

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19510

In the Matter of

ALBERT K. HU,

Respondent.

REQUEST FOR OFFICIAL NOTICE

**(IN SUPPORT OF DIVISION OF
ENFORCEMENT'S MOTION FOR
SUMMARY DISPOSITION)**

The Division of Enforcement (“Division”) hereby requests that official notice be taken of certain facts for which it would be appropriate for a federal district court to take judicial notice, pursuant to Rule 323 of the Commission’s Rules of Practice. In particular, it would be appropriate under Federal Rule of Evidence 201 for a district court to take judicial notice of documents that were filed in the two federal district court cases upon which this proceeding is founded, especially where the documents are publicly available and their authenticity is not disputed. Federal district courts may take judicial notice, among other things, of “undisputed matters of public record, . . . including documents on file in federal or state courts.” *Harris v.*

County of Orange, 682 F.3d 1186, 1131-32 (9th Cir. 2012). *See, e.g., Protégé Restaurant Partners LLC v. Sentinel Ins. Co., Ltd.*, 517 F. Supp. 2d 981, 986 n.1 (N.D. Cal. 2021) (applying this precedent to take judicial notice of other district court rulings and transcripts of hearings); *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746, 758 (N.D. Cal. 1997) (judicial notice is appropriate when the documents referred to are relevant to the issues addressed on the motion).

Accordingly, the Division asks that official notice be taken of the following attached documents from the dockets to two district court cases, *Securities and Exchange Commission v. Albert K. Hu*, Case No. C-09-01177-RMW (N.D. Cal.) (“the SEC civil case”) and *United States of America v. Albert Ke-Jeng Hu, a/k/a Ke-Jeng Hu*, Case No. CR-09-00487-001-RMW (N.D. Cal.) (“the criminal case”), the relevance of which is described in the accompanying motion for summary disposition:

- Exhibit A: Complaint in the SEC civil case filed on March 18, 2009
- Exhibit B: Preliminary Injunction in the SEC civil case filed on March 27, 2009
- Exhibit C: Indictment in the criminal case filed on May 6, 2009
- Exhibit D: Verdict in the criminal case filed on June 20, 2012
- Exhibit E: Excerpts from jury trial transcript in the criminal case (pp. 775-805, 820-25, 1113-18, plus transcript volume cover pages)
- Exhibit F: Criminal Judgment, Order of Restitution, and amendment to Order of Restitution, in the criminal case
- Exhibit G: Memorandum decision of the Court of Appeals in the criminal case
- Exhibit H: Order Granting Plaintiff’s Motion for Final Judgment Against All Defendants in the civil case filed on April 26, 2013

Exhibit I: SEC's Motion for Final Judgment Against All Defendants in the civil case
filed on February 27, 2013

Dated: September 15, 2021

Respectfully submitted,

/s/ Susan F. LaMarca
Susan F. LaMarca, Trial Counsel
Andrew J. Hefty, Trial Counsel
Elena Ro, Assistant Regional Director
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- Exhibit G: Memorandum decision of the Court of Appeals in the criminal case Order
- Exhibit H: Granting Plaintiff's Motion for Final Judgment Against All Defendants in the civil case filed on April 26, 2013
- Exhibit I: SEC's Motion for Final Judgment Against All Defendants in the civil case filed on February 27, 2013

EXHIBIT A

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E-filing

ADR

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

RMW

12 SECURITIES AND EXCHANGE COMMISSION,

Case No.

C09 01177

13 Plaintiff,

COMPLAINT

14 vs.

RS

15 ALBERT K. HU,
16 ASENQUA, INC.,
ASENQUA CAPITAL MANAGEMENT, LLC,
17 AQC ASSET MANAGEMENT, LTD., and
FIRESIDE CAPITAL MANAGEMENT, LTD.,

18 Defendants.

19
20 Plaintiff Securities and Exchange Commission ("Commission") alleges:

21 **SUMMARY OF THE ACTION**

22 1. From approximately 2001 through the present, defendant Albert K. Hu has
23 been defrauding investors in his hedge funds by falsifying investment documents, quarterly
24 account statements, and other financial statements, and by misappropriating their investment
25 funds. The false documents Hu provided were designed to give an aura of authenticity to
26 Hu's hedge funds and to induce investors into believing that credible and reliable
27 "gatekeepers" safeguarded their investments. Hu raised more than \$5 million in his scheme
28 to defraud investors.

1 2. Hu claimed to manage hedge funds through at least four entities: defendants
2 Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and
3 Fireside Capital Management, Ltd. (collectively, the “Asenqua defendants”). Hu, through the
4 Asenqua defendants, organized and managed at least a half-dozen different hedge funds
5 (collectively, the “Asenqua hedge funds”).

6 3. Hu touted the success of the Asenqua hedge funds in marketing materials and
7 presentations to investors. To gain investors’ confidence, Hu provided them with written
8 investment agreements stating that prominent international law firms served as legal counsel
9 for the Asenqua hedge funds. Hu also claimed that independent auditors and a reputable fund
10 administrator oversaw the management of the Asenqua hedge funds. In addition, Hu and the
11 Asenqua defendants provided quarterly statements to investors purportedly signed by the so-
12 called “Chief Financial Officer” of the Asenqua hedge funds.

13 4. In fact, the gatekeepers were a fiction. The law firms did not represent the
14 Asenqua hedge funds as the written investment agreements stated. The fund administrator
15 and one of the auditors did not, in fact, provide services to the Asenqua hedge funds. The
16 second purportedly independent auditor leased a virtual office, paid for by Hu. Furthermore,
17 Hu and the Asenqua defendants forged the signature of the purported Chief Financial Officer
18 on investor statements.

19 5. Hu misappropriated investors’ money by transferring funds out of the Asenqua
20 hedge funds’ accounts to other unrelated accounts. Hu has now refused to return investors’
21 funds, and his most recent communications have been from Hong Kong.

22 6. Hu and the Asenqua defendants have violated, and continue to violate, the
23 antifraud provisions of the federal securities laws, by misappropriating investor assets and
24 making materially false and misleading statements in connection with the purchase or sale of
25 securities. The Commission seeks an order enjoining Hu and the Asenqua defendants from
26 further conduct that violates the securities laws and requiring them to disgorge their ill-gotten
27 gains, with prejudgment interest. The Commission also seeks an order requiring Hu to pay
28 civil money penalties.

JURISDICTION

1
2 7. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
3 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)], Sections 21(d) and
4 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and
5 78u(e)], and Sections 209 and 214 of the Investment Advisers Act of 1940 ("Advisers Act")
6 [15 U.S.C. §§ 80b-9 and 80b-14].

7 8. This Court has jurisdiction over this action pursuant to Sections 20(b) and
8 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], Sections 21(d), 21(e) and 27 of
9 the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], and Sections 209 and 214 of the
10 Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14]. The defendants, directly or indirectly, have
11 made use of the means and instrumentalities of interstate commerce, of the mails, or of the
12 facilities of a national securities exchange in connection with the acts, practices and courses of
13 business alleged in this complaint.

14 9. Venue is proper in this district pursuant to Section 22 of the Securities Act
15 [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the
16 Advisers Act [15 U.S.C. § 80b-14]. During much of the period described in this complaint,
17 Hu resided in the Northern District of California, and acts or transactions constituting
18 violations occurred in this district.

INTRADISTRICT ASSIGNMENT

19
20 10. Assignment to the San Jose Division is appropriate pursuant to Civil Local
21 Rules 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims
22 occurred, among other places in this district, in Santa Clara County.

DEFENDANTS

23
24 11. **Albert K. Hu**, age 47, resided in San Jose, California, or in Fremont,
25 California, from approximately 2001 to approximately 2008. Hu served as the president of
26 defendants Asenqua, Inc., Asenqua Capital Management, LLC, Fireside Capital Management,
27 Ltd., and AQC Asset Management, Ltd. Until approximately 2001, Hu formerly served as
28 president of a now-defunct Sunnyvale, California, company.

1 funds took offsetting positions in strong and weak companies in the same market sectors. Hu
2 claimed to investors that his trading strategy lowered investment risk.

3 17. During 2004, to solicit new investments, Hu made particular claims to at least
4 one potential investor about the returns earned by his hedge funds. Hu claimed that his funds
5 managed by defendant Asenqua Capital Management, LLC returned net profits of 41.65
6 percent in 2001, 30.45 percent in 2002, and 34.12 percent in 2003.

7 18. To heighten the sense of exclusivity of his hedge funds, Hu told certain
8 investors that the funds were closed to new investors but that he would make an "exception" if
9 they chose to invest. As a further inducement for other investors, Hu supposedly "waived" the
10 \$1 million minimum investment.

11 19. Hu provided false marketing documents to investors describing the
12 "management team" of the Asenqua hedge funds, including its "Chief Financial Officer." The
13 individual identified as the Chief Financial Officer had been the Chief Financial Officer of a
14 now-defunct Sunnyvale, California, company for which Hu had been president until
15 approximately 2000. The individual identified as the Chief Financial Officer in fact had no
16 association with the Asenqua hedge funds.

17 20. As part of his solicitation, Hu gave investors and potential investors detailed
18 written descriptions of the hedge funds described as "private placement memoranda" and
19 "subscription agreements." According to these documents, Hu and defendant Asenqua, Inc.
20 managed the assets of various Asenqua hedge funds, including the Asenqua Alpha Fund, LP,
21 the Asenqua Beta Fund, LP, and the Asenqua Multi-Strategy Fund, LP.

22 21. In the private placement memoranda and subscription agreements, Hu made
23 representations that prominent international law firms had been retained as counsel to the
24 Asenqua hedge funds. In addition, Hu's documents claimed that independent auditors and a
25 known and reputable fund administrator assisted in the oversight, accounting, and
26 administration of the hedge funds.

27 22. Hu and the Asenqua defendants lied to investors. The prominent international
28 law firms did not, in fact, serve as legal counsel to the Asenqua hedge funds as identified in

1 the private placement memoranda and subscription agreements. Similarly, Hu and the
2 Asenqua defendants had not retained independent auditors or the fund administrator, and the
3 named entities did not provide services to the Asenqua hedge funds.

4 23. By making materially false and misleading representations to investors to
5 solicit their funds, including in marketing documents, the private placement memoranda and
6 subscription agreements, and by omitting to state material facts that were necessary to make
7 representations made not misleading, Hu acted knowingly or recklessly. Each of the Asenqua
8 defendants were controlled by Hu, and each therefore also acted knowingly or recklessly in
9 making material misrepresentations and omissions of material fact to investors to solicit
10 investments.

11 **Hu and the Asenqua Defendants Made Further Misrepresentations**

12 24. According to the investment agreements that each of the eight investors
13 received, each investor purchased a "limited partnership interest" in the Asenqua hedge funds.
14 Defendants represented in the agreements that the investors' funds were to be pooled into
15 various "master funds" controlled by Hu and the Asenqua defendants. Hu promised to
16 execute his investment strategy using the collective investor funds held in each master fund.

17 25. Hu and the Asenqua defendants further represented in the investor agreements
18 that the defendants were to earn fees based on a percentage of the returns on the investments
19 to the funds. Then, after subtracting those fees, Hu and the Asenqua defendants promised that
20 the returns on the investments earned by the funds would be allocated among investors across
21 the Asenqua hedge funds.

22 26. From approximately 2001 into 2008, Hu and the Asenqua defendants provided
23 quarterly statements to investors. In the statements, Hu and the Asenqua defendants almost
24 always claimed that the Asenqua hedge funds had positive net returns. For example, the
25 Asenqua Beta Fund, LP reported a return of more than 22 percent in the second quarter of
26 2003, the Asenqua Alpha Fund, LP also reported a return of more than 22 percent in the
27 second quarter of 2003, and the Fireside LS Fund, LP reported a return of more than 11
28 percent in the fourth quarter of 2005.

1 27. The same quarterly statements also provided purported annual returns, which
2 were similarly almost always positive. For example, according to the statements, the Asenqua
3 Alpha Fund, LP reported a return of nearly 47 percent in calendar year 2001, the Asenqua
4 Beta Fund, LP reported a return of nearly 53 percent in calendar year 2003, the Asenqua
5 Multi-Strategy Fund, LP reported a return of nearly 41 percent in calendar year 2003, and the
6 Fireside LS Fund, LP reported a 20 percent return in calendar year 2006 and a nearly 31
7 percent return in calendar year 2007.

8 28. Each of the quarterly statements that defendants provided to investors
9 purported to bear the signature of the so-called “Chief Financial Officer” of the Asenqua
10 hedge funds. In fact, Hu forged the signature of the person described as the Chief Financial
11 Officer, who was the same individual falsely identified in the Asenqua hedge funds’
12 marketing materials. The individual in fact had no association with the Asenqua hedge funds
13 and did not sign the Asenqua hedge fund statements.

14 29. To substantiate the Asenqua hedge funds’ assets and performance, Hu and the
15 Asenqua defendants gave investors audit opinion letters attaching “audited” financial
16 statements for two different Asenqua hedge funds, the Asenqua Alpha Fund, LP and the
17 Asenqua Beta Fund, LP. The financial statements reported identical “net asset values” for
18 calendar year-end 2003 and 2004 for the two funds: \$110,573,431 (2003) and \$140,870,552
19 (2004). The statements also reported identical year-over-year growth of the net asset values
20 for the two funds for calendar year-end 2003 and 2004: 34.12 percent (2003) and 27.40
21 percent (2004).

22 30. The opinion letters stated that the audit firm provided a purportedly
23 “independent” review of the financial statements of the two Asenqua hedge funds. Hu and the
24 Asenqua defendants, however, did not disclose Hu’s ties to the supposedly independent
25 auditing firm. Hu, through the Asenqua defendants, opened an account with a company that
26 provides “virtual offices” on behalf of the auditing firm. The virtual office made it appear as
27 if the auditing firm leased office space in San Francisco’s financial district. Hu paid for the
28 virtual office on his credit card. By failing to disclose Hu’s arrangements on behalf of the

1 auditing firm, Hu and the Asenqua defendants falsely represented that the Asenqua hedge
2 funds' financial statements had been subjected to an "independent" review by an audit firm
3 and misled investors into believing that the statements were reliable.

4 31. By making materially false and misleading representations in the hedge fund
5 statements provided to the investors, and by omitting to state material facts that were
6 necessary to make representations made in the statements not misleading, Hu acted knowingly
7 or recklessly. Each of the Asenqua defendants were controlled by Hu, and each therefore also
8 acted knowingly or recklessly in making material misrepresentations and omissions of
9 material fact to investors in the hedge fund statements.

10 **Hu and the Asenqua Defendants Have Misappropriated Investor Funds**

11 32. Hu and the Asenqua defendants misappropriated investor funds. They did so at
12 various times from 2001 through 2008 by using the funds for unauthorized purposes and
13 transferring them to accounts under Hu's control, and they continue to do so by refusing to
14 return funds in response to investors' requests.

15 33. The investment agreements Hu and the Asenqua hedge funds provided to
16 investors stated that a "master fund" would pool assets from the Asenqua hedge funds and
17 allocate fees and returns among the investors. Hu and the Asenqua defendants, however, did
18 not deposit directly all investor funds into financial accounts held in the name of the master
19 fund specified in the investment agreement.

20 34. For example, in February 2007, two individuals invested approximately
21 \$300,000 in the AQC Fixed Income Arbitrage Fund, LP, an Asenqua hedge fund managed by
22 Hu and defendant AQC Asset Management, Ltd. Within days, Hu transferred \$200,000 of the
23 investors' funds to an account held in the name of an unrelated business in Taipei. Hu and the
24 Asenqua defendants did not inform investors of the transfer.

25 35. In June 2007, Hu transferred \$280,000 of investors' funds out of an account
26 held in the name of defendant Fireside Capital Management, Ltd. into an account designated
27 to hold Hu's personal assets. Hu and the Asenqua defendants did not inform investors of the
28 transfer.

1 36. In 2005, Hu told investors that the Asenqua hedge funds had to be relocated to
2 Singapore. Hu claimed that burdensome tax regulations, as well as “privacy concerns,” made
3 the transfer of the hedge funds, and the investors’ money, out of the United States necessary.

4 37. In connection with the transfer of the Asenqua funds to Singapore, Hu
5 provided certain investors with new private placement memoranda and subscription
6 agreements. The private placement memoranda and subscription agreements included false
7 representations that the new Asenqua hedge fund had retained an independent auditor and a
8 fund administrator, and that a prominent international law firm had been retained as counsel to
9 the new Asenqua hedge fund. At Hu’s direction, investors transferred their prior interests in
10 various Asenqua hedge funds into limited partnership interests in the new Asenqua hedge
11 fund, the Fireside LS Fund, LP. Hu and defendant Fireside Capital Management, Ltd.
12 managed the assets of the Fireside LS Fund, LP.

13 38. On more than 50 occasions from November 2005 to December 2008, Hu
14 transferred investor funds to businesses and persons unrelated to the specified master fund.
15 Hu and the Asenqua defendants did not inform investors of the transfers.

16 39. In 2008, investors requested that Hu and the Asenqua defendants redeem their
17 investments in the Asenqua hedge funds. Hu failed to return any funds to all but two of the
18 eight investors who requested redemption. The two investors received less than they
19 requested, and far less than the value Hu and the Asenqua defendants had represented their
20 investment was then worth.

21 40. By January 2009, Hu stopped returning investors’ telephone calls and e-mail
22 messages. Also, Hu and the Asenqua defendants stopped providing quarterly statements for
23 the Asenqua hedge funds, having provided the last statements in approximately the first or
24 second quarter of 2008.

25 41. In Hu’s last contact with investors, Hu communicated from Hong Kong. In
26 December 2008, Hu told one investor that he is continuing to solicit new investors in the
27 Asenqua hedge funds.

28

1 42. By making materially false and misleading representations to investors in order
2 to transfer their funds, including in the private placement memoranda and subscription
3 agreements, and by omitting to state material facts that were necessary to make
4 representations made not misleading, Hu acted knowingly or recklessly. Furthermore, in
5 misappropriating investor funds, and in making use of investor funds contrary to the disclosed
6 purposes, and in failing to return investor funds, Hu acted knowingly or recklessly. Each of
7 the Asenqua defendants were controlled by Hu, and each therefore also acted knowingly or
8 recklessly in misappropriating investor funds.

9 **FIRST CLAIM FOR RELIEF**

10 *Violations of Section 10(b) of the Exchange Act and Rule 10b-5 by All Defendants*

11 43. The Commission realleges and incorporates by reference Paragraph Nos. 1
12 through 42, above.

13 44. By engaging in the acts and conduct alleged above, Hu and the Asenqua
14 defendants, directly or indirectly, in connection with the purchase or sale of securities, by the
15 use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a
16 national securities exchange, with scienter: (a) employed devices, schemes, or artifices to
17 defraud; (b) made untrue statements of material fact or omitted to state material facts
18 necessary in order to make the statements made, in light of the circumstances under which
19 they were made, not misleading; and (c) engaged in acts, practices, or courses of business
20 which operated or would operate as a fraud or deceit upon other persons, including purchasers
21 and sellers of securities.

22 45. By engaging in the forgoing conduct, Hu and the Asenqua defendants have
23 violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the
24 Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

25 **SECOND CLAIM FOR RELIEF**

26 *Violations of Section 17(a) of the Securities Act by All Defendants*

27 46. The Commission realleges and incorporates by reference Paragraph Nos. 1
28 through 42, above.

1 47. By engaging in the acts and conduct alleged above, Hu and the Asenqua
2 defendants, directly or indirectly, in the offer or sale of securities, by use of the means or
3 instruments of transportation or communication in interstate commerce or by use of the mails:
4 (a) with scienter employed devices, schemes, or artifices to defraud; (b) obtained money or
5 property by means of untrue statements of material fact or by omitting to state a material fact
6 necessary in order to make statements made, in the light of the circumstances under which
7 they were made, not misleading; and (c) engaged in transactions, practices, or courses of
8 business which operated or would operate as a fraud or deceit upon the purchasers.

9 48. By engaging in the forgoing conduct, Hu and the Asenqua defendants have
10 violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the
11 Securities Act [15 U.S.C. § 77q(a)].

12 **THIRD CLAIM FOR RELIEF**

13 *Violations of Section 206(1) and 206(2) of the Advisers Act by Hu*

14 49. The Commission realleges and incorporates by reference Paragraph Nos. 1
15 through 42, above.

16 50. At all relevant times, Hu acted as an investment adviser, as defined by
17 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the Asenqua hedge
18 funds and investors in the Asenqua hedge funds.

19 51. By engaging in the acts and conduct alleged above, Hu, directly or indirectly,
20 through use of the means or instruments of transportation or communication in interstate
21 commerce or of the mails, and while engaged in the business of advising others for
22 compensation as to the advisability of investing in, purchasing, or selling securities:
23 (a) employed devices, schemes, and artifices to defraud; and (b) engaged in acts, practices, or
24 courses of business which operated or would operate as a fraud or deceit upon clients or
25 prospective clients.

26 52. By engaging in the forgoing conduct, Hu has violated, and unless restrained
27 and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act
28 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FOURTH CLAIM FOR RELIEF

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 by Hu

53. The Commission realleges and incorporates by reference Paragraph Nos. 1 through 42, above.

54. At all relevant times, Hu acted as an investment adviser, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the Asenqua hedge funds and investors in the Asenqua hedge funds.

55. At all relevant times, the Asenqua hedge funds were pooled investment vehicles, as defined by Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8(b)].

56. By engaging in the acts and conduct alleged above, Hu, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, has engaged in transactions, practices, and courses of business which operate as a fraud or deceit upon investors in the Asenqua hedge funds. Hu made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the Asenqua hedge funds, and otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the Asenqua hedge funds.

57. By engaging in the forgoing conduct, Hu violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin Hu and the Asenqua defendants temporarily, preliminarily, and permanently from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)],

1 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R.
2 § 240.10b-5].

3 II.

4 Enjoin Hu temporarily, preliminarily, and permanently from directly or indirectly
5 violating Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1),
6 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

7 III.

8 Enter an order freezing the assets of Hu and the Asenqua defendants.

9 IV.

10 Order Hu and the Asenqua defendants to provide a verified accounting of the Asenqua
11 hedge funds, identifying: (i) the location and disposition of all funds received from investors;
12 (ii) the location and disposition of all accounts controlled by defendants or held for their
13 benefit; and (iii) the location and value of all investor, as well as personal or other assets
14 currently held by defendants, or under defendants' control or over which they may exercise
15 actual or apparent authority.

16 V.

17 Order Hu and the Asenqua defendants to repatriate to the territory of the United States
18 all assets and funds received from, or held for the benefit of, investors in the Asenqua hedge
19 funds.

20 VI.

21 Order Hu and the Asenqua defendants to disgorge their ill-gotten gains according to
22 proof, plus prejudgment interest thereon.

23 VII.

24 Order Hu to pay civil penalties pursuant to Section 20(d) of the Securities Act
25 [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and
26 Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

VIII.

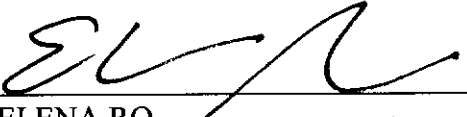
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2 Retain jurisdiction of this action in accordance with the principles of equity and the
3 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders
4 and decrees that may be entered, or to entertain any suitable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

6 IX.

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

9
10 DATED: March 2, 2009

Respectfully submitted,

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12 
13 _____
ELENA RO

14 Attorney for Plaintiff
15 SECURITIES AND EXCHANGE
16 COMMISSION
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EXHIBIT B

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E-Filed on 3/27/09

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 SECURITIES AND EXCHANGE COMMISSION,

Case No. 09-cv-01177 RMW

13 Plaintiff,

14 vs.

PRELIMINARY INJUNCTION

15 ALBERT K. HU,
ASENQUA, INC.,
16 ASENUA CAPITAL MANAGEMENT, LLC,
AQC ASSET MANAGEMENT, LTD.; and
17 FIRESIDE CAPITAL MANAGEMENT, LTD.,

18 Defendants.

1 This matter came before the Court on an Order to Show Cause why a preliminary
2 injunction should not be issued. The Court has received and considered the complaint, the *ex*
3 *parte* application submitted by the Securities and Exchange Commission (the “Commission”),
4 the Commission’s memorandum of points and authorities, the declarations of Lynne Born,
5 Lucas Chang, Andrea Dulberg, Jay Gould, Robert Kafin, Fuyuan Lin, Jeffrey B. Maletta,
6 Elena Ro, Sundara Sim, Robert L. Tashjian, Zhou Ye, and Marc Verdiell, and all exhibits
7 attached to those declarations, the Commission’s statement in support of a preliminary
8 injunction, and all other submissions, written or oral, at or before the hearing.

