

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21225**

**In the Matter of**

**DALIANG “DAVID” GUO,**

**Respondent.**

**DIVISION OF ENFORCEMENT’S**  
**MOTION FOR SUMMARY**  
**DISPOSITION AGAINST RESPONDENT**  
**DALIANG “DAVID” GUO AND**  
**MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 250(b) of the Securities and Exchange Commission’s (“SEC” or “Commission”) Rules of Practice, the Division of Enforcement (“Division”) respectfully moves for summary disposition against Respondent Daliang “David” Guo (“Respondent” or “Guo”).

This is a follow-on proceeding arising from civil securities broker-dealer registration and anti-fraud injunctions imposed against Guo by the United States District Court for the Eastern District of New York. These injunctions followed the Court’s order granting the SEC’s Motion for Summary Judgment against Guo and his co-defendants. Because Guo has been enjoined and the sole issue in this proceeding concerns the appropriate sanction against him under Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and because there is a strong public interest in imposing a bar on Guo, this motion for summary disposition should be granted, and an associational bar should be imposed against him.

**I. Procedural History and Factual Background**

**A. The District Court Case**

On October 9, 2013, the Commission filed a complaint against Respondent and others in the civil action entitled *SEC v. CKB168 Holdings Ltd., et al.*, 13-cv-5584, in the United States

District Court for the Eastern District of New York. The Commission’s complaint alleged that from at least May 2012 through October 2013, Respondent and others defrauded investors into investing in a business venture called CKB. OIP Section II, ¶ 2; Exh. 1, SEC Complaint (“Compl.”).<sup>1</sup> According to the complaint, Respondent falsely presented CKB as a profitable multi-level marketing company that sold web-based children’s educational courses when it was, in fact, a pyramid scheme. OIP Section II, ¶ 2; Exh. 1, Compl. at ¶¶ 2-7. The complaint alleged that there were virtually no legitimate sales of any CKB products to retail purchasers, and that the only way to earn money in the venture was to bring in new investor funds. *Id.* The complaint also alleged that Respondent was a top promoter in the scheme and acted as an unregistered broker-dealer. OIP Section II, ¶ 2; Exh. 1, Compl. at ¶¶ 28, 116-117.

On September 28, 2016, the Court granted the Commission’s Motion for Summary Judgment and found that Respondent violated Sections 5 and 17(a) of the Securities Act of 1933 and Section 10(b), Rule 10b-5, and Section 15(a) of the Exchange Act. OIP Section II, ¶ 3; Exh. 2, *SEC v. CKB168 Holdings, Ltd., et al.*, 210 F. Supp. 3d 421 (E.D.N.Y. 2016). The Court specifically found that Respondent was one of the highest-ranking promoters in the pyramid

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<sup>1</sup> Under Rule 323, notice may be taken in this proceeding of “any material fact which might be judicially noticed by a district court of the United States....” 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission’s public official records and of the docket reports, court orders, official trial transcripts, admitted trial exhibits, and other court filings by the parties in the civil action. The Division respectfully requests that judicial notice be taken of the following exhibits to this motion:

- Exhibit 1 – SEC Complaint, *SEC v. CKB168 Holdings Ltd., et al.*, 13-cv-5584 (E.D.N.Y. October 9, 2013);
- Exhibit 2 – Summary Judgment Order, *SEC v. CKB168 Holdings, Ltd., et al.*, 210 F. Supp. 3d 421 (E.D.N.Y. 2016);
- Exhibit 3 – Final Judgment, *SEC v. CKB168 Holdings Ltd., et al.*, 2022 WL 3347253 (E.D.N.Y. Aug. 12, 2022);
- Exhibit 4 – Division’s Proof of Service of the OIP, November 14, 2022; and
- Exhibit 6 – Respondent’s Answer, November 30, 2022.

scheme, actively promoted CKB, knowingly made false statements about CKB to investors, effected the purchase of CKB securities, and earned significant commissions on those purchases. Exh. 2, at 434-35. As a result, the court found that Respondent acted as an unregistered broker or dealer.<sup>2</sup> OIP Section II, ¶ 3; Exh. 2, at 452-53.

On August 12, 2022, the Court issued an order of final judgment that permanently enjoined Respondent from future violations of the foregoing securities laws and from participating in any pyramid scheme going forward. Exh. 3, *SEC v. CKB168 Holdings Ltd., et al.*, 2022 WL 3347253, at \*2-4 (E.D.N.Y. Aug. 12, 2022). The court also imposed monetary relief against Respondent that included disgorgement of \$3,979,867 and prejudgment interest of \$1,153,784. *Id.* at \*6.

#### **B. The Follow-On Proceeding**

On November 2, 2022, the Division of Enforcement initiated this follow-on proceeding against Guo pursuant to Section 15(b) of the Exchange Act. (The “OIP”). On or about November 3, 2022, the Office of the Secretary served Guo with the OIP. Exh. 4, Proof of Service, November 14, 2022. On or about November 30, 2022, the Division mailed to Respondent a letter notifying him that the Division had satisfied the requirements of SEC Rule of Practice 230 because he had already received the Commission’s entire investigative file in discovery in the underlying District Court action. Exh. 5, Discovery Letter, November 30, 2022. That same day, the Division received by mail, a handwritten letter from Guo, which the Commission has deemed to be an answer to the OIP. Exh. 6, Respondent Letter, November 30, 2022. On or about March 30, 2023, the parties conducted a

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<sup>2</sup> Based on the same conduct described in the Court’s order granting the SEC’s Motion for Summary Judgment, the U.S. Attorney’s Office for the Central District of California indicted Guo and certain co-defendants. *U.S. v. Chang, et al.*, 2:15-cr-00475. Following a trial, Guo was convicted, and is currently serving a prison sentence of 144 months.

prehearing conference. On or about April 18, 2023, Division filed a statement summarizing the discussion.

## **II. Summary Disposition Is Appropriate Here**

SEC Rule of Practice 250(b) provides that, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. *See* 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id.*

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at \*10 & n. 58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate “will be rare.” *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at \*2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied*, 66 F. App'x 687 (9th Cir. 2003)).

Further, “[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings.” *John W. Lawton*, Investment Adviser Act Release No. 3513, 2012 WL 6208750, at \*5 (Dec. 13, 2012). Thus, the Commission does not permit a respondent to relitigate issues that were addressed in a previous

civil proceeding against the respondent. *See James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at \*4 (Oct. 12, 2007).

Section 15(b) of the Exchange Act authorizes the imposition of an associational bar on any person who has been enjoined by a court of competent jurisdiction from acting as a broker or dealer and also authorizes the Commission to bar such person from participating in an offering of penny stock, if such bars would be in the public interest. 15 U.S.C. §§ 78o(b)(4)(C), (6)(A)(iii); *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at \*32 (July 26, 2013) (holding that it is “well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding”).

For the reasons set forth below, summary disposition is appropriate here. The Commission should permanently bar Guo from association with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and also should permanently bar him from participating in an offering of penny stock.

**A. Guo Has Been Enjoined**

The District Court permanently enjoined Guo from violating Section 15(a) of the Exchange Act, as well as the anti-fraud provisions of the securities laws. Exh. 3, at \*3-4. The Court previously found as a matter of law that Guo acted as an unregistered broker in connection with the conduct at issue in the District Court case because he received commissions, advised others to invest, acted as an intermediary between CKB and investors, and sought to find new investors. Exh. 2., at 453.

**B. An Associational Bar and Penny Stock Bar Are in the Public Interest**

In assessing whether associational and penny stock bars are in the public interest, the

Commission considers several factors, including:

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

*Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). Additionally, the Commission considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at \*5-6 (July 25, 2003).

The Commission has often emphasized, however, that the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public at large, the welfare of investors as a class, and standards of conduct in the securities business generally. See *Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). Moreover, the public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976). Here, the *Steadman* factors weigh in favor of an associational industry bar.<sup>3</sup>

First, Guo's actions were egregious. The Court found that Guo was among the most

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<sup>3</sup> Even though Guo's misconduct did not involve a penny stock *per se*, this kind of collateral relief is appropriate and in the public interest in this proceeding because where, as here, a party engages in misconduct that warrants a suspension or bar to protect investors in one part of the industry regulated by the Commission, it is in the public interest to protect investors in all parts of the industry the Commission regulates. Investors should not bear the risk the Commission is not able to accurately predict what business Guo may choose to undertake during the associational bar. Therefore, because a penny stock bar is not disproportionate in these circumstances, the Commission should include it as part of its order.

aggressive and most successful promoters, earning millions by defrauding investors. Exh. 2, at 434; Ex. 3, at \*6. The Court also found that Guo acted with a high degree of scienter, engaged in recurrent misconduct, failed to understand the wrongfulness of his conduct, and posed a high risk of recidivism. Exh. 3, at \*3-4 and n.5. He promoted CKB through seminars, conferences, and in-person solicitations. Exh. 2, at 433-434. These promotional efforts did not focus on CKB's software, rather he promoted CKB as a no-risk business opportunity to make enormous investment returns. *Id.* at 434-35. Guo falsely represented to investors that CKB that Profit reward Points ("Prpts") received by investors could be converted to cash and that CKB was risk-free when he knew those statements were not true. *Id.* By April of 2013, someone at CKB even told him that it was "inappropriate" to denote Prpts in dollars. *Id.* at 435. Guo also later admitted that his claims that CKB was risk-free were only his "hope" and his "personal view." *Id.* He had not done anything to verify such representations. *Id.* Guo profited a total of \$3,979,867 from the result of his conduct, and the District Court held him liable for disgorgement for that amount. Exh. 3, at \*4-6.

Second, Guo's violations were recurrent, and the misconduct was not an isolated incident. *Id.* at \*2-3. In May 2011, Guo was one of the earliest recruiting investors in CKB and he traveled throughout the U.S. and China to promote CKB and recruit new investors. Exh. 2, at 434. In one video from 2014, Guo stated that his "sales group," referring to his direct and indirect downlines he recruited over time, was responsible for "\$100 million of sales revenue." *Id.*

Third, Guo acted with a high degree of scienter, as the District Court specifically found. Exh. 3, at \*3. As described in the District Court's summary judgment opinion, by October 2012, Guo was aware that CKB had been accused of being a pyramid scheme when he received an email from Shern denouncing the claims and imploring the top promoters to attack CKB's critics.

Exh. 2, at 434-35. Guo made no investigation into these claims, nor did he verify any of the promotional claims he made to potential investors. *Id.* He never acquired, or even asked for, any internal CKB financial statements or other disclosures. *Id.* Instead, he continued making the same false claims to investors as detailed above. *Id.* In one video, potential investors can be heard questioning CKB's legitimacy. *Id.* In response, Guo refuted any claims that CKB was not legitimate and even claimed to have given one investor a personal guarantee that a CKB investment would only increase in value. *Id.* Similarly, despite the fact that Guo never received stock and, in fact, was not aware of anyone who had received stock certificates, he told investors and potential investors that he already had CKB stock. *Id.*, at 447-48.

Finally, Guo has given no assurances against future violations and has failed to recognize the wrongful nature of his conduct. In the District Court case, Guo's letters to the Court largely attempt to re-litigate his defense and seek to absolve himself of responsibility. Exh. 3, at \*3 n.5. Similarly, in his answer to the OIP, Respondent continues to deny responsibility, arguing instead that: 1) he joined CKB only because he "want[ed] to do something good for the world," (Exh. 6, at 4); 2) that he "was not the top sales in New York," (Exh. 6, at 4); he "was nothing more than a downstream seller of the CKB product," (Exh. 6, at 7). This continued refusal to take responsibility, in combination with the impact on the public at large – investors here lost hundreds of millions of dollars<sup>4</sup> – establishes that an associational bar is necessary and appropriate. Such a bar "will prevent [Guo] from putting investors at further risk." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at \*86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Ultimately, the securities industry "relies on the fairness and integrity of all persons associated

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<sup>4</sup> Exh. 3, at \*6 (imposing, for example, disgorgement of \$137,238,985 on the entity defendants).

with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants.” *John W. Lawton*, 2012 WL 6208750, at \*11. Guo’s pattern of blatant misconduct demonstrates he is incapable of such fairness and integrity. He presents a significant risk to the securities market and should be sanctioned accordingly. *See Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) (“Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from the six listed classes—broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs—based on misconduct in only one class.”).

### **III. Conclusion**

For the foregoing reasons, the Division of Enforcement respectfully requests the Commission grant this Motion for Summary Disposition, and impose a permanent associational bar and penny stock bar against Guo under Section 15(b) of the Exchange Act.

Dated: April 19, 2023

Respectfully submitted,

/s/ Devon L. Staren

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**CERTIFICATE OF SERVICE**

I certify that on April 19, 2023, I caused a copy of the forgoing to be mailed by U.S. Postal Service to Respondent David Guo.

/s/ Devon Leppink Staren  
Devon Leppink Staren

# EXHIBIT 1

CV 13

5584

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

v.

CKB168 HOLDINGS LTD., WIN168 BIZ  
SOLUTIONS LTD., CKB168 LTD., CKB168 BIZ  
SOLUTION, INC., CYBER KIDS BEST  
EDUCATION LTD., RAYLA MELCHER  
SANTOS, HUNG WAI ("HOWARD") SHERN,  
RUI LING ("FLORENCE") LEUNG, DALIANG  
("DAVID") GUO, YAO LIN, CHIH HSUAN  
"KIKI" LIN, WEN CHEN HWANG (AKA  
"WENDY LEE"), TONI TONG CHEN,  
CHEONGWHA "HEYWOOD" CHANG, JOAN  
CONGYI MA (AKA "JC MA"), AND HEIDI MAO  
LIU (AKA "HEIDI MAO"),

*Defendants,*

- AND -

ROSANNA LS INC., USA TRADE GROUP, INC.,  
OUNI INTERNATIONAL TRADING INC., E  
STOCK CLUB CORP., EZ STOCK CLUB CORP.,  
HTC CONSULTING LLC, AND ARCADIA  
BUSINESS CONSULTING, INC.,

*Relief Defendants.*

CASE NO. \_\_\_\_\_

JURY TRIAL  
DEMANDED

FILED UNDER SEAL

MAUSKOPF, J.

MANN, M.J.

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") alleges as follows:

## SUMMARY OF ALLEGATIONS

1. The Commission brings this emergency action to halt an ongoing pyramid scheme and offering fraud, which primarily targets members of the Asian-American community. The corporate defendants – WIN168 Biz Solutions Ltd., CKB168 Ltd., CKB168 Holdings, Ltd., CKB168 Biz Solution Inc., and Cyber Kids Best Education Limited – are five entities based in Hong Kong, Canada, and the British Virgin Islands that collectively operate under the business name “CKB168” or “CKB.” The individual defendants are three foreign nationals – Rayla Melchor Santos, Hung Wai (Howard) Shern, and Rui Ling (Florence) Leung (aka Kwai Chee Leung) – who control the CKB entities and eight senior promoters in the United States – Daliang (David) Guo, Yao Lin, Chih Hsuan (Kiki) Lin, Wen Chen Hwang (aka Wendy Lee), Toni Tong Chen, Cheongwha (Heywood) Chang, Joan Congyi (JC) Ma, and Heidi Mao Liu (aka Heidi Mao) – who sit atop the pyramid scheme in the United States. To date, the Defendants have harvested \$20 million, and likely much more, from at least 400 investors in New York, California, and elsewhere in the United States, as well as millions of dollars from investors in Canada, Taiwan, Hong Kong, and other countries in Asia.

