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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

SACV16-00974 CJC (AGRx)

11
12
13 **SECURITIES AND EXCHANGE
COMMISSION,**

Case No.

14 **Plaintiff,**

COMPLAINT

15 vs.

16
17 **CHARLES C. LIU;**
XIN WANG a/k/a LISA WANG;
18 **PACIFIC PROTON THERAPY**
REGIONAL CENTER, LLC;
19 **PACIFIC PROTON EB-5 FUND, LLC;**
and **BEVERLY PROTON CENTER,**
20 **LLC f/k/a LOS ANGELES COUNTY**
21 **PROTON THERAPY, LLC,**

22 **Defendants.**

23
24 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

25 **JURISDICTION AND VENUE**

26 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
27 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
28 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the

1 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
2 78u(d)(3)(A), 78u(e) & 78aa(a). Defendants have, directly or indirectly, made use of
3 the means or instrumentalities of interstate commerce, of the mails, or of the facilities
4 of a national securities exchange in connection with the transactions, acts, practices
5 and courses of business alleged in this Complaint.

6 2. Venue is proper in this district pursuant to Section 22(a) of the Securities
7 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a),
8 because certain of the transactions, acts, practices and courses of conduct constituting
9 violations of the federal securities laws occurred within this district. In addition,
10 venue is proper in this district because Defendants Charles C. Liu and Xin Wang
11 reside in this district.

12 SUMMARY

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

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

28 5. From at least October 2014 to the present, the defendants have offered

1 and sold, and continue to offer, EB-5 investments to Chinese investors, allegedly to
2 fund the development and operation of the cancer treatment center. The investors
3 made their investment in two parts: a \$500,000 “Capital Contribution,” which was to
4 be escrowed for use in developing and operating the center, and a \$45,000
5 “Administrative Fee.”

6 6. Rather than invest the investors’ Capital Contributions as promised—
7 and as required for the investors to meet the EB-5 program requirements—the
8 defendants misappropriated or diverted approximately \$17.4 million from the
9 accounts where the contributions were deposited. Liu misappropriated at least
10 \$6,285,000 for himself, and his wife and co-defendant, Wang, misappropriated at
11 least \$1,400,000. Liu also transferred over \$11,845,000 to three marketing firms in
12 China, including \$3,500,000 to a firm of which Wang is CEO and chairman of the
13 board. Liu also allowed most of the Administrative Fees to be used for undisclosed
14 purposes. As a result, the EB-5 eligible cancer treatment center that the defendants
15 represented would be constructed with investor funds has not been built. Liu and
16 Wang have carried out this fraud through a number of entities, three of which are
17 named as defendants.

18 7. The defendants’ fraud is still ongoing. The majority of the funds
19 dissipated by the defendants were transferred as recently as February and March
20 2016, shortly after the SEC subpoenaed Liu for investigative testimony. Also, the
21 website primarily used to offer the EB-5 investments to Chinese investors remains
22 active, and continues to market and promote the investments in a materially
23 misleading manner.

24 8. By engaging in this conduct, the defendants have violated, and continue
25 to violate, the antifraud provisions of Sections 17(a) of the Securities Act, 15 U.S.C.
26 § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-
27 5(a) and (c) thereunder, 17 C.F.R. 240.10b-5(a) & 240.10b-5(c), and Liu and the
28 corporate defendants have violated, and continue to violate Exchange Act Rule 10b-

1 5(b), 17 C.F.R. § 240.10b-5(b). Liu is also violating Section 10(b) and Rule 10b-5 as
2 a control person of each of the corporate defendants.

3 **THE DEFENDANTS**

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

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

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

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

23 13. **Beverly Proton Center, LLC f/k/a Los Angeles County Proton**
24 **Therapy, LLC (“Beverly Proton”)** is a California limited liability company,
25 headquartered in Laguna Niguel, California. Liu co-founded Beverly Proton to
26 develop and operate a proton therapy cancer treatment center using funds raised by
27 the PPEB5 Fund. Liu is president of Beverly Proton, and is its treasurer and
28 managing member. Wang is Beverly Proton’s “Vice President in Marketing of Asia

1 [sic].”

2 **THE FRAUDULENT SCHEME**

3 **A. The EB-5 Immigrant Investor Program**

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

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

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

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

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

1 **B. Designation Of Defendant Pacific Proton As A Regional Center**

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

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

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

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

15 (b) Beverly Proton would develop and operate an innovative new
16 cancer treatment center using proton beam radiation for treatment of oncology
17 patients in Montebello, California. In addition to the proton therapy center, the
18 building was expected to contain 125,000 square feet of medical office space and
19 ancillary facilities. Beverly Proton would also develop and construct a new 30,000
20 square foot office building in Monterey Park, California, which would contain a
21 restaurant, pharmacy, and radiation therapy office and multiple-use medical office
22 space.