9 Good cause appearing, the Court finds:

10 1. This Court has jurisdiction over the parties and the subject matter of this
11 action, pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 (“Securities Act”)
12 [15 U.S.C. §§ 77t(b) and 77v(a)], Sections 21(d), 21(e), and 27 of the Securities Exchange
13 Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209 and
14 214 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-9 and
15 80b-14].

16 2. This District is an appropriate venue for this action pursuant to Section 22 of
17 the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and
18 Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

19 3. The Commission has demonstrated good cause, based on the Declaration of
20 Robert L. Tashjian in Support of Preliminary Injunction, to find that defendant Albert K. Hu
21 and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management,
22 Ltd., and Fireside Capital Management, Ltd. (collectively, the “Asenqua defendants”)
23 received actual notice of the Temporary Restraining Order and Order to Show Cause, as well
24 as the Commission’s application for the temporary restraining order and its memorandum in
25 support of the application.

26 4. The Commission has demonstrated a likelihood of success on the merits of its
27 action and that the balance of hardships weighs in its favor. With respect to the balance of
28 hardships, the public interest weighs strongly in favor of issuance of injunctive relief.

1 5. Good cause exists to believe that defendants Albert K. Hu and Asenqua, Inc.,
2 Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
3 Management, Ltd. (collectively, the “Asenqua defendants”) have engaged in, are engaging in,
4 and are about to engage in transactions, acts, practices and courses of business which
5 constitute and will constitute violations of Section 17(a) of the Securities Act [15 U.S.C.
6 § 17q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78(j)] and Rule 10b-5 thereunder
7 [17 C.F.R. § 240.10b-5], and Sections 206(1), 206(2), and 206(4) of the Advisers Act [15
8 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R.
9 § 275.206(4)-8].

10 6. Good cause exists to believe that immediate and irreparable injury will occur
11 with respect to investor funds, including those held by each individually and those they hold
12 jointly, which would adversely affect the ability of the Court to grant final effective relief in
13 equity and at law, unless the Hu and the Asenqua defendants are restrained and enjoined from
14 controlling those assets and are required to repatriate assets.

15 7. Good cause exists to believe that there is an immediate and irreparable risk of
16 injury to or loss of defendants’ records, unless Hu and the Asenqua defendants are restrained
17 and enjoined from destroying them.

18 8. Good cause exists to permit immediate discovery by the parties under the
19 Federal Rules of Civil Procedure to allow the parties to present facts to the Court at a hearing,
20 if required, to determine whether this injunction and asset freeze should be modified,
21 extended, or dissolved.

22 9. Good cause exists for an order, pursuant to Rules 4(f)(3) and 4(h)(2) of the
23 Federal Rules of Civil Procedure, permitting service by means not prohibited by international
24 agreement. Specifically, the Court finds good cause to authorize service by e-mail on Hu
25 outside of the United States. As demonstrated in the Commission’s supporting papers,
26 investors received e-mail messages from Hu sent from the following e-mail addresses:

27 [REDACTED] (see Lin Decl. ¶ 17 (as of September 3, 2008); Verdiell Decl. ¶ 9 (as of
28 September 18, 2008); Ye ¶ 5 (as of September 19, 2008)); ahu@asenqua.com (see Lin Decl.

1 ¶ 17 (in 2005)); and ahu@agr.sg (*see* Verdiell Decl. ¶ 9 (as of April 11, 2008); Ye Decl. ¶ 5
2 (as of December 3, 2008)). *Cf.* Declaration of Robert L. Tashjian in Support of Preliminary
3 Injunction ¶ 6 (indicating that ahu@asenqua.com is no longer active). The Court finds that
4 service by e-mail at [REDACTED] and [REDACTED] is reasonably calculated to apprise
5 Hu of the pendency of the Commission's action and further filings. Similarly, the Court finds
6 that service by International FedEx (or by an international courier of equivalent reliability) on
7 defendants AQC Asset Management, Ltd. and Fireside Capital Management, Ltd. in the
8 British Virgin Islands is reasonably calculated to apprise them of the pendency of the
9 Commission's action and further filings.

10 Therefore,

11 I.

12 IT IS HEREBY ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
13 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
14 Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and
15 those persons in active concert or participation with any of them, who receive actual notice of
16 this Order, by personal service or otherwise, and each of them, are restrained and enjoined
17 from, in the offer or sale of any securities, by the use of any means or instruments of
18 transportation or communication in interstate commerce or by the use of the mails, directly or
19 indirectly:

20 A. employing any device, scheme, or artifice to defraud;

21 B. obtaining money or property by means of any untrue statement of a material
22 fact or any omission to state a material fact necessary in order to make the
23 statements made, in light of the circumstances under which they were made,
24 not misleading; or

25 C. engaging in any transaction, practice, or course of business which operates or
26 would operate as a fraud or deceit upon the purchaser;

27 in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].
28

II.

1
2 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
3 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
4 Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and
5 those persons in active concert or participation with any of them, who receive actual notice of
6 this Order, by personal service or otherwise, and each of them, are restrained and enjoined
7 from, directly or indirectly, in connection with the purchase or sale of any securities, by the
8 use of any means or instrumentality of interstate commerce, or of the mails, or of any facility
9 of any national securities exchange:

- 10 A. employing any device, scheme or artifice to defraud;
- 11 B. making any untrue statement of a material fact or omitting to state a material
12 fact necessary in order to make the statements made, in the light of the
13 circumstances under which they were made, not misleading; or
- 14 C. engaging in any act, practice, or course of business which operates or would
15 operate as a fraud or deceit upon any person;

16 in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
17 thereunder [17 C.F.R. § 240.10b-5].

18 III.

19 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and his officers, agents,
20 servants, employees, attorneys, and those persons in active concert or participation with any
21 of them, who receive actual notice of this Order, by personal service or otherwise, and each of
22 them, is restrained and enjoined from, directly or indirectly, by the use of any means or
23 instrumentality of interstate commerce:

- 24 A. employing any device, scheme, or artifice to defraud any client or prospective
25 client; or
- 26 B. engaging in any transaction, practice or course of business which operates as a
27 fraud or deceit upon any client or prospective client;

1 in violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and
2 80b-6(2)].

3 IV.

4 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and his officers, agents,
5 servants, employees, attorneys, and those persons in active concert or participation with any
6 of them, who receive actual notice of this Order, by personal service or otherwise, and each of
7 them, is restrained and enjoined from, directly or indirectly, by the use of any means or
8 instrumentality of interstate commerce:

9 A. making any untrue statement of a material fact or omitting to state a material
10 fact necessary in order to make the statements made, in the light of the
11 circumstances under which they were made, not misleading, to any investor or
12 prospective investor in a pooled investment vehicle; or

13 B. otherwise engaging in any act, practice or course of business that is fraudulent,
14 deceptive, or manipulative with respect to any investor or prospective investor
15 in a pooled investment vehicle;

16 in violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8
17 thereunder [17 C.F.R. § 275.206(4)-8].

18 V.

19 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
20 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
21 Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and
22 those persons in active concert or participation with any of them, who receive actual notice of
23 this Order, by personal service or otherwise, and each of them, are restrained and enjoined
24 from transferring, assigning, selling, hypothecating, changing, wasting, dissipating,
25 converting, concealing, encumbering, or otherwise disposing of, in any manner, funds, assets,
26 securities, claims, or other property wherever located in their possession or under their
27 control, including but not limited to the assets in accounts owned, controlled, or opened for
28 their benefit at the following financial institutions and brokerage firms:

- 1 1. Bank of America
- 2 2. Bank Sinopac
- 3 3. China Trust Commercial Bank (Taiwan)
- 4 4. China Trust Commercial Bank, Ltd (Hong Kong)
- 5 5. Cosmos Bank
- 6 6. Credit Suisse
- 7 7. E. Sun Commercial Bank
- 8 8. Far Eastern International Bank
- 9 9. First Republic Bank
- 10 10. Hang Seng Bank
- 11 11. Hong Kong and Shanghai Banking Corp. (HSBC)
- 12 12. Hua Nan Commercial Bank, Ltd.
- 13 13. UBS AG
- 14 14. US Bank
- 15 15. Sarasin-Rabo (Asia) Bank
- 16 16. Sunny Bank
- 17 17. Washington Mutual Bank
- 18 18. Wells Fargo Bank

19 VI.

20 IT IS FURTHER ORDERED THAT an immediate freeze shall be placed on all
21 monies and assets in all accounts at any bank, financial institution or brokerage firm holding
22 accounts in the name or for the benefit of defendant Albert K. Hu or defendants Asenqua,
23 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., or Fireside Capital
24 Management, Ltd., and that all banks, financial institutions and brokerage firms holding any
25 such account shall not permit transactions in such accounts without further order of the Court.

26 VII.

27 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
28 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital

1 Management, Ltd. shall within 21 days of this Order submit to the Court a verified accounting
2 identifying: (i) the location and disposition of all funds received from investors; (ii) the
3 location and disposition of all accounts controlled by defendants or held for their benefit; and
4 (iii) the location and value of all investor assets currently held by defendants, as well as all
5 other assets under defendants' control or over which they may exercise actual or apparent
6 authority, including without limitation any assets over which they claim a right of ownership or
7 a beneficial interest.

8 VIII.

9 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
10 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
11 Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and
12 those persons in active concert or participation with any of them, who receive actual notice of
13 this Order, by personal service or otherwise, and each of them, within ten (10) days of entry
14 of this order, shall repatriate, and take such steps as are necessary to repatriate to the territory
15 of the United States of America, any and all assets and funds, held by or in the name of or for
16 the benefit of defendants, or over which any of them maintained or maintains or exercises or
17 exercised control. Further, with ten (10) days of such repatriation, defendants will file with
18 the Court notice of the place where the assets are held within the United States and the steps
19 taken to maintain their safekeeping.

20 IX.

21 IT IS FURTHER ORDERED THAT the parties may immediately take discovery by
22 any means authorized under the Federal Rules of Civil Procedure.

23 X.

24 IT IS FURTHER ORDERED THAT defendant Albert K. Hu and defendants Asenqua,
25 Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital
26 Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and
27 those persons in active concert or participation with any of them, who receive actual notice of
28 this Order, by personal service or otherwise, and each of them, shall keep, preserve and

1 maintain all of their books, records, papers, account statements, computers, e-mail, electronic
2 data, journals, data bases, calendars, hard drives, flash drives, or any other documents,
3 materials and media (however created, produced, or stored) that relate to any of the matters
4 raised in this proceeding.

5 XI.

6 IT IS FURTHER ORDERED THAT, pursuant to Rule 4(f)(3) of the Federal Rules of
7 Civil Procedure, in addition to service otherwise permitted by rule, service on defendant
8 Albert K. Hu of all papers in this case, including without limitation all pleadings, orders,
9 motions, discovery requests and responses, and all documents otherwise authorized by rule to
10 be filed or served on a party, may be served by e-mail to [REDACTED] and

11 [REDACTED] In addition, the Court orders the Commission to make a good faith effort to
12 serve Hu personally with this Preliminary Injunction if such service is not prohibited by
13 international agreement.

14 XII.

15 IT IS FURTHER ORDERED THAT, pursuant to Rules 4(f)(3) and 4(h)(2) of the
16 Federal Rules of Civil Procedure, in addition to service otherwise permitted by rule, service
17 on defendants AQC Asset Management Ltd. and Fireside Capital Management, Ltd. in the
18 British Virgin Islands, of all papers in this case, including without limitation all pleadings,
19 orders, motions, discovery requests and responses, and all documents otherwise authorized by
20 rule to be filed or served on a party, may be served by International FedEx (or by an
21 international courier of equivalent reliability).

22 Dated the 27 day of March, 2009.

23
24 

25
26 UNITED STATES DISTRICT JUDGE
27
28

EXHIBIT C

No. _____

CR - 09 00487 JW

HBL

UNITED STATES DISTRICT COURT

FILED

NORTHERN DISTRICT OF CALIFORNIA

2009 MAY -6 P 2:06

SAN JOSE DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

E-filing

THE UNITED STATES OF AMERICA

vs.

ALBERT KE-JENG HU,

a/k/a Ke-Jeng Hu,

INDICTMENT

COUNTS ONE THROUGH SEVEN: (18 U.S.C. § 1343 – Wire Fraud)

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(c) and 28 U.S.C. § 2461(c) - Forfeiture of Wire Fraud Proceeds)

A true bill.



Foreperson

Filed in open court this 6 day of May

A.D. 2008



UNITED STATES MAGISTRATE JUDGE

Bail. \$ NO BAIL WARRANT

*C
JW*

1 JOSEPH P. RUSSONIELLO (CASBN 44332)
United States Attorney

FILED

2009 MAY -6 P 2:06

U.S. DISTRICT COURT
NO. DIST. OF CA.

E-filing

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

JW

11
12 UNITED STATES OF AMERICA,

CR -09 00487

13 Plaintiff,

14 v.

VIOLATIONS: 18 U.S.C. § 1343 – Wire
Fraud; 18 U.S.C. § 981(a)(1)(C) – Civil
Forfeiture; 28 U.S.C. § 2461(c) – Criminal
Forfeiture

HRL

15 ALBERT KE-JENG HU,
16 a/k/a Ke-Jeng Hu,

SAN JOSE VENUE

17 Defendant.
18

19
20 INDICTMENT

21 The Grand Jury charges:

22 INTRODUCTORY ALLEGATIONS

23 At all times relevant to this Indictment:

- 24 1. The Asenqua Beta Fund was a hedge fund managed in Sunnyvale, California.
- 25 2. The Fireside LS Fund was a hedge fund managed in Sunnyvale, California.
- 26 3. Defendant Albert Ke-Jeng Hu, a/k/a Ke-Jung Hu, was a resident of the Northern

27 District of California involved in the administration and operation of the Asenqua Beta Fund and
28 the Fireside LS Fund. Defendant Hu also operated a company, Asenqua Ventures, located in

INDICTMENT

OS Received 09/15/2021

1 Sunnyvale, California. Defendant Hu solicited investments from potential investors for both the
2 Asenqua Beta Fund and the Fireside LS Fund.

3 4. Defendant Hu maintained a bank account at a Bank of America in San Francisco,
4 California under the name Asenqua Capital LLC. Defendant Hu directed investors in the
5 Asenqua Beta Fund to wire investment funds into this bank account. Defendant Hu was a
6 signatory on the signature card for this account. Defendant Hu also maintained a bank account at
7 a Credit Suisse in Singapore. Defendant Hu directed investors in the Fireside LS Fund to wire
8 investment funds into this bank account. Defendant Hu was a signatory on the signature card for
9 this account.

10 THE SCHEME TO DEFRAUD

11 5. Beginning in approximately September 1, 2002 and continuing until June 11,
12 2008, in the Northern District of California and elsewhere, the defendant, Albert Ke-Jung Hu,
13 along with other persons known and unknown, did knowingly devise, and intend to devise, a
14 material scheme and artifice to defraud and to obtain money by means of materially false and
15 fraudulent pretenses, representations, and promises, knowing that those pretenses, representations
16 and promises were false when made.

17 6. The purpose of the scheme to defraud was for defendant Hu, a resident of
18 California, to enrich himself by inducing various investors to wire money to him based upon
19 defendant Hu's false representations regarding his hedge funds.

20 7. Defendant Hu and others told potential investors that they were operating hedge
21 funds under the names Asenqua Beta Fund and Fireside LS Fund out of locations in Sunnyvale,
22 San Francisco and elsewhere in the Northern District of California.

23 8. It was further part of the scheme to defraud that defendant Hu and others induced
24 investors to give Hu money by making false representations regarding entities that were
25 supposedly affiliated with these hedge funds, such as prominent law firms, a fund administrator,
26 an independent auditing firm, and a chief financial officer (CFO). In reality, neither the law
27 firms, the fund administrator, nor the CFO ever had any connection with the Asenqua Beta Fund
28 or Fireside LS Fund. Furthermore, the so-called "independent" auditing firm was a facade

1 defendant Hu fabricated to lure investors to invest in his funds.

2 9. It was further part of the scheme to defraud that defendant Hu used the names of
3 these entities to legitimize the hedge funds and give the perception that the hedge funds were
4 secure.

5 10. It was further part of the scheme to defraud that defendant Hu enticed victims to
6 invest by promising them rates of returns as high as 20-30% a year.

7 11. It was further part of the scheme to defraud that once defendant Hu obtained
8 money from investors, he did not invest those funds as promised but instead converted that
9 money for his own personal use and for other non-investment purposes.

10 MANNER AND MEANS

11 12. In furtherance of the scheme to defraud, defendant Hu and his representatives
12 communicated to potential investors (through verbal statements as well as investment-related
13 documents such as subscription agreements, private placement memoranda (PPM) and quarterly
14 statements) one and more of the following false statements to induce them to invest:

- 15 (a) That GlobeOp Financial Services, a popular and well-known fund
16 administrator for hedge funds, was the fund administrator for defendant
17 Hu's Fireside LS Fund.
- 18 (b) That the law firm Pillsbury Winthrop Shaw Pittman LLP was engaged as
19 legal counsel for defendant Hu's Fireside LS Fund.
- 20 (c) That the law firm Proskauer Rose LLP was engaged as legal counsel for
21 defendant Hu's Fireside LS Fund.
- 22 (d) That the law firm Heller Ehrman LLP was as of February 2005 engaged as
23 legal counsel for defendant Hu's Asenqua Beta Fund.
- 24 (e) That the firm "Castillo, Lyn, Cohen & Vijay" was an independent auditor
25 for defendant Hu's Asenqua Beta Fund and Fireside LS Fund.
- 26 (f) That an individual named Tony Pollace was the chief financial officer of
27 the Asenqua Beta Fund and Fireside LS Fund and that Pollace had signed
28 off on quarterly financial statements of those hedge funds which defendant

1 Hu provided to investors.

2 (g) That as of May 2007 the minimum amount individuals were investing in
3 the Fireside LS Fund to date was \$1,000,000.

4 (h) That defendant Hu would pay investors rates of return as high as 20% to
5 30% annually and that these were the historic rates of return for his hedge
6 funds,

7 (i) That defendant Hu would obtain these high rate returns for investors
8 primarily by investing their funds in technology-related securities.

9 13. In fact, each of the representations described in paragraph 12 was knowingly false
10 when made, in that:

11 (a) Defendant Hu knew that GlobeOp Financial Services had never been the
12 fund administrator for his Fireside LS Fund.

13 (b) Defendant Hu knew that Pillsbury, Winthrop, Shaw, and Pittman had
14 never been legal counsel for his Fireside LS Fund.

15 (c) Defendant Hu knew that the law firm Proskauer Rose LLP had never been
16 legal counsel for the Fireside LS Fund.

17 (d) Defendant Hu knew that the law firm Heller Ehrman was not legal counsel
18 for the Asenqua Beta Fund in February 2005.

19 (e) Defendant Hu knew that "Castillo, Lyn, Cohen & Vijay" was not an
20 independent auditor for defendant Hu's Asenqua Beta Fund and Fireside
21 LS Fund, but rather a shell auditing firm defendant Hu and his
22 representatives had created to facilitate his fraudulent scheme.

23 (f) Defendant Hu knew that Tony Pollace had never been chief financial
24 officer of the Fireside LS Fund or the Asenqua Beta Fund, and that the
25 purported signature of "Pollace" on quarterly financial statements
26 defendant Hu provided investors was in fact a forgery.

27 (g) Defendant Hu knew that multiple individual investors had invested less
28 than \$1,000,000 in the Fireside LS Fund as of May 2007.

1 (h) Defendant Hu knew that he could not provide investors in his hedge funds
2 with 20-30% annual return and had not done so in the past.

3 (i) Defendant Hu knew that he was diverting the majority of investors funds
4 for non-investment purposes rather than investing those funds in the
5 manner he had promised.

6 14. As a result of Hu's false representations, investors in the Northern District of
7 California directed their brokers to wire money to accounts Hu and representatives controlled
8 both in the United States and abroad. In all, defendant Hu raised a total of at least \$2,700,000
9 from investors based on his false statements, but failed to invest this money in the manner that he
10 had promised, failed to provide the investors with the interest they had been promised, and failed
11 to repay their principal when requested. Defendant Hu instead converted the majority of
12 investors' funds for his and others' personal use, diverted hundreds of thousands of dollars
13 abroad, and used investor funds to make partial payments to at least one other investor in a
14 manner consistent with a "Ponzi" fraud scheme.

15 COUNTS ONE THROUGH SEVEN: (18 U.S.C. § 1343 – Wire Fraud)

16 15. The factual allegations contained in paragraphs 1 through 14 are incorporated as if
17 fully set forth here.

18 16. On or about the dates indicated for each of Counts One through Seven below, in
19 the Northern District of California and elsewhere, the defendant,

20 ALBERT KE-JENG HU,
21 a/k/a Ke-Jeng Hu,

22 and other persons known and unknown to the grand jury, having knowingly and intentionally
23 devised a material scheme and artifice to defraud and to obtain money and property by means of
24 materially false and fraudulent pretenses, representations, and promises, did for the purpose of
25 executing such scheme and artifice knowingly cause to be transmitted in interstate and foreign
26 commerce certain writings, signs, signals, and pictures, that is, wire transfers of funds, as further
27 set forth below:
28

COUNT	DATE	ITEM	WIRED FROM	WIRED TO
1	2/8/05	\$100,000 wire transfer	Merrill Lynch New York, New York	Bank of America San Francisco, California
2	2/23/05	\$100,000 wire transfer	UBS New York, New York	Bank of America San Francisco, California
3	7/6/05	\$250,000 wire transfer	Merrill Lynch New York, New York	Bank of America San Francisco, California
4	4/27/07	wire communication directing \$2,000,000 wire transfer	Fidelity Cupertino, California	Fidelity Boston, Massachusetts
5	4/30/07	\$2,000,000 wire transfer	Fidelity Boston, Massachusetts	Credit Suisse Singapore
6	6/19/07	wire communication directing \$250,000 wire transfer	Merrill Lynch San Jose, California.	Merrill Lynch New York, New York
7	6/19/07	\$250,000 wire transfer	Merrill Lynch New York, New York	Credit Suisse Singapore

All in violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(c) and 28 U.S.C. § 2461(c) - Forfeiture of Wire Fraud Proceeds)

17. The allegations of paragraphs 1 through 16 of this Indictment are realleged and incorporated as if fully set forth herein.

18. Upon a conviction of any of the offenses alleged in Counts One through Seven above, defendant

ALBERT KE-JENG HU,
a/k/a Ke-Jeng Hu,

shall forfeit to the United States, all property (real and personal) which constitutes proceeds and is derived from proceeds traceable to said offense(s), pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), including but not limited to the following: a. a sum of money not less than \$2,700,000 representing the amount of proceeds obtained as a result of the offense

19. If any of the above described forfeitable property, as a result of any act or omission

1 of the defendant:

2 (a) cannot be located upon the exercise of due diligence;

3 (b) has been transferred or sold to, or deposited with, a third person;

4 (c) has been placed beyond the jurisdiction of the Court;

5 (d) has been substantially diminished in value; or

6 (e) has been commingled with other property which cannot be subdivided without

7 difficulty; any and all interest defendant has in other property shall be vested in the United States

8 and forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as

9 incorporated by Title 28, United States Code, Section 2461(c) and Rule 32.2 of the Federal Rules

10 of Criminal Procedure.


11 DATED: 5/6/09

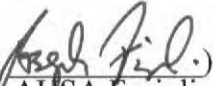
A TRUE BILL.


FOREPERSON

14 JOSEPH P. RUSSONIELLO

United States Attorney

15 
16 JEFFREY NEDROW
17 Deputy Chief, San Jose Branch Office

18 (Approved as to form: )
19 AUSA Fazioli

20

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DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

COUNTS ONE THROUGH SEVEN: (18

U.S.C. § 1343 - Wire Fraud)

FORFEITURE ALLEGATION: (18 U.S.C. §§

981(a)(1)(c) and 28 U.S.C. § 2461(c) -

Forfeiture of Wire Fraud Proceeds)

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:

20 years imprisonment (per count)

\$250,000 fine (per count)

3 years supervised release

\$100 special assessment

E-filing

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT - U.S.