2. Through publicly available websites, promotional materials, seminars, and videos posted to the internet, as well as through other efforts intended to create the appearance of a legitimate enterprise, Defendants have falsely portrayed CKB as a profitable multi-level marketing company that sells web-based children’s educational courses.

3. What CKB really sells, however, is the false promise of easy wealth. Potential purchasers of CKB products must invest in CKB to get one of its courses. Defendants promise that those investors will earn exponential, risk-free returns. In addition to the course, each purchaser/investor receives “Profit Reward Points” (“Prpts”) with a purported value of \$750.

Investors are told that they will earn “passive” returns in the form of Prpt dividends and 2-for-1 splits, and that they will be able to buy and sell their Prpts in an online exchange accessible through the CKB website. Investors also are promised that they will earn massive returns by converting their Prpts into shares of CKB stock when the company conducts an initial public offering (“IPO”) on the Hong Kong Stock Exchange sometime during 2014. Some Defendants allege that these returns can be achieved without any risk of loss.

4. Despite Defendants’ representations to the contrary, the Prpts are worthless and cannot be meaningfully traded, sold or exchanged. Nor has CKB taken required steps to prepare for the promised IPO and, in fact, does not meet the Hong Kong Exchange’s current listing requirements. Even if the IPO were to occur, CKB would have to go public as one of the world’s largest companies in order to honor conversions of the ever-expanding universe of Prpts.

5. Still, while essential to the scheme, Prpts are not its only incentive. The scheme’s ultimate goal is to turn investors into recruiters. CKB lures investors with the promise of even greater “active” returns, in the form of commissions and bonuses, for recruiting new, “down-line” participants into the program. In contrast to Prpts, active recruitment is the only way to make actual significant money.

6. In a videotaped recording posted to the internet, Defendant Kiki Lin exemplifies this pitch, telling potential investors: “So in our . . . pyramid triangle system, we spread it from one to ten and ten to hundred and hundred to thousand, thousand to ten thousand. Right now the company has been operating for over three months. And all of us are still at the top of the pyramid. And for those who really want to make money, who are really hard working, in a short time, you would all be like John who had already had – made money to buy five houses in Las Vegas. . . . I believe the company is providing us with a wonderful opportunity.”

7. In fact, CKB has little or no retail consumer sales to generate the promised returns and no apparent source of revenues other than money received from new investors. Instead, CKB is a classic pyramid scheme that depends on the recruitment of new investors to pay promised returns to existing ones. Its inevitable collapse will cause substantial investor losses. Indeed, bank records show that most of the money raised has already been paid out as commissions, with the bulk of this money going to Defendants and others at the top of the investment pyramids.

8. As a result of this conduct, Defendants have violated the antifraud provisions of the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”). By selling securities in an unregistered offering, Defendants have violated Section 5 of the Securities Act, 15 U.S.C. § 77e. By acting as brokers for these transactions without being registered as, or associated with, a registered broker-dealer, Defendants Shern, Guo, Yao Lin, Kiki Lin, Wendy Lee, Toni Chen, Heywood Chang, JC Ma, and Heidi Mao have violated Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a). Unless restrained and enjoined, Defendants will continue to violate these provisions and are likely to engage in future violations of the federal securities laws.

9. To halt Defendants’ unlawful conduct, to maintain the status quo and to preserve any remaining assets for defrauded investors, the Commission seeks emergency relief, including temporary restraining orders and preliminary injunctions, and an order: (i) imposing asset freezes on the Defendants and Relief Defendants and requiring them to repatriate all fraudulent proceeds that are now located abroad; (ii) providing for alternative service, preventing the destruction of documents, and ordering expedited discovery; and (iii) requiring the Defendants and Relief Defendants to provide verified accountings. The Commission also seeks permanent injunctions

against the Defendants, disgorgement of ill-gotten gains and prejudgment interest thereon from the Defendants and Relief Defendants, and civil monetary penalties from the Defendants.

### **JURISDICTION AND VENUE**

10. The Commission brings this action pursuant to the authority conferred by Section 20 of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

11. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transaction, acts, practices, and courses of business alleged herein.

12. Venue lies in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Certain of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred within the Eastern District of New York. Among other things, Defendants Santos and Shern have travelled to Flushing, Queens to participate and speak in seminars and meetings for CKB investors. Defendant Leung controls accounts that have received wires of investor funds from banks in this district, including branches located in Queens. Defendants Guo and Yao Lin, who sit atop U.S. investment pyramids, live in New Hyde Park and Flushing, respectively, and have solicited investors in this district, and maintain bank accounts in this district through which they have received and transferred investor funds. Other Defendants have transferred investor funds up-line to accounts controlled by Guo and Yao Lin in this district, and have maintained

websites or posted videos on the internet promoting CKB that are accessible to investors in this district. All of the Defendants have substantially participated in the fraudulent scheme described herein, which has raised money from investors who reside in this district.

## **DEFENDANTS AND RELIEF DEFENDANTS**

### **I. Defendants**

#### **A. The CKB Entities**

13. WIN168 Biz Solutions Limited (“WIN168”) is a private Hong Kong company established on March 8, 2011. Defendants Santos, Shern, and Florence Leung are directors of WIN168 and together own eight million of the company’s nine million shares. WIN168 registered a website located at [www.ckb168.com](http://www.ckb168.com), posted in English and Chinese, which promoted the investment scheme. In approximately April 2013, [www.ckb168.com](http://www.ckb168.com) was taken down and replaced with a largely identical website located at [www.ckbmax.com](http://www.ckbmax.com), which also was posted in English and Chinese. (Collectively, the two websites will be referred to as the “CKB Website.”) The CKB Website contains many of the misrepresentations described below, including “testimonials” by many of the Defendants, and provides investors access to fraudulent “account statements.” From April 2011 until at least August 2013, WIN168 maintained bank accounts at HSBC in Hong Kong that were used to receive and transfer funds from CKB investors located in the United States and elsewhere. Those accounts received wire transfers from banks located in New York, including this district. Defendants Shern and Leung were the authorized signatories for these accounts.

14. CKB168 Biz Solution Inc. (“CKB168 Biz”) is a Canadian corporation established on April 29, 2011 with its principal place of business in Toronto, Ontario. Defendant Shern is

the sole director of CKB168 Biz. CKB168 Biz has maintained bank accounts at TD Bank in Canada that have been used to receive and transfer funds from CKB investors.

15. CKB168 Limited (“CKB168 Ltd.”) is a private Hong Kong company established on October 13, 2011. CKB168 Ltd. shares a business address with WIN168, and its sole director is CKB168 Biz Solution Limited (“CKB168 Biz Ltd.”), a British Virgin Islands corporation with its office in Tortola. From November 2011 until approximately August 2013, CKB168 Ltd. maintained a bank account at HSBC in Hong Kong that was used to receive and transfer funds from CKB investors, including wires coming from New York. Defendants Shern and Leung were the authorized signatories for this account.

16. CKB168 Holdings Limited (“CKB168 Holdings”) is a private Hong Kong company established on October 13, 2011. CKB168 Holdings shares a business address with Defendants WIN168 and CKB168 Ltd., and its directors are CKB168 Biz Ltd., and a non-party individual who is listed as an executive on the CKB Website. Sample stock certificates shown to prospective investors indicate that CKB168 Holdings is the entity whose shares have been offered to the public.

17. Cyber Kids Best Education Limited (“Cyber Kids Best”) is a private British Virgin Islands company established on January 15, 2013. Cyber Kids Best shares a business address with CKB168 Biz Ltd., and its correspondence address matches that of the other CKB entities. Its sole director is a non-party individual listed as the head of a “Global Committee” under the “Marketing Alliances” section of the CKB Website. Cyber Kids Best controls five bank accounts at Shanghai Commercial Bank Ltd. in Hong Kong, at least two of which were used to receive and transfer funds from CKB investors located in the United States, including this district, and elsewhere. Florence Leung is an authorized signatory to these accounts.

18. WIN168, CKB168 Biz, CKB168 Holdings, CKB168 Ltd., and Cyber Kids Best have never been registered with the Commission in any capacity and have never registered any offering of securities under the Securities Act or any class of securities under the Exchange Act.

**B. CKB Executives**

19. Rayla Melchor Santos (“Santos”), aka “Teacher Sam,” born 1956, is a Philippines national and is featured on the CKB website as the “founder” of CKB. Corporate registry records indicate that Santos is a director and the second largest shareholder of WIN168. Santos has travelled to the United States, including to this district, to participate in meetings and seminars to promote CKB.

20. Defendant Hung Wai (Howard) Shern (“Shern”), born 1958, is a Canadian citizen and resident of Hong Kong. Shern is featured on the CKB website as the “Director of CKB168 International Marketing.” Shern is a director and the largest shareholder of WIN168, and, along with Defendant Florence Leung, one of the signatories to bank accounts in the names of WIN168 and CKB168 Ltd. that were used to receive and transfer funds from CKB investors. He also is the sole director of CKB168 Biz in Toronto, Ontario. Shern has travelled to the United States, including to this district, to participate in meetings and seminars to promote CKB.

21. Defendant Rui Ling (Florence) Leung, aka Kwai Chee Leung (“Leung”), born 1957, is a Hong Kong national and is described on the CKB website as the “Chief Financial Officer” for CKB. Leung is a director and shareholder of WIN168, and, along with Shern, one of the signatories to bank accounts in the names of WIN168 and CKB168 Ltd. that were used to receive and transfer funds from CKB investors. Leung is also a signatory to accounts in the name of Cyber Kids Best that were used to receive and transfer funds from CKB investors. In addition, Leung has received CKB investor funds sent from a Western Union branch located in

Flushing, Queens, within this district. In promotional materials distributed to investors, Leung describes herself as a professional investment adviser who will assist CKB in its public offering. Approximately \$4.6 million have been transferred from CKB bank accounts into bank accounts that Leung controls.

**C. CKB Promoters**

22. Daliang (David) Guo (“Guo”), born 1963, is a Chinese native and a resident of New Hyde Park, New York. Guo was among CKB’s first U.S. promoters, and currently sits atop a U.S. investment pyramid. In his “Grand Ranking” promoter testimonial on the CKB website, Guo claims to have earned over \$1 million from his association with CKB within 8 months. He has met with and made presentations to prospective investors in this district, as well as elsewhere in New York, Las Vegas, California, Philadelphia, Delaware, and China to promote CKB. Guo has deposited funds received from CKB investors into accounts held in his own name as well as accounts held in the name of a company he controls, Relief Defendant Rosanna LS Inc.

23. Yao Lin (“Yao Lin”), born 1973, is a resident of Fresh Meadows, New York. Yao Lin was among CKB’s first U.S. promoters, and currently sits atop a U.S. investment pyramid. In his “Grand Ranking” promoter testimonial on the CKB website, Yao Lin claims to have earned over \$300,000 from his association with CKB. Yao Lin has met with prospective investors within this district, as well as in California. Bank records indicate that he has deposited funds received from CKB investors into accounts held in his own name as well as accounts held in the name of a company he controls, Relief Defendant Ouni International Trading Inc.

24. Chih Hsuan (Kiki) Lin (“Kiki Lin”), born 1965, is Taiwanese native and a resident of Las Vegas, Nevada. In her “Grand Ranking” promoter testimonial, Kiki Lin claims she earned “one million USD” within her first two months of investing in CKB. Kiki Lin is

directly down-line from David Guo within his pyramid and has sent CKB investor funds to bank accounts under his control within this district. Kiki Lin has promoted CKB to prospective investors in New York, Las Vegas, San Francisco, and Los Angeles, and began collecting funds from investors beginning in at least August 2011. She has deposited these funds into banks accounts held in her own name, as well as in the name of a company she controls, Relief Defendant USA Trade Group, Inc. Kiki Lin also operates a website, [www.kk1368.com](http://www.kk1368.com), through which “CKB members” can login to a password-protected portion of the site.

25. Defendant Wen Chen Hwang, aka Wen Chen Lee, (“Wendy Lee”), born 1962, is a Taiwanese native and a resident of Rowland Heights, California. In her “Grand Ranking” promoter testimonial, Wendy Lee claims to have made \$53,000 within four months of investing in CKB. Wendy Lee is directly down-line from Yao Lin within his pyramid, has sent CKB investor funds to bank accounts under his control in this district, and holds weekly seminars to promote CKB in Los Angeles. Wendy Lee began collecting funds from CKB investors from at least July 2011 and has deposited them into accounts held in her own name, accounts over which she held a power of attorney, and accounts in the names of three entities under her control: Relief Defendants E Stock Club Corp. and EZ Stock Club Corp, as well as United Diagnostics Corp. E Stock Club Corp. has a website located at [www.estockclub.com](http://www.estockclub.com), which appears in an English version and a Chinese version. Both versions appear to provide securities trading advice, but only the Chinese version of the website promotes CKB.

26. Toni Tong Chen (“Toni Chen”), born 1968, is a resident of Hacienda Heights, California. Toni Chen is a certified public accountant licensed in California. From 1996 to August 2012, she was associated with four registered broker-dealers, and held multiple securities licenses. In her “Grand Ranking” promoter testimonial, together with her husband, Defendant

Heywood Chang, they claim to have earned six-digit commissions since the first month they joined CKB and to have made a return of over 100% from their investment. The pair are directly down-line from Wendy Lee, and have made presentations at her weekly seminars in Los Angeles, California. In addition, the pair has sent CKB investor funds to bank accounts under the control of Yao Lin in this district.

27. Cheongwha (“Heywood”) Chang (“Heywood Chang”), born 1967, is Chinese native and a resident of Hacienda Heights, California. From 1998 to 2000, he was associated with two registered broker-dealers and held securities licenses. Together with his wife, he began collecting funds from CKB investors from at least May 2012, and has deposited these funds into bank accounts held in their own names, as well as in the names of companies under their control, including Relief Defendants HTC Consulting LLC and Arcadia Business Consulting Inc. In addition, CKB investor funds have been deposited into bank accounts in the names of other individuals over which Toni Chen held a power of attorney.

28. Joan Congyi Ma (“JC Ma”), born 1970, is a resident of Arcadia, California. From 1996 to 1999, she was associated with a registered broker-dealer and held securities licenses. In her “Grand Ranking” promoter testimonial, JC Ma claims that her income from the CKB investment “has far exceeded [her] expectations.” JC Ma is down-line from Wendy Lee, and has appeared at and helped to organize seminars and other events in Los Angeles, California. JC Ma began collecting funds from CKB investors from at least May 2012, and has deposited them into accounts held in her own name as well as accounts over which she held a power of attorney. In her testimonial, JC Ma references the day she met Yao Lin as her “lucky day.”

29. Defendant Heidi Mao Liu (“Heidi Mao”), born 1964, is a resident of Diamond Bar, California. From 1997 to 1999, she was associated with a registered broker-dealer and held

securities licenses. Heidi Mao operates a website located at [www.heidimao168.com](http://www.heidimao168.com), which promotes the CKB investment scheme. Heidi Mao is down-line from Wendy Lee, and has provided testimonials at Wendy Lee's seminars in Los Angeles, California. Heidi Mao began collecting funds from CKB investors from at least July 2012, and has deposited them into accounts held in her own name, as well as accounts over which she held a power of attorney.

## **II. Relief Defendants**

30. Rosanna LS Inc. ("Rosanna") is a New York corporation with the same business address as the home address of David Guo in New Hyde Park, New York. David Guo has signatory authority over accounts held in the name of Rosanna, which have been used to receive and transfer proceeds from CKB investors.