23 (c) Each investor would be required to invest \$500,000 as a “Capital
24 Contribution” in the PPEB5 Fund and to pay an “Administrative Fee” of
25 approximately \$45,000 before applying to USCIS for their I-526 petition. Pacific
26 Proton would use an escrow account to hold the foreign investor’s \$500,000 Capital
27 Contribution. Once the escrow agent receives confirmation that the investor’s I-526
28 Petition was approved, the escrowed funds would be released to the PPEB5 Fund for

1 deployment to Beverly Proton. If USCIS were to deny the I-526 Petition, then the
2 \$500,000 Capital Contribution investment would be returned to the investor, together
3 with 50% of the Administrative Fee.

4 (d) According to an economic report included with the application,
5 the project would “create an estimated 4,775 permanent new jobs, boost output by
6 \$728 million per year, and increase labor (household) income by \$217 million per
7 year.”

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

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

15 **C. Liu and Wang’s Roles in the Corporate Defendants**

16 23. Liu has been the president of the regional center, Pacific Proton, since
17 2010. Until recently, Liu owned 75% of the membership interests in Pacific Proton.

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

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

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

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

28 28. On January 19, 2016, Liu and Wang were elected by Liu as the two sole

1 directors of Beverly Proton. Wang has also been Beverly Proton’s “Vice President in
2 Marketing of Asia [sic]” since 2011.

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

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

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

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

14 33. During the entire relevant period, up to and including the present, Liu
15 has been the sole signatory on all bank accounts held in the name of each entity
16 defendant, except that Dr. Thropay, was also a signatory on the Beverly Proton
17 account from October 2015 until Liu caused passage of a board resolution on January
18 19, 2016, removing Thropay from the account.

19 **D. The EB-5 Offering**

20 34. From at least October 1, 2014 to the present, the defendants have offered
21 and sold investments in the form of limited liability company, or “LLC,” units in the
22 PPEB5 Fund. To date, the defendants have raised at least \$26,967,918 from at least
23 50 investors in China.

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

28 36. Liu and the PPEB5 Fund provided offering materials to each investor

1 consisting of: (1) a private offering memorandum (“POM”) dated May 1, 2013; (2) an
2 Escrow Agreement attached to the POM as Appendix A; (3) an Operating Agreement
3 attached to the POM as Appendix B; and (4) a Subscription Agreement attached to
4 the POM as Appendix C.

5 37. The POM states that the PPEB5 Fund is offering the LLC units for
6 \$500,000 each, and can offer up to 300 LLC units (one per each accredited investor)
7 for a maximum offering of \$150 million.

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

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

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

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

27 42. The POM explicitly states that “Proceeds of this Offering do not include
28 Administrative Fees. Offering expenses, commissions and fees incurred in

1 connection with this Offering shall be paid from the proceeds of Administrative Fees
2 and not from EB-5 Capital Contributions.”

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

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

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

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

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

22 48. Any profits from investments in the PPEB5 Fund were to be derived
23 from the efforts of others. Liu solely manages the PPEB5 Fund; the investors have
24 no management role. The POM further provides that Pacific Proton is the sole
25 manager of the PPEB5 Fund, and that investors will have limited involvement in the
26 management of PPEB5 Fund.

27 49. Additionally, the POM emphasizes that the success of the PPEB5 Fund
28 and Beverly Proton is principally dependent on current management personnel for

1 operation of the business. In particular, the POM states that Beverly Proton “is
2 dependent upon the continued involvement of Dr. Thropay and Mr. Liu in this Project
3 personally. The loss of services of either Dr. Thropay or Mr. Liu would have a
4 material adverse effect on PPEB5 [Fund]’s and the Borrower’s business, financial
5 condition and results of operations.”

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

12 **E. The Sales Efforts**

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

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

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

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

28 55. Wang also participated in the sales effort on behalf of Beverly Proton

1 and UDG. She held the title of “Vice President in Marketing of Asia [sic]” for
2 Beverly Proton. Her responsibilities included promotions and marketing, and
3 attracting patients from overseas for cancer treatment.

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

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

13 **F. The UDG Promotional Materials**

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

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

18 60. For example, UDG’s website states that the Beverly Proton therapy
19 center project “is a secure and reliable investment project.”