ALBERT KE-JENG HU, a/k/a Ke-Jeng Hu,

DISTRICT COURT NUMBER

CR - 09 00487

JW

HRL

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding.
If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction
- 6) Awaiting trial on other charges

Fed'l State

If answer to (6) is "Yes", show name of institution

HONG KONG

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
S/A Gregory Fine - FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. Att'y Defense

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

09-70057-PVT

Name and Office of Person Furnishing Information on THIS FORM

JOSEPH P. RUSSONIELLO

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

JOSEPH A. FAZIOLI

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: NO BAIL

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

EXHIBIT D

FILED

JUN 20 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERT KE-JENG HU,

Defendant.

Case No. CR-09-00487-RMW

VERDICT FORM
[Corrected]

We, the members of the jury in the above-entitled action, find the defendant, Albert Ke-Jeng

Hu:

COUNT ONE:

1. Guilty
(Guilty/Not Guilty) of the charge of wire fraud with respect to an interstate
wire transfer of \$100,000 sent by or on the behalf of Mr. Lin on or about February 8, 2005, and
described in instruction 13.

COUNT TWO:

2. Guilty
(Guilty/Not Guilty) of the charge of wire fraud with respect to an interstate
wire transfer of \$100,000 sent by or on the behalf of Mr. Lin on or about February 23, 2005, and
described in instruction 13.

Case No. CR-09-00487-RMW - Verdict Form

OS Received 09/15/2021

1 **COUNT THREE:**

2 3. Guilty of the charge of wire fraud with respect to an interstate
(Guilty/Not Guilty)
3 wire transfer of \$250,000 sent by or on the behalf of Mr. Lin on or about July 6, 2005, and described
4 in instruction 13.

5 **COUNT FOUR:**

6 4. Guilty of the charge of wire fraud with respect to an interstate wire
(Guilty/Not Guilty)
7 communication directing that a \$2,000,000 wire transfer be sent by or on the behalf of Mr. Verdiell
8 on or about April 27, 2007, and described in instruction 13.

9 **COUNT FIVE:**

10 5. Guilty of the charge of wire fraud with respect to an international
(Guilty/Not Guilty)
11 wire transfer of \$2,000,000 sent by or on the behalf of Mr. Verdiell on or about April 30, 2007, and
12 described in instruction 13.

13 **COUNT SIX:**

14 6. Guilty of the charge of wire fraud with respect to an interstate wire
(Guilty/Not Guilty)
15 communication directing that a \$250,000 wire transfer be sent by or on the behalf of Mr. Lin on or
16 about June 19, 2007, and described in instruction 13.

17 **COUNT SEVEN:**

18 7. Guilty of the charge of wire fraud with respect to an international
(Guilty/Not Guilty)
19 wire transfer of \$250,000 sent by or on the behalf of Mr. Lin on or about June 19, 2007, and
20 described in instruction 13.

21 DATED: 6/20/12

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FILED on 6/20/12, at 4 o'clock and 21 minutes P.m.

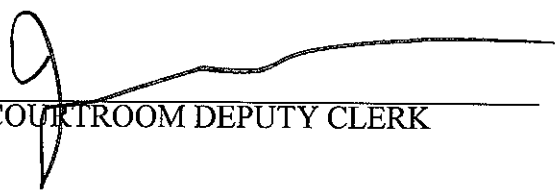
BY: 
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EXHIBIT E

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES,) CR-09-00487-RMW
)
PLAINTIFF,)
) JUNE 18, 2012
VS.)
) VOLUME 6
ALBERT KE-JENG HU,)
)
DEFENDANT.) PAGES 766-917
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE
BY: JOSEPH FAZIOLI
TIM LUCEY
150 S. ALMADEN BLVD, STE 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: ATTORNEY AT LAW
BY: JERRY FONG
PO BOX 1040
PALO ALTO, CA 94302-1040

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

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INDEX OF WITNESSES

PLAINTIFF'S

GREGORY FINE

DIRECT EXAM BY MR. LUCEY P. 776
CROSS-EXAM BY MR. FONG P. 835
REDIRECT EXAM BY MR. LUCEY P. 862, 876

ANTHONY POLLACE

DIRECT EXAM BY MR. FAZIOLI P. 880
CROSS-EXAM BY MR. FONG P. 904

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INDEX OF EXHIBITS

MARKED

ADMITTED

PLAINTIFF'S

263-272

P. 780

1 THEN HARD COPIES FOR EVERYONE IN THE COURTROOM. WE
2 HAVE THOSE AVAILABLE IF THE COURT IS SO INCLINED

3 THE COURT: THAT'S FINE.

4 MR. FAZIOLI: THANK YOU, YOUR HONOR.

5 MR. FONG: I HAVE NO OBJECTIONS.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THE PRESENCE OF THE JURY:)

8 THE COURT: PLEASE BE SEATED.

9 WELCOME BACK, EVERYBODY, AND I THINK WE
10 ARE READY TO GO.

11 MR. LUCEY: YES, YOUR HONOR. THE
12 GOVERNMENT NOW CALLS SPECIAL AGENT GREG FINE TO THE
13 STAND.

14

15 **GREGORY FINE,**

16 BEING CALLED AS A WITNESS ON BEHALF OF THE
17 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19

20 THE WITNESS: I DO.

21 THE CLERK: FOR THE RECORD PLEASE STATE
22 YOUR FULL NAME AND SPELL YOUR LAST NAME.

23 THE WITNESS: MY NAME IS GREGORY FINE.

24 LAST NAME IS SPELLED F-I-N-E.

25

DIRECT-EXAMINATION BY MR. LUCEY

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BY MR. LUCEY:

Q. GOOD AFTERNOON, SIR.

A. GOOD AFTERNOON.

Q. WHERE DO YOU CURRENTLY WORK?

A. AT THE FEDERAL BUREAU OF INVESTIGATION.

Q. HOW LONG HAVE YOU WORKED WITH THE FEDERAL BUREAU OF INVESTIGATION?

A. FIVE AND A HALF YEARS.

Q. WHAT IS YOUR TITLE?

A. SPECIAL AGENT.

Q. WHAT OFFICE ARE YOU BASED?

A. THE SAN JOSE OFFICE.

Q. AND SPECIAL AGENT FINE, BEFORE WE GO FURTHER INTO YOUR WORK, BACKGROUND COULD YOU TELL US BRIEFLY WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I HAVE A BACHELOR'S DEGREE OF COMPUTER SCIENCE FROM THE UNIVERSITY OF MARYLAND.

Q. GOING BACK TO YOUR WORK EXPERIENCE AT THE FBI, AGENT FINE, ARE YOU ASSIGNED TO A PARTICULAR GROUP WITHIN THE SAN JOSE OFFICE?

A. I AM.

Q. WHAT GROUP IS THAT?

A. THE WHITE COLLAR CRIME SQUAD.

1 Q. HOW LONG HAVE YOU BEEN BASE INDEED THAT
2 PARTICULAR SQUAD?

3 A. FIVE AND A HALF YEARS.

4 Q. GENERALLY THE LENGTH OF YOUR TENURE WITH THE
5 FBI?

6 A. YES.

7 Q. WHAT ARE YOUR RESPONSIBILITIES GENERALLY AS A
8 SPECIAL AGENT WITH THE FBI?

9 A. TO INVESTIGATE FEDERAL CRIMES.

10 Q. HAVE YOU HAD ANY EXPERIENCE PREVIOUSLY TO THIS
11 MATTER BEFORE THE COURT IN INVESTIGATING INVESTMENT
12 FRAUD?

13 A. YES.

14 Q. COULD YOU SPEAK GENERALLY ABOUT THAT
15 EXPERIENCE, WHAT KIND OF MATTERS HAVE YOU HANDLED?

16 A. REGARDING INVESTMENT FRAUD SPECIFICALLY.

17 Q. YES, SIR.

18 A. I PROBABLY WORKED TEN TYPES OF CASES RELATED
19 TO VARIOUS TYPES OF FRAUD RELATED TO INVESTMENT.

20 Q. NOW SPECIAL AGENT FINE, I WANT TO TALK TO YOU
21 ABOUT SOME FINANCIAL DATA IN THIS CASE IN
22 CONNECTION WITH THE DEFENDANT. HAVE YOU REVIEWED
23 DOCUMENTS IN CONNECTION WITH YOUR TESTIMONY HERE
24 TODAY?

25 A. YES.

1 Q. DID THERE COME A TIME WHEN YOU WERE ASKED TO
2 PREPARE CHARTS DEMONSTRATIVES IN CONNECTION WITH
3 YOUR TESTIMONY TODAY?

4 A. YES.

5 Q. AND DID YOU IN FACT REVIEW DOCUMENTS IN
6 CONNECTION WITH THE PREPARATION OF THOSE CHARTS?

7 A. YES.

8 Q. GENERALLY SPECIAL AGENT FINE WHAT KIND OF
9 DOCUMENTS DID YOU REVIEW IN CONNECTION WITH THE
10 PREPARATION OF THOSE CHARTS?

11 A. I REVIEWED BANK RECORDS WHICH WOULD INCLUDE
12 THE ACCOUNT STATEMENTS, WIRE TRANSFERS, CANCELLED
13 CHECKS. ADDITIONALLY, I REVIEWED INVESTOR RECORDS
14 WHICH WOULD INCLUDE THE DOCUMENTS I RECEIVED FROM
15 INVESTORS. SO THEY ARE INVESTMENT STATEMENTS AS
16 WELL AS THE PRIVATE PLACEMENT MEMORANDUMS AND
17 SUBSCRIPTION BOOK LETS.

18 Q. AND THAT GENERALLY SUMMARIZES THE GENERAL TYPE
19 OF DOCUMENTS YOU REVIEWED?

20 A. YES.

21 Q. NOW AGENT FINE, DO YOU RECALL THAT REALLY LONG
22 STIPULATION THAT MY COLLEAGUE MR. FAZIOLI READ AT
23 THE OUT SET OF THE TRIAL BACK A COUPLE WEEKS AGO?

24 A. I DO.

25 Q. AND DO YOU RECALL THAT IT REFERENCED EXHIBITS

1 220 THROUGH 252, 257, AS WELL AS 276 THROUGH 278?

2 A. YES.

3 Q. AND DO YOU RECALL THAT THOSE, ALL THOSE
4 EXHIBITS WERE THERE AFTER MOVED INTO EVIDENCE?

5 A. YES.

6 Q. NOW, AGENT FINE, DID YOU RELY ON A PORTION OF
7 THOSE EXHIBITS IN PREPARATION FINISH YOUR TESTIMONY
8 HERE TODAY AS WELL AS THE CHARTS BEING REFERENCED
9 YOU ASKED TO PREPARE?

10 A. I DID.

11 Q. AND SPECIAL AGENT FINE, DID YOU IN FACT CREATE
12 CHARTS AND TABLES THAT SUMMARIZED THE INFORMATION
13 IN THE PORTION OF THE EXHIBITS YOU DID REFER TO AND
14 REVIEW?

15 A. YES.

16 Q. NOW I'M GOING TO SHOW YOU A DOCUMENT, AGENT
17 FINE MARKED PREVIOUSLY AS 263 THROUGH 272. DO YOU
18 RECOGNIZE THOSE DOCUMENTS, AGENT FINE?

19 A. YES.

20 Q. AND AGENT FINE, DO THOSE EXHIBITS ACCURACY
21 LITE SUMMARIZE THE INFORMATION CONTAINED IN THE
22 FINANCIAL DOCUMENTS THAT YOU REVIEWED IN CONNECTION
23 WITH YOUR PREPARATION OF THOSE CHARTS THAT ARE
24 CONTAINED IN EXHIBITS 263 THROUGH 272?

25 A. YES.

1 MR. LUCEY: YOUR HONOR, AT THIS POINT THE
2 GOVERNMENT OFFERS EXHIBITS 263 UP TO INCLUDING 272
3 INTO EVIDENCE.

4 MR. FONG: NO OBJECTION, YOUR HONOR.

5 THE COURT: THOSE ARE RECEIVED.

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 263-272
7 HAVING BEEN PREVIOUSLY MARKED FOR IDENTIFICATION,
8 WERE ADMITTED INTO EVIDENCE.)

9 MR. LUCEY: YOUR HONOR, FOR THE BENEFIT
10 OF ALL CONCERNED BEING AS CAREFUL AS WE CAN IN
11 REVIEWING THE DOCUMENTS WE HAVE HARD COPIES TO
12 PROVIDE TO THE COURT.

13 WE ALREADY PROVIDED COPIES TO DEFENSE
14 COUNSEL AND WE ALSO INTEND TO PUBLISH A HARD COPY
15 TO EACH JUROR IN TODAY'S SESSION.

16 THANK YOU, YOUR HONOR.

17 AND YOUR HONOR JUST GIVING THE JURORS A
18 CHANCE TO DISTRIBUTE THOSE INDIVIDUAL HARD COPIES
19 OF EXHIBIT 263 THROUGH 272. I WOULD ASK THE JURORS
20 REMAIN ON THE FIRST PAGE OF THEIR HAND OUT, 263.

21 AND NOW MS. BURNEY I WOULD ASK IF YOU
22 COULD PUT THAT ON THE GENE FOR OUR BENEFIT AS WELL.
23 THANK YOU.

24 Q. AGENT FINE, DO YOU SEE EXHIBIT 263?

25 A. YES.

1 Q. AND YOU HAVE A HARD COPY IN FRONT OF YOU?

2 A. I DO.

3 Q. SO AGENT FINE, TAKE A LOOK AT EXHIBIT 263.
4 WHAT DOES -- WHAT INFORMATION DOES EXHIBIT 263
5 SUMMARIZE?

6 A. IT SUMMARIZES THAT DISTRIBUTION OF BOB LIN'S
7 FIRST \$100,000 INVESTMENT WHICH HE WIRED
8 TRANSFERRED TO A BANK OF AMERICA ACCOUNT TO ALBERT
9 HU ON FEBRUARY 8TH, 2005.

10 Q. AND YOU CREATED A CHART IN CONNECTION WITH
11 THAT FIRST WIRE?

12 A. I DID.

13 Q. AND HOW MUCH MONEY, SPECIAL AGENT FINE, WAS
14 USED TO PURCHASE STOCKS AND OTHER SECURITIES AFTER
15 THIS WIRE ARRIVED IN THE ACCOUNT ON OR ABOUT
16 FEBRUARY 8TH, 2005?

17 A. NO MONEY WAS.

18 Q. HOW WAS THE MONEY ACTUALLY SPENT?

19 A. WELL, THIS CHART DETAILS HOW. BUT IN GENERAL,
20 I PUT IT IN THREE CATEGORIES. \$77,274.06 WAS SPENT
21 ON CHECK AND CHECK CARD PURCHASES. ANOTHER
22 \$12,557.16 WAS TRANSFERRED TO ASENQUA EMPLOYEES.

23 AND FINALLY 10,000 WAS TRANSFERRED TO
24 DIFFERENT BANK ACCOUNT IN THE SAME OF ASENQUA AT
25 WELLS FARGO.

1 Q. SO ESSENTIALLY IT WAS DISTRIBUTED THREE WAYS,
2 ROUGHLY?

3 A. ROUGHLY.

4 Q. AND AGENT FINE, CAN WE NOW PROCEED TO TAKE
5 EACH CATEGORY IN SEQUENCE. I WILL START WITH THE
6 TOP ONE ON THE RIGHT-HAND SIDE, CHECK AND CHECK
7 CARD PURCHASES WHICH AMOUNT TO APPROXIMATELY
8 \$17,274.06?

9 A. OKAY.

10 Q. IT SAYS CHECK CARD PURCHASES WHAT DO YOU MEAN
11 BY THAT IN YOUR CHART HERE?

12 A. THIS IS A TYPICAL ACCOUNT AT BANK OF AMERICA
13 THAT HAD CHECKS ASSOCIATED WITH IT AND A CHECK CARD
14 ASSOCIATED WITH IT. SO THE MONEY CAME OUT USING
15 CHECKS OR CHECK CARD.

16 Q. AND JUST ESSENTIALLY, USES OF THE MONEY BASED
17 ON CHECK AND CHECK CARDS?

18 A. THAT'S CORRECT.

19 Q. BASED ON YOUR REVIEW OF THOSE ACCOUNT
20 DOCUMENTS DID IT GIVE YOU ANY INDICATION THAT THE
21 MONEY WAS BEING USED TO PURCHASE SECURITIES?

22 A. I FOUND NO EVIDENCE OF THAT.

23 Q. SO I WOULD LIKE TO NOW HAVE MS. BURNEY CHANGE
24 THE DOCUMENT ON THE SCREEN TO THE BANK OF AMERICA
25 CARD STATEMENT FOR THE ACCOUNT ENDING IN 6581. IF

1 YOU COULD CALL YOUR ATTENTION TO EXHIBIT 245. IT'S
2 IN PARTICULAR BATES NUMBER 8627 WHICH SHOULD BE
3 PAGE 23.

4 SO AGENT FINE YOU NOW SEE EXHIBIT 245 IN
5 FRONT OF YOU ON THE SCREEN

6 A. I SEE IT, NOT VERY WELL.

7 Q. PERHAPS IF I GET YOU A HARD COPY, AGENT FINE.

8 SHOWING YOU A PORTION OF EXHIBIT 245,
9 GOVERNMENT EXHIBIT 245 IN EVIDENCE.

10 JUST FOR ALL, WHAT IS EXHIBIT 245 HERE
11 THE DOCUMENT I JUST SHOWED YOU BEGINNING AT BATES
12 NUMBER 8626.

13 THIS IS THE BANK OF AMERICA ACCOUNT
14 STATEMENT FOR 8561. ASENQUA CAPITAL LLC. IT'S FOR
15 THE TIME PERIOD OF FEBRUARY 5TH, 2005, THROUGH
16 MARCH 10TH, 2005.

17 Q. AND AGENT FINE I NOW CALL YOUR ATTENTION TO
18 THE ENTRIES BEGINNING AT 214 WHICH ARE ON SCREEN IN
19 FRONT OF US.

20 AS A REFERENCE HERE TO A PURCHASE AT 2-14
21 ON 2-13, THAT'S WHAT A REFERENCE TO?

22 A. THAT WAS A PURCHASE OF \$254.83 AT COSTCO.

23 Q. DOES THAT APPEAR TO BE FROM YOUR VIEW OF THE
24 RECORD A PURCHASE OF SOME KIND OF STOCK OR SECURITY
25 IN COSTCO?

1 A. NO. THIS IS A PURCHASE OF MERCHANDISE AT
2 COSTCO, MOUNTAIN VIEW.

3 Q. NEXT I CALL YOUR ATTENTION AGENT FINE TO THE
4 ENTRY ON 216. DO YOU SEE A REFERENCE HERE FOR
5 CHECK CARD PURCHASE ON 2-15 FOR AN AMOUNT OF OVER
6 \$4,000?

7 A. YES.

8 Q. WHAT IS THAT A REFERENCE TO?

9 A. BASED ON THE RECORD IT'S A REFERENCE TO
10 \$4,760.78 AT FRY'S ELECTRONICS IN PALO ALTO.

11 Q. I CALL YOUR ATTENTION NOW AGENT FINE TO THE
12 BOTTOM OF THIS DOCUMENT, THE LAST ENTRY OF THE PAGE
13 ON OR ABOUT 2-22.

14 A. YES.

15 Q. A CHECK CARD PURCHASE ON 2-17?

16 A. YES.

17 Q. APPARENTLY IN THE AMOUNT OF HUNDRED \$8.50?

18 A. THAT'S RIGHT.

19 Q. WHAT'S THAT A PURCHASE TO?

20 A. STAR BUCKS.

21 Q. BASED ON YOUR VIEW OF THE RECORD DOES THAT
22 APPEAR TO BE A PURCHASE OF SECURITIES IN STARBUCKS?

23 MR. FONG: OBJECTION. ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 THE WITNESS: NO, THAT'S A PURCHASE AT A

1 STARBUCKS IN PALO ALTO.

2 BY MR. LUCEY:

3 Q. SO AGENT FINE, WE LOOKED AT A COUPLE OF
4 ENTRIES FOR CHECKS AND CHECK CARD PURCHASES HERE ON
5 THIS PAGE OF THE DOCUMENT 8627.

6 IN GENERAL TERMS, ARE THESE ITEMS
7 REPRESENTATIVE OF THE SPENDING GOING ON IN THE
8 ACCOUNT AT THAT TIME AFTER MR. LIN'S WIRE HIT THE
9 ACCOUNT ON FEBRUARY 8TH?

10 A. YES.

11 Q. MR. FINE GOING FORWARD NOW, THE NEXT REFERENCE
12 ON YOUR PIE CHART IN GREEN IS TO ASENQUA EMPLOYEES?

13 A. YES.

14 Q. TURNING BACK TO EXHIBIT 263?

15 A. OKAY.

16 Q. MS. BURNEY, THANK YOU. WHAT'S THIS A
17 REFERENCE TO. THIS CATEGORY?

18 A. THIS IS A REFERENCE TO MONEY TRANSFERRED TO
19 PERSONS WORKING FOR ALBERT HU.

20 Q. SO WHO IN FACT RECEIVED THOSE FUNDS BASED ON
21 YOUR REVIEW OF THE BANK STATEMENTS?

22 A. STEVE BOND.

23 Q. AND THE LAST CATEGORY ON THIS CHART IS FOR
24 \$10,000, WHAT'S THAT A REFERENCE TO?

25 A. THAT WAS \$10,000 THAT WAS TRANSFERRED TO A

1 DIFFERENT ASENQUA ACCOUNT. THIS ONE AT WELLS
2 FARGO.

3 Q. AND HAVE YOU HAD AN OPPORTUNITY TO LOOK AT
4 THAT, THE TRANSFER REFERENCED ON THE BANK STATEMENT
5 AS WELL?

6 A. YES.

7 Q. AND THAT IS ALSO CONTAINED ON THE EXHIBIT WE
8 JUST LOOKED AT, EXHIBIT 245?

9 A. IT IS.

10 Q. DID YOU ALSO HAVE A CHANCE TO LOOK AT THE END
11 RESULT OF THAT TRANSFER TO THE WELLS FARGO ACCOUNT?

12 A. I DID.

13 Q. AND THAT'S CONTAINED IN EXHIBIT 237. PAGE 73
14 OF THAT EXHIBIT.

15 AGENT FINE, WHILE WE ARE TRYING TO GET
16 THAT DOCUMENT PULLED UP ON THE SCREEN, LET ME ASK
17 YOU A QUESTION OF THE BANK OF AMERICA ACCOUNT WE
18 HAVE BEEN REFERRING TO.

19 DID THE DEFENDANT HAVE ACCESS TO AND
20 CONTROL THIS ACCOUNT?

21 A. YES.

22 Q. AND WE WILL COME BACK TO THAT EXHIBIT.

23 MS. BURNEY, IF YOU COULD NOW TURN TO EXHIBIT 238 AT
24 PAGE 423.

25 SO AGENT FINE, ARE YOU ABLE TO VIEW THE

1 DOCUMENT ON THE SCREEN?

2 A. YES.

3 Q. SO, ARE YOU FAMILIAR WITH THIS DOCUMENT,
4 EXHIBIT 237 BATES NUMBER 5551, NUMBER 73 OF THE
5 EXHIBIT. DO YOU SEE THE ENTRY HERE, I WILL POINT
6 OUT WITH MY PEN, AGENT FINE, FOR \$10,000; IS THAT
7 CORRECT?

8 A. YES.

9 Q. WHAT'S THAT A REFERENCE TO, BASED ON YOUR
10 ANALYSIS?

11 A. IT'S ON THE PIE CHART IT'S THE 10,000 THAT'S
12 BEING TRANSFERRED FROM THE BANK OF AMERICA ACCOUNT
13 TO WELLS FARGO.

14 Q. THANK YOU.

15 NOW SHOWING YOU EXHIBIT 238, BATES NUMBER
16 6196, PAGE 423 OF THE EXHIBIT. DO YOU SEE THAT
17 DOCUMENT NOW ON THE SCREEN THERE, AGENT FINE?

18 A. YES.

19 Q. I CALL YOUR ATTENTION TO THE ENTRY ON 2-10,
20 THE SECOND TO LAST ENTRY. COULD YOU READ THAT
21 ENTRY -- THIS IS NOW THE WELLS FARGO BANK ACCOUNT.
22 WHO CONTROLS THIS BANK ACCOUNT BASED ON YOUR REVIEW
23 OF THE DOCUMENTS?