31. USA Trade Group Inc. ("USA Trade") is a Nevada Corporation for which Kiki Lin serves as the sole officer and director. Kiki Lin has signatory authority over accounts held in the name of USA Trade, which have been used to receive and transfer proceeds from CKB investors.

32. Ouni International Trading Inc. ("Ouni International") is a New York corporation with the same business address as the home address of Yao Lin in Fresh Meadows, New York. Yao Lin has signatory authority over accounts held in the name of Ouni International, which have been used to receive and transfer proceeds from CKB investors.

33. E Stock Club Corp. ("E Stock Club") is a California corporation with an address in Rowland Heights, California for which Wendy Lee is the registered agent. Wendy Lee has signatory authority over accounts held in the name of E Stock Club, which have been used to receive and transfer proceeds from CKB investors.

34. EZ Stock Club Corp. (“EZ Stock”) is a California corporation with an address in Rowland Heights, California for which Wendy Lee is the registered agent. Wendy Lee has signatory authority over accounts held in the name of EZ Stock, which have been used to receive and transfer proceeds from CKB investors.

35. HTC Consulting LLC (“HTC”) is a California company with a business address identical to the home address of Toni Chen and Heywood Chang. Bank records indicate that Heywood Chang has signatory authority over accounts held in the name of HTC, which have been used to receive and transfer proceeds from CKB investors.

36. Arcadia Business Consulting, Inc. (“Arcadia”) is a California company for which Heywood Chang is the registered agent. Heywood Chang has signatory authority over accounts held in the name of Arcadia, which have been used to receive and transfer proceeds from CKB investments.

## FACTS

### **I. Defendants Launch Their Fraudulent Scheme**

37. Defendants Santos, Leung and Shern are the architects of this pyramid scheme, which was launched from Hong Kong. Shortly after WIN168 was established in March 2011, Defendants Santos, Leung and Shern began efforts to establish investment pyramids in the United States. Guo and Yao Lin were among the first to join the scheme in the United States, making their first investments in approximately June 2011. Guo and Yao Lin then almost immediately began to recruit new investors by holding meetings and seminars in New York. Accounts controlled by Guo and Lin show investor payments starting that same month.

38. Guo’s and Yao Lin’s roles quickly grew, and they now sit atop multi-level CKB investment pyramids. In email communications, meetings and presentations to investors, they

are generally described as the “top leaders” for CKB in the United States. Both have travelled extensively to promote CKB, and appear in CKB promotional videos that have been posted on YouTube or other publicly-accessible internet sites. In these videos, both Guo and Yao Lin can be seen posing with other Defendants and/or speaking directly to the camera. Guo and Yao Lin knew or were reckless in not knowing that they were being recorded and that such recordings would be shared with other CKB investors or prospective investors.

39. Both are also directly connected to CKB executives Santos, Shern, and Leung. Guo, Yao Lin, Santos, and Shern appear together in multiple promotional videos recorded in the United States. In a video posted to the internet on July 10, 2012 by an unidentified promoter, Guo describes two occasions in which he invited Santos to travel to New York to promote CKB. He later identifies her in this video as one of CKB’s “owners.” Furthermore, bank records from June 2011 through at least October 2011 reflect multiple transfers of investor funds from bank accounts in New York that Guo and Yao Lin control to CKB bank accounts in Hong Kong controlled by Leung and Shern.

40. After Guo and Yao Lin began recruiting investors in the New York area, the scheme quickly expanded to California and other areas with large Asian-American immigrant communities. There, they recruited energetic and highly visible promoters that have organized seminars and meetings nationwide, maintained a robust internet presence, recorded and posted numerous promotional videos, and organized and executed the transfer of investor funds. Those promoters include Defendants Kiki Lin, Wendy Lee, Toni Chen, Heywood Chang, Heidi Mao, and JC Ma. Kiki Lin sits just below David Guo in his investment pyramid. Wendy Lee sits just below Yao Lin in his pyramid, while the other Defendants are below Lee.

41. Defendants Shern, Santos, Guo, Yao Lin, Wendy Lee, Kiki Lin, Heywood Chang, Toni Chen, JC Ma, and Heidi Mao appear in CKB promotional videos recorded in New York, San Francisco, Los Angeles, and perhaps other locations and posted to the internet at various times from between October 2011 to at least February 2013. These Defendants knew or were reckless in not knowing that these videos would be recorded and shared with other CKB investors or prospective investors.

42. Toni Chen, Heywood Chang, Heidi Mao, and JC Ma are all former licensed securities professionals. Although Lee has never been a licensed securities professional, she offers securities trading advice and education for a fee through her company, Relief Defendant E Stock Club and its website.

## **II. The CKB Offering and Defendants' Promises of Extraordinary Returns**

43. Since at least June 2011, Defendants have solicited United States investors for CKB through a variety of tactics, including in-person sales pitches, videotaped presentations posted on the internet, websites, written brochures and other written materials, and e-mail and telephone communications. These solicitations have been made in both Chinese and English.

44. Many of these presentations and promotional events have been recorded on video and posted to YouTube or other publicly-available sites on the internet. At these promotional events, investors are provided with pamphlets and other promotional materials that purport to describe the business of CKB and the purportedly enormous profit potential for investors.

45. These materials generally direct investors to the CKB website and also often are accompanied by contact information for one or more of the Defendants. Investors are routinely directed to the CKB website not only for information about the company, but also to access their individual password-protected accounts. There, they are able to monitor their purported CKB

investments, including the fraudulent statements of account value. Since at least January 2013, the CKB website also has been advertising periodic company-sponsored “business introduction” webinars on the CKB investment in English and Chinese.

46. Defendants Guo, Yao Lin, Kiki Lin, Wendy Lee, Toni Chen, Heywood Chang, and JC Ma are all featured as “Grand Ranking” promoters on the CKB website. As Grand Ranking promoters, each has posted testimonials on the website, recounting their discovery of, and success with, the CKB “business opportunity.” Those testimonials all include descriptions of these Defendants’ enormous profits, as well as endorsements of CKB’s legitimacy and ultimate success. As JC Ma puts it in her testimonial, although she did not initially understand the business, her income from CKB “has far exceeded her expectations.”

47. The statements in these testimonials are similar to those found on the websites separately maintained by Wendy Lee, Kiki Lin, and Heidi Mao that promote the CKB investment. For example, on her website, Mao describes CKB as “an explosively growing company,” and encourages investors to buy a \$1380 business package, which will allow them to become an “angel representative.”

48. Defendants have made no effort to determine the financial qualifications or investment experience of any investor prior to soliciting funds. In fact, Kiki Lin’s testimonial on the CKB website indicates that she took money from individuals who she knew to have very limited financial resources, including someone she described as a Las Vegas hotel cleaning woman and another she described as a “servant with low income.” Nor have the Defendants provided investors with any financial or other disclosure statements for CKB. Investors who have requested financial information about the company have been told the information is secret and not available to investors.

49. WIN168, Shern and the CKB Promoters have knowingly or recklessly made misrepresentations and all Defendants have knowingly or recklessly engaged in deceptive acts that falsely portray CKB as a profitable educational software company that distributes its products using legitimate multi-level marketing methods that will reward investors with enormous returns. As the founders, officers, directors, primary shareholders and representatives of CKB and its related entities, including the corporate Defendants, Defendants Santos, Shern and Leung knew or were reckless in not knowing that CKB is and was a fraudulent pyramid scheme. Moreover, Defendants Santos, Shern and Leung knew or were reckless in not knowing the falsity of the statements being made to promote it. Santos and Shern, in particular, have frequently attended and presented at promotional events in the United States. Leung is also directly involved in running CKB. For example, she actually signs the checks sent to promoters as commissions. Shern, Leung and WIN168 control bank accounts into which millions of dollars of investor money have flowed.

50. As set forth in this Complaint, each of the CKB Promoters has made substantial efforts to recruit investors to CKB, including the use of in-person, on-line and written persuasive statements. Each of the CKB Promoters has also directly and substantially benefitted from the CKB pyramid scheme, with at least tens of or hundreds of thousands, or in some cases millions, of dollars of investor assets flowing into accounts he or she individually controls. Each of the CKB Promoters frequently coordinates with other promoters and with the CKB Executives, including for the purposes of promoting CKB and transferring investor assets. In light of these circumstances, each of the CKB Promoters knew, or was reckless in not knowing, CKB's true nature and the falsity of the promised returns. This is especially true for Defendants Toni Chen, Heywood Chang, Heidi Mao, Wendy Lee and JC Ma, who were, or hold themselves out to be,

financial professionals, and for Defendants David Guo and Yao Lin, who sit atop United States investor pyramids, and who were among CKB's first U.S. promoters. JC Ma states in her testimonial that she has worked her way through six levels of the CKB pyramid, making it impossible that she does not understand how CKB really works. Heidi Mao, who maintains an entire website devoted to promoting CKB, also knows, or is reckless in not knowing, CKB's real purpose. Finally, as set forth in greater detail below, Defendants Guo, Yao Lin, Kiki Lin, Ma, Chen and Chang have sought to reassure potential investors about CKB's legitimacy by telling them they have studied CKB's business model and confirmed the promotional claims.

51. Defendants' grandiose claims about CKB's performance depict a huge, profitable business. For example, in one video posted to the internet by Kiki Lin in March 2013, Guo tells prospective investors in California that his "marketing team" – a euphemism for the pyramid he sits atop – has generated \$100,000,000 in sales revenue. Santos and Shern can be seen applauding in response to his claim. In another seminar presentation recorded and posted to the internet by Heidi Mao on November 25, 2012, Heywood Chang tells investors that during a business trip with Shern in Hong Kong, he learned that CKB had sold 125,000 courses in the first 16 months of its existence, resulting in "about \$170 million . . . in total sales."

52. In another set of videos, recorded on August 26, 2011 in New York, Guo pretends to be a news anchor reporting CKB with a fake news ticker across the screen. Guo predicts enormous growth for CKB, describing new office space, products, and "play parks" that "will be all over the world." Similar statements appear in promotional materials distributed by Kiki Lin, Wendy Lee, Heywood Chang, and Toni Chen. In these materials, the educational software courses are described generally as the perfect all-purpose games, able to teach English, memory

skills, creativity, moral standards and international values. Yao Lin claims in his testimonial that CKB “is a business that invests in children education and will change the future.”

53. Defendants do not dwell on specifics when describing CKB. The CKB website and in the promotional materials distributed to investors describe CKB’s business and products only in the most general, hyperbolic terms. Moreover, in at least some instances when investors and potential investors have sought more specific information, they have been refused or been given false information. For instance, one investor that requested specific financial data about CKB was told by Heywood Chang and Toni Chen that the information was “secret” and not available to investors. When this investor sought the same information directly via the email address provided on the CKB website, he received a similar response. In another instance, this investor requested additional information about the promised IPO via the email address provided on the CKB website; he received a response stating that the IPO was being reviewed by a Hong Kong governmental agency that, in fact, has no role or authority relating to IPOs.

54. Defendants’ primary lure, and biggest focus, is the promise of fantastic, risk-free returns. For example, in videos posted to the internet by Kiki Lin and other CKB promoters, in August 2011, October 2011, and March 2013, Guo asserts that that the CKB investment “increased four times” in the first two months of CKB’s existence, will “increase by 50 times,” and, eventually “will have return several tens, even several hundreds . . . times return.”

55. These types of claims are repeated in different forms by WIN168, Shern and the CKB Promoters. Examples include Defendant Chang, in a seminar presentation recorded and posted to the internet by Heidi Mao on November 25, 2012, predicting that an original investment of \$56,000 can soon become \$1 million. Wendy Lee posts a chart on a CKB promotional website she maintains purporting to show that a CKB investment will increase

eight-fold in less than ten months. Other slides on her website purport to depict a chart of historical Prpt values and splits, and conclude that if an investor had 10,000 Prpts when CKB was first established, he or she would not have 320,000. Kiki Lin claims in a recorded presentation that she posted to the internet on March 27, 2013 that if an investor makes a sizable enough investment, he or she could see returns of up to 600 times. At a private dinner, Yao Lin told one investor that \$50,000 can become \$1 million in a single year, a claim that matched statements by Defendants Chen, Chang and Lee to the same investor.

56. Literature distributed to investors says much the same thing. An English flyer provided to a prospective investor by a CKB promoter down-line from Kiki Lin states that “your investment will be doubled, quadrupled and continue to grow in size to 8 times, 16 times...” Another flyer received by a prospective investor contains the photograph and contact information for Kiki Lin and touts “a onehundredfold [sic] profit.”

57. At least some Defendants couple these promises with reassurances that a CKB investment will never lose money. In a recorded presentation posted to the internet on March 27, 2013 by Kiki Lin, Guo states that an investment in CKB “will only grow and never fall.” In an earlier video posted to the internet on October 31, 2011, Guo says “we will talk about why this stock doesn’t have risk.”

58. Other Defendants echo these claims. In promotional materials distributed to investors and videos posted to the internet, they describe an investment that will always increase in value as more investors purchase “business packs.” For instance, in a video posted to the internet on November 11, 2011 by Kiki Lin, Shern states that the price of Prpts will increase every time a certain number of Prpts are distributed. In other words, contrary to investment

logic, the distribution of more Prpts leads inexorably to an increase in Prpt value. As Defendants Chang and Chen told one investor in late 2012, a CKB investment can only go up.

59. To become a CKB investor, an individual must purchase one or more “business packs,” for approximately \$1,380 per pack. (Business packs were at one time sold for \$1200.) Once an investor purchases a business pack, he or she becomes a CKB “affiliate” known as an “Online Marketing Angel” (“OMA”) and, for each pack purchased, receives: a) access to one of CKB’s online children’s courses; b) a “back office” account accessible through a password-protected portion of the CKB website; and c) Prpts purportedly worth \$750.

60. Under the scheme, as designed and carried out by the Defendants, investors are eligible to earn investment returns in one of two ways. The first is simply through the passive accumulation of Prpts. The CKB website and promotional materials distributed to investors state that the Prpts have a U.S. dollar cash value. CKB Promoters Guo, Yao Lin, Kiki Lin, Wendy Lee, Heywood Chang, Toni Chen, and Heidi Mao have made statements directly to investors, through internet postings, and/or emails indicating that the value of these Prpts will grow exponentially over time. CKB Promoters Chang and Chen have told at least one investor that he can expect to make back his original investment in Prpts within a few months. These gains are purportedly accomplished in two ways: by the Prpts splitting and returning to their pre-split price, and by investors earning an additional 5% to 30% annual dividend, paid quarterly in Prpts. The CKB promotional materials, as well as statements to investors by certain Defendants, including Shern, Guo, Kiki Lin, Wendy Lee, Chang, and Chen, indicate that their Prpts are liquid and can be used, among other things, to be traded for cash with other investors on an internal online “exchange” that is accessible through the CKB website. In fact these statements are false and these Defendants knew or were reckless in not knowing that they were false.