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

26 62. UDG’s website also claims that the Beverly Proton project is using the
27 proton therapy technology of Optivus Proton Therapy, Inc. (“Optivus”). UDG’s
28 website has descriptions of the Optivus technology, including that it was used by

1 Loma Linda University, and a description of Loma Linda University's cancer
2 treatment program. The website touts the Optivus proton therapy technology, stating
3 that "Optivus is the equipment supplier of Los Angeles Proton Therapy Center. It is .
4 . . the most effective, reliable, precise and environmental proton therapy system in the
5 market currently LAPTC will use new Optivus Conforma 3000 System"

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

10 64. Wang understood that the photograph of former Governor
11 Schwarzenegger, which was also hanging at UDG's offices, was maybe there "for
12 promotional purposes."

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

21 **G. The Stalled Therapy Center Project**

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

27 67. Liu knows that construction for the new therapy center has not begun.
28 He has personally toured the site, both before and after the demolition of the office

1 building. Similarly, Wang is aware that construction is not complete.

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

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

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

20 71. Similarly, Loma Linda University stated in its letter that the use of its
21 name, logo and health care services "are presented in a manner that is likely to
22 confuse visitors to the [Pacific Proton] website into believing that there is an
23 affiliation or sponsorship between [Pacific Proton/Beverly Proton] on the one hand,
24 and [the University and its medical center] on the other." It also states that, to the
25 extent that Pacific Proton or Beverly Proton have held themselves out to investors as
26 being affiliated, associated or otherwise endorsed by the university, "any such
27 representation was, and is, false and misleading, and [Pacific Proton and Beverly
28 Proton] must promptly address such misrepresentations by, without limitation,

1 immediately notifying investors that [Loma Linda University] and its affiliates,
2 including [its medical center], have no sponsorship or affiliation” with the project.

3 **H. The Removal of Dr. Thropay**

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

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

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

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

24 76. On April 4, 2016, after being subpoenaed and providing investigative
25 testimony to the SEC, Liu reorganized the companies again. He purportedly sold
26 50% of Pacific Proton to a former salesperson of a company that sold proton therapy
27 equipment, for \$1 per unit. No payments have been made by this person for the
28 purchase of Pacific Proton, however. At that time, the former salesman allegedly

1 replaced Liu as Pacific Proton's president and treasurer, and Liu replaced Wang as its
2 secretary.

3 77. In purportedly selling part of Pacific Proton to this former salesman, Liu
4 diluted Dr. Thropay's interest in Pacific Proton from 25% to 12.5% by giving the
5 putative purchaser a 50% ownership, Liu a 37.5% ownership, and Dr. Thropay only a
6 12.5% ownership. Before this purported change in ownership structure, Liu owned
7 75% of the membership interests in Pacific Proton.

8 **I. Delsk's Letter to Liu**

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

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

17 80. In the letter, Delsk stated that: "Due to the capital structure problem
18 (namely, the absence of equity capital), in [the project]," in September 2015, Delsk
19 had formally requested that Liu suspend promotional activities for the project in
20 China, "while we wait for legal proof from you demonstrating that the capital
21 structure problem has been solved," and that it met with Liu "again regarding the
22 capital structure of this project on November 3, 2015." Delsk concluded by stating,
23 that in its view, the PPEB5 Fund needed to issue a written document to inform all of
24 its investors of, among other things: "the current status of capital raised by [the]
25 project company," "explaining the progress of construction," and "[e]xplaining the
26 status of the capital of all investors (in which account their funds are currently
27 deposited, and whether the funds have been embezzled or misappropriated)."

28 81. Notwithstanding that Delsk's letter placed Liu on notice that additional

1 disclosure to investors was necessary regarding the material facts of the progress of
2 construction and the use of their monies, no such further disclosure has been provided
3 investors.

4 **J. The Misappropriation of Investor Funds**

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

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

16 84. Liu personally received at least \$6,285,000 from the accounts where
17 investor proceeds were deposited. Of that amount, \$4,270,000 was transferred to him
18 as recently as February and March 2016, shortly after he was subpoenaed to give
19 investigative testimony to the SEC.

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

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

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

28 88. Liu also misused a portion of the Administrative Fees, taking at least

1 \$1,600,000 for his and Wang’s personal use.