24 A. SO I THINK WE'VE -- THIS IS ALBERT HU AGAIN.
25 I NEED TO SEE THE FULL BANK STATEMENT BECAUSE I'M

1 NOT SURE THIS IS THE SAME BANK ACCOUNT YOU JUST --

2 Q. CERTAINLY. I'M PROVIDING YOU NOW A COPY OF
3 GOVERNMENT EXHIBIT 237. I'M SORRY, 238?

4 A. THAT'S RIGHT. THIS IS EXHIBIT 238. SO THE
5 10,000 WENT FROM THE BANK OF AMERICA ACCOUNT WHERE
6 BOB LIN ORIGINALLY WIRED HIS MONEY TO AN ASENQUA
7 WELLS FARGO ACCOUNT. AFTER THAT, WHICH IS WHAT WE
8 WERE STARTING TO JUST SEE, THERE'S A SEPARATE
9 ACCOUNT IN THE NAME OF JUST ALBERT HU, A PERSONAL
10 ACCOUNT.

11 AND 7,000 OUT OF THAT 10,000 WENT TO
12 ALBERT HU'S PERSONAL ACCOUNT. THEN WE WERE SEEING
13 THE END RESULT OF IT ON THE SAME DAY, 5,000,
14 THERE'S A \$5,000 TRANSACTION YOU WERE JUST SHOWING.

15 Q. AND AGENT FINE, LET ME FLASH THAT BACK UP ON
16 THE SCREEN.

17 SO CALLING YOUR ATTENTION NOW TO THE
18 ENTRY, SECOND TO THE LAST ENTRY ABOVE THE LINE,
19 TOTAL OTHER WITHDRAWALS.

20 A. YES.

21 Q. THERE'S AN ENTRY ON 2-10?

22 A. THAT'S RIGHT.

23 Q. FOR \$5,000?

24 A. CORRECT.

25 Q. AND WHAT DOES THE BANK RECORD REFLECT IS THAT

1 TRANSACTION?

2 A. IT SAYS LOAN PAY BACK TO JESSE.

3 Q. NOW MS. BURNEY IF YOU COULD FLASH BACK ON THE
4 SCREEN GOVERNMENT EXHIBIT 263, THE COLORED CHART
5 FOR MR. LIN'S FIRST \$100,000 INVESTMENT AND WIRE ON
6 FEBRUARY 8TH, 2005.

7 SO MR. FINE, JUST SO WE ARE CLEAR, BASED
8 ON YOUR REVIEW OF THIS BANK ACCOUNT STATEMENT, THE
9 6581 BANK ACCOUNT THAT WAS THE RECIPIENT ACCOUNT
10 FOR MR. LIN'S FIRST WIRE, HOW MUCH OF THAT MONEY
11 WENT TOWARDS INVESTMENTS

12 A. NONE.

13 Q. AND LOOKING BACK AT YOUR CHART AGAIN, AGENT
14 FINE, THERE'S TWO ENTRIES AT THE BOTTOM OF THE
15 CHART, ONE HAS ONE ASTERISK AND THE SECOND ONE HAS
16 TWO. CAN YOU EXPLAIN TO THE JURY WHAT THAT IS A
17 REFERENCE TO BEGINNING AT \$98.78?

18 A. YES. SO BEFORE BOB LIN WIRED THE HUNDRED
19 THOUSAND DOLLARS THE BANK OF AMERICA ACCOUNT HAD A
20 NEGATIVE BALANCE. IT WAS \$98.78. SO THE FIRST
21 ASTERISK REFERS TO THE MONEY TO REPLENISH THE
22 ACCOUNT TO BRING IT BACK TO INJURY.

23 THE SECOND ASTERISK IS A SMALL AMOUNT
24 SPENT IN BANK FEE

25 Q. AND AGENT FINE, AS YOU'VE NOW SUMMARIZED ON

1 THIS CHART, WAS THERE ANY OTHER SOURCE OF FUNDS
2 INTO THE ACCOUNT OTHER THAN THE WIRE THAT BOB LIN
3 DIRECTED BE SENT TO THE ACCOUNT ON FEBRUARY 8TH,
4 2005?

5 A. NO, THERE WERE NOT.

6 Q. IT'S --

7 A. I SHOULD CLARIFY. THERE'S -- IT'S THE
8 STATEMENT UP ON THE SCREEN. THERE WAS A CREDIT
9 THAT WAS A REFUND OF A PRIOR CHECK CARD PURCHASE SO
10 REALLY IT'S BOB LIN'S MONEY COMING BACK IN.

11 Q. BEING RECYCLED INTO THE ACCOUNT?

12 A. RIGHT. BUT IT'S ALL BOB LIN'S MONEY.

13 Q. IF WE COULD TURN OUR ATTENTION TO GOVERNMENT
14 EXHIBIT 264.

15 AGENT FINE YOU ALSO PREPARED THIS EXHIBIT
16 AS WELL, CORRECT

17 A. YES.

18 Q. WHAT IS THIS EXHIBIT 264 SUMMARIZE?

19 A. THIS SHOWS FOR THAT SAME BANK OF AMERICA
20 ACCOUNT SHOWS THE DAILY BALANCE JUST BEFORE BOB
21 LIN'S WIRE AND THE PERIOD AFTER RECEIVING BOB LIN'S
22 WIRE ON FEBRUARY 8TH, 2005.

23 Q. NOW AGENT FINE I WANT TO BE CLEAR ABOUT
24 SOMETHING. YOUR CHART HERE SHOWS -- IT STARTS ON
25 2-7, THERE'S OBVIOUSLY A LARGE SPIKE UP HERE ON

1 2-8, RIGHT?

2 A. YES.

3 Q. BUT IT NEVER QUITE REACHES \$100,000?

4 A. THAT'S RIGHT.

5 Q. BUT MR. LIN DID WIRE \$100,000?

6 A. YES.

7 Q. WHAT IS THIS CHART SHOWING?

8 A. THERE'S TWO REASONS WHY IT HIT \$100,000. ONE
9 IS THAT THE ACCOUNT WAS ALREADY NEGATIVE BEFORE HE
10 PUT THE MONEY IN. AND THE SECOND IS BANK OF
11 AMERICA DOES THEIR DAILY BALANCES AT THE END OF THE
12 DAY. SO THE SAME DAY BOB LIN WIRED IN MONEY, SOME
13 OF IT WAS SPENT.

14 Q. THEN FURTHER ON, AGENT FINE THERE'S AN ENTRY
15 HERE ON THE RIGHT SIDE OF THE CHART SHOWING 2-2-05?

16 A. YES.

17 Q. WHAT DOES THAT REFLECT ON THAT DATE?

18 A. THE BALANCE ON THAT DATE IS ACTUALLY BACK TO
19 NEGATIVE. NEGATIVE 207.02.

20 Q. HOW MUCH TIME ELAPSED BETWEEN THE TIME OF THE
21 WIRE HITTING AND THE TIME OF IT HITTING A NEGATIVE
22 BALANCE?

23 A. ABOUT TWO WEEKS.

24 Q. NOW MR. FINE I WANT TO DRAW YOUR ATTENTION TO
25 GOVERNMENT EXHIBIT 265. MS. BURNEY IF YOU COULD BE

1 SO KIND TO TURN TO THE NEXT EXHIBIT IN ORDER.

2 AGENT FINE, WHAT INFORMATION DOES
3 GOVERNMENT EXHIBIT 265 SUMMARIZE?

4 A. SIMILAR TO THE FIRST PIE CHART WE LOOKED AT.
5 DISTRIBUTION OF BOB LIN'S SECOND \$100,000 THAT HE
6 INVESTED, SPECIFICALLY HIS WIRE TRANSFER WAS
7 FEBRUARY 23RD, 2005.

8 Q. AND HOW MUCH OF THE MONEY FROM THIS SECOND BOB
9 LIN WIRE THAT OCCURRED ON OR ABOUT FEBRUARY 23RD,
10 2005, HOW MUCH OF THAT WAS USED TO PURCHASE STOCKS
11 AND OTHER SECURITIES, BASED ON YOUR REVIEW OF THE
12 DOCUMENTS?

13 A. I FOUND NO EVIDENCE THAT ANY OF IT WAS USED TO
14 PURCHASE SECURITY.

15 Q. SO YOUR EXHIBIT HERE YOU PREPARED, 265, THIS
16 SUMMARIZES HOW THE MONEY WAS ACTUALLY SPENT?

17 A. YES.

18 Q. SO AGAIN, WHAT IS THE RED COLOR ON THE CHART,
19 THE SINGLE LARGEST CATEGORY OF SPENDING?

20 A. CHECK AND CHECK CARD PURCHASES IN THE AMOUNT
21 OF 76,590.18.

22 Q. MS. BURNEY IF YOU COULD CALL UP THE BANK OF
23 AMERICA ACCOUNT, EXHIBIT 245, AND MR. FINE YOU
24 STILL HAVE A HARD COPY IN FRONT OF YOU?

25 A. I DO.

1 Q. MS. BURNEY, IF YOU COULD BLOW UP THE TEXT
2 BEGINNING AT THE DATE OF 2-25-05?

3 MR. FINE, THERE APPEARS TO BE AN ENTRY OF
4 \$10,000. WHAT WAS THE CHECK FOR \$10,000, WERE YOU
5 ABLE TO EXAMINE THE CHECK?

6 A. I BELIEVE SO.

7 Q. AGENT FINE DO YOU RECOGNIZE THIS PORTION OF
8 EXHIBIT 245?

9 A. YES.

10 Q. WHAT IS THIS DOCUMENT?

11 A. THIS IS THAT CHECK THAT WE WERE JUST LOOKING
12 AT ON THE ACCOUNT STATEMENT.

13 Q. DID YOU HAVE AN UNDERSTANDING IF THIS WAS IN
14 CONNECTION OF ANY KIND OF SECURITIES?

15 A. NO.

16 Q. MS. BURNEY, IF YOU COULD TURN BACK TO THE MAIN
17 ACCOUNT STATEMENT PAGE. AND AGAIN, IF YOU COULD
18 ENLARGE THE BOTTOM HALF BEGINNING AT 225 OF THE
19 DOCUMENT.

20 AND AGAIN, AGENT FINE YOU MAY WANT TO
21 REFER TO THE HARD COPY IN FRONT OF YOU. THERE
22 APPEARS TO BE AN ENTRY ON 2-28-05 FOR REFERENCE OF
23 \$9.68

24 A. YES. THERE'S A PURCHASE AT PALO ALTO
25 HARDWARE.

1 Q. THERE APPEARS TO BE A DEBIT FOR \$1,700 PLUS ON
2 228?

3 A. YES. IT WAS A PURCHASE TO AIR CHINA.

4 Q. AND HOW MUCH WAS THAT EXACT PURCHASE FOR?

5 A. I'M SORRY, \$1,760.95.

6 Q. IF WE COULD TURN TO THE NEXT PAGE, MS. BURNEY,
7 IN ORDER OR SEQUENCE. STILL ON EXHIBIT 245. IF WE
8 COULD HIGHLIGHT THE ENTRIES IN OR AROUND MARCH 2ND,
9 2005.

10 AND THEN I CALL YOUR ATTENTION, AGENT
11 FINE TO THE ENTRY ON THE BANK RECORD DATED
12 MARCH 2ND, 2005. THERE'S AN ENTRY FOR 1,479.89

13 A. YES.

14 Q. WHO IS THE PAYEE ON THAT PARTICULAR ENTRY?

15 A. HQ GLOBAL WORK PLACE.

16 Q. AGENT FINE, DID YOU HAVE AN UNDERSTANDING
17 BASED ON YOUR INVOLVEMENT AND REVIEW OF DOCUMENTS
18 IN THIS MATTER OF ANY CONNECTION BETWEEN THE
19 DEFENDANT AND HQ GLOBAL PRIOR TO MARCH 2005?

20 A. YES.

21 Q. WHAT IS THE CONNECTION?

22 A. HE PURCHASED VIRTUAL OFFICE SPACE FROM THAT
23 COMPANY.

24 Q. PREVIOUS TO MARCH 2005?

25 A. YES.

1 Q. AGENT FINE WHAT'S THE GREEN WHICH ARE ON THIS
2 CHART NOW FOR \$10,000?

3 A. THAT'S 10,000 TRANSFERRED TO AN ASENQUA
4 EMPLOYEE.

5 Q. WHAT ASENQUA EMPLOYEE RECEIVED THAT SUM OF
6 MONEY?

7 A. IT WAS STEVE BOND.

8 Q. AND THAT'S AGAIN BASED ON YOUR REVIEW OF THE
9 BANK STATEMENT?

10 A. YES.

11 Q. EXHIBIT 245?

12 A. THAT'S CORRECT.

13 Q. NOW THE NEXT ENTRY ON YOUR CHART AGENT FINE IS
14 FOR ANOTHER \$10,000 SUM IN YELLOW, WHAT'S THAT IN
15 REFERENCE TO?

16 A. THE SAME ASENQUA, WELLS FARGO ACCOUNT.

17 Q. AND YOU ALSO REVIEWED THAT PORTION OF THE
18 WELLS FARGO ACCOUNT FOR ASENQUA, DID YOU NOT?

19 A. YES.

20 Q. WAS THAT MONEY USED TO PURCHASE SECURITIES?

21 A. IT WAS NOT.

22 Q. WHAT HAPPENED AFTER IT HIT THAT BANK ACCOUNT,
23 DID IT STAY THERE, ALL OF IT?

24 A. I DON'T BELIEVE SO. I BELIEVE SOME WAS
25 TRANSFERRED TO ALBERT HU'S PERSONAL ACCOUNT.

1 Q. AND AFTER IT WENT TO THE PERSONAL ACCOUNT,
2 WERE YOU ABLE TO DETERMINE WHAT HAPPENED TO IT
3 AFTER THAT WHEN IT HIT MR. HU'S OTHER ACCOUNT AT
4 WELLS FARGO BANK?

5 A. YES.

6 Q. AND REFERRING NOW TO EXHIBIT 237. AND AGENT
7 FINE, YOU UNDERSTAND THERE WERE ADDITIONAL MONIES
8 TRANSFERRED OUT OF THIS ACCOUNT?

9 A. YES.

10 Q. AND I CALL YOUR ATTENTION -- MS. BURNEY IF YOU
11 COULD HIGHLIGHT THE TOP PORTION OF THE PAGE, IN OR
12 AROUND FEBRUARY 28TH.

13 THERE'S AN ENTRY FOR \$10,000

14 A. YES.

15 Q. WHERE WAS THAT GOING TO, AS YOU UNDERSTAND IT?
16 WAS THAT COMING FROM THE BANK OF AMERICA ACCOUNT WE
17 JUST LOOKED AT?

18 A. THAT'S RIGHT. SO THIS WAS THE YELLOW PIE ON
19 THE CHART. THIS IS THE \$10,000 GOING FROM BANK OF
20 AMERICA TO WELLS FARGO.

21 Q. NOW MS. BURNEY, IF YOU COULD CALL UP THE NEXT
22 EXHIBIT IN ORDER, 238. FIRST IF WE COULD START ON
23 PAGE 425 OF THAT EXHIBIT.

24 IF YOU COULD NOW, FIRST, FOR THE BENEFIT
25 OF THE JURY AND THE COURT, IF YOU COULD BLOW UP THE

1 ENTRY AT THE TOP, THE ADDRESS ON THIS BANK
2 STATEMENT. AND AGENT FINE, AGAIN, LET ME SHOW YOU
3 A HARD COPY OF THIS DOCUMENT SO YOU CAN READ ALONG
4 WITH THIS MORE EASILY. SHOWING YOU A PORTION OF
5 EXHIBIT 238, BEGINNING AT PAGE 425 OF THE EXHIBIT.
6 HAVE YOU SEEN THIS DOCUMENT BEFORE, AGENT FINE

7 A. I HAVE.

8 Q. WHAT IS IT IN GENERAL TERMS?

9 A. THIS IS A WELLS FARGO STATEMENT FOR ALBERT
10 KE-JENG AND I DON'T KNOW HOW TO PRONOUNCE IT,
11 H-S-I-A-O-M-E-I, L-I-U. AND IT'S FOR THE PERIOD
12 FEBRUARY 11TH, 2005, THROUGH MARCH 10TH, 2005.

13 Q. AND THIS IS AN ADDRESS IN FREMONT, CALIFORNIA?

14 A. YES.

15 Q. IF I CAN BOTH CALL YOUR ATTENTION TO THE NEXT
16 PAGE OF THIS EXHIBIT, 426. AND IF WE CAN NOW
17 HIGHLIGHT THE TOP PORTION OF THE DOCUMENT.

18 AND WHAT'S GOING ON IN THIS TOP PORTION
19 OF THE DOCUMENT, AGENT FINE?

20 A. THIS IS ALL THE DOCUMENTS INTO THAT ACCOUNT.

21 Q. OKAY. NOW IN TERMS OF THE DEPOSITS COMING
22 FROM THE VARIOUS ACCOUNTS, THERE APPEARS TO BE SOME
23 ON LINE TRANSFERS ON 2-28 AND 3-03?

24 A. YES.

25 Q. AND WHAT ACCOUNTS ARE THOSE MONEYS COMING

1 FROM?

2 A. THE ASENQUA WELLS FARGO ACCOUNT.

3 Q. THE ONE WE HAD A MOMENT AGO?

4 A. YES.

5 Q. EXHIBIT 237. HAVE YOU ALSO BEEN ABLE TO LOOK
6 OVER THIS DOCUMENT IN TERMS OF HOW THE MONEY WAS
7 SPENT IN GENERAL TERMS AFTER THE MOAN HAS ARRIVED
8 FROM THE OTHER WELLS FARGO ACCOUNT FOR ASENQUA?

9 A. YES.

10 Q. THERE WERE ANY CASH WITHDRAWALS?

11 A. YES.

12 Q. WAS THERE ANY SPENDING ON WHAT APPEARS TO BE
13 TRAVEL?

14 A. YES. IN THE ASENQUA ACCOUNT THERE APPEARED TO
15 BE TRAVEL PURCHASES. IN THE PERSONAL ACCOUNT,
16 ABOUT 4500 WAS TRANSFERRED THAT APPEARED TO BE
17 PERSONAL.

18 Q. AGENT FINE, GOING ON NOW TO, STILL LOOKING AT
19 EXHIBIT 265, WHAT IS THE ORANGE COLOR INDICATED
20 THERE ON THE TOP OF THE PIE CHART?

21 A. THAT'S \$3,000 OUT OF THE \$100,000 WAS
22 WITHDRAWN IN CASH FROM THE BANK OF AMERICA ACCOUNT.

23 Q. THEN AGENT FINE AT THE VERY BOTTOM OF THE
24 DOCUMENT THERE APPEARS TO BE TWO ASTERISK?

25 A. YES.

1 Q. WHAT ARE THOSE IN REFERENCE TO?

2 A. THEY ARE SIMILAR TO THE ASTERISK ON THE FIRST
3 PIE CHART. THE FIRST ONE INDICATES THAT PRIOR TO
4 BOB LIN'S \$100,000 COMING, THE ACCOUNT BALANCE WAS
5 NEGATIVE AGAIN FOR \$207.82.

6 SO SOME OF BOB'S MONEY WAS USED TO
7 REPLENISH THE OVERDRAWN ACCOUNT. AND THEN THERE
8 \$202.00 IN BANK FEES.

9 Q. AGENT FINE AGAIN, ASKING YOU A SIMILAR
10 QUESTION, BASED ON THE REVIEW OF THE BANK STATEMENT
11 IN SUCCESS BANK ACCOUNT 6581 WHICH WAS THE
12 RECEIVING ACCOUNT FOR MR. LIN'S SECOND WIRE, HOW
13 MUCH OF THAT WOULD YOU DETERMINE WENT TO THE
14 PURCHASE OF SECURITIES?

15 A. I FOUND NO EVIDENCE THAT ANY OF IT WENT TO THE
16 PURCHASE OF SECURITIES.

17 Q. AGENT FINE, I NOW CALL YOUR ATTENTION TO
18 GOVERNMENT EXHIBIT 266.

19 WHAT ARE WE NOW LOOKING AT HERE? WHAT IS
20 THIS EXHIBIT 266 SUMMARIZE?

21 A. THIS, AGAIN, IS THE DAILY BALANCE IN THE BANK
22 OF AMERICA ACCOUNT, JUST PRIOR TO BOB LIN'S
23 \$100,000 WIRE ON FEBRUARY 23RD, 2005, AS WELL AS
24 FOR ABOUT A WEEK AND A HALF AFTER.

25 Q. HOW MUCH TIME ELAPSED BETWEEN THE TIME THAT

1 THE MONEY HIT THE ACCOUNT ON OR ABOUT FEBRUARY 23RD
2 UNTIL IT WAS EXHAUSTED?

3 A. ABOUT TEN DAYS.

4 Q. AND NOW AGENT FINE I WANT TO CALL YOUR
5 ATTENTION TO THE NEXT EXHIBIT IN ORDER, 267?

6 A. OKAY.

7 Q. NOW WHAT IS THIS DOCUMENT?

8 A. THIS IS THE DAILY BALANCE FOR THE ENTIRE MONTH
9 PERIOD OF THE STATEMENT WE HAVE BEEN LOOKING AT.
10 THE TWO SPIKES, WHAT WE SAW PREVIOUSLY IN THE OTHER
11 TWO GRAPHS, THE HUNDRED THOUSAND DOLLAR INVESTMENTS
12 BY BOB LIN.

13 Q. JUST SO WE ARE CLEAR, THE DOCUMENT INDICATES
14 THIS, THE TWO HIGH SPIKES ARE THE TWO RECEIPTS OF
15 MR. LIN'S \$100,000 ON FEBRUARY 8TH THEN AGAIN ON
16 FEBRUARY 23RD?

17 A. YES.

18 Q. AND OTHER THAN THE MONEYS COMING IN FROM
19 MR. LIN, OTHER THAN ANY KIND OF CREDITS BACK TO THE
20 ACCOUNT ON CARD PURCHASES, WERE THERE ANY OTHER
21 SOURCES OF MONEY COMING INTO THIS ACCOUNT BETWEEN
22 THE TIME PERIOD OF FEBRUARY 5TH, 2005, UP TO
23 MARCH 4TH, 2005?

24 A. SNOW.

25 Q. NOW YOU'VE HAD AN OPPORTUNITY, SPECIAL AGENT

1 FINE TO REVIEW THE STATEMENTS PROVIDED TO MR. LIN
2 AS TO THE FIRST \$2,100,000 WIRES?

3 A. I HAVE.

4 Q. I WOULD ASK TO PUBLISH TO THE JURY GOVERNMENT
5 EXHIBIT NUMBER 3: HAVE YOU SEEN THIS DOCUMENT
6 BEFORE, AGENT FINE?

7 A. YES.

8 Q. WHAT IS THIS DOCUMENT?

9 A. IT'S THE ACCOUNT STATEMENT GIVEN TO BOB LIN,
10 I'M SORRY I CAN'T READ THE DATE.

11 Q. MS. BURNEY, IF YOU COULD ENLARGE THE TOP
12 PORTION OF THE DOCUMENT.

13 A. IT APPEARS TO BE THE ACCOUNT STATEMENT FOR BOB
14 LIN FOR Q1, 2005. STATEMENT DATE IS APRIL 17TH,
15 2005.

16 Q. AND MS. BURNEY, IF YOU COULD ENLARGE THE
17 BOTTOM PORTION OF THE DOCUMENT WHERE IT SAYS TOTAL
18 VALUE. COULD YOU READ THAT?

19 A. YES.

20 Q. WHAT DOES IT SAY AT TOTAL VALUE?

21 A. \$203,842.

22 Q. AND BASED ON YOUR ANALYSIS OF MR. LIN'S FIRST
23 TWO WIRES, AS THEY CAME INTO THE BANK AMERICA
24 ACCOUNT ENDING IN 6581, WHAT WAS THE BALANCE IN
25 THAT ACCOUNT AS OF EARLY MARCH 2005, ABOUT 4, 5,

1 6 WEEKS EARLIER?

2 A. NEXT TO NOTHING.

3 Q. AGENT FINE, IF YOU COULD NOW TURN OUR
4 ATTENTION TO GOVERNMENT EXHIBIT 268 AND ASK THAT BE
5 PUBLISHED NOW FOR THE JURY.