61. Another primary tool used to recruit new investors has been the promise that they will be able to exchange their Prpts for pre-IPO shares of CKB. JC Ma claims in her testimonial that the “opportunity to be a shareholder of CKB168” was a “main attraction.” Shern says in a video uploaded by Kiki Lin that investors can “convert you [sic] points into shares.” Yao Lin emphasizes in his testimonial that CKB “offers a great opportunity for common people to get rich by means of getting listed.” The CKB website, promotional materials distributed to investors, internet postings, and statements by Shern and most of the CKB Promoters, indicate that CKB is taking steps to conduct an IPO on the Hong Kong Stock Exchange in mid-2014. For instance, in a presentation to investors that was posted to the internet on March 27, 2013 by Kiki Lin, Guo asserts that “we will go public in 2014.” Kiki Lin is even more specific in a video she posted of herself, asserting that “in July and August 2014, the company will go public.” Once the IPO occurs, investors will purportedly be able to exchange their Prpts for pre-IPO shares of CKB. In a video posted to the internet on July 10, 2012, Guo explains that “once the company becomes public, those [Prpts] will become initial shares.” Defendants Howard Shern, Wendy Lee, Kiki Lin, Heywood Chang, Toni Chen, and Heidi Mao have made similar statements directly to investors in seminars and through CKB promotional materials distributed to investors.

62. Although Defendants emphasize the potential growth for passive investors, the only actual returns an investor can receive under this scheme is by actively recruiting new investors. According to a “Dynamic Rewards Plan” used by WIN168, Shern and the CKB Promoters to solicit investors, active recruiters can earn commissions, which are called “dynamic” or “active” returns. This Dynamic Rewards Plan describes an investment pyramid, whereby OMAs profit by recruiting more investors, with a portion of each “down-line” investment going to investors who are higher in the pyramid. According to this material, 85% of

“sales” revenues are paid back to OMAs in the form of commissions. The amount of commissions and bonuses that an investor is eligible to receive generally depends upon his or her rank within the company – the higher the rank, the more commissions and bonuses that the person can earn. This system is thus cleverly designed to pay the vast majority of the commissions to the highest ranked promoters within CKB, including many of the Defendants.

63. In an investor presentation posted to the internet on October 31, 2011 as a series of three videos, Guo describes to Defendant Kiki Lin and others the benefits of “develop[ing] people on the second level to the tenth level,” so that you can make “indirect profits.” He goes on to reiterate the claims in the Dynamic Reward Plan that “85%” of investor money will be returned as commissions to investors higher in the pyramid. Later in the same series of videos, Guo explains how to establish a more lucrative, “horizontal” pyramid.

64. Certain Defendants, including Shern, Heywood Chang, and Toni Chen, have encouraged investors to work for active returns because they accrue more rapidly than passive returns. What they fail to disclose, however, is that the active returns are the only actual returns that an OMA can earn under this scheme. Instead of simply passively accumulating more worthless Prpts, the scheme allows active recruiters to redeem most of their commissions for real cash.

65. In order to effectuate these commission payments, Defendant Shern and Leung have established accounts in the names of WIN168 and CKB168 Ltd. from which payments were made. Defendant Leung signed most of the disbursements from these accounts. In addition, Defendants Shern and Leung entered into agreements with at least three third party commission payment providers to distribute the commissions on CKB’s behalf. In approximately June 2013, when a payment provider called Hyperwallet asked for confirmation

that CKB's commissions were based on "actual sales," Defendant Shern created a "revised" version of the Dynamic Rewards Plan. This version contained new language suggesting (for the first time) that a retail consumer could purchase a CKB educational product without becoming an investor. Defendant Shern sent this version to the commission payment provider, but failed to disclose that CKB did not actually sell any of its products to non-investors.

### **III. The Defendants' Misrepresentations and Omissions**

#### **A. CKB is a Pyramid Scheme**

66. Notwithstanding Defendants' efforts to portray it as a legitimate multi-level marketing company, CKB is a classic pyramid scheme. Unlike a legitimate multi-level marketing program, CKB sells its product exclusively to investors and has no apparent source of revenues other than money received from new investors. And, like many such schemes, Defendants have targeted an affinity group.

67. Neither CKB's website nor any of the websites operated by other Defendants offer any means to purchase the software without also purchasing Prpts and becoming an investor. While investors are encouraged to purchase large numbers of courses, they are given no instruction, training, or guidance on how to resell these courses to retail consumers. The focus of the Defendants' promotional efforts and recruiting literature is almost exclusively on the CKB "business opportunity," rather than the purported educational software.

68. Furthermore, certain Defendants' own statements make clear that every purchaser of a CKB course becomes an investor. In a video presentation posted to the internet on November 25, 2012 by Heidi Mao, Heywood Chang states, "we have three products right now you can actually purchase, *you know, when you become a member.*" Similarly, Kiki Lin states in a video presentation she posted to the internet on March 27, 2013, that "as long as you purchase

an order which is worth 1380 yen [sic], you will be eligible to become our initial shareholder.”

Slides captured from Wendy Lee’s E Stock Club website state that, with the purchase of a course, one “can enjoy a number of Prpt with a value of USD 750.”

69. As a result, the entire CKB enterprise depends on the recruitment of new investors to pay promised returns and commissions to existing investors. Such a scheme is destined to collapse, leaving a significant majority of investors with substantial losses. Defendants, however, instead claim that CKB is on a trajectory of limitless growth.

70. Defendants’ failures to disclose CKB’s true nature, and its inevitable collapse, were omissions of material fact that made the Defendants’ statements about CKB, as described herein, misleading.

#### **B. Misrepresentations and Omissions About CKB’s Purported IPO**

71. Defendants’ promotional efforts are built around the promise that CKB is going to launch an initial public offering (“IPO”) on the Hong Kong stock exchange, and that investors will be able to convert their Prpts into shares of CKB stock at that time, thereby making massive returns. As Guo explains in a video, “once the company becomes public, those [Prpts] will become initial shares.”

72. Promotional materials distributed to an investor by a CKB promoter down-line from Kiki Lin stated in part:

*Is It Possible to Turn \$1,380 Investment To \$500,000?*

*Pre-IPO investing is growing, it outperformed all other investment classes with outsized returns of well over 20%, 30%, 50% or even 100% and more for holders of original shares. Hundreds and thousands of millionaires and billionaires have been created by the big name firms like Google, Facebook and smaller firms as well like Alibaba, Baidu, New Oriental, Ice Town Animation, etc. . . .*

*CKB168: Invest in Education: Create Wealth to Share*

...

*Return on Investment: With a courseware purchase, investing \$1,380 in education, you receive a Pre-IPO privilege of PrPt for FREE, an equivalent of \$750 in value, salable, redeemable, and convertible to company stock. Your investment will be doubled, quadrupled and continue to grow in size to 8 times, 16 times . . . till IPO.*

73. A flyer captured from Wendy Lee's E Stock Club website asserts that when CKB has allocated "the first batch of 200 million Prpts," it will be prepared to go public and allocate a 20% stake in the company to the holders of these Prpts. The flyer then states that when CKB has "sold about 360,000 courses with revenue of about USD 432 million and the profit of USD 36 million," then "CKB's market value is USD 2.88 billion." Accordingly, the flyer concludes, after the IPO each Prpt will be worth the equivalent of \$2.16, a huge rise from the then-current quoted Prpt price of \$0.16 each.

74. The promise of an IPO is thus critical to Defendants' scheme. It discourages investors from trying to unload their Prpts, and, because Defendants claim that the IPO cannot go forward until certain sales benchmarks have been met, it encourages recruitment.

75. A common trope in Defendants' promotional videos and literature is a comparison between investors holding Prpts and pre-IPO shareholders in other famously successful IPOs. Both Heywood Chang and Kiki Lin appear in separate videos posted to the internet comparing the planned CKB IPO with other famously successful IPOs, including Google, Baidu, Alibaba and Facebook. In a different video that she posted to the internet, Kiki Lin asserted that after the IPO, "you will see the profit goes double, four times, eight times, sixteen times, 32 times and because the circulation in the world is very fast, you may even get 64 times." David Guo makes similar recorded claims in a video posted to the internet on March 27,

2013 by Kiki Lin that “after going public . . . the value of Prpt will increase by 50 times,” adding “can you believe it? Everything is real. Everything is true.”

76. In fact, none of it is real or true. Defendants have made no filings with Hong Kong authorities to list any of the CKB entities. In addition, the Hong Kong Stock Exchange has threshold financial criteria for public listing that CKB cannot possibly meet because, among other reasons, it has no real revenues.

77. WIN168 and CKB Promoters David Guo, Yao Lin, Kiki Lin, Wendy Lee, Heywood Chang, Toni Chen, and Heidi Mao have knowingly or recklessly misrepresented to investors that the Prpts frequently split, effectively doubling in value. For instance, in the November 2012 video posted by Heidi Mao, Heywood Chang tells investors that in the first 18 months of its existence, the Prpts have, on average, doubled in value every three to four months, and that he “very conservatively” estimates that the Prpts will double four more times in the next 18 to 20 months. A series of charts captured from Wendy Lee’s E Stock Club website purport to show that “the value of each Profit Reward Point has increase[d] from USD 0.024 on Jan 1, 2012 to USD 0.169 on Sep 21, 2012, with a return of 8 times within 9.5 months! In this way, there still might be return of 8-16 times before CKB gets listed in 2014.” These false representations are similar to those shown in the charts purportedly showing historical Prpt values to investors that access the password-protected section of the CKB website (controlled by WIN168).

78. These representations cannot possibly be true. If investors’ Prpt positions split and grow at anything approaching the exponential pace that Defendants promise, CKB could honor conversions only if it had a market capitalization that placed it, at a bare minimum, among the world’s most valuable companies.

79. The Defendants' failures to disclose that CKB will not actually conduct an IPO and that investors will not make the promised returns were material omissions of material fact that made the Defendants' statements about CKB, as described herein, misleading.

**C. Misrepresentations and Omissions About the Prpts' Value and Liquidity**

80. Defendants seek to create the impression with investors that owning Prpts is tantamount to owning CKB stock. The Prpts have a purported price that rises over time, and "split" every few months. WIN168 posts these historical prices on its website. Investors can also view these purported prices in fraudulent "account statements," accessible through the CKB Website. In a video posted to the internet by Kiki Lin on November 11, 2011, Shern states that the value of the Prpts in each business pack is \$750. This claim is made repeatedly in Defendants' literature and promotional videos. Defendants Guo, Yao Lin, Wendy Lee, Heywood Chang, Toni Chen, and Heidi Mao have all logged-in to their back office accounts to display their own massive Prpt holdings to investors.

81. At least some CKB Promoters also have knowingly or recklessly misrepresented to investors that Prpts are liquid and can, among other uses, be traded for cash with other investors on an internal "Prpt exchange" accessible through the CKB Website. For instance, slides captured from Wendy Lee's E Stock Club website provide that the Prpts can be "sold in Members online auction market." Guo appears in the March 2013 video posted by Kiki Lin telling investors that "after two months, we c[an] actually sell our Prpt at the backstage and convert it into money." Heywood Chang explains in the November 2012 video posted by Heidi Mao, that an investor "can auction off some of the points to get cash value." In an undated videotaped presentation that she posted, Kiki Lin asserts that an investor could sell all of his or her Prpts in two days, but cautions that "people might start to regret" such sales when they see

the value continue to climb. Kiki Lin further claims the market has extremely high demand with 100 people wanting to buy Prpts for every 10 that want to sell.

82. None of these representations are true. Except in rare and tightly limited situations, Prpts cannot be converted to cash. Nor do other investors clamor for Prpts. Defendants have not made or backed a meaningful Prpt market. One CKB investor who attempted to withdraw his six-figure investment and return his Prpts to Defendants Chang and Chen was refused.

83. The Defendants' failures to disclose that the Prpts are not liquid and cannot be easily traded or converted to cash were material omissions.

**D. Misrepresentations and Omissions About CKB's Relationship with Cackleberries**

84. WIN168, Shern and certain CKB Promoters have also knowingly or recklessly misrepresented to investors CKB's relationship with a Canadian company called Cackleberries International Language Corporation ("Cackleberries"). Cackleberries developed an English-as-a-second-language ("ESL") program, which was the primary product purportedly sold by CKB from its inception through at least November 2012. For instance, in the November 2012 video posted to the internet by Heidi Mao, Heywood Chang falsely claimed that Santos and Shern were "very big stockholders" of Cackleberries and that CKB was a "partnership" between Cackleberries, Santos, and Shern. CKB Promoters David Guo, Heywood Chang, Wendy Lee, and Kiki Lin have told investors that 45% of the costs of developing the Cackleberries ESL program were paid for by the government of Canada. A previous incarnation of the CKB Website contained language falsely implying that CKB had created a Cackleberries product.

85. Those statements are false. In fact, WIN168 was simply a distributor hired by Cackleberries to market its ESL program in Asia. Under that distribution agreement, WIN168 was not authorized to sell the Cackleberries program anywhere in North America. When the CEO of Cackleberries asked Shern to see the marketing materials relating to Cackleberries, Shern avoided showing her any materials by falsely telling her that the name Cackleberries was not being used in his marketing materials. In approximately November 2012, Cackleberries terminated its distribution agreement after learning that CKB was violating the terms of the marketing agreement by, among other things, falsely claiming to own a Cackleberries product and marketing it in North America. As of July 2013, Cackleberries records reflected that CKB had purchased a total of approximately 18,750 copies of the ESL program from Cackleberries, of which only 2,806 copies have been accessed, far short of the sales numbers claimed by Defendants.

86. The truth about Cackleberries' relationship to CKB is highly material information. A number of individuals who received or were aware of Defendants' promotional efforts contacted the CEO of Cackleberries to inquire about that relationship. Defendants acted unlawfully by failing to disclose CKB's true relationship, or lack thereof, with Cackleberries. The failure to disclose the true relationship was a material omission.

**E. Defendants' "Lulling" Statements to Address Investor Questions**

87. A number of the CKB Promoters have made false and misleading statements to allay investors' questions and concerns. Guo (in videos posted to the internet) and Yao Lin (in his testimonial posted to the CKB Website) each acknowledged that potential investors may be skeptical of CKB. But then, each falsely asserts that there has been widespread, positive press coverage of CKB. In fact, internet searches reveal few independent news reports on CKB, and

many of those suggest that CKB is an illegal pyramid scheme. A section of the CKB Website entitled “Media Coverage” features at least four purported “News Clipping[s]” from three Hong Kong papers, which, in reality, are advertisements placed by CKB that were designed to look like newspaper articles.

88. In a series of videos posted to the internet on October 31, 2011, Guo – apparently reacting to the concerns of potential investors – also claims to have “sent people from New York” to scrutinize CKB to help him overcome his own doubts. For good measure, in a March 2013 video posted to the internet by Kiki Lin, Guo tells investors they can rely on the endorsement of CKB by the United Nations, the Canadian government, the Christian God, Buddha and I Ching to reassure themselves.

89. In testimonials that have been posted to the CKB Website, Kiki Lin, JC Ma, Toni Chen, and Heywood Chang all describe their transformation from skeptics to believers. The nature of these testimonials, all of which effusively praise the CKB168 business opportunity, make it clear that they were meant to be accessible to any member of the investing public. Kiki Lin states in her testimonial that she was initially surprised at the promised returns from CKB, but “when [she] learned the operation secret of this company, [she] recognized that this was a once in a blue moon opportunity to get rich.” JC Ma states in her testimonial that initially, she did not “fully understand CKB’s whole system and its great potential,” but became more confident about the investment “after [she] became familiar with CKB’s highly dedicated and powerful management team and understood their careful plans to develop the business.” Similarly, Toni Chen and Heywood Chang wrote in their testimonial that “as an engineer, [Heywood] was a natural skeptic” and that “he had to research the company from top to bottom” before agreeing to invest. They then state that “[a]fter two weeks of intense research, he

understood the company, its products, and its growth plan” and on that basis, they invested all of their liquid assets into CKB.

