11. In October 2013, Ming Xu's former counsel, Scott Warren, advised him
23 to "stop all operations and cease raising money throughout the world." Mr. Warren
24 further expressed the opinion to Ming Xu that "WCM777 was operating as a Ponzi
25 scheme, illegal in every state, as well as every country of the world. ... [and]
26 advised Mr. Xu that WCM777 was an illegal pyramid scheme, and that it violates
27 State and Federal securities laws." (SUF, ¶ 14.)
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1 12. Yuanhao received \$500,000 from ToPacific on or around February 28,
2 2014. (SUF, ¶¶ 15, 22.)

3 13. The Yuanhao Account had an account balance on February 1, 2014 of
4 slightly over \$500. (SUF, ¶ 42.)

5 14. Yuanhao's bank account had an account balance \$93.07 on February
6 27, 2014 (one day before the payment of \$500,000 from ToPacific was deposited).
7 (SUF, ¶ 41.)

8 15. The payment of \$500,000 to Yuanhao by ToPacific was purportedly
9 made pursuant to an written agreement to purchase garments from Yuanhao dated
10 February 28, 2014 (the "Purchase Agreement"). (SUF, ¶¶ 17-19.)

11 16. The Purchase Agreement was then purportedly cancelled by Sue Wang.
12 (SUF, ¶ 20.)

13 17. Wu admits the \$500,000 was received by Yuanhao, and of that amount,
14 \$100,000 was retained and not returned to the Receivership Entities. (SUF, ¶ 22.)

15 18. Wu admits no goods or services were ever provided to the
16 Receiverships Entities in exchange for the \$500,000 paid by ToPacific. (SUF, ¶ 23.)

17 19. There are no documents in the Receivership Entities' records to show
18 that any goods or services was provided to the Receivership Entities in exchange for
19 the \$500,000 paid to Yuanhao. (SUF, ¶ 24.)

20 20. Huajian Wu transferred \$210,000 from Yuanhao's bank account to his
21 own personal account at east West Bank (the "Wu Account") on March 19, 2014.
22 (SUF, ¶ 27.)

23 21. Huajian Wu transferred \$55,000 from Yuanhao's bank account to the
24 Wu account on March 26, 2014. (SUF, ¶ 28.)

25 22. Huajian Wu transferred \$64,000 from Yuanhao's bank account to the
26 Wu account on April 10, 2014. (SUF, ¶ 29.)

27 23. Huajian Wu transferred \$27,000 from Yuanhao's bank account to the
28 Wu account on April 14, 2014. (SUF, ¶ 30.)

1 24. The Yuanhao Account had an account balance of negative \$6,407.50
2 on March 31, 2014. (SUF, ¶ 43.)

3 25. On April 7, 2014, \$130,000 was transferred from the Wu Account to
4 Xiaomei Deng's personal bank account at East West Bank with an account number
5 ending in x5531. (SUF, ¶ 45.)

6 26. On April 28, 2014, \$360,000 was transferred from the Wu Account to
7 Sue Wang's personal bank account at East West Bank with an account number
8 ending in x8654. (SUF, ¶ 46.)

9 27. Wu claims that the transfers of \$130,000 and \$360,000 to Sue Wang
10 and Xiaomei Deng were to pay for other obligations owed to Sue Wang or her
11 company, JJ Sparkles, but he admits there are no documents evidencing the alleged
12 obligations and cannot recall any details regarding these prior debts. (SUF, ¶ 47.)

13 28. Wu admits Sue Wang personally instructed and accompanied him to
14 the bank to process the transfers of the \$130,000 and the \$360,000 to Sue Wang and
15 Xiaomei Deng. (SUF, ¶ 48.)

16 29. On March 14, 2014, \$200,000 was returned to ToPacific by wire
17 transfer from Yuanhao, and on March 19, 2014, another \$200,000 was returned to
18 ToPacific by wire transfer from Wu's personal bank account. (SUF, ¶ 21.)

19 30. Yuanhao is a company owned and operated by Wu with no other
20 owners or investors, and is purportedly engaged in the business of selling garments
21 sourced from vendors in China. (SUF, ¶ 26.)

22 31. Yuanhao has no regular employees and is operated solely by Wu
23 himself. (SUF, ¶ 33.)

24 32. The Purchase Agreement is the single largest documented purchase
25 order Yuanhao has ever received, far exceeding in amount the typical transactions
26 Yuanhao processes, the highest of which is less than \$15,000. (SUF, ¶ 34.)