6 WHAT INFORMATION DOES GOVERNMENT 268
7 SUMMARIZE, AGENT FINE?

8 A. THIS IS THE DISTRIBUTION OF BOB LIN'S FIRST
9 \$250,000 WIRE WHICH HE WIRED ON JULY 6TH, 2005.

10 Q. AND IT APPEARS YOU'VE DONE A SIMILAR BREAK
11 DOWN OF DISTRIBUTION OF THAT MONEY AFTER IT HIT THE
12 ACCOUNT?

13 A. I HAVE.

14 Q. AND WAS ANY OF THIS MONEY, BASED ON YOUR
15 REVIEW OF THE ACCOUNT -- THIS IS SKILL BANK ACCOUNT
16 6581?

17 A. YES.

18 Q. THE SAME ONE WE WERE LOOKING AT FOR THE FIRST
19 TWO WIRES?

20 A. YES.

21 Q. WAS ANY OF THE MONEY USED TO PURCHASE
22 SECURITIES OR STOCKS OR OTHER SECURITIES?

23 A. NO.

24 Q. AND THE MONEY WAS ALSO SPENT ON THE CATEGORIES
25 REPRESENTED ON EXHIBIT 268?

1 A. THAT'S CORRECT.

2 Q. SO THE FIRST WHAT APPEARS TO BE THE LARGEST
3 CATEGORY IS \$150,000; IS THAT CORRECT?

4 A. THAT'S RIGHT.

5 Q. WHAT IS THAT A REFERENCE TO?

6 A. SO MOST OF BOB LIN'S MONEY WAS TRANSFERRED TO
7 A PRIOR INVESTOR, HONG LU FOR SPECIFICALLY
8 \$150,000.

9 Q. AND AGENT FINE, WHAT'S THE NEXT CATEGORY ON
10 THIS FOR, LOOKS LIKE A LITTLE OVER \$34,000?

11 A. YES, SO \$34,232.36 SPENT ON CHECK AND CHECK
12 CARD PURCHASES.

13 Q. AGENT FINE I'M NOW PROVIDING YOU A HARD COPY
14 OF THE NEXT PORTION, 245. IF YOU COULD DESCRIBE
15 THE DOCUMENT YOU ARE NOW LOOKING AT THAT'S PART OF
16 EXHIBIT 245.

17 A. THIS IS THE BANK OF AMERICA ACCOUNT STATEMENT
18 FOR THE ACCOUNT ENDING IN 6581 FOR THE TIME PERIOD
19 OF JUNE 10TH, 2005, THROUGH JULY 8TH, 2005. I ALSO
20 HAVE THE SEQUENTIALLY THE NEXT ACCOUNT STATEMENT
21 FOR THAT TIME FRAME WHICH IS FOR THE PERIOD
22 JULY 9TH, 2005, THROUGH AUGUST 10TH, 2005.

23 Q. AND FOR THE -- AGAIN, FOR THE BENEFIT OF THE
24 RECORD, THE STATEMENT BEGINNING JULY 9TH, WHAT IS
25 THE NUMBER AT THE VERY BOTTOM IN THE MIDDLE?

1 A. THE ONE, JULY 9TH IS 8644. IN THE VERY
2 MIDDLE? PAGE 40.

3 Q. PAGE 40. WHICH IS THE NUMBER OF THE
4 ELECTRONIC VERSION?

5 A. YES.

6 Q. JUST AGAIN, IF WE COULD WALK THROUGH THIS
7 PORTION OF EXHIBIT 245. MS. BURNEY, IF YOU COULD
8 FLASH UP ON THE SCREEN EXHIBIT 245 AT PAGES 38 TO
9 42. AND IN PARTICULAR, IF YOU COULD CALL YOUR
10 ATTENTION TO THE DOCUMENT WHICH ENDS AT THE BOTTOM,
11 NUMBER 40.

12 SO THIS IS THE STATEMENT YOU WERE
13 REFERRING TO A MOMENT AGO, AGENT FINE?

14 A. YES.

15 Q. MS. BURNEY, IF YOU COULD FIRST FLASH UP ON THE
16 SCREEN NOW THE NEXT PAGE IN SEQUENCE, PAGE 41 OF
17 EXHIBIT 245 WHICH IS BATES 8645.

18 AND IF YOU COULD ENLARGE, MS. BURNEY, THE
19 ENTRIES BEGINNING AT JULY 11, 2005. AND IF YOU
20 COULD FOCUS ON THE ENTRIES BEGINNING 7-11 UP
21 THROUGH 7-14.

22 AGENT FINE, THERE APPEARS TO BE AN ENTRY
23 ON 7-11-2005 WHICH WOULD BE SEVERAL DAYS AFTER
24 MR. LIN'S WIRE HIT THE ACCOUNT.

25 A. YES.

1 Q. FOR \$35?

2 A. YES.

3 Q. YOU SEE THAT ENTRY THERE?

4 A. YES.

5 Q. WHAT'S THAT IN REFERENCE TO AS FAR AS THE LINE
6 ITEM?

7 A. IT'S A PURCHASE AT FISH EAT CAFE IN FREMONT.

8 Q. GOING DOWN THERE'S AN ENTRY FOR \$1,341.59?

9 A. YES.

10 Q. WHAT'S THAT LINE ENTRY?

11 A. PURCHASE WITH EVA AIRWAYS.

12 Q. AND AGENT FINE GOING ON TO THE BOTTOM OF THE
13 PAGE 714 THERE'S AN ENTRY FOR \$3,088.96?

14 A. YES.

15 Q. WHAT'S THE LINE AUTOMATIC?

16 A. FAR EASTERN HOTEL IN TAIPEI.

17 Q. AND NUMBER OF ENTRIES HERE ON THIS PAGE,
18 MR. FINE, ON 7-18?

19 A. YES.

20 Q. I CALL YOUR ATTENTION TO THE ENTRY ABOUT
21 HALFWAY DOWN THE PAGE FOR 7-18, USA PETROLEUM?

22 A. YES.

23 Q. HOW MUCH IS THAT ENTRY?

24 A. \$15.14.

25 Q. AND GOING ON FURTHER IF WE COULD LOOK BAT THE

1 PORTION OF THE DOCUMENT. THIS IS THE FIRESIDE USA
2 ACCOUNT YOU WERE TALKING ABOUT A MOMENT AGO.

3 A. THIS WAS THE ORIGINAL \$474,000.

4 Q. AND THE ACCOUNT GOES ON FURTHER, EXHIBIT 227.

5 SO IF WE COULD LOOK AT THAT DOCUMENT AS WELL,

6 MS. BURNEY. I'M SORRY, BEGINNING AT PAGE 15.

7 THESE ARE THE CREDIT SUISSE ENTRIES AS WELL?

8 A. THAT'S CORRECT.

9 Q. SO BASED ON YOUR REVIEW OF THE ACCOUNT
10 MATERIAL FOR FIRESIDE USA AND THEN THE TRANSFERS
11 INTO THE FURTHER ACCOUNT CONTROLLED BY MR. HU, WAS
12 ANY OF THAT MONEY USED TO PURCHASE SECURITIES?

13 A. IT WAS NOT.

14 Q. MS. BURNEY, IF YOU COULD RETURN BACK TO
15 GOVERNMENT EXHIBIT 271.

16 NEXT CATEGORY ON YOUR CHART, AGENT FINE
17 APPEARS TO BE FOR SECURITIES

18 A. THAT'S CORRECT.

19 Q. FOR APPROXIMATELY \$410,000?

20 A. YES. 410,717.89 WAS USED TO PURCHASE
21 SECURITIES AS OF JUNE 17, 2007.

22 Q. AND SO IN FACT THERE WAS A TRADING GOING ON IN
23 SECURITIES FOR AT LEAST A PORTION OF MR. VERDIELL'S
24 MONEY?

25 A. YES.

1 Q. HOW MUCH DID THAT AMOUNT TO APPROXIMATELY,
2 PERCENTAGE WIDE?

3 A. ABOUT 21 PERCENT OF HIS MONEY.

4 Q. NOW, AGENT FINE ARE YOU FAMILIAR WITH
5 GOVERNMENT EXHIBIT NUMBER 12 THE PPM FOR THE
6 FIRESIDE LS FUND?

7 A. YES.

8 Q. DOES IT PROVIDE THAT ONLY 21 PERCENT OF THE
9 INVESTOR'S MONEY WOULD GO TO SECURITIES?

10 A. NO.

11 Q. NOW, WE ARE GOING TO FINISH WITH THIS CHART
12 AGENT FINE. BUT BEFORE I GO ON I WANT TO ASK YOU,
13 OF THAT \$410,000, JUST SO WE CAN BE CLEAR, WHAT
14 HAPPENED TO THOSE SECURITIES ULTIMATELY THAT WERE
15 USED, WHAT WAS THE END RESULT OF THOSE SECURITIES?
16 DID ANY OF THOSE MONEYS END UP BEING RETURNED TO
17 MR. VERDIELL?

18 A. NO.

19 Q. THOSE SECURITIES WERE TOLD OVER TIME, AS WE
20 ARE GOING TO SEE IN A FEW MOMENTS IN YOUR
21 TESTIMONY?

22 A. THEY WERE SOLD, YES.

23 Q. AND DID ANY OF THOSE PROCEEDS, WERE THEY
24 RETURNED TO MR. VERDIELL?

25 A. NO.

1 Q. AND THAT'S BASED ON YOUR REVIEW OF THE CREDIT
2 SWISS COULD RECORDS?

3 A. THAT'S CORRECT.

4 Q. SO TURNING NOW TO THE NEXT CATEGORY IN YOUR
5 CHART THE FOREST GREEN OF \$280,000?

6 A. YES. \$280,000 WAS TRANSFERRED IN THE NAME OF
7 CAM PRIVILEGE VISION MANAGEMENT, ALSO, CREDIT
8 SWISS. CREDIT SUISSE.

9 Q. HOW DO YOU KNOW THAT? HOW DID YOU DETERMINE
10 IT WAS A CAMBRIDGE VISION MANAGEMENT ACCOUNT. YOU
11 CAN SEE THE 280,000 ON THE ACCOUNT STATEMENT AND
12 YOU CAN LOOK AT TRANSFER RECORD?

13 Q. WHERE WAS THIS CAMBRIDGE VISION MANAGEMENT
14 LOCATED?

15 A. CREDIT SWISS IN SINGAPORE.

16 Q. SO IT WAS ALSO A CREDIT SUISSE ACCOUNT IN
17 SINGAPORE?

18 A. YES.

19 Q. AND DID DEFENDANT ALSO HAVE CONTROL OF THE
20 CAMBRIDGE VISION MANAGEMENT ACCOUNT?

21 A. YES.

22 Q. DID YOU HAVE A CHANCE TO REVIEW THE CAMBRIDGE
23 VISION MANAGEMENT ACCOUNT AT CREDIT SUISSE?

24 A. I DID.

25 Q. DID ANY OF MR. VERDIELL'S MONEY USED TO

1 PURCHASE SECURITIES?

2 A. NO.

3 Q. DID ANY OF THE MONEY THAT WENT TO THE
4 CAMBRIDGE VISION MANAGEMENT ACCOUNT EVER MAKE ITS
5 WAY BACK TO MR. VERDIELL?

6 A. NO.

7 Q. WHAT'S THE LIGHT GRAY COLOR THERE AT THE TOP
8 OF YOUR CHART FOR 160,000?

9 A. YES. THAT'S \$160,000 TO YILI LIU. THE 30 YOU
10 ALSO SEE ON THE 30TH, ANDY YAN'S TIMES TWO, THOSE
11 ARE ACTUALLY WIRE TRANSFER FEES IT'S NOT BEING
12 TRANSFERRED TO THAT PERSON, HOWEVER THAT FULL
13 AMOUNT IS MARK VERDIELL'S MONEY, SO I INCLUDED THE
14 FULL AMOUNT THERE.

15 Q. SO THE ODD NUMBERS AT THE END OF THOSE LARGE
16 AMOUNTS ARE SIMPLY THE FEES ASSOCIATED WITH THE
17 TRANSFERS?

18 A. THAT'S RIGHT.

19 Q. SO AGAIN YOU DETERMINED THERE WAS ADDITIONAL
20 WIRES TRANSFERRED TO YILI LIU?

21 A. YES.

22 Q. WERE YOU ABLE TO VIEW ANY WIRE DOCUMENTS WITH
23 THOSE TRANSFERS?

24 A. YES.

25 Q. THEN AGENT FINE IF WE COULD LOOK AT

1 EXHIBIT 224 AT BATES NUMBER 2784. IF WE COULD
2 ENLARGE THIS DOCUMENT. WHAT'S THE DATE ON THIS
3 DOCUMENT, AGENT FINE?

4 A. MAY 16, 2007.

5 Q. AND HOW MUCH -- COULD YOU ACTUALLY READ AGENT
6 FINE THIS PORTION INTO THE RECORD?

7 A. PLEASE TAKE THIS LETTER AS MY INSTRUCTION TO
8 REMIT USD, \$160,000, USD, 160,000 ONLY, FROM THE
9 SUBJECT A/C TO THE FOLLOWING:

10 Q. THEN THE BENEFICIARY NAMED DOWN BELOW?

11 A. YILI LIU.

12 Q. AND THEN MS. BURNEY, IF YOU COULD ENLARGE THE
13 BOX IN THE MIDDLE PORTION OF THE DOCUMENT, THANK
14 YOU. AGAIN THERE'S ANOTHER VALIDATION ON CLIENT'S
15 FAX INSTRUCTION?

16 A. YES.

17 Q. VOICE LOGGED WITH?

18 A. YES.

19 Q. WHOSE NAME IS WRIT THEN THERE WITH THE VOICE
20 LOG ENTRY?

21 A. MR. HU.

22 Q. AND AGAIN, IF YOU COULD, MS. BURNEY, ENLARGE
23 THE SIGNATURE PORTION IMMEDIATELY NEXT TO THAT BOX.

24 WHOSE SIGNATURE DO YOU RECOGNIZE THAT TO
25 BE?

1 A. ALBERT HU.

2 Q. IF WE COULD NOW RETURN TO AGENT FINE'S CHART
3 AT EXHIBIT 271, MS. BURNEY. THERE APPEARS TO BE A
4 REFERENCE AT THE VERY BOTTOM, AGENT FINE, WITH AN
5 ASTERISK AND A NUMBER AND A DATE. WHAT'S THAT A
6 REFERENCE TO?

7 A. SO AS OF 6-19-2007, NOT ALL OF MARK VERDIELL'S
8 MONEY HAD BEEN SPENT. IN FACT THERE WAS \$74,195.26
9 REMAINING.

10 Q. AND AGAIN, YOU TOLD US THAT, EARLIER THAT
11 JUNE 19TH DATE IS SIGNIFICANT BECAUSE ADDITIONAL
12 EVENTS OCCURRED ON JUNE 20TH?

13 A. THAT'S RIGHT.

14 Q. SO AGAIN WHAT HAPPENED ON JUNE 20TH?

15 A. BOB LIN WIRES INTO THE SAME ACCOUNT \$250,000.

16 Q. SO DID YOU SEE ANY INDICATION BASED ON YOUR
17 REVIEW OF THE CREDIT SUISSE DOCUMENTS IN QUESTION
18 THAT WERE RELATED TO FIRESIDE, THAT THERE WAS ANY
19 SEPARATION OR DIVISION BETWEEN MR. VERDIELL'S
20 BALANCE OF 74,195.26 AND THE QUARTER MILLION FROM
21 MR. LIN?

22 A. NO.

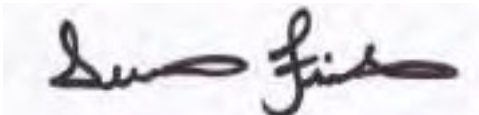
23 Q. JUST SO WE ARE CLEAR, AGAIN, I THINK YOU
24 ALREADY SAID THIS, BUT I WANT TO UNDERSTAND YOUR
25 TESTIMONY AGENT FINE, THE 74,000 PLUS IN THE

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.



SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 6/19/2012

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES,) CR-09-00487-RMW
)
PLAINTIFF,)
) JUNE 20, 2012
VS.)
) VOLUME 8
ALBERT KE-JENG HU,)
)
DEFENDANT.) PAGES 972-1134
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE
BY: JOSEPH FAZIOLI
TIM LUCEY
150 S. ALMADEN BLVD, STE 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: ATTORNEY AT LAW
BY: JERRY FONG
PO BOX 1040
PALO ALTO, CA 94302-1040

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

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INDEX OF PROCEEDINGS

CLOSING ARGUMENT BY MR. FAZIOLI	P. 979
CLOSING ARGUMENT BY MR. FONG	P. 1051
CLOSING ARGUMENT BY MR. LUCEY	P. 1093
JURY INSTRUCTIONS	P. 1107

1 SCHEME AND ON HIS INTENT MOTIVE OR PLAN AT THE TIME
2 HE OBTAINED THE MONEY HE IS CHARGED WITH HAVING
3 OBTAINED FROM BOB LIN AND MARK VERDIELL.

4 A SEPARATE CRIME IS CHARGED AGAINST
5 MR. HU IN EACH COUNT. YOU MUST DECIDE EACH COUNT
6 SEPARATELY. YOUR VERDICT ON ONE COUNT SHOULD NOT
7 CONTROL YOUR VERDICT ON ANY OTHER COUNT.

8 CERTAIN CHARTS AND SUMMARIES HAVE BEEN
9 ADMITTED IN EVIDENCE. CHARTS AND SUMMARIES ARE
10 ONLY AS GOOD AS THE UNDERLYING SUPPORTING MATERIAL.
11 YOU SHOULD, THEREFORE, GIVE THEM ONLY SUCH WEIGHT
12 AS YOU THINK THE UNDERLYING MATERIAL DESERVES.

13 MR. HU IS CHARGED WITH SEVEN COUNTS OF
14 WIRE FRAUD. THE GOVERNMENT CHARGES THAT ON THE
15 DATES LISTED BELOW ALBERT HU, HAVING KNOWINGLY AND
16 INTENTIONALLY DEVISED A SCHEM TO DEFRAUD AND TO
17 OBTAIN MONEY BY MEANS OF MATERIAL FALSE AND
18 FRAUDULENT PRETENSES, REPRESENTATION CUBICLES AND
19 PROMISES, DID FOR THE PURPOSE OF EXECUTING THE
20 SCHEME, KNOWINGLY CAUSE TO BE TRANSMITTED IN
21 INTERSTATE OR FOREIGN COMMERCE, THE FOLLOWING WIRES
22 OR WIRE COMMUNICATIONS.

23 COUNT ONE, THE TRANSFER DATE OF
24 FEBRUARY 8TH, 2005, AN INTERSTATE WIRE TRANSFER OF
25 \$100,000 SENT BY OR ON BEHALF OF MR. LIN TO A BANK

1 OF AMERICA ACCOUNT ENDING IN 6581.

2 COUNT TWO, DATE OF FEBRUARY 23RD, 2005,
3 AN INTERSTATE WIRE TRANSFER OF \$100,000 SENT BY OR
4 ON BEHALF OF MR. LIN TO BANK OF AMERICA ACCOUNT
5 ENDING IN 6581.

6 COUNT 3, JULY 6, 2005, INTERSTATE WIRE
7 TRANSFER OF \$250,000 SENT BY OR ON BEHALF OF
8 MR. LIN TO A BANK OF AMERICA ACCOUNT ENDING IN
9 6581.

10 COUNT 4, APRIL 27, 2007, INTERSTATE WIRE
11 COMMUNICATION DIRECTING A \$2 MILLION WIRE TRANSFER
12 BE SENT BY OR ON BEHALF OF MR. VERDIELL TO A CREDIT
13 SUISSE ACCOUNT ENDING IN 1780.

14 COUNT FIVE, AN INTERSTATE WIRE DATED
15 APRIL 30TH, 2007, INTERNATIONAL WIRE TRANSFER OF
16 \$2 MILLION SENT BY OR ON BEHALF OF MR. VERDIELL TO
17 A CREDIT SUISSE ACCOUNT ENDING IN 1780.

18 COUNT 6, JUNE 19, 2007, AN INTERSTATE
19 WIRE COMMUNICATION DIRECTING THAT A \$250,000 WIRE
20 TRANSFER BE SENT BY OR ON BEHALF OF MR. LIN TO A
21 CREDIT SUISSE ACCOUNT ENDING IN 1780.

22 AND COUNT SEVEN, A JUNE 19, 2007,
23 INTERNATIONAL WIRE TRANSFER OF \$250,000 SENT BY OR
24 ON BEHALF OF MR. LIN TO A CREDIT SUISSE ACCOUNT
25 ENDING IN 1780.

1 IN ORDER FOR MR. HU TO BE FOUND GUILTY OF
2 ANY COUNT OF THE CHARGED OFFENSES OF WIRE FRAUD,
3 THE GOVERNMENT MUST PROVE EACH OF THE FOLLOWING
4 ELEMENTS BEYOND A REASONABLE DOUBT WITH RESPECT TO
5 THAT COUNT.

6 FIRST, THE DEFENDANT KNOWINGLY DEvised A
7 SCHEME OR PLAN TO DEFRAUD, OR A SCREAM OR PLAN FOR
8 OBTAINING MONEY OR PROPERTY BY MEANS OF FALSE OR
9 FRAUDULENT PRETENSES OR REPRESENTATIONS OR
10 PROMISES, WITH ALL OF YOU AGREEING ON AT LEAST ONE
11 PARTICULAR FALSE OR FRAUDULENT PRETENSE,
12 REPRESENTATION OR PROMISE THAT WAS MADE.

13 SECOND, THE DEFENDANT KNEW THAT THE
14 PRETENSES, REPRESENTATIONS OR PROMISES WERE FALSE
15 OR FRAUDULENT.

16 THIRD, THE FALSE OR FRAUDULENT PRETENSES
17 REPRESENTATIONS OR PROMISES THAT WERE MADE AS PART
18 OF THE SCHEME OR PLAN WERE MATERIAL.

19 FOURTH, THE DEFENDANT ACTED WITH THE
20 INTENT TO DEFRAUD, THAT IS THE INTEND TO DECEIVE OR
21 CHEAT.

22 AND FIFTH, THE DEFENDANT USED OR CAUSED
23 TO BE USED INTERSTATE OR INTERNATIONAL WIRES TO
24 CARRY OUT AN ESSENTIAL PART OF THE SCHEME.

25 IN DETERMINING WHETHER A SCHEME TO

1 DEFRAUD EXISTS YOU MAY CONSIDER NOT ONLY THE
2 DEFENDANT'S WORDS OR STATEMENTS BUT ALSO THE
3 CIRCUMSTANCES IN WHICH THEY WERE USED AS A WHOLE.

4 A FALSE OR FRAUDULENT PRETENSE,
5 REPRESENTATION OR PROMISE IS MATERIAL IF IT HAD A
6 NATURAL TENDENCY TO INFLUENCE, OR WAS CAPABLE OF
7 INFLUENCING A POTENTIAL INVESTOR TO PART WITH
8 MONEY.

9 A DEFENDANT USES OR CAUSES SOMEONE TO USE
10 INTERSTATE WIRES WHEN HE KNOWS OR REASONABLY
11 FORESEES IN THE ORDINARY COURSE OF BUSINESS THAT
12 ANY WRITING SIGNAL OR SOUND WILL BE TRANSMITTED BY
13 MEANS OF WIRE, RADIO, TELEVISION, COMMUNICATION
14 FROM ONE STATE TO ANOTHER.

15 SIMILARLY, A DEFENDANT USES OR CAUSES
16 SOMEONE TO USE INTERNATIONAL WIRES WHEN HE KNOWS,
17 OR REASONABLY FORESEES IN THE ORDINARY COURSE OF
18 BUSINESS THAT ANY WRITING, SIGNAL OR SOUND WILL BE
19 TRANSMITTED BY MEANS OF WIRE, RADIO OR TELEVISION
20 COMMUNICATION FROM ONE COUNTRY TO ANOTHER.