90. These and other, similar lulling statements are highly material and are characteristic of the Defendants’ promotional efforts, which seek to exploit relationships of trust and close connections among members of the Asian-American community.

**IV. The Defendants Have Raised Millions of Dollars from Investors**

91. The misrepresentations described above are highly material. One investor that invested over \$400,000 in CKB states that promises about returns and descriptions of CKB’s business model, were critical to his decision to invest. He is not alone. On the basis of the misrepresentations described above, Defendants have raised millions from, at a minimum, hundreds of United States investors.

92. Bank records from Hong Kong and the United States reflect that, from approximately June 2011 through August 2013, at least 400 U.S. investors have deposited at least \$20.5 million, and likely much more, into financial accounts controlled by one or more Defendants. These investors provided their funds either to the OMA that recruited them, to one of the “up-line” OMAs within the pyramid, and/or directly to one of CKB’s Hong Kong bank accounts. The funds were provided through a variety of methods, including checks, wires, electronic bank transfers, and cash. The majority of these U.S. investors are either New York residents, including residents of this district, or California residents.

93. Of this \$20.5 million, approximately \$11 million was deposited into three accounts located at HSBC Hong Kong in the names of WIN168 and CKB168 Ltd. Another approximately \$1.5 million was deposited to accounts at Shanghai Commercial Bank in the name

of Cyber Kids Best. The other \$8 million of investor funds were identified from deposits to bank accounts held in the names of the CKB promoter Defendants located in the United States.

94. Approximately \$34,400 of CKB investor funds were deposited into three bank accounts controlled by David Guo and opened at branches within this district. Two accounts are in his name and one account is in the name of his company, Relief Defendants Rosanna LS Inc. Guo transferred approximately \$3,600 of investor funds to one of the CKB HSBC accounts in Hong Kong.

95. Approximately \$1.8 million of CKB investor funds were deposited into four bank accounts controlled by Kiki Lin. Two accounts are in her name and two accounts are in the name of her company, Relief Defendant USA Trade Group, Inc. Kiki Lin transferred approximately \$217,000 of investor funds to one or more of the CKB HSBC accounts in Hong Kong. In addition, Kiki Lin transferred approximately \$4,000 of investor funds to accounts in this district controlled by David Guo.

96. Approximately \$450,000 of CKB investor funds were deposited into five bank accounts and one credit card account controlled by Yao Lin and opened at branches within this district. Three of these bank accounts were in his name and two bank accounts and one credit card account were in the name of his company, Relief Defendant Ouni International. Yao Lin transferred approximately \$36,000 of investor funds to one or more of the CKB HSBC accounts in Hong Kong.

97. Approximately \$2.2 million of CKB investor funds were deposited into nine bank accounts controlled by Wendy Lee. Three were accounts in her own name, three were accounts over which she held a power of attorney, and three were accounts in the names of her companies: United Diagnostics Corp., and Relief Defendants E Stock Club Corp. and EZ Stock Club Corp.

Wendy Lee transferred approximately \$565,000 of investor funds to one or more of the CKB HSBC accounts in Hong Kong and another \$100,000 to one of the Shanghai Commercial bank accounts. In addition, Wendy Lee transferred approximately \$44,000 of investor funds to accounts in this district controlled by Yao Lin.

98. Approximately \$1.3 million of CKB investor funds were deposited into five bank accounts controlled by Toni Chen. Approximately \$800,000 of CKB investor funds were deposited into four bank accounts controlled by Heywood Chang. Four were accounts in their own names, one was an account over which Toni Chen held a power of attorney, and four were accounts in the names of their companies: Greenguard Financial Inc. and Relief Defendants HTC Consulting LLC and Arcadia Business Consulting Inc. Toni Chen and Heywood Chang transferred approximately \$526,000 of investor funds to one or more of the CKB HSBC accounts in Hong Kong. In addition, Toni Chen and Heywood Chang transferred approximately \$12,000 of investor funds to accounts in this district controlled by Yao Lin.

99. Approximately \$200,000 of CKB investor funds were deposited into three bank accounts controlled by JC Ma. Two were accounts held in her own name and one was an account over which she held a power of attorney. JC Ma transferred approximately \$40,000 in investor funds to one or more of the CKB HSBC accounts in Hong Kong.

100. Approximately \$1.2 million of CKB investor funds were deposited into six bank accounts controlled by Heidi Mao. One was an account in her own name and five were accounts over which she held a power of attorney. Heidi Mao transferred approximately \$230,000 to one or more of the CKB HSBC accounts in Hong Kong.

101. The vast majority of investor funds received into these accounts have been transferred to other accounts controlled by one or more of the Defendants, accounts controlled by

other CKB promoters, or spent. As of approximately August 13, 2013, two of the HSBC accounts had been closed and a total of approximately \$6.9 million was left in the remaining CKB HSBC account and the Shanghai Commercial bank accounts. By mid-August 2013, there was only approximately \$450,000 remaining in the domestic bank accounts controlled by Defendants that received investor funds.

**FIRST CLAIM FOR RELIEF**  
**Violations of Section 17(a)(1) and (3) of the Securities Act**  
(Against all Defendants)

102. Paragraphs 1 through 101 are realleged and reincorporated by reference as if fully set forth herein.

103. From at least June 2011 through the present, Defendants directly and indirectly, singly and in concert, by the use of the means and instruments of transportation or communication in interstate commerce or by the use of the mails, and in connection with the offer or sale of securities, have: (a) with scienter, employed devices, schemes or artifices to defraud; or (b) engaged in one or more transactions, acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers.

104. By engaging in the conduct described above, Defendants have violated, are violating, and unless restrained and enjoined, will continue to violate Section 17(a)(1) and (3) of the Securities Act, 15 U.S.C. § 77q(a).

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 17(a)(2) of the Securities Act**  
(Against WIN168, Shern and the CKB Promoters)

105. Paragraphs 1 through 101 are realleged and reincorporated by reference as if fully set forth herein.

106. From at least June 2011 through the present, Defendants WIN168, Shern and the CKB Promoters directly and indirectly, singly and in concert, by the use of the means and instruments of transportation or communication in interstate commerce or by the use of the mails, and in connection with the offer or sale of securities, have obtained money or property by means of one or more untrue statements of material fact or omissions of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

107. By engaging in the conduct described above, WIN168, Shern and the CKB Promoters have violated, are violating, and unless restrained and enjoined, will continue to violate Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a).

**THIRD CLAIM FOR RELIEF**

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

(Against All Defendants for Violations of Rule 10b-5(a) and (c) and Against WIN168, Shern and the CKB Promoters for Violations of 10b-5(b))

108. Paragraphs 1 through 101 are realleged and reincorporated by reference as if fully set forth herein.

109. From at least June 2011 through the present, Defendants directly and indirectly, singly and in concert, by the use of any means or instrumentality of interstate commerce, or of the mails, or of the facilities of a national securities exchange, and in connection with the purchase or sale of securities, have, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made one or more untrue statements of material fact or one or more omissions of material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in one or more acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

110. By engaging in the conduct described above, Defendants have violated, are violating, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

**FOURTH CLAIM FOR RELIEF**  
**Unregistered Securities Offerings in Violation of Sections 5(a) and 5(c) of the Securities Act**  
(Against all Defendants)

111. Paragraphs 1 through 101 are realleged and reincorporated by reference as if fully set forth herein.

112. Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

113. No registration statement has been filed or has been in effect with respect to any of the offerings or sales alleged herein, nor did any exemption from the registration requirements exist with respect to the securities and transactions described in this Complaint.

114. By engaging in the conduct described above, Defendants have violated, are violating, and unless restrained and enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a) and 77e(c).

**FIFTH CLAIM FOR RELIEF**  
**Unregistered Broker-Dealer in Violation of Section 15(a)(1) of the Exchange Act**  
(Against Shern and the CKB Promoters)

115. Paragraphs 1 through 101 are realleged and reincorporated by reference as if fully set forth herein.

116. From at least June 2011 through the present, Shern and the CKB Promoters, by the use of means or instrumentalities of interstate commerce or of the mails, have engaged in the

business of effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities as a “broker.”

117. During that time period, neither Shern nor the CKB Promoters were registered with the Commission as a broker-dealer or associated with a broker-dealer registered with the Commission. Nor did any exemption from the broker-dealer registration requirements exist with respect to the securities and transactions described in this Complaint.

118. By engaging in the conduct described above, Shern and the CKB Promoters violated and, unless restrained and enjoined, will continue to violate Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court grant the following relief:

**I.**

Enter a Final Judgment finding that Defendants each violated the securities laws and rules promulgated thereunder as alleged against them herein.

**II.**

Enter an Order temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining Defendants and their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of each of the securities laws and rules promulgated thereunder, or alternatively, from aiding and abetting such future violations, as respectively alleged against them herein.

**III.**

Enter an Order freezing the assets of Defendants and Relief Defendants, and all assets under their control.

**IV.**

Enter an Order directing Defendants and Relief Defendants to file with this Court and serve upon the Commission, within three (3) business days, or within such extension of time as the Commission staff agrees in writing or as otherwise ordered by the Court, a verified written accounting, signed by each of them under penalty of perjury.

**V.**

Enter an Order requiring Defendants and Relief Defendants to repatriate all funds and assets obtained from the fraudulent activities described herein that are now located outside the Court's jurisdiction.

**VI.**

Enter an Order permanently restraining and enjoining Defendants and Relief Defendants from destroying, altering, concealing or otherwise interfering with the access of the Commission to relevant documents, books and records.

**VII.**

Enter an Order permitting expedited discovery.

**VIII.**

Enter an Order permitting alternative means of service of all Defendants.

**IX.**

Enter a Final Judgment directing Defendants and Relief Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the violations alleged herein.

X.

Enter a Final Judgment directing Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

XI.


Grant such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

A jury trial is demanded on all issues so triable.

Dated: Washington, DC  
October 9, 2013

Respectfully submitted,

  
Stacy L. Bogert (SB-5794)  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
(202) 551-4847  
(202) 772-9227 (facsimile)  
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Attorney for Plaintiff  
Securities and Exchange Commission

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U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

OV 13

5584

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) SECURITIES AND EXCHANGE COMMISSION STACY L. BOGERT, 100 F STREET, NE, WASHINGTON, DC 20549 202-551-4847

DEFENDANTS

CKB168 HOLDINGS, LTD., ET AL. (SEE ATTACHMENT A)

County of Residence of First Listed Defendant HONG KONG (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

MAUSKOPF, J.

MANN, M.J.

FILED 2013 OCT 9 AM 9:18

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- 110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
625 Drug Related Seizure of Property 21 USC 881
690 Other
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
820 Copyrights
830 Patent
840 Trademark
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC 7609
375 False Claims Act
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 77e(a), 77e(c), 77g(a), 78(j)(b), 78o(a), 17 C.F.R. § 240.10b-5.

Brief description of cause: This case involves violations of United States federal securities laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE October 9, 2013 SIGNATURE OF ATTORNEY OF RECORD Stacy L Bogert

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE PLM MAG. JUDGE PLM

5584

**ATTACHMENT A**  
**COMPLETE LIST OF DEFENDANTS AND RELIEF DEFENDANTS**

**DEFENDANTS**

CKB168 HOLDINGS LTD.  
WIN168 BIZ SOLUTIONS LTD.  
CKB168 LTD.  
CKB168 BIZ SOLUTION, INC.  
CYBER KIDS BEST EDUCATION LTD.  
RAYLA MELCHER SANTOS  
HUNG WAI (“HOWARD”) SHERN  
RUI LING (“FLORENCE”) LEUNG  
DALIANG (“DAVID”) GUO  
YAO LIN  
CHIH HSUAN “KIKI” LIN  
WEN CHEN HWANG (AKA “WENDY LEE”)  
TONI TONG CHEN  
CHEONGWHA “HEYWOOD” CHANG  
JOAN CONGYI MA (AKA “JC MA”)  
HEIDI MAO LIU (AKA “HEIDI MAO”)

**RELIEF DEFENDANTS**

ROSANNA LS INC.  
USA TRADE GROUP, INC.  
OUNI INTERNATIONAL TRADING INC.  
E-STOCK CLUB CORP.  
EZ STOCK CLUB CORP.  
HTC CONSULTING LLC  
ARCADIA BUSINESS CONSULTING, INC.

I, Stacy Bogert, counsel for SEC, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? NO
  - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.  
 Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?  
 Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_

# EXHIBIT 2

210 F.Supp.3d 421  
United States District Court, E.D. New York.

SECURITIES AND EXCHANGE  
COMMISSION, Plaintiff,  
v.  
CKB168 HOLDINGS, LTD., et al.,  
Defendants.

13-CV-5584 (RRM) (RLM)  
|  
Signed September 28, 2016

Synopsis

**Background:** Securities and Exchange Commission (SEC) brought action against founders and promoters of multi-national pyramid scheme to sell shares of non-public sham corporation, alleging they had recruited investors with false promises of investment returns and profitable stock, in violation of Securities Exchange Act and Securities Act. SEC moved for summary judgment.

**Holdings:** The District Court, Roslynn R. Mauskopf, J., held that:

- [1] promoters made material representations to investors that were false;
- [2] promoters were “makers” of the false statements;
- [3] founders’ actions supported scheme liability, distinct from any other misstatements made to potential investors;
- [4] founder acted with scienter to commit securities fraud;
- [5] chief executive officer (CEO) acted with scienter to commit securities fraud; and
- [6] fraudulent statements were made “in connection with” the sale of securities.

Motion granted.

West Headnotes (32)

[1] **Securities Regulation**↔Manipulative, Deceptive or Fraudulent Conduct

To prevail on claims under Section 10(b) and Rule 10b-5, the Securities and Exchange Commission (SEC) must show that defendant: (1) made a material misrepresentation or a material omission as to which he had a duty to speak, or used a fraudulent device; (2) with scienter; (3) in connection with the purchase or sale of securities. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

[2] **Securities Regulation**↔Scienter, Intent, Knowledge, Negligence or Recklessness

Scienter, in context of violations of Section 10(b) and Rule 10b-5, requires at least willful or reckless disregard for the truth or knowing misconduct. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

[3] **Securities Regulation**↔Use of mails or instrumentalities of commerce  
**Securities Regulation**↔Use of mails or instrumentalities of commerce

For purposes of claim for securities fraud, the Internet, wire transfers, interstate travel, and e-mails are all “instrumentalities of interstate commerce.” Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q; 17 C.F.R. § 240.10b-5.

[4] **Securities Regulation**↔Reliance  
**Securities Regulation**↔Materiality and

causation

**Securities Regulation** → Causation; existence of injury

**Securities Regulation** → Reliance

Unlike private litigants, the Securities and Exchange Commission (SEC) does not need to prove investor reliance, loss causation, or damages in action for fraud under Section 10(b) of the Securities Exchange Act, Rule 10b-5, or Section 17(a) of the Securities Act. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q(a)(2); 17 C.F.R. § 240.10b-5.

Promoters of multi-national pyramid scheme to sell shares of non-public sham corporation were “makers” of false statements, for purposes of claim for securities fraud, even though misrepresentations they made to potential investors were based on information created and disseminated by company’s founders, since promoters controlled their own communications with potential investors. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q; 17 C.F.R. § 240.10b-5.