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1 the Receivership Entities, including ToPacific, commingled their funds such that the
2 Entities operated as a unitary enterprise; and virtually all of the funds of the
3 Receiverships Entities, including those held by ToPacific, are ill-gotten gains of the
4 fraudulent Ponzi operations. (SUF, ¶¶ 5-10.) Accordingly, a presumption of actual
5 fraud exists in connection with the transfer of \$500,000 to Yuanhao. *Kowell*, 533
6 F.3d at 767 ("[T]he mere existence of a Ponzi scheme is sufficient to establish actual
7 intent to defraud.") (quoting *In re AFI Holding Inc.*, 525 F.3d 700, 704 (9th Cir.
8 2008); *In re Cohen*, 199 B.R. at 717 ("Proof of a Ponzi scheme is sufficient to
9 establish the Ponzi operator's actual intent to hinder, delay, or defraud creditors for
10 purposes of actually fraudulent transfers").

11 **II. Actual Fraud Exists Independent Of The Ponzi Presumption.**

12 2. Ming Xu was fully aware of the regulatory implications of his
13 fraudulent offerings and Ponzi activities, and had knowledge of imminent
14 enforcement action by the Commission as early as in October 2013—well before the
15 \$500,000 was transferred to Yuanhao. (SUF, ¶¶ 12-13.) In addition, because the
16 Receivership Entities, including ToPacific, were operated as a Ponzi scheme, they
17 were insolvent by definition. *See U.S. v. Treadwell*, 593 F.3d 990, 993 n. 2 (9th Cir.
18 2010); *see also, Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d
19 185, 186 (5th Cir. 2013); *Kowell*, 533 F.3d at 770-771. The \$500,000 transferred to
20 Yuanhao was not disclosed to any investors, and although the payment was made
21 using Receivership Entities' funds, the \$100,000 Wu retained was never returned.
22 (SUF, ¶¶ 15, 22.) Moreover, there was no value conveyed to the Receivership
23 Entities, as Wu has admitted. (SUF, ¶¶ 23-24.) Accordingly, the circumstances
24 under which Ming Xu paid \$500,000 to Yuanhao (using ToPacific's funds) show
25 Ming Xu acted with actual intent to defraud investors in the Ponzi scheme by
26 transferring funds to Yuanhao and funneling monies through Wu's personal account
27 for the benefit of Sue Wang and Xiaomei Deng. Cal. Civ. Code § 3439(b) (setting
28 forth factors upon which actual fraudulent intent may be found).

1 **III. The \$500,000 Transferred To Yuanhao Is Also Constructive Fraudulent.**

2 3. As explained above, it is not subject to any reasonable dispute that the
3 Receivership Entities operated a Ponzi scheme, proof of which satisfies the
4 insolvency requirements of constructive fraud. Thus, the only remaining inquiry to
5 establish constructive fraud is whether the \$500,000 was received in good faith by
6 Yuanhao and whether reasonably equivalent value was provided in exchange. *See*
7 Cal. Civ. Code § 3439.04(a)(2).

8 4. Here, no value was provided in exchange for the funds paid to the Wu
9 Defendants. As Wu admits, no goods or services were provided at all to any of the
10 Receivership Entities in exchange for the \$500,000 that was paid. (SUF, ¶ 23.) The
11 Wu Defendants also did not receive the funds in good faith. There are no
12 documents showing Yuanhao had ever handled transactions of this size, and the
13 only two receipts purporting to show deposits paid by Yuanhao to procure garments
14 for the sale to ToPacific are unsupported by any other documents showing the
15 deposits were actually paid. (SUF, ¶¶ 34-40.) Accordingly to Wu, the vendor was
16 paid in cash by his family members in China. (SUF, ¶ 38.) Wu admits, however,
17 there was no written agreement with the vendor for the purported purchase of
18 garments, despite the fact that the order was for more than 62,000 garments, and no
19 goods were ever delivered or refunds provided even after the order was cancelled.
20 (SUF, ¶ 40.) The investor funds paid to the Wu Defendants, or at least part of them,
21 were also immediately passed on to Sue Wang's and Xiaomei Deng's personal bank
22 accounts with no documentation to support Wu's claim that these transfers were to
23 pay pre-existing obligations. (SUF, ¶¶ 45-48.) In short, the facts demonstrate there
24 was no legitimate purpose for the initial payment of \$500,000 to Yuanhao and no
25 legitimate purpose for the subsequent transfer of funds to Sue Wang and Xiaomei
26 Deng. Rather, the apparent purpose of the entire series of transfers was to siphon
27 monies out of the Receivership Entities for the benefit of Ming Xu, Sue Wang, and
28 their immediate family members. Accordingly, as a matter of law, the Wu

1 Defendants cannot show they provided reasonably equivalent value in exchange for
2 the \$100,000, making the full \$100,000 subject to disgorgement as a constructive
3 fraudulent transfer.