21 IT DOES NOT MATTER WHETHER THE MATERIAL
22 WIRED WAS ITSELF FALSE OR DECEPTIVE SO AS LONG AS
23 THE WIRES WERE USED AS A PART OF THE SCHEME, NOR
24 DOES IT MATTER WHETHER THE SCHEME OR PLAN WAS
25 SUCCESSFUL OR THAT ANY MONEY OR PROPERTY WAS

1 OBTAINED.

2 THE GOVERNMENT CHARGES THAT MR. HU MADE
3 THE FOLLOWING FRAUDULENT STATEMENTS,
4 REPRESENTATIONS OR PROMISES.

5 A, THAT GLOBEOP FINANCIAL SERVICES WAS
6 THE FUND ADMINISTRATOR FOR DEFENDANT HU'S FIRESIDE
7 LS FUND.

8 B, THE LAW FIRM PROSKAUER ROSE WAS
9 ENGAGED AS LEGAL COUNSEL FOR DEFENDANT HU'S
10 FIRESIDE LS FUND.

11 C, THE FIRM OF CASTILLO, LYN, COHEN &
12 VIJAY WAS AN INDEPENDENT AUDITOR FOR DEFENDANT
13 ASENQUA BETA FUND AND FIRESIDE LS FUND.

14 D, THAT AN INDIVIDUAL NAMED TONY POLLACE
15 WAS THE CHIEF FINANCIAL OFFICER OF THE ASENQUA BETA
16 FUND AND THE FIRESIDE LS FUND AND THAT POLLACE HAD
17 SIGNED OFF ON QUARTERLY FINANCIAL STATEMENTS OF
18 THOSE HEDGE FUNDS WHICH DEFENDANT HU PROVIDED TO
19 INVESTORS.

20 E, THAT AS OF MAY 2007 THE MINIMUM AMOUNT
21 INDIVIDUALS WERE INVESTING IN THE FIRESIDE LS FUND
22 TO DATE WAS \$1 MILLION.

23 F, THAT DEFENDANT HU WOULD PAY INVESTORS
24 RATES OF RETURN AS HIGH AS 20 TO 30 PERCENT
25 ANNUALLY AND THAT THESE WERE HISTORIC RATES OF

1 RETURN FOR HIS HEDGE FUND.

2 AND G, THAT DEFENDANT HU WOULD OBTAIN
3 THESE HIGH RATE RETURNS FOR INVESTORS PRIMARILY BY
4 INVESTING THEIR FUNDS IN TECHNOLOGY-RELATED
5 SECURITIES.

6 AN ACT IS DONE KNOWINGLY IF THE DEFENDANT
7 IS AWARE OF THE ACT AND DOES NOT ACT THROUGH
8 IGNORANCE, MISTAKE OR ACCIDENT.

9 THE GOVERNMENT IS NOT REQUIRED TO PROVE
10 THAT THE DEFENDANT KNEW HIS ACTS OR OMISSIONS WERE
11 UNLAWFUL. YOU MAY CONSIDER EVIDENCE OF THE
12 DEFENDANT'S WORDS, ACTS OR OMISSIONS ALONG WITH ALL
13 THE OTHER EVIDENCE IN DECIDING WHETHER THE
14 DEFENDANT ACTED KNOWINGLY.

15 WHEN YOU BEGIN YOUR DELIBERATIONS YOU
16 SHOULD ELECT ONE MEMBER OF THE JURY AS YOUR
17 PRESIDING JUROR WHO WILL PRESIDE OVER THE
18 DELIBERATIONS AND SPEAK FOR YOU HERE IN COURT.

19 YOU WILL THEN DISCUSS THE CASE WITH YOUR
20 FELLOW JURORS TO REACH AGREEMENT IF YOU CAN DO SO.
21 YOUR VERDICT, WHETHER GUILTY OR NOT GUILTY MUST BE
22 UNANIMOUS.

23 EACH OF YOU MUST DECIDE THE CASE FOR
24 YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE
25 CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 6/26/12

EXHIBIT F

**United States District Court
Northern District of California**

UNITED STATES OF AMERICA
v.
ALBERT KE-JENG HU
A/K/A KE-JENG HU

JUDGMENT IN A CRIMINAL CASE

USDC Case Number: CR-09-00487-001 RMW
BOP Case Number: DCAN509CR000487-001
USM Number: 13160-111
Defendant's Attorney : Jerry Fong (Appointed)

THE DEFENDANT:

- pleaded guilty to count(s): ___.
- pleaded nolo contendere to count(s) ___ which was accepted by the court.
- was found guilty on Count(s) One (1) through Seven (7) of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
See next page.			

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ___.
- Count(s) ___ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

January 14, 2013
Date of Imposition of Judgment

Ronald M Whyte
Signature of Judicial Officer

Honorable Ronald M. Whyte, Senior U. S. District Judge
Name & Title of Judicial Officer

1/29/13
Date

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 2 of 8

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1343	Wire Fraud	February 8, 2005	One
18 U.S.C. § 1343	Wire Fraud	February 23, 2005	Two
18 U.S.C. § 1343	Wire Fraud	July 6, 2005	Three
18 U.S.C. § 1343	Wire Fraud	April 27, 2007	Four
18 U.S.C. § 1343	Wire Fraud	April 30, 2007	Five
18 U.S.C. § 1343	Wire Fraud	June 19, 2007	Six and Seven

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 3 of 8

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE HUNDRED AND FORTY-FOUR (144) MONTHS**.

This term consists of One Hundred and Forty-Four (144) months on each of Counts One through Seven, all terms to run concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal. The appearance bond is hereby exonerated.

The defendant shall surrender to the United States Marshal for this district.

at ___ am pm on ____.
 as notified by the United States Marshal.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2:00 pm on ____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

The appearance bond shall be deemed exonerated upon the surrender of the defendant.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy United States Marshal

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 4 of 8

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS**.
This term consists of Three (3) years on each of Counts One through Seven, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and two periodic drug tests thereafter.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions in this judgment.

STANDARD CONDITIONS

- 1) The defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) The defendant shall support his or her dependants and meet other family responsibilities;
- 5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 5 of 8

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay any restitution and special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.
2. The defendant shall provide the probation officer with access to any financial information, including tax returns, and shall authorize the probation officer to conduct credit checks and obtain copies of income tax returns.
3. The defendant shall not open any new lines of credit and/or incur new debt without the prior permission of the probation officer.
4. The defendant shall not maintain a position of fiduciary capacity without the prior permission of the probation officer.
5. The defendant shall submit his person, residence, office, vehicle, or any property under his control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.
6. The defendant shall not own or possess any firearms, ammunition, destructive devices, or other dangerous weapons.
7. The defendant shall cooperate in the collection of DNA as directed by the probation officer.

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU Judgment - Page 6 of 8
CASE NUMBER: CR-09-00487-001 RMW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 700.00	\$ waived	\$ to be determined

The determination of restitution is deferred until **March 18, 2013**. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below. The defendant shall make all payments directly to the U.S. District Court Clerk’s Office who will disburse payments to the payee.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<u>Totals:</u>	\$ _	\$ _	

Restitution amount ordered pursuant to plea agreement \$ _

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6, may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 7 of 8

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of **\$700.00** due immediately, balance due
 not later than ____, or
 in accordance with () C, () D, () E, () F () G or () H below; or
- B Payment to begin immediately (may be combined with () C, () D, or () F below); or
- C Payment in equal (e.g. weekly, monthly, quarterly) installments of \$ _ over a period of __ (e.g., months or years), to commence _ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal (e.g. weekly, monthly, quarterly) installments of \$ _ over a period of __ (e.g., months or years), to commence _ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within (e.g, 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

- G. In Custody special instructions:

Payment of criminal monetary penalties is due during imprisonment at the rate of not less than \$25.00 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

- H. Out of Custody special instructions:

It is further ordered that the defendant shall pay to the United States a special assessment of \$ and a fine of \$ which shall be due immediately. If incarcerated, payment of criminal monetary payment is due during imprisonment and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal

DEFENDANT: ALBERT KE-JENG HU A/K/A KE-JENG HU
CASE NUMBER: CR-09-00487-001 RMW

Judgment - Page 8 of 8

monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and co-defendant Names	Case Numbers (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee (if appropriate)

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect this defendant's responsibility for the full amount of the restitution ordered.**

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERT KE-JENG HU,

Defendant.

Case No. CR-09-00487-RMW

ORDER OF RESTITUTION

[Re Docket Nos. 142, 143]

A jury convicted defendant Albert Ke-Jeng Hu of wire fraud. He now challenges the government's proposed restitution. In particular, he argues that (1) only victims of the scheme the jury convicted him of are eligible for restitution and (2) that the court should reduce any restitution by the amount of tax benefits the victims received. For the reasons explained below, the court finds that Hu is responsible for the victim losses set forth below and that Hu's argument that he is entitled to reduce the amount of restitution by the tax benefits allegedly received by the victims fails as a matter of law.

I. BACKGROUND

The indictment charges Hu with a scheme to defraud people. Indictment ¶ 5, Dkt. No. 4. The indictment charges that he induced various investors to wire him money based upon false

1 representations regarding his hedge funds. Indictment ¶ 6. It also charges that he falsely claimed
2 that prominent business people and businesses were involved with his hedge funds to give them
3 credibility. Indictment ¶ 8-9. The government claims he raised approximately \$8 million from
4 investors, failed to invest almost all of this money as promised, and caused investors to lose
5 approximately \$6.5 million.

6 On June 20, 2012, a jury convicted Hu of seven counts of wire fraud, in violation of 18
7 U.S.C. § 1343, for a scheme to defraud by making fraudulent statements to induce victims to send
8 interstate wire transfers. Indictment; Jury Instructions 13 & 14, Dkt. No. 91; Verdict Form, Dkt.
9 No. 90. On January 14, 2013, the court sentenced him to 12 years in prison. The court delayed
10 determining the amount of restitution to allow time for the parties to provide additional information.
11 The parties have now filed briefs regarding various disputes over the scope of restitution and these
12 issues are ripe for resolution.

13 **II. ANALYSIS**

14 Under the Mandatory Victims Restitution Act ("MVRA"), the court must order full
15 restitution to victims of a convicted offense when the offense is committed by fraud or deceit. 18
16 U.S.C. §§ 3663A(c)(1), 3664(f)(1)(A). The parties dispute two key issues. First, they dispute
17 which victims are eligible for restitution. Second, Hu argues that the court should reduce the
18 amount he owes in restitution by the amount victims were able to mitigate by deducting the losses
19 from their taxes.

20 **A. Relevant Victims**

21 Hu argues that the government is improperly seeking restitution for persons that were not
22 victims of the crimes for which he was convicted. A victim under the Mandatory Victims
23 Restitution Act is "a person directly and proximately harmed as a result of the commission of an
24 offense" and "in the case of an offense that involves as an element a scheme, conspiracy, or pattern
25 of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of
26 the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A.¹ Here, the crime of conviction includes a

27
28 ¹ The Mandatory Victims Restitution Act was passed to broaden the definition of victim in the case
of a scheme in response to the Supreme Court's holding in *Hughey v. United States*, 495 U.S. 411,
420 (1990), that "the loss caused by the conduct underlying the offense of conviction establishes the

1 scheme as an element of the offense, and therefore the court may order restitution for anyone
2 harmed by Hu's conduct in the course of his scheme. *See* 18 U.S.C. § 1343 (wire fraud includes
3 "having devised or intending to devise any scheme or artifice to defraud"); *United States v. Brock-*
4 *Davis*, 504 F.3d 991, 999 (9th Cir. 2007) (finding the restitution order may "include acts of related
5 conduct for which the defendant was not convicted"). The government must also establish "that a
6 person or entity is a victim for purposes of restitution" by a preponderance of the evidence. *United*
7 *States v. Waknine*, 543 F.3d 546, 556 (9th Cir. 2008). *See also* 18 U.S.C. § 3664(e). The parties
8 dispute the scope of the scheme for which restitution is available.

9 Hu argues that the government seeks restitution for victims and conduct outside of the fraud
10 scheme specified in the indictment. He argues that because the indictment only mentions two funds,
11 the Asenqua Beta Fund and Fireside LS Fund, a restitution award should be limited to people who
12 invested in those two funds.

13 Both parties agree that restitution is limited to losses that result from the fraudulent scheme
14 charged in the indictment. They disagree, however, over how broadly a court should construe the
15 scope of the charged scheme. Although the Ninth Circuit has not provided a test, it allows
16 restitution for actions not charged in the indictment when the same pattern of behavior for which the
17 defendant is convicted caused the loss. For example, in *United States v. Brock-Davis*, the Ninth
18 Circuit affirmed a restitution order to a motel in one city that it found was the victim of a charged
19 conspiracy in another city. 504 F.3d 991, 998-1000 (9th Cir. 2007). The defendant pled guilty to a
20 conspiracy to manufacture methamphetamine in Missoula, Montana after a housekeeper discovered
21 a partial meth lab in the motel room rented by the defendant in Missoula. *Id.* at 994, 998. The
22 defendant's accomplice told the police they had better check another motel room in Kalispell,
23 Montana, where they discovered another partial meth lab. *Id.* The government only mentioned the
24 motel room in Missoula in the indictment. *Id.* at 998. Although the defendant argued that there was
25 no proven manufacturing of methamphetamine in the Kalispell motel room, the Ninth Circuit found
26 the evidence sufficiently disclosed the existence of the lab and that it was part of the scheme. *Id.* at
27 998-99. The court found that "the fact that the [the Kalispell motel] was not mentioned in the

28 outer limits of a restitution order" in all cases. *See United States v. Brock-Davis*, 504 F.3d 991, 998
(9th Cir. 2007).

United States District Court
For the Northern District of California

1 indictment is immaterial" because there was evidence supporting a finding that the Kalispell motel
2 room was used as part of the conspiracy. *Id.* at 999.

3 Similarly, in *United States v. Grice*, the Ninth Circuit affirmed a restitution order for over
4 \$15,000 for mail fraud even though the plaintiff only pled guilty to four counts, representing a
5 \$1,400 loss. 319 F.3d 1174, 1176. The court found that the defendant's actions were all part of the
6 same long-standing scheme to defraud using the mail because she used the same method
7 throughout—filing and failing to file change of address forms so that her son's dividend checks
8 came to her instead of him. *Id.* at 1178-79. In *United States v. Johnson*, the Ninth Circuit affirmed
9 a restitution order that included the losses caused by 113 counts of fraud even though Johnson only
10 pled guilty to one count. 132 F.3d 1279, 1286 (9th Cir. 1997). The court found that because "the
11 plea agreement described in detail the method and duration of Johnson's scheme to defraud" he
12 could be ordered to pay restitution for all of the losses. *Id.* at 1287.

13 Here, the scheme charged in the indictment is not limited to the Asenqua Beta Fund and
14 Fireside LS Fund. Hu was charged and convicted of inducing investors to wire him money through
15 "false representations regarding his hedge funds." Indictment ¶ 6. The next paragraph gives the
16 names of two of Hu's hedge funds—Asenqua Beta Fund and Fireside LS Fund—and the paragraph
17 after that describes actions Hu took in "further part of the scheme to defraud" with respect to those
18 two named hedge funds. *Id.* ¶¶ 7, 8. This does not mean, however, that the scheme was limited to
19 the two named hedge funds. Rather, the indictment describes a scheme to defraud investors by
20 inducing them to send Hu money based upon false representations regarding his hedge funds. The
21 declaration filed by Special Agent Wunderli, who analyzed the financial records of the victims,
22 indicates that many of the investors in the Asenqua Beta Fund and Fireside LS Fund also invested in
23 other funds owned by Hu around the same time. Wunderli Decl. Ex. A. The evidence supports the
24 finding that the following investments were made as a result defendant's scheme:

Victim	Amount Invested	Fund(s) Invested In	Amount Returned	Restitution
Andy Yan	\$723,133.00	Asenqua Beta / Fireside LS	\$660,000.00	\$63,133.00
Yu-Mei Doong	\$830,000.00	Fireside LS	\$0.00	\$830,000.00

Marc Verdiell	\$2,000,000.00	Fireside LS	\$0.00	\$2,000,000.00
Bob Lin (Does not include \$75,000 invested in Anoxis)	\$1,000,000.00	Asenqua Beta / Fireside LS	\$0.00	\$1,000,000.00
Joe Ye (Does not include \$75,000 invested in Anoxis)	\$500,000.00	Asenqua Alpha / Fireside LS	\$200,000.00	\$300,000.00
Grace Doong	\$379,962.00	AQC / Asenqua Ventures	\$0.00	\$379,962.00
TOTAL	\$5,433,095.00		\$860,000.00	\$4,573,095.00

Restitution is not awarded to Hwa-Fu Chen, Dan Ye, Accelera Ventures (Dennis Kam and Eileen Tan) and Donald Lee as the proof was insufficient to show that they invested in hedge funds operated by defendant Hu or that their investments were the result of fraudulent representations. For example, the evidence did not establish what Anoxis was and how investments were obtained for it. The court similarly finds the proof insufficient to support any restitution for investments in Konarka.

B. Reduction of Restitution Based on Tax Benefits

The court is supposed to order restitution "in the full amount of each victim's losses." § 3664(f)(1)(A); *United States v. Rizk*, 660 F.3d 1125, 1136 (9th Cir. 2011). A court does not consider "compensation with respect to a loss from insurance or any other source" when determining the amount of the restitution. 18 U.S.C. § 3664(f)(1)(B). Rather, the defendant must pay restitution to whoever provided the compensation, after first compensating the victim for any remaining loss. § 3664(j)(1). The purpose of restitution is to make the victim whole by restoring the value of the losses suffered because of the defendant's crime. *United States v. Hunter*, 618 F.3d 1062, 1064 (9th Cir. 2010).

Hu argues that the court should reduce the amount he must pay in restitution by the amount of tax benefits or savings that each investor was able to realize because of their losses. He relies primarily on *U.S. v. Black*. 589 F. Supp. 594, 599 (D. Or. 1984). In that case, the court held that "if investors received tax benefits and did not have to pay civil jeopardy assessments by the Internal Revenue Service (IRS) because the statute of limitations had run, those investors will not be entitled to restitution." *Id.* However, *Black* was decided before the Mandatory Victims Restitution Act became law. The court based its decision on wording and cases interpreting 18 U.S.C. § 3651

1 (1984), which was repealed later that year. *See* PL 98-473, Title II, § 212(a)(1), (2), Oct. 12, 1984,
2 98 Stat. 1987. No other courts have followed its holding.

3 The government argues that the court should not consider tax deductions because they are
4 not supported by the law, would be complex to calculate, and would implicate the privacy rights of
5 the victims because they would have to provide their tax returns to Hu. In the *United States v.*
6 *McAlpine*, the Tenth Circuit refused to reduce a restitution award because of a tax credit. 32 F.3d
7 484, 489 (10th Cir. 1994). Although the court also decided *McAlpine* before the MVRA, it based its
8 decision on similar restitution laws, which the MVRA references. The court in *McAlpine* found no
9 support for the "novel proposition" that restitution should be reduced by tax savings. *Id.* It noted
10 that the only situations in which courts reduce restitution are when the defendant was directly
11 "responsible for the victim's receipt of something of value." *Id.* The Sixth Circuit in *United States*
12 *v. Driver* reached the same conclusion. 132 F.3d 34, 1997 WL 745168 (6th Cir. Nov. 17, 1997). It
13 held that the "critical amount is the amount unlawfully taken by the defendant from his victims,
14 unaffected by speculation as to . . . what they may or may not have done with respect to the
15 treatment of their investments on their individual tax returns." *Id.* at *5. Both courts also noted that
16 the sentencing guidelines could have included modifications for tax benefits and did not. *Id.* at *5
17 (citing U.S.S.G. § 2B1.1, Application n. 2); *McAlpine*, 32 F.3d at 489 (same).

18 The court agrees, finding that the full amount of the victims' loss is how much they lost to
19 Hu less any benefit Hu provided directly to the victims. Any benefits the victims received from
20 third parties because of their loss are independent of the restitution award. To the extent, the
21 victims did receive a tax benefit, they may need to compensate the IRS after they receive restitution.
22 But because each victim's tax situation is private and complicated, the court leaves to the victims
23 and the IRS any required reimbursements to the IRS, as its regulations appear to provide for. *See,*
24 *e.g.*, 26 C.F.R. § 1.165-1(d)(2)(iii).

25 III. ORDER

26 The court hereby amends the judgment against Hu to require him to pay a total of
27 \$5,383,095 in restitution to each of the following in the specified amounts:

28 Andy Yan: \$63,133

1 Yu-Mei Doong: \$830,000
 2 Marc Verdiell: \$2,000,000
 3 Fuyuan Lin aka Bob Lin: \$1,000,000
 4 Zhou Ye aka Joe Ye: \$300,000
 5 Grace Doong: \$379,962

7 Dated: August 26, 2013

Ronald M. Whyte
 RONALD M. WHYTE
 United States District Judge

United States District Court
For the Northern District of California

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United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERT KE-JENG HU,

Defendant.

Case No. CR-09-00487-RMW

**ORDER AMENDING RESTITUTION
ORDER**

On August 26, 2013, the court issued an order of restitution. Dkt. No. 157. Three days later, the court ordered another hearing to determine whether the restitution award, should be corrected to include the \$570,000 lost by Hwa-Fu Chen. Dkt. No. 159. Hwa-Fu Chen was originally excluded from the restitution award because the government believed that Hwa-Fu Chen had not filed a victim-impact statement. Shortly after the original hearing, the government realized he had filed a victim-impact statement and requested that the court amend its restitution order.

Given that the victim-impact statement had previously been filed, the court finds it appropriate to amend the restitution order to include \$570,000 for Hwa-Fu Chen. Therefore, the

1 court vacates its prior restitution order and orders defendant Hu to pay a total of \$5,143,095¹ in
2 restitution to each of the following in the following specified amounts:

3 Andy Yan: \$63,133

4 Yu-Mei Doong: \$830,000

5 Marc Verdiell: \$2,000,000

6 Fuyuan Lin aka Bob Lin: \$1,000,000

7 Zhou Ye aka Joe Ye: \$300,000

8 Grace Doong: \$379,962

9 Hwa-Fu Chen: \$570,000

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11
12 Dated: September 27, 2013



RONALD M. WHYTE
United States District Judge

United States District Court
For the Northern District of California

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28 ¹ Page 6 of the court's prior restitution order, Dkt. No. 157, mistakenly stated that the total
restitution was \$5,383,095. The total should have been \$4,573,095, which is the total of the
individual restitution amounts stated in the order.

EXHIBIT G

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 04 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT KE-JENG HU, AKA Ke-Heng
Hu, AKA Ke-Jeng Hu,

Defendant - Appellant.

No. 13-10039

D.C. No. 5:09-cr-00487-RMW-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT KE-JENG HU, AKA Ke-Heng
Hu, AKA Ke-Jeng Hu,

Defendant - Appellant.

No. 13-10474

D.C. No. 5:09-cr-00487-RMW-1

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, Senior District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted January 4, 2016
San Francisco, California

Before: WALLACE and O'SCANNLAIN, Circuit Judges and HUFF,** District Judge.

Albert Ke-Jeng Hu appeals from his jury conviction and sentence on seven counts of wire fraud, in violation of 18 U.S.C. § 1343. He also appeals from the district court's imposition of restitution. This court has jurisdiction under 28 U.S.C. § 1291. We affirm.

1. The district court properly admitted the foreign investor's testimony. The testimony was inextricably intertwined with the charged offenses because it involved the same hedge funds, the same representations, and events that occurred during the same time period. "The policies underlying rule 404(b) are inapplicable when offenses committed as part of a single criminal episode become other acts simply because the defendant is indicted for less than all of his actions." *United States v. Williams*, 989 F.2d 1061, 1070 (9th Cir. 1993) (internal quotation marks omitted).

The evidence was also admissible because it was relevant to show intent, absence of mistake, or common plan at the time of the charged offenses.

** The Honorable Marilyn L. Huff, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

See Fed. R. Evid. 404(b)(2). The government articulated those purposes in its motion *in limine*, and those issues were material “simply because the government had to prove [them].” *United States v. Flores Blanco*, 623 F.3d 912, 919 n.4 (9th Cir. 2010) (internal quotation marks omitted). The other acts were similar to the charged offenses and not too remote in time, and the evidence was sufficient to support a finding that Hu committed them. *See United States v. DeCinces*, 808 F.3d 785, 791 (9th Cir. 2015). The district court’s admission of the testimony over Hu’s objections reflects that it performed the balancing required by Rule 403. *See United States v. Lillard*, 354 F.3d 850, 855 (9th Cir. 2003). Additionally, the limiting instruction minimized any prejudice. *See Flores Blanco*, 623 F.3d at 920.