- [5] **Securities Regulation** → Fraudulent Statements, Omissions or Conduct
- Securities Regulation** → Misrepresentation

Promoters of multi-national pyramid scheme to sell shares of non-public sham corporation each repeatedly made material representations to investors that were false, as required to support Securities and Exchange Commission’s (SEC) claim against them for securities fraud; false claims included that the business was a legitimate educational company, even though it had only a few products that were not widely sold, that profit reward points given to investors had value, when instead, they were worthless, that investors could make active returns by recruiting new investors, even though only the top one percent earned more than 60 percent of all commissions, that investors could acquire stock, despite fact that company was not authorized to issue it, and that the company would soon go public, when in fact it had not made any necessary preparations to do so. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q; 17 C.F.R. § 240.10b-5.

- [7] **Securities Regulation** → Distributorships; pyramid schemes

A “pyramid scheme” is a mechanism used to transfer funds from one person to another, as compared to a legitimate multi-level marketing company, which includes a system of distributing products or services in which each participant earns income from sales of a product to his or her downline and also from sales to the public.

- [8] **Summary Judgment** → Securities regulation

Summary judgment on matters of materiality in a securities fraud case is appropriate when the omissions and misrepresentations in question are so obviously important to investors that reasonable minds cannot differ on the question of materiality. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q; 17 C.F.R. § 240.10b-5; Fed. R. Civ. P. 56.

- [6] **Securities Regulation** → Persons Liable
- Securities Regulation** → In general; control persons

- [9] **Securities Regulation** → Fraudulent Statements, Omissions or Conduct

**Securities Regulation**↔Manipulative, Deceptive or Fraudulent Conduct

Rule 10b-5 and Section 17(a) of the Securities Act impose what courts have called “scheme liability” for those who, with scienter, engage in deceitful conduct; scheme liability hinges on the performance of an inherently deceptive act that is distinct from an alleged misstatement. Securities Act of 1933 § 17, 15 U.S.C.A. § 77q; 17 C.F.R. § 240.10b-5.

8 Cases that cite this headnote

**[10] Securities Regulation**↔Manipulative, Deceptive or Fraudulent Conduct

To prove scheme liability under Rule 10b-5, the Securities and Exchange Commission (SEC) must show that defendant: (1) committed a deceptive or manipulative act, (2) in furtherance of the alleged scheme to defraud, (3) with scienter. 17 C.F.R. § 240.10b-5.

8 Cases that cite this headnote

**[11] Securities Regulation**↔Fraudulent Statements, Omissions or Conduct

To prove scheme liability under 17(a) of the Securities Act, the Securities and Exchange Commission (SEC) must show that defendant: (1) committed a deceptive or manipulative act, (2) in furtherance of alleged scheme to defraud, (3) with negligence. Securities Act of 1933 § 17, 15 U.S.C.A. § 77q(a).

6 Cases that cite this headnote

**[12] Securities Regulation**↔Fraudulent Statements, Omissions or Conduct  
**Securities Regulation**↔Manipulative, Deceptive or Fraudulent Conduct

Founders of multi-national pyramid scheme to sell shares of non-public sham corporation engaged in inherently deceptive acts distinct from alleged misstatements, as required for scheme liability under Rule 10b-5 and 17(a) of the Securities Act; founders created business model that gave the false appearance that company was legitimate, promoted the business through false marketing, enrolled investors in the pyramids through the purchase of business packs, administered a commission system for upper one percent of promoters, provided illegitimate stock certificate, and then offered victims false assurances about the company’s legitimacy. Securities Act of 1933 § 17, 15 U.S.C.A. § 77q(a); 17 C.F.R. § 240.10b-5.

2 Cases that cite this headnote

**[13] Securities Regulation**↔Scienter, Intent, Knowledge, Negligence or Recklessness

Liability for securities fraud requires proof of “scienter,” defined as a mental state embracing intent to deceive, manipulate, or defraud. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

**[14] Securities Regulation**↔Scienter, Intent, Knowledge, Negligence or Recklessness

Scienter to commit securities fraud is established by knowing or reckless conduct, or even in some cases, by willful blindness, i.e., a deliberate refusal to acquire information. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

**[15] Securities Regulation**↔Scienter, Intent, Knowledge, Negligence or Recklessness

Representing information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy as to belie any genuine belief in its truth, are all circumstances sufficient to support a conclusion of scienter to commit securities fraud. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

- [16] **Securities Regulation** — Scienter; knowledge or intention  
**Securities Regulation** — Scienter, Intent, Knowledge, Negligence or Recklessness

Founder of multi-national pyramid scheme to sell shares of non-public sham corporation acted with scienter to commit securities fraud, as required for Securities and Exchange Commission (SEC) claims for violation of Section 10(b) of the Securities Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act, when he helped to create a deceptive scheme and directed its promotional efforts; founder helped create and distribute a plan based on the sale of shares in an online educational company that had no real products for retail sale, he made himself a top investor despite being warned that it would create a conflict of interest, he explained to other investors how to arrange their downlines, he traveled frequently to the United States and other countries, appearing with and otherwise encouraging promoters, he falsely told audiences that they could earn active returns and claimed investors could get stock, even though he knew it was illegal for stock to be distributed, and he acted as the key source of misrepresentations about the operation. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q(a)(2); 17 C.F.R. § 240.10b-5.

- [17] **Securities Regulation** — Scienter; knowledge or intention

Chief financial officer (CFO) of online

educational company acted with scienter to commit securities fraud, as required for Securities and Exchange Commission (SEC) claims for violation of Section 10(b) of Securities Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act, when she helped launch multi-national pyramid scheme to sell shares of non-public sham corporation then managed company's finances, signed its checks, and controlled its accounts, all the while knowing the company's improper commission structure and its lack of retail sales. Securities Act of 1933 §§ 17, 17, 15 U.S.C.A. §§ 77q, 77q(a)(2); 17 C.F.R. § 240.10b-5.

- [18] **Securities Regulation** — Scienter; knowledge or intention  
**Securities Regulation** — Scienter, Intent, Knowledge, Negligence or Recklessness

Promoters of multi-national pyramid scheme to sell shares of non-public sham corporation acted with scienter to commit securities fraud, as required for Securities and Exchange Commission (SEC) claims for violation of Section 10(b) of Securities Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act, since they either knowingly or recklessly promulgated company's false claims of enormous, risk-free returns on investment and imminent acquisition of valuable stock; although promoters were confronted with obvious signs that operation was fraudulent, they failed to investigate or evaluate company's legitimacy, and even those promoters who were formerly licensed securities professionals, or had considerable prior experience with sales, simply accepted founder's communications disputing the illegitimacy of the scheme, rather than conducting independent investigation. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; Securities Act of 1933 § 17, 15 U.S.C.A. § 77q(a)(2); 17 C.F.R. § 240.10b-5.

1 Case that cites this headnote

[19] **Securities Regulation** ↔ Conduct of Broker-Dealers

To avoid liability for securities fraud, a broker is under a duty to investigate the truth of his representations to clients, because by his position he implicitly represents he has an adequate basis for the opinions he renders; this duty applies even if broker is not registered. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

[20] **Securities Regulation** ↔ Conduct of Broker-Dealers

To avoid liability for securities fraud when recommending a company's securities to investors, a broker may not rely solely on materials submitted by the company without independent investigation; this duty to investigate is even greater when promotional materials are in some way questionable. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

[21] **Securities Regulation** ↔ Connection with purchase or sale

Any statement that is reasonably calculated to influence the average investor satisfies the "in connection with" the purchase or sale of securities requirement of the securities laws. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j; 17 C.F.R. § 240.10b-5.

[22] **Securities Regulation** ↔ Distributorships; pyramid schemes  
**Securities Regulation** ↔ Offer and sale in general

Fraudulent actions and statements made by founder, officer, and promoters of multi-national pyramid scheme to sell shares of non-public sham corporation were made "in connection with" the purchase or sale of securities, as required for Securities and Exchange Commission (SEC) claims for violation of Section 10(b) of Securities Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act; investment in the pyramid scheme was itself a "security," even though company was not authorized to issue stock, since it came with a promise or expectation of profits to come solely from the efforts of others in the common enterprise, and investors expected to acquire an ownership stake, and the right to enjoy dividends, in a legitimate company that would soon go public. Securities Act of 1933 §§ 17, 17, 15 U.S.C.A. §§ 77q, 77q(a)(2); 17 C.F.R. § 240.10b-5.

[23] **Securities Regulation** ↔ Corporate Shares or Stock

Although the fact that an instrument bears the label "stock" is not itself sufficient to invoke the coverage of the securities laws, the instrument will be considered a security when it possesses some of the significant characteristics typically associated with stock. Securities Exchange Act of 1934 § 10, 15 U.S.C.A. § 78j(b); 17 C.F.R. § 240.10b-5.

[24] **Securities Regulation** ↔ Registration Requirement in General

To prove a violation of provision of Securities Act that requires securities to be registered with the Commission before sale, Securities and Exchange Commission (SEC) must show: (1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale. Securities Act of 1933 § 5, 15

U.S.C.A. § 77e.

[25] **Securities Regulation**↔Evidence  
**Securities Regulation**↔Evidence

Once Securities and Exchange Commission (SEC) establishes a violation of the provision of the Securities Act that requires securities to be registered with the Commission before sale, burden shifts to defendant in civil enforcement action to show that the securities were exempt from registration. Securities Act of 1933 § 5, 15 U.S.C.A. § 77e.

[26] **Securities Regulation**↔Scienter; absolute or strict liability

Since a violation of the provision of the Securities Act that requires securities to be registered with the Commission before sale is a strict liability offense, Securities and Exchange Commission (SEC) need not prove defendant who violated provision acted with scienter. Securities Act of 1933 § 5, 15 U.S.C.A. § 77e.

[27] **Securities Regulation**↔Persons Subject to Regulation or Liability

Provision of the Securities Act that requires securities to be registered with the Commission before sale can be violated by both a direct participant and an indirect participant, who has not himself passed title to an unregistered security. Securities Act of 1933 § 5, 15 U.S.C.A. § 77e.

[28] **Securities Regulation**↔Persons Subject to Regulation or Liability

Indirect participants are liable for violation of provision of Securities Act that requires securities to be registered with the Commission before sale if, but for their involvement, the sale transaction would not have taken place; in other words, liability depends on whether their acts were a substantial factor in the sales transaction. Securities Act of 1933 § 5, 15 U.S.C.A. § 77e.

1 Case that cites this headnote

[29] **Securities Regulation**↔Persons Subject to Regulation or Liability

Acts of promoters, as indirect participants in multi-national pyramid scheme to sell unregistered shares of non-public sham corporation, were a substantial factor in the sales transaction, as required for liability for violation of provision of Securities Act requiring registration prior to sale of a security; promoters offered securities for sale that could not be obtained on an exchange market and could only be sold by promoters or company officers, by offering prospective investors the opportunity to purchase a \$1,380 business pack entitling them to receive points, which purportedly could then be used to acquire the right to stock when the company went public. Securities Act of 1933 § 5, 15 U.S.C.A. § 77e.

[30] **Securities Regulation**↔Broker-dealers and associates, registration and regulation

Scienter is not an element of a claim for sale of security by unregistered broker. Securities Exchange Act of 1934 § 15, 15 U.S.C.A. § 78o(a).

[31] **Securities Regulation** — Broker-dealers and associates, registration and regulation

In determining whether an individual is as a “broker” subject to registration under Securities Exchange Act, court considers whether the alleged broker (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors. Securities Exchange Act of 1934 § 15, 15 U.S.C.A. § 78o(a).

4 Cases that cite this headnote

[32] **Securities Regulation** — Broker-dealers and associates, registration and regulation

Founder and promoters of multi-national pyramid scheme to sell shares of non-public sham corporation were “brokers” subject to registration under Securities Exchange Act, even though they were not formal employees of the operation, where they received commissions as opposed to salary, promoted the merits of the investment and advised others to invest therein, were active rather than passive finders of investors and urged downlines to find still more investors, acted as intermediaries between the operation and their downlines, and devoted themselves to effecting and inducing the purchase of securities. Securities Exchange Act of 1934 § 15, 15 U.S.C.A. § 78o(a).

1 Case that cites this headnote

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MEMORANDUM AND ORDER

ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiff Securities and Exchange Commission (“SEC”) commenced this action on October 9, 2013, alleging violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b–5 thereunder;<sup>1</sup> Section 17(a)(1) and (3) of the Securities Act, 15 U.S.C. § 77q(a)(1), (3); and Section 5 of the Securities Act, 15 U.S.C. § 77e. (Compl. (Doc. No. 1).) The SEC also alleges violations of Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1), and Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), against CKB founder Hyng Wai (Howard) Shern and CKB’s United States promoters—Daliang (David) Guo, Yao Lin, Wen Chen Hwang (aka Wendy Lee), and Joan Congyi (JC) Ma, (collectively “promoters”). (Compl.) The SEC now moves for summary judgment against all defendants pursuant to Federal Rule of Civil Procedure 56.<sup>2</sup> (Mot. Summ. \*427 J. (Doc. No. 311).) Defendants oppose the motion.<sup>3</sup> (Shern Opp’n (Doc. No. 327); Leung Opp’n (Doc. No. 328); Guo, Lee, Ma, Yao Lin Opp’n (Doc. No. 353).) For the reasons below, the SEC’s motion is granted.

**BACKGROUND<sup>4</sup>**

Defendants are the architects and top U.S. promoters of “CKB,” a multi-national pyramid scheme made of several collective entities, purported to be a legitimate multi-level marketing company (“MLM”) selling educational software. Defendants Shern, Leung, and Santos were CKB founders. Defendants Guo, Lee, Ma, Yao Lin, Kiki Lin, Chang, Chen, and Mao were among CKB’s top promoters. In just two years, defendants collectively earned approximately millions in commissions by recruiting investors with false promises of investment returns and profitable stock.

**I. The Purported Business**

Defendants described CKB as a profitable provider of web-based educational software for children. The products functioned like a video game, with animation and interactive features. Through 2012, CKB had three software products; however, by the time this suit was filed, CKB had seven unique software products. (SEC’s 56.1 at ¶¶ 20–22.) To use a product, a purchaser had to obtain a license from CKB before accessing the product via the internet. (SEC’s 56.1 (Doc. No. 311–2) at ¶¶ 18–19.) The SEC maintains that the majority of software licenses issued were never used. (SEC’s 56.1 at ¶ 23.)

CKB and its promoters earned money by recruiting investors, known as Online Marketing Angels (“OMAs”). OMAs joined CKB by purchasing \$1,380 “business packs,” which contained one software license; “profit reward points” (“Prpts”), which defendants claimed had a cash value of \$750 and could be converted to stock in the future; and access to a password-protected account (a “back office account”) on the CKB website, which contained each OMA’s personal CKB financial information, Prpt pricing, and CKB promotional materials. (SEC’s 56.1 at ¶ 30.) CKB’s compensation plan, called the “Dynamic Rewards Plan,” offered no incentive for OMAs to sell CKB’s products to retail purchasers. Instead, it set forth a system of direct and indirect commissions earned solely by recruiting other OMAs. (SEC’s 56.1 at ¶ 54.)

\*428 Defendants promoted CKB through seminars, conferences, email, a corporate webpage, individually maintained webpages, internet postings on sites such as

YouTube, and in-person solicitations. These promotional efforts did not focus on CKB’s software, rather they promoted CKB as a no-risk business opportunity to make enormous investment returns.<sup>5</sup> (SEC’s 56.1 at ¶ 24.) For example, in a presentation recorded and posted on YouTube, Chang compared CKB to prominent companies with successful initial public offerings (“IPOs”) and talked at length about how an investment in CKB could quickly multiply. In the video, Chang did not attempt to sell CKB’s actual software, offering only platitudes about CKB’s educational mission. (SEC’s 56.1 at ¶ 25.) In another video recording, Guo promotes CKB to potential investors, one of whom can be heard saying to Guo: “We’re attracted by the stocks, and not many people are using the products really.” (SEC’s 56.1 at ¶ 28.)