4 **IV. Yuanhao Is The Alter Ego Of Wu.**

5 5. Ordinarily, a corporation is regarded as a legal entity, separate and
6 distinct from its stockholders, officers and directors, with separate and distinct
7 liabilities and obligations. *Sonora Diamond Corp. v. Superior Court*, 83
8 Cal.App.4th 523, 538 (2000). A corporate identity may be disregarded—the
9 "corporate veil" pierced—where an abuse of the corporate privilege justifies holding
10 the equitable ownership of a corporation liable for the actions of the corporation.
11 (*Ibid.*) Under the alter ego doctrine, "when the corporate form is used to *perpetuate*
12 *a fraud, circumvent a statute, or accomplish some other wrongful or inequitable*
13 *purpose*," the courts will ignore the corporate form and deem the corporations acts
14 to be those of its equitable owners. (*Id.*, emphasis added.) The doctrine is thus
15 intended to prevent misuse of the corporate laws by "the device of a sham corporate
16 entity formed for the purpose of committing fraud or other misdeeds." (*Id.*) In
17 California, two conditions must be met before the alter ego doctrine will be invoked.
18 First, there must be such a unity of interest and ownership between the corporation
19 and its equitable owner that the separate personalities of the corporation and the
20 shareholder do not in reality exist. Second, there must be an inequitable result if the
21 acts in question are treated as those of the corporation alone. (*Id.*)

22 6. Here, there is no legal distinction between Wu and his company
23 Yuanhao. As he admits, Wu operated Yuanhao without any employees and
24 commonly comingled company funds with his personal funds, often making
25 payments from his personal bank account for company business. (SUF, ¶¶ 26-33.)
26 Wu also admits transferring large sums of funds siphoned from Yuanhao's accounts
27 directly to Sue Wang and her immediate family members at Sue Wang's direction.
28 (SUF, ¶¶ 45-48.) Although he claims these payments were for prior debts owed to

1 Sue Wang, he admits that there are no documents to support these claims and,
2 naturally, he cannot recall any details regarding these alleged prior debts. (*Id.*)
3 Thus there is no corporate distinction between Yuanhao and Wu, and because the
4 evidence demonstrates that Yuanhao was used as a mere shell by Wu, in cooperation
5 with Sue Wang, to divert investor funds to Sue Wang and her immediate family
6 members, it would be inequitable to allow Wu to escape liability by hiding behind
7 his shell company.

8 **V. The \$100,000 Is Also Subject To Disgorgement Under The Receiver's**
9 **Claims For Unjust Enrichment And Constructive Trust.**

10 There is no dispute the Wu Defendants received and retained \$100,000 from
11 the Receivership Entities. (*See* SUF, ¶ 22.) These funds were derived from investor
12 proceeds generated through fraudulent offerings in violation of the securities laws
13 and no reasonably equivalent value was provided to the Receivership Entities in
14 exchange. (*Id.* at ¶¶ 5-11, 23-24.) It would thus be patently unjust to allow the Wu
15 Defendants to retain these funds, at the expense of the investors and creditors of the
16 Ponzi scheme. *Lyles v. Sangadeo-Patel*, 225 Cal.App.4th 759 (2014) ("[t]he
17 elements for a claim of unjust enrichment are 'receipt of a benefit and unjust
18 retention of the benefit at the expense of another.'"); *Communist Party v. 522*
19 *Valencia, Inc.*, 35 Cal.App.4th 980, 990 (1995) (providing for imposition of
20 constructive trust upon three conditions: "(1) the existence of a *res* (property or
21 some interest in property); (2) the *right* of a complaining party to that *res*; and
22 (3) some *wrongful* acquisition or detention of the *res* by another party who is not
23 entitled to it.") (emphasis in original). The Wu Defendants provided no value in
24 exchange for the funds they received and retained, participated and assisted Ming
25 Xu in transferring investors funds to his immediate family members before they

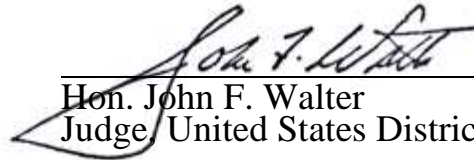
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1 could be frozen, and therefore are not entitled to retain the \$100,000 over the
2 legitimate claims of investors and creditors of the receivership estate. *FTC v.*
3 *Network Services Depot, Inc.*, 617 F.3d 1127, 1141-42 (9th Cir. 2010).
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6 Dated: December 1, 2015



Hon. John F. Walter
Judge, United States District Court

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