2. The case agent’s opinion testimony is not a basis for reversal. The agent’s testimony was simple lay testimony based on his tracing of the funds. The district court did not plainly err by failing to *sua sponte* convert Hu’s objection to an objection under Federal Rule of Evidence 701. In any event, any error was harmless because Hu’s counsel exposed the weaknesses of the agent’s testimony on cross-examination, and the other evidence against Hu was substantial.

3. The materiality instruction is also not a basis for reversal. The materiality standard from *Neder v. United States*, 527 U.S. 1 (1999), is an objective

standard that focuses on “the intrinsic capabilities of the false statement itself, rather than the possibility of the actual attainment of its end.” *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008) (internal quotation marks omitted). The district court did not misinstruct the jury or abuse its discretion by formulating the instruction as it did.

4. The district court correctly applied the abuse-of-trust enhancement under § 3B1.3 of the U.S. Sentencing Guidelines. Based on Hu’s false representations, his victims entrusted him with substantial discretion, which significantly facilitated his commission of the offense. *See* U.S.S.G. § 3B1.3 & cmts. 1 & 3; *United States v. Laurienti*, 731 F.3d 967, 973–74 (9th Cir. 2013). “The position need not be that of a fiduciary.” *United States v. Thornton*, 511 F.3d 1221, 1227 (9th Cir. 2008).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
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TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk

EXHIBIT H

United States District Court
For the Northern District of California

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E-FILED on 4/26/13

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ALBERT K. HU,
ASENQUA, INC.,
ASENQUA CAPITAL MANAGEMENT, LLC,
AQC ASSET MANAGEMENT, LTD., and
FIRESIDE CAPITAL MANAGEMENT, LTD.

Defendants.

No. C-09-01177 RMW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR FINAL JUDGMENT
AGAINST ALL DEFENDANTS**

[Re: Docket No. 101]

Plaintiff, the Securities and Exchange Commission ("Commission"), moved for final judgement against all defendants. On March 1, 2013, the court entered a default judgment against defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd, and Fireside Capital Management, Ltd. Dkt. No. 105. The only remaining defendant, Albert K. Hu, failed to respond to the plaintiff's motion [or appear at the hearing].

I. BACKGROUND

The Commission alleges that Hu violated the antifraud provisions of the Securities Act of 1944 and the Securities Exchange Act of 1934 (counts 1 and 2) and violated the Investment Advisers Act of 1940 (counts 3 and 4). The Commission seeks a final judgment against defendant Hu on the basis that Hu's recent criminal conviction is based on the same relevant facts, *United*

1 *States v. Hu*, No. 09-cr-487 RMW (N.D. Cal.), and thus works as an estoppel in favor of the
 2 government in this civil action. The Commission also seeks: (1) a permanent injunction against all
 3 defendants for future violation of Section 17(a) of the Securities Act and Section 10(b) of the
 4 Securities Exchange Act and Rule 10b-5 thereunder; (2) a permanent injunction against Hu for
 5 violations of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act and Rule 206(4)-8
 6 thereunder; (3) disgorgement and prejudgement interest in the amount of \$6,624,238; and (4) civil
 7 money penalties.

8 **II. ORDER**

9 Because Hu does not oppose the motion, and upon good cause shown, the court GRANTS
 10 the Government's motion for final judgment against Hu and grants relief as follows:

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendant Albert K. Hu and
 12 defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and
 13 Fireside Capital Management, Ltd., and their respective officers, agents, servants, employees,
 14 attorneys, and those persons in active concert or participation with any of them, who receive actual
 15 notice of this Order, by personal service or otherwise, and each of them, are permanently restrained
 16 and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of
 17 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R.
 18 § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of
 19 any facility of any national securities exchange, in connection with the purchase or sale of any
 20 security:

21 (a) to employ any device, scheme, or artifice to defraud;

22 (b) to make any untrue statement of a material fact or to omit to state a material fact
 23 necessary in order to make the statements made, in the light of the circumstances under which they
 24 were made, not misleading; or

25 (c) to engage in any act, practice, or course of business which operates or would operate
 26 as a fraud or deceit upon any person.
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United States District Court
For the Northern District of California

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd., and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, is permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], by the use of any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client;
- or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

OS Received 09/15/2021

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3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Albert K. Hu and his
4 officers, agents, servants, employees, attorneys, and those persons in active concert or participation
5 with any of them, who receive actual notice of this Order, by personal service or otherwise, and each
6 of them, is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act
7 [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], by the use of any
8 means or instrumentality of interstate commerce, directly or indirectly:

9 (a) to make any untrue statement of a material fact or omitting to state a material fact
10 necessary in order to make the statements made, in the light of the circumstances under which they
11 were made, not misleading, to any investor or prospective investor in a pooled investment vehicle;
12 or

13 (b) otherwise to engage in any act, practice or course of business that is fraudulent,
14 deceptive, or manipulative with respect to any investor or prospective investor in a pooled
15 investment vehicle.

16
17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that defendant Albert K. Hu and
18 defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and
19 Fireside Capital Management, Ltd., are jointly and severally liable for disgorgement of \$4,980,000,
20 representing profits gained as a result of the conduct alleged in the Complaint, together with
21 prejudgment interest thereon in the amount of \$1,644,238, for a total of \$6,624,238. Defendants
22 shall satisfy this obligation by paying \$6,624,238 to plaintiff Securities and Exchange Commission
23 within 14 days after entry of this Final Judgment.

24 Defendant may transmit payment electronically to the Commission, which will provide
25 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from
26 a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.
27 Defendants may also pay by certified check, bank cashier's check, or United States postal money
28 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

United States District Court
For the Northern District of California

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Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the following: the case title; the civil action number; the name of this Court; defendants Albert K. Hu, Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd. as defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission shall hold the funds (collectively, the “Fund”) and may propose a plan to distribute the Fund subject to the Court’s approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court’s judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Albert K. Hu and defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd., shall jointly and severally pay a civil penalty in the amount of \$1,300,0000 to plaintiff Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendants shall make this payment within 14 days after entry of this Final Judgment.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying following: the case title; the civil action number; the name of this Court; defendants Albert K. Hu, Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and Fireside Capital Management, Ltd. as defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, defendants relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

DATED: April 26, 2013



RONALD M. WHYTE
United States District Judge

United States District Court
For the Northern District of California

EXHIBIT I

1 MARC J. FAGEL (Cal. Bar No. 154425)
ROBERT TASHJIAN (Cal. Bar No. 191007)
2 tashjianr@sec.gov
ELENA RO (Cal. Bar No. 197308)
3 roe@sec.gov

4 Attorneys for Plaintiff
SECURITIES AND EXCHANGE
5 COMMISSION
44 Montgomery Street, Suite 2600
6 San Francisco, California 94104
Telephone: (415) 705-2500
7 Facsimile: (415) 705-2501

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,
13 vs.
14 ALBERT K. HU,
15 ASENQUA, INC.,
16 ASENQUA CAPITAL MANAGEMENT, LLC,
17 AQC ASSET MANAGEMENT, LTD., and
18 FIRESIDE CAPITAL MANAGEMENT, LTD.,
19 Defendants.

Case No. 09-CV-01177 RMW

NOTICE OF MOTION AND MOTION FOR
FINAL JUDGMENT AGAINST ALL
DEFENDANTS

DATE: April 26, 2013
TIME: 9:00 a.m.
PLACE: Courtroom 6, Fourth Floor

NOTICE OF MOTION

1
2 **TO DEFENDANT ALBERT K. HU, THE DEFENDANT ENTITIES, AND**
3 **COUNSEL, IF ANY, PLEASE TAKE NOTICE THAT** plaintiff Securities and Exchange
4 Commission (the "Commission") hereby moves for final judgment against all defendants.
5 The Commission's motion is noticed for hearing on April 26, 2013, at 9:00 a.m. before the
6 Honorable Ronald Whyte, Judge of the District Court for the Northern District of California.

7 Separate notice has been provided Hu, who is in custody and not represented by legal
8 counsel in this matter. *See* Certificate of Service (attaching Special Notice of Motion to Pro
9 Se Defendant) (filed concurrently).

10 The Commission's motion is based on the principles of collateral estoppel and is
11 supported by facts necessarily decided in a related criminal trial against defendant Hu. The
12 entity defendants, controlled by defendant Hu, are not represented by legal counsel in this
13 action. The Commission moves for default judgment against the entity defendants based on
14 their failure to defend this action or to appear through counsel. The Commission seeks
15 injunctive relief against all defendants, as well as disgorgement of defendants' ill-gotten gains
16 and the imposition of civil monetary penalties, as authorized by the federal securities laws.

17 The Commission's motion is supported by this Memorandum of Points and
18 Authorities, the accompanying declaration of Robert L. Tashjian, all materials attached to the
19 declaration, the accompanying Request for Clerk's Entry of Default, the proposed judgment
20 submitted by the Commission, pleadings and papers filed on the Court's docket in this action
21 and the related criminal action captioned *United States v. Hu*, No. 09-CR-487 RMW (N.D.
22 Cal.), and such other oral or written evidence, as may be presented at the hearing.

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STATEMENT OF ISSUES

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In deciding the Commission’s motion, the Court must rule on the following issues:

1. Whether the criminal judgment against defendant Hu compels the conclusion that he is also liable for violations of the antifraud provisions of the federal securities laws.

2. Whether default judgment should be entered against the entity defendants based on their failure to appear through counsel and to defend the Commission’s claims.

3. Whether the Court should grant the Commission’s requested relief, including the entry of permanent injunctions against future violations of the securities laws, an order requiring defendants to disgorge their ill-gotten gains, and an order imposing civil monetary penalties.

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1 **I. INTRODUCTION**

2 In a criminal trial, a jury convicted defendant Albert K. Hu on seven counts of wire
3 fraud, finding him guilty of defrauding investors in fictional hedge funds by falsifying
4 investment documents, quarterly account statements, and other financial statements. These
5 false documents gave the aura of authenticity to Hu's scheme to defraud investors and
6 induced them into believing that credible and reliable "gatekeepers" safeguarded their
7 investments. In their verdict, the jury necessarily found that Hu made materially false and
8 misleading statements to investors. Because these facts also establish Hu's violations of the
9 antifraud provisions of the securities laws, the Court should enter summary judgment against
10 him based on traditional legal principles of collateral estoppel.

11 Defendants Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset
12 Management, Ltd., and Fireside Capital Management, Ltd. (collectively, the "Asenqua
13 defendants"), are entities created and controlled by Hu. These defendants have failed to
14 defend the Commission's claims or even to retain legal counsel, as required by the Court's
15 local rules. The Court should thus enter default judgment against the Asenqua defendants.

16 For these reasons, as discussed further in this memorandum, the Commission
17 respectfully requests that the Court enter final judgment against all defendants in this action.

18 **II. PROCEDURAL AND EVIDENTIARY BACKGROUND**

19 **A. The Civil Claims and Criminal Indictment Against Hu**

20 The Commission filed its Complaint against Hu and four associated Asenqua
21 defendants on March 18, 2009. *See* Exh. A (Compl.).¹ The Commission alleged violations of
22 the antifraud provisions of the Securities Act of 1933 ("Securities Act"), the Securities
23 Exchange Act of 1934 ("Exchange Act"), and the Investment Advisers Act of 1940
24 ("Advisers Act"). *See id.* at 10-12 (alleging violations of Section 10(b) of the Exchange Act
25 and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, Sections 206(1) and 206(2) of
26 the Advisers Act, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.) At

27 ¹ Referenced exhibits are attached to the accompanying Declaration of Robert L. Tashjian
28 submitted in support of this motion and are cited as "Exh. ___."

1 the request of the Commission, the Court entered a Temporary Restraining Order and a
2 subsequent Preliminary Injunction against Hu and the Asenqua defendants. *See* Exh. E
3 (TRO); Exh. F (PI).

4 The Grand Jury returned a criminal indictment against Hu on May 6, 2009. *See* Exh. J
5 (Indictment). The Indictment charged Hu with seven counts of wire fraud in violation of
6 18 U.S.C. § 1343. Because the scheme to defraud investors was based on the same set of
7 allegations in both cases, the Court related the criminal charges with the Commission's civil
8 action. *See* Exh. G (Order).

9 In the Commission's action, Hu's legal counsel moved to withdraw in May 2010. *See*
10 Exh. H (Motion). The Court granted the motion on June 4, 2010. *See* Exh. I (Order). The
11 Court provided notice to all defendants that "you may not in most cases represent yourself if
12 you are . . . [a] corporation; [a] partnership; [or a] limited liability company." *Id.* at 2. The
13 Court warned defendants that "Failure to retain an attorney may lead to . . . the entry of a
14 default judgment." *Id.* Hu and the Asenqua defendants have been unrepresented in the
15 Commission's action to this date.

16 Hu obtained legal counsel in the criminal action, however, and his trial commenced on
17 June 4, 2012. *See* Exh. K (Minute Entry).

18 **B. The Evidence Admitted at Hu's Criminal Trial**

19 Hu is the former Chief Executive Officer of Aplex, Inc., a privately-held company
20 based in Sunnyvale. *See* Reporter's Transcript, *United States v. Hu*, No. 09-CR-487 RMW
21 (N.D. Cal.) ("R.T.") at 60-61 (Lin); *id.* at 879-80, 883 (Pollace).² Aplex ran out of money and
22 went out of business in 1999. *Id.* at 884 (Pollace). Shortly thereafter, Hu established a hedge
23 fund enterprise that he called "Asenqua." *Id.* at 885 (Pollace).

24
25 _____
26 ² Cited excerpts of the Reporter's Transcript of the proceedings at Hu's criminal trial are
27 attached to the accompanying declaration. *See* Tashjian Decl. ¶ 18 & Exh. P. The testifying
28 witness follows the citation in (parentheses). Relevant exhibits admitted into evidence at the
trial are referenced herein by their trial exhibit numbers (*e.g.*, Exh. 2) and are attached to the
Tashjian Declaration as Exhibits Q-W.

1 By 2004, Hu was actively soliciting investments in Asenqua hedge funds. *See* R.T. at
2 63-64 (Lin); *id.* at 373-74, 380-81 (Doong). Hu boasted about the purported performance of
3 the Asenqua hedge funds: according to a Power Point presentation that he provided investors,
4 the funds appeared successful and showed a “high percentage gain.” *Id.* at 66 (Lin). By
5 2007, Hu raised at least \$4.98 million from investors. *Id.* at 125 (Lin) (investing \$1 million);
6 *id.* at 484 (Doong) (investing combined \$1.13 million between herself and sister); *id.* at 609-
7 10, 612 (Verdiell) (investing \$2 million).³

8 Under the terms of the investment agreements, investors became limited partners or
9 shareholders in various Asenqua hedge funds. *See* R.T. at 88 (Lin) (identifying Exhibit No. 2
10 as the Asenqua Beta Fund, LP investment agreement); Exh. 2 at HU-000051 (describing
11 limited partnership interests in Paragraph No. 2); R.T. at 384-86, 456-57 (Doong) (identifying
12 selected pages of Exhibit No. 63 as the Fireside LS Fund, Ltd. investment agreement);
13 Exh. 63 at HU-01114A (describing Participating Shares in Paragraph No. 2). Hu and the
14 Asenqua defendants controlled the Asenqua hedge funds’ investment strategy. *See* R.T. at 89
15 (Lin) (identifying Hu signature on subscription agreement); Exh. 2 at HU-000047 (identifying
16 Asenqua, Inc. as “Investment Manager”); *id.* at HU-000062 (Hu signature); R.T. at 457-58
17 (Doong) (identifying Hu signature); Exh. 63 at HU-1127A (Hu signature).

18 Investments in the Asenqua hedge funds were to be pooled into various “master
19 funds” controlled by Hu and the Asenqua defendants. *See* R.T. at 617-18 (Verdiell)
20 (identifying Exhibit No. 12 as the “Fireside” investment memorandum); Exh. 12 at HU-
21 000147 (describing “master/feeder” fund structure). Hu promised to execute his investment
22 strategy using the collective investor funds held in each master fund. *See* Exh. 12 at HU-
23 000147. Hu and the Asenqua defendants were allowed to earn fees based on a percentage of
24 the returns as compensation. *See* Exh. 12 at HU-000149 (investment manager to earn 0.375
25 percent annually of assets under management and 20 percent “incentive” fee). Hu and the
26 Asenqua defendants further committed that the returns, after subtracting costs and

27 ³ Another investor, Zhou Ye, invested \$825,000 in the Asenqua funds between 2003 and
28 2005. *See* Exh. D (Ye Decl.) ¶ 3 & Exh. B (attached thereto).

1 management fees, would be allocated among investors across the Asenqua hedge funds. *See*
2 Exh. 12 at HU-00174.

3 Hu misled investors from the beginning. The investment agreements provided by Hu
4 to investors included falsehoods designed to lend legitimacy to the Asenqua enterprise and
5 give confidence to investors about the safety of their investment. The agreements, for
6 example, identified prestigious international law firms as counsel to various Asenqua hedge
7 funds. *See* Exh. 2 at HU-000059 (subscription agreement identifying “Heller Ehrman Rose
8 LLP” as the legal counsel to the Asenqua Beta Fund, LP); Exh. 63 at HU-001123A
9 (subscription agreement identifying Proskauer Rose as the legal counsel to the Fireside LS
10 Fund, LP); Exh. 12 at HU-000152 (private placement memorandum identifying “Pillsbury
11 Winthrop” as the legal counsel to the Fireside LS Fund, LP). These representations were
12 false: although some of the firms had provided unrelated legal advice to Hu or Asenqua
13 entities, none served as legal counsel to the Asenqua hedge funds as specified in the
14 investment agreements. *See* R.T. at 320-21, 327 (Arthur) (testifying that Proskauer firm had
15 not been retained by Asenqua Funds); *id.* at 328, 338-40 (Rappaport) (same).⁴

16 Similarly, the Fireside LS Fund, LP investment agreement stated that GlobeOp
17 Financial Services S.A., an established fund administrator, had been retained to manage the
18 Asenqua hedge funds’ back office operations. *See* Exh. 12 at HU-000148. This
19 representation was false. *See* R.T. at 558, 566, 569 (Dulberg) (testifying that GlobeOp
20 Financial Services had not been retained to provide services to any Asenqua Fund).

21 The Fireside LS Fund, LP investment agreement claimed that Seiler LLP, a Certified
22 Public Accounting firm with offices in Redwood City, California, had been retained to review
23 the Asenqua hedge funds’ books and records. *See* R.T. at 626-27 (Verdiell); Exh. 12 at
24

25 _____
26 ⁴ *See also* Exh. B (Chang Decl.) ¶ 5 (stating that Heller Ehrman White & McAuliffe has not
27 served as counsel to Hu or the Asenqua defendants); Exh. C (Gould Decl.) ¶ 4 (stating that
28 Pillsbury Winthrop Shaw Pittman briefly represented Hu from August 2006 to April 2007, but
did not prepare the offering documents for the Fireside LS Fund, LP and did not represent the
fund).

1 HU_000168. This claim was false: Seiler provided no services to the Asenqua hedge funds.

2 See R.T. at 746, 751, 756 (Born).

3 Hu provided quarterly financial statements to investors in the Asenqua hedge funds.

4 See R.T. at 94-95 (Lin) (identifying Exhibit Nos. 3 and 4 as fund statements); R.T. at 426-28

5 (Doong) (identifying selected pages in Exhibit No. 63 as fund statements); R.T. at 635-36

6 (Verdiell) (identifying Exhibit Nos. 14 to 18 as fund statements). The statements represented

7 that the Asenqua hedge funds performed well. See, e.g., Exh. 63 at HU-001024A (stating that

8 fund had grown by more than 10 percent in 2004). Each statement bore the purported

9 signature of “Tony Pollace” as the Chief Financial Officer. See, e.g., Exh. 3 (printing name as

10 “Anthony Pollack,” but signing name “Tony Pollace”); Exh. 63 at HU-001025A; Exh. 18.

11 Mr. Pollace, however, was never employed at any Asenqua entity. See R.T. at 889, 894

12 (Pollace). Pollace neither signed the statements nor authorized Hu to sign his name. R.T. at

13 897-900 (Pollace).

14 In 2005, Hu provided investors with an audit opinion letter from a firm called

15 “Castillo, Lyn, Cohen & Vijay,” attaching Asenqua financial statements for the year ended

16 December 31, 2004. See R.T. at 70-71 (Lin) (identifying Exhibit No. 1 as audited financial

17 statements provided by Hu); R.T. at 435 (Doong) (identifying selected pages of Exhibit No.

18 63 as audited financial statements provided by Hu); see also R.T. at 628 (Verdiell) (referring

19 to auditor identified in investment memorandum). The letter represented that Castillo, Lyn,

20 Cohen & Vijay were certified public accountants who had performed an “independent” audit

21 on the Asenqua hedge funds and substantiated the assets and performance reflected in the

22 attached financial statements. See Exh. 1 at HUH-000039; Exh. 63 at HU-000995-A. The

23 financial statements reported identical “net asset values” for calendar year-end 2003 and 2004

24 for the two different funds: \$110,573,431 (2003) and \$140,870,552 (2004). See Exh. 1 at

25 HU-000040; Exh. 63 at HU-000996A. The statements also reported identical year-over-year

26 growth of the net asset values for the two funds for calendar year-end 2003 and 2004: 34.12

27 percent (2003) and 27.40 percent (2004). See *id.*

28

1 No record of Castillo, Lyn, Cohen & Vijay exists with the California Board of
2 Accountancy, however. *See* R.T. at 347-48, 357 (Franzella). The firm's address in San
3 Francisco is only a "virtual office." *See* R.T. at 570-71, 576-77 (Szto). Payment for the
4 Castillo, Lyn, Cohen & Vijay virtual office was charged to Hu's credit card. *Id.* at 586-87
5 (referring to credit card number and Stipulation No. 3, in which parties agreed that Hu was the
6 account holder).

7 Hu told investors in October 2005 that the Asenqua hedge funds needed to be
8 relocated to Singapore. *See* R.T. at 447 (Doong). Hu asked that investors authorize the
9 transfer of funds into accounts Hu opened at financial institutions in Singapore. *See id.* at
10 109-10 (Lin); *id.* at 449 (Doong).

11 Hu did not comply with the custody arrangements set forth in the investor agreements.
12 For example, Hu transferred investor funds to unrelated personal accounts and spent investor
13 funds on personal items. *See* R.T. at 775-78, 781-82, 792, 802, 820-21, 822-23 (Fine). There
14 is no record that Hu invested any funds in accordance with the investment agreements. *See,*
15 *e.g., id.* at 822-23.

16 In 2007 and 2008, investors requested that Hu return their investments. *See* R.T. at
17 130 (Lin); *id.* at 474 (Doong); *id.* at 655 (Verdiell). Hu stalled, often asking for additional
18 time to honor the investors' requests. *See id.* at 132, 134-35 (Lin); *id.* at 474 (Doong). Hu
19 stopped returning investors' telephone calls and e-mail messages, and stopped providing
20 quarterly statements for the Asenqua hedge funds. *See id.* at 655-56 (Verdiell).

21 C. The Jury Instructions and Verdict

22 At the conclusion of the trial, the Court instructed the jury on the seven counts of wire
23 fraud. *See* R.T. at 1113-14 (describing each count). The Court further instructed the jury that
24 the Government must prove each of the following elements beyond a reasonable doubt:

25 First, the defendant knowingly devised a *scheme or plan to defraud*, or
26 a [scheme] or *plan for obtaining money* or property *by means of false or*
27 *fraudulent pretenses or representations* or promises, with all of you agreeing
28 on at least one particular false or fraudulent pretense, representation or promise
that was made.

1 Second, the defendant knew that the pretenses, representations or
promises were false or fraudulent.

2 Third, the false or fraudulent pretenses representations or promises that
3 were made as part of the scheme or plan were *material*.

4 Fourth, the defendant acted with the *intent to defraud*, that is the
[intent] to deceive or cheat.

5 And fifth, the defendant used or caused to be used interstate or
6 international wires to carry out an essential part of the scheme.

7 *See* R.T. at 1115 (emphasis added).

8 The Court instructed the jury with respect to the following seven specific “fraudulent
9 statements, representations, or promises” alleged by the Government:

10 A, that GlobeOp Financial Services was the fund administrator for
defendant Hu’s Fireside LS Fund.

11 B, the law firm Proskauer Rose was engaged as legal counsel for
12 defendant Hu’s Fireside LS fund.

13 C, the firm of Castillo, Lyn, Cohen & Vijay was an independent auditor
for defendant Asenqua Beta Fund and Fireside LS Fund.