Similarly, in a testimonial posted on the CKB website, Ma talks about how she profited from the CKB business opportunity. (SEC’s 56.1 at ¶ 26.) CKB promotional literature also emphasizes the business opportunity, not the products. As one hand-out states:

Is It Possible to Turn \$1,380 Investment To \$500,000?

...

Return on Investment: With a courseware purchase, investing \$1,380 in education, you receive a Pre-IPO privilege of PrPt for FREE, an equivalent of \$750 in value, salable, redeemable, and convertible to company stock. Your investment will be doubled, quadrupled and continue to grow in size to 8 times, 16 times ... till IPO.

(SEC’s 56.1 at ¶ 27.)

In fact, CKB never sold its software products directly to any retail customers. The majority of licenses were purchased as part of the business pack sold to OMAs. In only a few instances did any promoter ever make a sale of a CKB license directly to a retail customer. This was such a rarity that CKB’s proceeds show no revenue attributable to retail sales of its software. (SEC’s 56.1 at ¶¶ 29–32.)

**II. Defendants’ False Claims that OMAs Would Own CKB Stock and that CKB Would Have an IPO**

Defendants typically referred to OMAs as “investors” and described the purchase of a business pack as an “investment” in CKB. Among other promotional tactics, defendants stated that OMAs would see significant returns on their investment, referred to as “pre-IPO shares,” when CKB went public. (SEC’s 56.1 at ¶¶ 33,

39.) Promoters initially told potential investors and OMAs that OMAs would directly acquire stock. Though CKB did issue stock certificates to early OMAs, it attempted to rescind such certificates in 2011 upon learning they were unlawfully issued. Yet, even after, Shern and the promoters continued to claim that OMAs could convert Prpts to stock. (SEC's 56.1 at ¶¶ 35–36.)

In a 2012 presentation, Shern told potential investors, “when the company goes public [in 2014], it could be up to eight times the rate of return. Your investment of \$56,000 will become \$420,000.” Similarly, in a July 2012 email, Lee sent a document \*429 to an OMA that stated, “CKB168 will be publicly listed in 2014 and is estimated to undergo splitting for four times before listing.” In a November 2012 email, Ma made the same representation that CKB would have an IPO in 2014. (SEC's 56.1 at ¶ 40.)

Despite these claims, CKB never provided stock to OMAs in exchange for Prpts. (SEC's 56.1 at ¶¶ 36–38.) While defendants frequently claimed they owned “shares” in CKB, only Yao Lin ever received a purported stock certificate, which could not be sold or transferred. (SEC's 56.1 at ¶¶ 33, 37.)

Along the same lines, despite defendants' claims of an imminent IPO, CKB, Shern, and Leung made no preparations to go public. (SEC's 56.1 at ¶¶ 41, 160.)

### III. Defendants' False Claims that Investors Would Make Active and Passive Profits

Defendants claimed that OMAs could make large, rapid returns on their investments. Defendants divided these returns into two categories: (a) “active” or “dynamic” returns and (b) “passive” or “static” returns. (SEC's 56.1 at ¶ 42.) However, OMAs could only realize a profit through recruitment commissions, the majority of which were realized by defendants themselves.

#### a. Active Returns

As set forth in CKB's Dynamic Rewards Plan (the “Plan”), OMAs could only make actual money by recruiting new OMAs to buy business packs. The Plan provided no incentive for OMAs to make retail sales. Rather, the Plan rewarded OMAs that successfully recruited new OMAs with commissions, which appeared

in the OMA's back office account.<sup>6</sup> (SEC's 56.1 at ¶¶ 52–54.)

Under the Plan, CKB rewarded OMAs in two instances: (1) when they established “downlines,” new OMAs who they or their existing downlines recruited, and (2) when an existing downline purchased additional business packs. Generally, OMAs could profit from investments up to ten levels below them. Defendants, as top-ranked OMAs, could earn commissions from deeper levels. This pyramid structure incentivized OMAs to grow their business by finding new investors. As discussed above, defendants' marketing efforts, as well as the training they provided to downlines, focused almost exclusively on the investment opportunity.<sup>7</sup> (SEC's 56.1 at ¶¶ 55–59.)

#### b. Passive Returns

Defendants' claims of passive returns referred to the accumulation and allegedly increasing value of Prpts. (SEC's 56.1 at ¶ 45.) Defendants told investors that Prpts would rapidly increase in value and never \*430 decrease. OMAs were given Prpts with a purported value of \$750 in their business packs, and CKB claimed that their value would increase as a function of CKB's business pack sales. Defendants stated that so long as CKB continued to attract new OMAs, CKB would increase the value assigned to the Prpts. (SEC's 56.1 at ¶ 46.)

Every few months, CKB would “split” its Prpts, thus doubling each OMA's Prpt holdings. (SEC's 56.1 at ¶ 47.) Though defendants represented the value of Prpts in terms of “dollars” and claimed Prpts had a “market value,” OMAs were never actually able to realize a cash value for their Prpts. (SEC's 56.1 at ¶¶ 48–49.) As defendants knew, or at best recklessly ignored, Prpts could not be converted to cash.<sup>8</sup> (SEC's 56.1 at ¶ 50.) Prpts could only be exchanged for more business packs or traded by OMAs on a Prpt exchange accessed through the OMA back office accounts. However, because there were effectively no buyers on the back office Prpt exchange, OMAs could not use the exchange to trade their Prpts for cash. (SEC's 56.1 at ¶ 51.) In effect, Prpts were worthless.

#### c. Defendants Earned the Vast Majority of Commissions

The top 1% of OMAs earned 61% of all commissions.<sup>9</sup> Out of 65,883 total OMA accounts, the top 12 (or .018%)

earned nearly 13% of all commissions. Guo, Yao Lin, Lee, Shern, Leung, Kiki Lin, JC Ma, and Toni Chen were among those top 12 accounts. More than half of all OMA accounts received no commissions whatsoever. (SEC's 56.1 at ¶¶ 60–61.) Defendants and a few select others collected millions, while nearly everyone else incurred losses. The SEC alleges that such a distribution of winners and losers was inherent in the Dynamic Rewards Plan. (SEC's 56.1 at ¶¶ 60–61, 64–66.)

#### **d. Other Investors Felt Significant Losses on their Investment**

Other OMAs, promised enormous returns by defendants, realized significant losses. Two examples are detailed below:<sup>10</sup>

#### **1. Harry Lee**

In August and September 2012, Mao recruited Harry Lee and his mother to invest in CKB. Mao, with the help of her \*431 sister, lauded CKB as a great company for Harry Lee and his mother to invest in. At Mao's invitation, Harry Lee attended a promotional seminar on September 4, 2012. There, Wendy Lee described CKB as a legitimate company selling children's educational products. Wendy Lee told the attendees that CKB would soon go public and that OMAs would be awarded Prpts that would rapidly multiply and could be converted to pre-IPO stock. Mao also spoke at the seminar. There, Harry Lee stated that Mao discussed the profits she had made from her CKB investment. (SEC's 56.1 at ¶¶ 105–06.) Based on those representations, Harry Lee's mother invested \$55,200, a significant portion of which came from her retirement account, in CKB and gifted the investment to Lee for his wedding. (SEC's 56.1 at ¶ 107.)

After his mother's investment, Harry Lee continued to attend CKB presentations. One such presentation, hosted by Wendy Lee at Mao's home, was designed to train new OMAs to recruit other OMAs. There, Wendy Lee told attendees to promote CKB by focusing on the impending IPO and the opportunity to double or triple an investment. No instruction on how to sell the software was provided. (SEC's 56.1 at ¶ 108.)

Shortly thereafter, Harry Lee began to question his investment in CKB. He asked Mao how CKB incurred revenue without making retail sales. He also stated that

her claims that he would be able to redeem his Prpts for cash were false. Mao responded that it was important to "believe" in CKB and urged Lee to recruit downlines. (SEC's 56.1 at ¶ 109.)

In July 2013, Harry Lee attempted to convert his Prpts to 15,619 shares of CKB stock. He received two responses from CKB acknowledging his request, but he never received stock certificates. (SEC's 56.1 at ¶ 110.)

#### **2. Richard Tuan**

Richard Tuan, a retiree, attended a 2012 CKB promotional event in California, at which Shern, Santos, and Lee presented. At the event, defendants claimed that CKB would soon go public in Hong Kong and that the cash value of Prpts would increase dramatically. (SEC's 56.1 at ¶ 112.)

In July 2012, Tuan invested \$15,000. Shortly thereafter, Tuan attempted to convert his Prpts to stock. On July 11, 2013, CKB told him that in exchange for his Prpts, he would receive 6,082 shares of CKB stock. In November 2013, Tuan contacted Lee as he was confused about the instructions sent by CKB regarding his stock order. Despite the fact that the SEC had already initiated this suit against CKB and Lee, Lee told Tuan that he needed to provide additional information to CKB and would be required to pay a \$50 fee to obtain the certificates. She did not mention the pending law suit.<sup>11</sup> (SEC's 56.1 at ¶¶ 113–16.)

### **IV. Defendants Conduct and Roles in CKB**

#### **a. Shern**

In January 2011, Shern described the concept of what would become CKB to Santos. In April 2011, Shern and Leung opened bank accounts to conduct CKB business. Together they directly and indirectly \*432 controlled CKB's bank and securities accounts. (SEC's 56.1 at ¶¶ 117–18.)

After helping to create CKB, Shern acted as CKB's International Marketing Director and as an OMA, despite being warned that it was a "conflict of interest" for a CKB director to be an OMA. (SEC's 56.1 at ¶ 142.) As

International Marketing Director, Shern, with a select few others, was responsible for designing and implementing the CKB investment plan, including drafting the plan and setting up the back office accounts. On March 10, 2011, Santos emailed Shern a draft of Policies and Procedures for CKB. (SEC's 56.1 at ¶ 119; 3/10/11 Santos Email (Doc. No. 319-1) at 49 (ECF pagination).) The draft explicitly stated:

As a legitimate MLM Company

- [CKB] pays Distributors commission based on product sales, NOT on recruiting people.

- [CKB] does not require individuals to buy products in order to become a Distributor. The cost is a one time sign-up fee that is reasonable and refundable.

(Draft Policies and Procedures (Doc. No. 319-1) at 51 (ECF pagination).) Despite being presented with this document highlighting the commission structure of a "legitimate MLM," Shern created and implemented the Dynamic Rewards Plan, which compensated OMAs exclusively for recruiting new investors. (SEC's 56.1 at ¶ 121.)

Similarly, CKB required OMAs to purchase software licenses through their business packs. Yet, most OMAs had no need for the software and those that attempted to use it often had problems. In late 2011, one OMA told Shern directly that the product was "garbage." On another occasion, Shern directly acknowledged a flaw in the software that required users to complete the same lesson for three days before being able to proceed to the next lesson. Nonetheless, Shern marketed CKB as a legitimate, growing company selling an advanced and desirable product. (SEC's 56.1 at ¶¶ 125, 127.)

On many occasions, Shern traveled to the U.S. to promote CKB, including to present at seminars and other events. In a testimonial posted on the CKB website, Guo said that Shern's "US trip helped boosting our sales a lot." Both during these trips and at other times, Shern served as a primary source of information and instruction for promoters. (SEC's 56.1 at ¶¶ 122-24.)

Shern knew, and repeatedly discussed, that the promoters and others were describing CKB as an "investment" and claiming that investors would get CKB "shares" or "stock." In a YouTube video he posted on May 12, 2012, Shern stated that the "idea" of CKB was "to do these educational programs and then to provide opportunities for the regular public to become the holder of the initial stocks even before the company went public." In February 2013, Shern used a promotional flyer for an upcoming presentation that stated that participants would

learn "how [they] could possess the initial non-public shares of CKB group .... How CKB can be the company to make millions for its shareholders." (SEC's 56.1 at ¶¶ 128-29, 132.) Yet starting in 2011, Shern had repeatedly been told that it was unlawful for CKB to sell "stock." Shern even acknowledged in a November 26, 2012 email to Kiki Lin that the promoters "may have ... promised too much" and "members were misled." Shern even acknowledged that it was "illegal" for CKB to distribute stock. (SEC's 56.1 at ¶¶ 131, 133-35.)

Despite knowing that CKB could not sell stock, Shern continued to promise OMAs and potential investors that they could become shareholders by converting their Prpts to stock. At one of his U.S. presentations, he explained, "we have ways to convert \*433 things into stocks and give it to you." In another presentation, Shern stated that "by accumulating [Prpts] you could change them into stock .... So by doing this we make ourself a legal operation. You know, sometimes people will say, if you sell stocks—initial stocks, it's illegal, but we are legal." Even after acknowledging that "members were misled," Shern continued to pay commissions to promoters and accept investments from their downlines. (SEC's 56.1 at ¶¶ 134-35, 138.)

Shern also continuously told investors that CKB would soon go public. In one presentation, he stated "in the next 24 months the value of your initial stock will increase ... so for the next two years, and also during the first three to five years after the company gets public, we will get the value of the stock increased." As late as June 2013, Shern edited and consulted on a revised compensation plan that still claimed that OMAs could convert their Prpts into stock. (SEC's 56.1 at ¶¶ 136-37.)

When confronted with allegations that CKB was a pyramid scheme, Shern led CKB's efforts to suppress such allegations. In an email, Shern urged OMAs "to protect the name of the company" and aggressively deny any allegations. Shern also hired a consultant to eliminate references to the allegations from internet search results for CKB. In a December 2012 response to allegations that CKB was a fraud, Shern edited and approved a response letter stating that CKB sold "cutting-edge educational products" and it "sell[s] real products, generate[s] real sales, [and] produce[s] real results." The same response also stated that CKB would go public "in the next few years" and was not a "wild claim to squeeze money out of unsuspecting members." (SEC's 56.1 at ¶¶ 148-49.) As the accusations continued, Shern took steps to distance himself from CKB. By February of 2013, Shern disclosed to Santos that as a result of the pyramid scheme allegations, he had been "busy for two months' time

working with lawyers and accountants to restructure the company. And that is why now we are not owners of CKB.” Nonetheless, even after the SEC initiated this lawsuit in October 2013, Shern continued to communicate with and accept money from OMAs, and even held a webinar accessible to OMAs in which he described “the future of the company.” (SEC’s 56.1 at ¶¶ 151–52.)

#### b. Leung

Leung, one of CKB’s founders, acted as CKB’s Chief Financial Officer (“CFO”). In a CKB promotional brochure, Leung was credited with creating CKB’s “management structure.” The same brochure recounted Leung’s background in banking and wealth management and claimed that Leung has experience taking companies public. (SEC’s 56.1 at ¶¶ 153, 165.)

As CFO, Leung was chiefly responsible for managing CKB’s finances, collecting funds from investors, paying salaries and other business expenses, and paying commissions to OMAs. She controlled bank accounts, some of which she opened with Shern, and signed checks on behalf of CKB. In February 2012, she also signed a stock certificate on behalf of CKB for Yao Lin. (SEC’s 56.1 at ¶¶ 156–57, 166–67.) Leung was also widely understood to be in charge of CKB’s finances. She communicated directly with OMAs regarding payment issues. She frequently adjusted accounts, signed checks, modified transactions, and gave instructions to OMAs about where to send their money and other steps to take. Leung was familiar with the Dynamic Rewards Plan and the back office. (SEC’s 56.1 at ¶¶ 153, 157–58.)