2 **a. Overseas Chinese Was Paid Over \$7.7 Million**

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

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

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

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

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

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

26 94. The agreement with UDG was signed by Wenli Yao on behalf of United
27 Damei Investment Co. Ltd. Ms. Yao is Wang’s mother and Liu’s mother-in-law.
28 Ms. Yao lives with Liu and Wang in Laguna Niguel. She does not speak or read

1 English, the language in which the Agreement is written.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **L. The Misrepresentations and Omissions**

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

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

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

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

19 113. In addition, notwithstanding that the POM states that the project “is
20 dependent upon the continued involvement of Dr. Thropay” and that the “loss of
21 services” of Dr. Thropay “would have a material adverse effect on PPEB5 [Fund]’s
22 and [Beverly Proton’s] business, financial condition and results of operations,” Liu
23 and the three corporate defendants have omitted, and not disclosed to actual and
24 potential investors that Dr. Thropay has been effectively removed from the project
25 and that there is, currently, no medical director.

26 114. At all relevant times, Liu, who is ultimately responsible for the POM and
27 other disclosures to investors, knew, or was reckless and negligent in not knowing,
28 that these representations and omissions were false and misleading. His state of mind

1 is imputed to Pacific Proton, Beverly Proton and the PPEB5 Fund, due to his control
2 and/or management of them.

3 115. In addition, UDG's website misleadingly implies that the proton therapy
4 project is going well and is a "safe and reliable" investment.

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

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

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

19 **M. The Ongoing Fraud**

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

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

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

FIRST CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Section 17(a) of the Securities Act

(against all Defendants)

1
2
3
4
5 122. The SEC realleges and incorporates by reference paragraphs 1 through
6 121 above.

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

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

24 125. By engaging in the conduct described above, each of the defendants
25 violated, and unless restrained and enjoined will continue to violate, Sections
26 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1),
27 77q(a)(2), & 77q(a)(3).
28

1 **SECOND CLAIM FOR RELIEF**

2 **Fraud in Connection with the Purchase or Sale of Securities**

3 **Violations of Section 10(b) of the Exchange Act**

4 **and Rules 10b-5(a) and 10b-5(c) Thereunder**

5 **(against all Defendants as primary violators, and, alternatively,**

6 **against Liu as a control person under Section 20(a) of the Exchange Act)**

7 126. The SEC realleges and incorporates by reference paragraphs 1 through
8 121 above.

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

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

19 129. By engaging in the conduct described above, each of the defendants
20 violated, and unless restrained and enjoined will continue to violate, Section 10(b) of
21 the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder,
22 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

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

1 (c) thereunder.

2 **THIRD CLAIM FOR RELIEF**

3 **Fraud in Connection with the Purchase or Sale of Securities**

4 **Violations of Section 10(b) of the Exchange Act**

5 **and Rule 10b-5(b) Thereunder**

6 **(against Defendants Liu, Pacific Proton, PPEB5 Fund and Beverly Proton as**

7 **primary violators, and, alternatively, against Liu as a control person under**

8 **Section 20(a) of the Exchange Act)**

9 131. The SEC realleges and incorporates by reference paragraphs 1 through
10 121 above.

11 132. By engaging in the conduct described above, defendant Liu, Pacific
12 Proton, PPEB5 Fund and Beverly Proton, and each of them, directly or indirectly, in
13 connection with the purchase or sale of a security, by the use of means or
14 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
15 securities exchange, made untrue statements of a material fact or omitted to state a
16 material fact necessary in order to make the statements made, in the light of the
17 circumstances under which they were made, not misleading.

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

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

27 135. Defendant Liu was a control person of defendants Pacific Proton, PPEB5
28 Fund and Beverly Proton because he possessed, directly or indirectly, the power to

1 direct or cause the direction of the management and policies of each of these entities.
2 Accordingly, pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a),
3 defendant Liu is liable to the SEC to same extent as each of the entity defendants for
4 those defendants' violations of Section 10(b) and Rule 10b-5(b) thereunder.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the SEC respectfully requests that the Court:

7 **I.**

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

10 **II.**

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

19 **III.**

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

1 Regional Center designated by the USCIS, for purposes of issuing, offering, trading,
2 or inducing or attempting to induce the purchase or sale of any such EB-5 investment.

3 **IV.**

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

9 **V.**

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

13 **VI.**

14 Order defendants to pay civil penalties under Section 20(d) of the Securities
15 Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
16 78u(d)(3).

17 **VII.**

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

22 **VIII.**

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

25 Dated: May 26, 2016

26 */s/ John W. Berry*

27 John W. Berry

Attorney for Plaintiff

28 Securities and Exchange Commission