14 D, that an individual named Tony Pollace was the Chief Financial
15 Officer of the Asenqua Beta Fund and the Fireside LS Fund and that Pollace
had signed off on quarterly financial statements of those hedge funds which
16 defendant Hu provided to investors.

17 E, that as of May 2007 the minimum amount individuals were investing
in the Fireside LS Fund to date was \$1 million.

18 F, that defendant Hu would pay investors rates of return as high as 20
19 to 30 percent annually and that these were historic rates of return for his hedge
fund.

20 And G, that defendant Hu would obtain these high rate returns for
21 investors primarily by investing their funds in technology-related securities.

22 *See* R.T. at 1117-18.

23 The jury returned a verdict of guilty on all seven counts on June 20, 2012. *See* Exh. L
24 (Verdict Form); R.T. at 1130-31. The Court subsequently sentenced Hu to a term of 144
25 months in custody. *See* Exh. N (Minute Entry). The Court entered final judgment on
26
27
28

1 January 25, 2013, deferring only determination on the final amount of restitution until after a
 2 hearing currently scheduled for March 18, 2013. *See* Exh. O (Judgment).⁵

3 **III. ANALYSIS**

4 **A. Summary Judgment Should be Granted When the Issues Have 5 Been Litigated**

6 Summary judgment should be entered, as a matter of law, where “the record taken as a
 7 whole could not lead a rational trier of fact to find for the nonmoving party, there is no
 8 genuine issue for trial.” *Matsushita Elec. Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S.
 9 574, 587 (1986). Where factual findings underlying a criminal conviction establish a
 10 violation of the securities laws in a civil case, the criminal judgment against the defendant
 11 resolves those facts in the civil case. *Hinkle Northwest, Inc. v. SEC*, 641 F.2d 1304, 1308-09
 12 (9th Cir. 1981); *Municipality of Anchorage v. Hitachi Cable, Ltd.*, 547 F. Supp. 633, 641 (D.
 13 Ala. 1982); *SEC v. Dimensional Entertainment Corp.*, 493 F. Supp. 1270, 1274 (S.D.N.Y.
 14 1980). Under the doctrine of collateral estoppel, an issue of fact or law necessary to a
 15 judgment is conclusive against a party in subsequent litigation. *Montana v. United States*, 440
 16 U.S. 147, 153 (1979).

17 “It is well established that a prior criminal conviction may work an estoppel in favor
 18 of the Government in a subsequent civil proceeding. Such estoppel extends to questions
 19 ‘distinctly put in issue and directly determined’ in the criminal prosecution.” *Emich Motors*
 20 *Corp. v. General Motors Corp.*, 340 U.S. 558, 568-69 (1951) (citations omitted); *accord SEC*
 21 *v. Bilzerian*, 29 F.3d 689, 694 (D.C. Cir. 1994); *SEC v. Gruenberg*, 989 F.2d 977, 978 (8th
 22 Cir. 1993); *SEC v. Everest Management Corp.*, 466 F. Supp. 167, 172 (S.D.N.Y. 1979).

23 So long as the factual bases for the two actions are the same, the doctrine will apply
 24 even where the statute charged in the successive civil suit is not identical to the criminal
 25 statute. *Ivers v. United States*, 581 F.2d 1362, 1367 (9th Cir. 1978); *accord SEC v. Pace*, 173

26
 27 ⁵ The Government, concurring with the Probation Department, requests that the Court order
 28 Hu to pay restitution “totaling approximately \$6.5 million.” *See* Exh. M (United States’
 Sentencing Mem.) at 10.

1 F. Supp. 2d 30, 33 (D.D.C. 2001) (finding that conviction for two counts of wire fraud
 2 collaterally estopped defendant from contesting liability for violating Sections 10(b) and
 3 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1, for financial reporting fraud and
 4 misappropriation); *Dimensional Entertainment, supra*, 493 F. Supp. at 1275-77 (finding that
 5 wire fraud conviction collaterally estopped re-litigation of Exchange Act Section 10(b)
 6 claims, even though jury in criminal case acquitted the defendant on the very same Section
 7 10(b) charges).

8 **B. The Commission’s Fraud Claims Based on the Same Alleged Facts**
 9 **Were Decided in the Government’s Favor at the Criminal Trial**

10 The Commission alleges that Hu violated the antifraud provisions of the Securities Act
 11 and the Exchange Act. *See* Exh. A (Compl.) ¶¶ 43-48 (first and second claims).

12 Section 17(a) of the Securities Act prohibits fraud in the “offer or sale” of securities.

13 15 U.S.C. § 77q(a). Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit
 14 fraud “in connection with the purchase or sale” of securities. *See* 15 U.S.C. § 78j(b);

15 17 C.F.R. § 240.10b-5. The antifraud provisions prohibit: (1) employing any device, scheme
 16 or artifice to defraud; (2) making material misstatements of fact or omitting to state material
 17 facts necessary to make statements made not misleading; and (3) engaging in any act or
 18 practice that operates as a fraud. *See, e.g., SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855-56

19 (9th Cir. 2001) (citing the antifraud provisions). Section 17(a)(2) requires additional proof
 20 that the defendant obtained “money or property” through the alleged misrepresentations.

21 15 U.S.C. § 77q(a)(2); *see Vernazza v. SEC*, 327 F.3d 851, 858 (9th Cir. 2003).⁶

22 Here, the evidence admitted by the Court established that Hu defrauded investors by
 23 selling limited partnership interests and shares in various funds that he claimed to operate.

24 _____
 25 ⁶ The nexus required by Section 10(b) and Rule 10b-5 between the alleged violative conduct
 26 and the purchase or sale of a security is satisfied if a scheme to defraud coincides with the
 27 purchase or sale of securities, whether or not accompanied by a particular misrepresentation
 28 or omission. *SEC v. Zandford*, 535 U.S. 813, 820-22 (2002); *Simpson v. AOL Time Warner Inc.*,
 452 F.3d 1040, 1050-51 (9th Cir. 2006) (reasoning that misrepresentations about a
 company’s revenue may coincide with the purchase or sale of securities and thus satisfy the
 requirement).

1 These shares and limited partnership agreements are securities under the federal securities
2 laws. 15 U.S.C. § 77b(1) (defining “security” under the Securities Act); 15 U.S.C.
3 § 78c(a)(10) (including “investment contract” in Exchange Act definition); 15 U.S.C. § 80b-
4 2(18) (Advisers Act). According to the Ninth Circuit, a “limited partnership generally is a
5 security because, by definition, it involves investment in a common enterprise with profits to
6 come solely from the efforts of others.” *SEC v. Murphy*, 626 F.2d 633, 640-41 (9th Cir. 1980)
7 (citing *SEC v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946); *SEC v. Holschuh*, 694 F.2d 130,
8 137 (7th Cir. 1982) (concurring). Because the Asenqua investors’ expectations of returns
9 came solely from the efforts of Hu, their investments in limited partnership interests in the
10 Asenqua hedge funds amounted to “investment contracts,” and thus securities.

11 The jury thus necessarily found that Hu’s misrepresentations and omissions—
12 concerning the fund administrator, the legal counsel to the funds, the auditor to the funds, and
13 the funds’ investment returns, among others—occurred in the offer and sale of securities,
14 from which Hu received money or property. *See Vernazza*, 327 F.3d at 858. His subsequent
15 misrepresentations and omissions about the “Chief Financial Officer,” the audited financial
16 statements, occurred in furtherance of, and “coincided with,” his investment scheme and thus
17 satisfy the required nexus with the purchase and sale of securities. *See Zandford, supra* n.6,
18 535 U.S. at 820-22.

19 As instructed by the Court, the jury also necessarily found that Hu’s fraud was
20 material to investors. Information is material if there is a substantial likelihood that disclosure
21 of the misstated or omitted fact would have significantly altered the “total mix” of
22 information available to a reasonable investor. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32
23 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). “Surely the
24 materiality of information relating to financial condition, solvency and profitability is not
25 subject to serious challenge.” *Murphy*, 626 F.2d at 653; *see Koehler v. Pulvers*, 614 F. Supp.
26 829, 842 (S.D. Cal. 1985) (finding that omissions and misrepresentations about “the use of
27 investor funds” material). Here, Hu misled investors about the trustworthiness of the Asenqua
28 hedge funds, about the personnel who managed the Asenqua hedge funds, and about the

1 management of investor funds. These misrepresentations and omissions went to the essence
2 of the purported enterprise.

3 Finally, as the jury found, Hu intentionally swindled investors. Scierter, or intentional
4 deception, is required to establish violations of Section 17(a)(1), Section 10(b), and Rule 10b-
5 5. *Aaron v. SEC*, 446 U.S. 680, 691, 696-97 (1980). In the Ninth Circuit, “scierter is
6 satisfied by recklessness.” *Dain Rauscher*, 254 F.3d at 856; see *Vernazza*, 327 F.3d at 860.
7 Violations of Sections 17(a)(2) and 17(a)(3) require only a showing of negligence. *Dain*
8 *Rauscher*, 254 F.3d at 856; see *Aaron*, 446 U.S. at 696-97. In this matter, the Asenqua hedge
9 fund investment agreements were designed to mislead investors into believing that reputable
10 law firms, auditors, and fund administrators stood behind Hu and the Asenqua funds and
11 safeguarded the investments. For instance, Hu fabricated an audit opinion letter from
12 “Castillo, Lyn, Cohen & Vijay,” to substantiate the assets and performance of the Asenqua
13 hedge funds and failed to inform investors of his financial entanglement with the firm. Hu
14 lied to investors about the Asenqua hedge funds’ supposed “Chief Financial Officer,”
15 Anthony Pollace, and forged Pollace’s signature to quarterly account statements.

16 In returning its guilty verdict on the seven counts of wire fraud, following the
17 instructions of the Court, the jury necessarily determined facts in the Government’s favor that
18 support each element of the Commission’s antifraud claims—that is, that Hu intentionally
19 made material misrepresentations in connection with the purchase and sale of interests in his
20 purported hedge funds. The Court should enter summary judgment against Hu, finding that
21 the criminal judgment establishes his liability for violations of Section 17(a) of the Securities
22 Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

23 **C. The Factual Basis for the Commission’s Advisers Act Claims Were**
24 **Also Adjudicated in the Government’s Favor at the Criminal Trial**

25 In addition, the jury determined facts that establish Hu’s liability for violations of the
26 Commission’s Advisers Act claims. See Exh. A (Compl.) ¶¶ 49-57 (third and fourth claims).
27 Section 206 of the Advisers Act makes it unlawful for any “investment adviser,” directly or
28 indirectly:

1 (1) to employ any device, scheme, or artifice to defraud any client or prospective client;

2 (2) to engage in any transaction, practice or course of business which operates as
3 a fraud or deceit upon any client or prospective client; . . .

4 (4) to engage in any act, practice, or course of business which is fraudulent,
5 deceptive, or manipulative.

6 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4) . Additionally, Rule 206(4)-8 under the Advisers
7 Act prohibits any investment adviser to a “pooled investment vehicle” to make materially
8 false misrepresentations or omissions, or to engage in any act, practice, or course of business
9 which is fraudulent, deceptive, or manipulative. 17 C.F.R. § 275.206(4)-8; *see Prohibition of*
10 *Fraud by Advisers to Certain Pooled Investment Vehicles*, Advisers Act Release No. 2628,
11 91 SEC Docket 938, 2007 WL2239114, at *3 nn.21 & 22 (Aug. 3, 2007) (explaining that
12 pooled investment vehicles include “hedge funds, private equity funds, venture capital funds,
13 and other types of privately offered pools that invest in securities”).

14 The elements of the Adviser Act claims thus are similar to the antifraud claims in the
15 Securities Act and Exchange Act. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S.
16 180, 191-92, 194 (1963) (tracing legislative history of Advisers Act in support of finding that
17 advisers owe fiduciary duty to deal with their clients in utmost good faith and complete
18 candor); *Vernazza, supra*, 327 F.3d at 858 (comparing Section 17(a), Section 10(b) and
19 Section 206 and finding that “the element of a materially false statement is satisfied by
20 essentially the same conduct for all of the statutes in question.”).⁷

21 An “investment adviser,” the additional element necessary to establish liability under
22 the Advisers Act, is defined to include “any person, who for compensation, engages in the
23 business of advising others, either directly or through publications or writings, as to the value

24 ⁷ Section 206(1) requires a showing of scienter. *Vernazza*, 327 F.3d at 860 (finding that
25 recklessness satisfies scienter standard). Scienter is not an element of Section 206(2),
26 however. *Capital Gains*, 375 U.S. at 195 (concluding that Congress did not “intend to require
27 proof of intent to injure”). Section 206(4), similarly, does not require scienter. *SEC v.*
28 *Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992) (analogizing Section 206(4) to
Sections 17(a)(2) and 17(a)(3) of the Securities Act). In its release accompanying the
enactment of Rule 206(4)-8, the Commission stated that it intended the rule to encompass
negligent conduct. *See Advisers Act Release No. 2628, supra*, 2007 WL2239114, at *4.

1 of securities or as to the advisability of investing in, purchasing, or selling securities.”

2 15 U.S.C. § 80b-2(a)(11). Misappropriation of investor assets also constitutes

3 “compensation.” *See In the Matter of Alexander V. Stein*, Advisers Act Release No. 1497,

4 59 SEC Docket 1115, 1995 WL 358127, at *2 n.13 (June 8, 1995).

5 In this case, the jury found that Hu obtained money from investors as the “investment
6 manager” to the Asenqua hedge funds. Under the terms of the investment agreements, Hu
7 was to receive a percentage of the returns on the Asenqua hedge funds as compensation.

8 Accordingly, Hu meets the definition of an “investment adviser” under the Advisers Act. As
9 discussed above, *see Part III(B) supra*, the jury further found that Hu intentionally made

10 material misrepresentations and omissions in the Asenqua hedge fund investment agreements,
11 audit reports, and account statements, and misappropriated investor funds. For these reasons,
12 the Court should enter summary judgment against Hu, finding him liable for violations of
13 Sections 206(1), 206(2), 206(4) the Advisers Act and Rule 206(4)-8 thereunder.

14 **D. The Court Should Enter Default Judgment Against the Asenqua**
15 **Defendants**

16 “A corporation, unincorporated association, partnership or other such entity may
17 appear only through a member of the bar of this Court.” Civil L.R. 3-9(b). The Asenqua
18 defendants have not been represented by counsel since June 4, 2010, when the Court granted
19 former counsel’s motion to withdraw. *See* Exh. I. The Commission has simultaneously
20 requested that the Clerk enter the Asenqua defendants’ default based on their failure to appear
21 and defend this action. *See* FED. R. CIV. P. 55(a); Request for Clerk’s Entry of Default (filed
22 concurrently).

23 Each of the Asenqua defendants is an entity requiring representation through legal
24 counsel. *See* Exh. A (Compl.) ¶¶ 12-15 (alleging place of incorporation or organization). .
25 Substantial evidence admitted at Hu’s criminal trial establishes that Hu acted through, and in
26 concert with, the Asenqua defendants. *See, e.g.,* Exh. 2 at HU-000047 (identifying defendant
27 Asenqua, Inc. as Investment Manager of fund); Exh. 63 at HU-001110A (identify defendant
28

1 Fireside Capital Management, Ltd. as Investment Manager of fund).⁸ Based on this evidence,
 2 this Court should enter a default judgment against the Asenqua defendants for their failure to
 3 defend the claims against them and order the relief described below.

4 **IV. REQUESTED RELIEF AGAINST ALL DEFENDANTS**

5 **A. Permanent Injunctions**

6 The federal securities laws authorize the Commission to seek, and the Court to grant,
 7 an injunction against acts or practices that violate the securities laws. *See* 15 U.S.C. § 77t(b)
 8 (Securities Act authorization); 15 U.S.C. § 78u(d)(1) (Exchange Act authorization); 15 U.S.C.
 9 § 80b-9(d) (Advisers Act authorization). A permanent injunction is the Commission's
 10 primary weapon against future violations of the securities laws. *See SEC v. Randolph*, 736
 11 F.2d 525, 529 (9th Cir. 1984). Whenever there is "a reasonable likelihood of future violations
 12 of the securities laws," a permanent injunction is appropriate. *SEC v. Fehn*, 97 F.3d 1276,
 13 1295 (9th Cir. 1996) (quoting *Murphy*, 626 F.2d at 655). "The existence of past violations
 14 may give rise to an inference that there will be future violations; and the fact that the
 15 defendant is currently complying with the securities laws does not preclude an injunction."
 16 *Murphy*, 626 F.2d at 655.

17 To assess the likelihood of future violations, courts consider the totality of the
 18 circumstances surrounding the past violations, including: (1) the degree of scienter involved;
 19 (2) the isolated or recurrent nature of the violations; (3) the defendant's recognition of the
 20 wrongfulness of his conduct; (4) the likelihood, because of the defendant's line of work, of
 21 future violations; and (5) the sincerity of assurances against future violations. *Fehn*, 97 F.3d
 22 at 1295.

23 This Court should permanently enjoin both Hu and the Asenqua defendants against
 24 future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act
 25 and Rule 10b-5 thereunder, and Hu from violations of Sections 206(1), 206(2), and 206(4) of

26
 27 ⁸ In addition, evidence previously submitted by the Commission establishes that Hu controlled
 28 each of the Asenqua defendants. *See* SEC Mem. ISO TRO (Dkt. 8) at n.1 (citing sworn
 declarations).

1 the Advisers Act and Rule 206(4)-8 thereunder. *See* [Proposed] Final Judgment (filed
2 concurrently). The egregiousness of Hu’s violations and the substantial planning, intent, and
3 deception behind his years-long scheme require the Court-ordered injunction against future
4 violations. Each of the Asenqua defendants should also be enjoined: each was organized by
5 Hu for the purpose of furthering the fraud perpetrated on investors. A permanent injunction
6 would thus ensure that the entities are not re-capitalized and used again in a similar
7 manipulative scheme. For these reasons, the entry of permanent injunctions against each
8 defendant is an appropriate remedy in this matter.

9 **B. Disgorgement and Prejudgment Interest**

10 Disgorgement is an equitable remedy that deprives a defendant of the benefits of his
11 wrongful conduct. *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993). The Ninth Circuit has
12 observed that disgorgement plays a central role in securities law enforcement. *Id.* at 1491. To
13 obtain disgorgement, the Commission need not provide a detailed accounting; rather
14 disgorgement need be only a reasonable approximation of a defendant’s unjust enrichment.
15 *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996).

16 Hu and the Asenqua defendants should be held jointly and severally liable for the full
17 amount for the full amount of the profits. “[W]here two or more individuals or entities
18 collaborate or have a close relationship in engaging in the violations of the securities laws,
19 they have been held jointly and severally liable for the disgorgement of illegally obtained
20 proceeds.” *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191-92 (9th Cir. 1998).

21 In this case, Hu and the Asenqua defendants raised at least \$4.98 million from five
22 investors. *See* R.T. at 125-26 (Lin) (investing \$1 million); *id.* at 484 (Doong) (investing
23 combined \$1.13 million between herself and sister); *id.* at 612 (Verdiell) (investing
24 \$2 million); *see also* Exh. D (Ye Decl.) ¶ 3 (investing \$825,000). Prejudgment interest should
25 be assessed on the disgorgement to ensure that defendants do not benefit from the lapse of
26 time between the stock sales and the resolution of this action against him. *SEC v. Cross Fin.*
27 *Servs., Inc.*, 908 F. Supp. 718, 734 (C.D. 1995), *aff’d sub nom. SEC v. Colello*, 139 F.3d 674
28 (9th Cir. 1998). In the Ninth Circuit, prejudgment interest may be calculated using the

1 interest rate specified for postjudgment interest—the one-year constant maturity Treasury
2 yield. *See* 28 U.S.C. § 1961; *Western Pac. Fisheries, Inc. v. SS President Grant*, 730 F.2d
3 1280, 1289 (9th Cir. 1984); *SEC v. M&A West, Inc.*, No. C-01-3376 VRW, 2005 WL
4 2988963, at *2 (N.D. Cal. Oct. 31, 2005) (including formula for computation), *aff'd in part*
5 *and rev'd in part*, 538 F.3d at 1054.

6 Here, the amount of prejudgment interest accruing from the time that each investor
7 transferred funds to Hu equals at least \$1,644,238. *See* Tashjian Decl. ¶ 27 & Exh. X
8 (including interest rates and computation). Thus, the full amount of disgorgement and
9 prejudgment interest requested by the Commission totals \$6,624,238. *Id.* The Commission
10 notes, however, that the Government similarly requested that the Court order Hu to pay
11 “approximately \$6.5 million” in restitution, as recommended by the Probation Department.
12 *See* United States’ Sentencing Mem., *United States v. Hu*, Case No. 09-CR-487 RMW (N.D.
13 Cal.) (Dkt. 99) at 10. Although the calculation of the amounts of restitution and disgorgement
14 differ (restitution is measured by the loss of victims; disgorgement is measured by the
15 perpetrator’s gain), in this case the amounts are comparable, if not identical. The Commission
16 is not privy to the information gathered by the Probation Department and therefore requests
17 that the Court allow additional victims who submitted losses for verification by the Probation
18 Department to be included in the amount of disgorgement ordered (with prejudgment interest)
19 in this matter. Should the Court order restitution to be paid in the criminal action, it may thus
20 consider whether to offset the amount of disgorgement and prejudgment interest
21 correspondingly.⁹

22 C. Civil Penalties

23 The securities laws also provide for civil money penalties to deter future violations.
24 *See* 15 U.S.C. § 77t(d)(2) (Securities Act); 15 U.S.C. § 78u(d) (Exchange Act); 15 U.S.C.
25 § 80b-9(e) (Advisers Act). The statutes establish three tiers of penalties, to be determined in
26 light of the facts and circumstances of each case:

27 ⁹ The restitution hearing is scheduled for March 18, 2013. *See supra* at 8 & n.5. As
28 appropriate, the Commission will update its request for disgorgement following the hearing.

- 1 1. For any violation of the securities laws, the Court may impose penalties against
2 individuals and entities in the maximum amounts of \$6,500 and \$65,000,
3 respectively.
- 4 2. For each violation involving fraud or deceit, the Court may impose penalties
5 against individuals and entities in the maximum amounts of \$65,000 and
6 \$325,000, respectively, or the gross amount of the defendant's pecuniary gain.
- 7 3. For each violation involving fraud or deceit which resulted in substantial loss or a
8 significant risk of substantial loss, the Court may impose penalties against
9 individuals and entities in the maximum amounts of \$130,000 and \$650,000,
10 respectively, or the gross amount of the defendant's pecuniary gain.

11 *See, e.g.*, 15 U.S.C. § 77t(d)(2) (Securities Act); 17 C.F.R. § 201.1003 & Table III (adjusting
12 for inflation amounts of statutory penalties for violations occurring after Feb. 14, 2005).

13 Penalties may be assessed for each violation of the securities laws. *See, e.g., SEC v.*
14 *Henke*, 275 F. Supp. 2d 1075, 1084 (N.D. Cal. 2003); *SEC v. Kenton Capital, Ltd.*, 69 F.
15 Supp. 2d 1, 17 (D.D.C. 1998) (multiplying third-tier penalty by the number of investors
16 defrauded as a proxy for number of violations). In determining the appropriate penalty for the
17 Asenqua defendants, the Court may impose the higher maximum amounts allowable for
18 entities.

19 In this case, Hu and the Asenqua defendants caused substantial losses to least five
20 investors out of at least \$4.98 million. The Court may impose third tier penalties (*i.e.*,
21 amounts of \$130,000 on Hu and \$650,000 on the Asenqua defendants) multiplied by the
22 number of investors. Alternatively, the Court may impose civil penalties on Hu and the
23 Asenqua defendants totaling the amount that they gained from the fraud (*i.e.*, \$4.98 million).
24 The Court, in any case, should impose substantial and meaningful penalties on Hu and the
25 Asenqua defendants to reinforce the seriousness of the violations and deter illegal conduct by
26 others.

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V. CONCLUSION

The Commission respectfully requests that the Court grant summary judgment against Hu, enter default judgments against the Asenqua defendants, and order the relief requested by the Commission.

DATED: February 27, 2013

Respectfully submitted,

/s/ Robert L. Tashjian
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