Even after Leung was confronted with allegations that CKB was a pyramid scheme and warned that it was illegal to sell stock, Leung continued functioning as \*434 CKB’s CFO and diverting funds into her own account. (SEC’s 56.1 at ¶¶ 161–63.)

#### c. Guo

Guo was one of CKB’s highest ranking promoters due to his success in recruiting direct and indirect downlines.<sup>12</sup> Guo was also one of the earliest OMAs to invest in CKB, in May 2011. For his successful recruitment efforts, CKB awarded him a \$250,000 bonus. (SEC’s 56.1 at ¶¶ 168, 193.)

Guo traveled throughout the U.S. and China to promote CKB and recruit new OMAs. In one video, Guo stated that his “sales group,” referring to his direct and indirect downlines, was responsible for “\$100 million of sales revenue.” In testimonials posted on the CKB website, both Lee and Kiki Lin state that they were recruited by Guo. As part of his recruitment efforts, Guo provided his downlines with CKB promotional material. (SEC’s 56.1 at ¶¶ 170, 172.)

Like other defendants, Guo made repeated statements to potential investors that CKB would soon go public. In a presentation, he stated that the IPO would happen in 2014, and added, “So, yes, today I’m promising that we definitely can go public.” In a testimonial posted on the CKB website, Guo wrote that he had been “rewarded 500K USD and lots of shares” and that “[h]aving such a big portion of shares and Prpts given out are another attractive point of CKB168.” Guo also repeatedly referred to Prpts as “shares” and “stocks” and told potential investors that OMAs are “holders of initial stocks.” In presentations, Guo compares OMAs who help Prpts to pre-IPO investors in Google, New Oriental, and Baidu.<sup>13</sup> (SEC’s 56.1 at ¶¶ 173–175.)

Guo also told investors that they would enjoy enormous, risk-free returns by investing in CKB. In one video, he stated that “before going public, [Prpts] will only grow and never fall.” In another video, he told investors that OMAs can “sell our Prpt at the back [office] and convert it to money.” He also compared the allegedly risk-free CKB approach with investments in purportedly riskier public companies, where the value of the investment may fluctuate. At other times, Guo purported to explain “why there is no risk for [CKB] investors.” Guo made similar claims as to the investment after an IPO. He stated that “after going public ... the value of Prpt will increase by 50 times.” Along the same lines, he also claimed that CKB’s “stock value would be increased dozens of times or even hundreds of times.” (SEC’s 56.1 at ¶¶ 179–81, 183.)

In addition to telling OMAs and potential investors that CKB was a profitable, risk-free investment, Guo also explained CKB’s structure. In a variety of contexts, he explained that OMAs earned commissions by actively recruiting new investors and benefited indirectly when their downlines successfully recruited. In one video, Guo walked OMAs through arranging a downline pyramid in order to maximize commissions. (SEC’s 56.1 at ¶ 184.)

Even after being confronted with signs and accusations that CKB was a “scam” and a pyramid scheme, Guo continued to \*435 promote CKB and accept commissions. By October 2012, Guo was aware that CKB had been

accused of being a pyramid scheme when he received an email from Shern denouncing the claims and imploring the top promoters to attack CKB's critics. Guo made no investigation into these claims, nor did he verify any of the promotional claims he made to potential investors. He never acquired, or even asked for, any internal CKB financial statements or other disclosures. Instead, he continued making the same claims to investors as detailed above. In one video, potential investors can be heard questioning CKB's legitimacy. In response, Guo refuted any claims that CKB was not legitimate and even claimed to have given one investor a personal guarantee that a CKB investment would only increase in value. Similarly, despite the fact that Guo never received stock and, in fact, wasn't aware of anyone who had received stock certificates, he told OMAs and potential investors that he already had CKB stock.<sup>14</sup> (SEC's 56.1 at ¶¶ 175–78, 182–83, 185.)

Guo knew that CKB that Prpts could not actually be converted to cash and that CKB was not actually risk-free while making such claims to investors. By April of 2013, someone at CKB even told him that it was "inappropriate" to denote Prpts in dollars. Guo also later admitted that his claims that CKB was risk-free were only his "hope" and his "personal view." He had not done anything to verify such representations. Guo also was aware that he earned no commissions and CKB offered no incentives for retail sales. Though he collected millions in commissions for recruiting new OMAs, he made only 15 or 16 software sales to non-OMAs, who were exclusively his family members in China. His promotional efforts focused entirely on recruiting new OMAs with statements that he knew were false. (SEC's 56.1 at ¶¶ 184, 187–90.)

#### d. Lee

Lee became an OMA in July 2011. After joining CKB, she regularly hosted promotional events at her Los Angeles area home. Her OMA account ranked among the top 28 out of over 65,000 worldwide OMA accounts. (SEC's 56.1 at ¶¶ 65, 194–95.) Lee stated that she did not have "any goals" for selling the CKB software. (Lee Dep. (Doc. No. 312–1) at 210:6–12 at 140 (ECF pagination).)

Lee promoted CKB on her own website, estockclub.com. Though the site was publically accessible, Lee noted that it was in its Beta (pre-launch) form.<sup>15</sup> (Defs.' 56.1 at ¶ 196.) There, Lee gave financial advice and information about CKB. Other promoters directed OMAs and potential investors to Lee's website, where Lee posted CKB materials, meeting times, and promotional literature

for site visitors. Lee also listed the website address on her CKB business card. (SEC's 56.1 at ¶¶ 196–97.)

One presentation posted on Lee's website, extolled CKB's business plans and invited visitors to "[j]oin us and become a CKB OMA." The presentation made several claims about Prpts, including that "USD 750 [of Prpts] will become USD 3,000 within six months to one year." It listed Prpt prices on various days and added the "value of each [Prpt] has increase[d] from \*436 USD 0.024 on Jan. 1, 2012 to USD 0.169 on Sep. 21, 2012, with a return of 8 times within 9.5 months! In this way, there might be a return on 8–16 times before CKB gets listed in 2014." A flier posted on Lee's website claimed that "CKB's market value is USD 2.88 billion," and that "the first batch of 200 million Prpts are allocated, CKB has sold about 360,000 courses with the revenue of about ESD 432 million and the profit of about USD 36 million." The flier also claimed that "each Prpt is equivalent to about USD 2.16." (SEC's 56.1 at ¶¶ 198, 200.)

In presentations and in informal conversations with OMAs and potential investors, Lee made similar claims about Prpts. For example, in September 2012, she told potential investors that the value of Prpts would rapidly multiply and that the Prpts could be converted to pre-IPO stock. In a July 2016 email to an OMA, Lee described future increases in Prpt value and attached a chart showing how an investment of \$124,000 could rapidly become over \$4 million in Prpts. Lee circulated similar charts to other OMAs and potential investors. Such charts did not disclose that Prpts did not actually have a cash value and could not simply be exchanged for cash, as Lee understood.<sup>16</sup> (SEC's 56.1 at ¶¶ 80, 101, 106, 202, 207–11.)

Lee also told OMAs and potential investors that CKB was taking steps to go public. Lee told OMAs that they could convert their Prpts to stock and become investors in, and have ownership of, CKB. Another presentation on her website stated that Prpts could be "[u]sed to exchange for a share certificate," and that, if Prpts are "used to exchange for a share certificate, annual dividends can be enjoyed." Lee claimed that these holdings would become valuable upon CKB's imminent IPO. Lee also distributed materials and charts with similar claims to potential investors. (SEC's 56.1 at ¶¶ 113–16, 199, 202.)

Like other defendants, Lee continued to promote CKB and accept commissions despite accusations and signs that CKB was a fraud. By fall of 2012, Lee knew that CKB had been accused of being a pyramid scheme by various media sources, bloggers and even frustrated OMAs. She discussed these allegations with other

defendants and she was part of an October 2012 email exchange in which Shern denied the allegations. Nevertheless, she did nothing to independently assess the allegations. In November 2012, Shern himself warned Lee that she was making false claims about CKB and he asked her to temporarily take down her website, explaining that “there is information inaccurate and will be used to by ... SEC against” CKB. Though it is unclear when, or for how long, Lee’s website was taken down, evidence shows it was active in October 2013. (SEC’s 56.1 at ¶¶ 133, 213–14.)

Lee also never investigated CKB’s purported efforts to go public. At one point Lee actually attempted to convert her Prpts to stock, but never received any stock certificates. Despite this, Lee never verified her claims that OMAs could become shareholders of CKB, which she repeatedly made to OMAs and potential investors. Lee also repeatedly told OMAs and potential investors that Prpts could be converted to cash, despite knowing that OMAs would have to wait in line to find a buyer on the back office exchange. In communications with potential investors, Lee described Prpts as actual CKB income even though she knew the potential investors were not aware of the difference between \*437 the valueless Prpts and the actual commissions paid out. (SEC’s 56.1 at ¶¶ 202–04, 206, 211–12.)

#### e. Ma

Ma became an OMA in May 2012 and, within ten weeks, achieved the level of Executive Vice President due to her success. One of her OMA accounts was among the top 112. Prior to joining CKB, Ma had been a licensed securities professional. In her CKB testimonial, Ma claimed, “I am experienced and licensed in both the financial services and real estate industries,” and represented that she had “learned” and “studied” CKB’s business. (SEC’s 56.1 at ¶¶ 289–91.) Ma often worked in coordination with Lee, Mao, Chang, and Chen, whom she referred to as her “team.” Ma would direct OMAs and potential investors to Lee’s website for CKB promotional information. Ma also attended recruiting events with her team and implored them in emails to work hard in recruiting new OMAs. During a trip to China, she sought to arrange CKB promotional events and speakers with Chang and Chen. (SEC’s 56.1 at ¶¶ 292, 294–95.)

In her CKB testimonial and in numerous communications with other OMAs and potential investors, Ma stated that she was a shareholder of CKB. In her testimonial, Ma expressed regret that had she “made a higher investment,

[she would] have acquired many more shares at a lower price.” In a November 3, 2012 email to OMAs, she wrote that “[t]hose selling shares and dividends would regret what ... few shares they own later.” (SEC’s 56.1 at ¶ 297.)

Ma also made repeated representations that a CKB IPO was imminent. In a June 2, 2013 email to OMAs, she wrote, “June marks the last month of CKB stock lock-up. If you or your friends want to catch the last flight before public listing, please lock up all points before the end of June.” At the bottom of the email, in bold, oversized letters, Ma wrote, “[o]ne without stocks cannot become rich and one without initial stocks cannot muster enormous fortune.” In another email, Ma wrote, “Oct 1 is around the corner, this will be the last chance to invest and get free shares.” In a January 22, 2013 email, Ma wrote, “[p]rospective investors in CKB186 need to complete investment prior to the end of April.” On March 19, 2013, Ma sent another email to OMAs stating that CKB had changed its website “[t]o satisfy requirements of the listing of the parent company.” (SEC’s 56.1 at ¶¶ 298–300, 303.)

Ma also told OMAs and potential investors that they could enjoy huge returns on their Prpts, despite knowing they were valueless. For example, Ma emailed a chart to Mao and other OMAs depicting a rapid 112% return on an OMA’s initial investment and specified a “market value” for the Prpts in dollars. Along the same lines, Ma sent emails to OMAs notifying them that they could purchase more business packs before a Prpts “split.” In one email, she itemized the enormous returns a new OMA could enjoy, writing, “[i]f 81 orders are concluded before the end of September, the company will gift [Prpts] worth ... 379,818 shares for X [times] 0.163 = \$61910. In case of increases by 16 folds, the value would be \$1 million at the time of the public listing, exclusive of dividend.” However, Ma knew that Prpts did not have cash value and could not be converted to cash. Although she believed that OMAs could use Prpts to purchase software licenses, and then sell those licenses for cash, she never sold licenses in this manner. Ma was aware that the only way to earn real cash was for her or her downlines to sell business packs. Ma only ever sold a few licenses to retail purchasers. (SEC’s 56.1 at ¶¶ 304–07, 309.)

By October 2012, Ma was aware that CKB had been accused of being a pyramid \*438 scheme. Along with other defendants, Ma was copied on an email exchange between an OMA and Shern, in which Shern denounced allegations that CKB was a pyramid scheme. Like Shern, Ma described similar allegations as sabotage. In a December 2012 email to an OMA, Ma wrote, “[t]here are some he[ar]says about the company, which are made

intentionally to sabotage our Company. There are also people doubting about the operation model of CKB168 .... One company has created numerous millionaires with this model.” Yet Ma did nothing to investigate the allegations she denounced. Ma claims that, instead, she accepted Shern’s explanation that the accusations were motivated by jealousy. After learning of the allegations, Ma continued to promote CKB, to encourage her downlines to recruit new investors, to accept commissions and cash, and to permit her testimonial to be used on the CKB website. (SEC’s 56.1 at ¶¶ 310–13.)

#### f. Yao Lin

Lin became an OMA in May 2011, after being recruited by Guo. Lin’s top OMA account ranked among the top 28. Prior to becoming an OMA, Lin participated in sales and promotion programs for other MLMs. At the other MLMs, unlike at CKB, Lin sold products directly, in addition to developing downlines. Yet, while at CKB, Lin never made a single software sale separate from business packs sold to OMAs. (SEC’s 56.1 at ¶¶ 315–16, 321.)

Lin promoted CKB by representing that Prpts had cash value, despite knowing they could not simply be exchanged for cash.<sup>17</sup> He based his presentations to investors on CKB’s claims regarding the value, uses, and ever-increasing returns for Prpts. He described Prpts as “passive income,” which would increase so long as CKB continued to sell business packs.<sup>18</sup> In his CKB testimonial, he claimed that he had earned over six digits, which included returns on his Prpts. However, Lin knew that Prpts could not be converted to cash. At one point, Lin had attempted to sell his Prpts on the back office exchange, but, like other OMAs, he could not find a buyer. Lin knew that other OMAs had the same experience. (SEC’s 56.1 at ¶¶ 324–26.)

Lin also claimed that OMAs could convert their Prpts to stock despite his own difficulty in doing so. He passed along information to potential investors that CKB would have an IPO in July 2014, that CKB would be listed on the Hong Kong stock exchange, and that the IPO would make CKB extremely valuable.<sup>19</sup> In presentations \*439 to potential investors, Lin compared CKB’s imminent IPO with the successful IPO of another Chinese education company. However, Lin himself encountered numerous roadblocks to obtaining CKB stock. Although he first tried to convert his Prpts in 2011, he did not receive a stock certificate until the summer of 2012. To get it, he had to fly to Hong Kong to visit the CKB office there. When he arrived, CKB personnel claimed not to have it. It

was only after Lin confronted Leung that she provided him with a signed certificate. His other attempts, both before and after his attempt in 2011, to convert Prpts to stock failed. Lin was the only U.S. promoter to receive a stock certificate and was not aware of any other OMAs who received an actual certificate. (SEC’s 56.1 at ¶¶ 327, 329.)

Like other defendants, Lin continued to promote CKB and accept commissions despite accusations and signs that CKB was a fraud. By October 2012, Lin knew that CKB had been widely accused of being a fraudulent scheme. Even prior to that, several of Lin’s recruits told him that they suspected that CKB was not a legitimate company and, in the fall of 2012, Lin reviewed articles that directly questioned CKB’s legitimacy and promotional claims and asserted that CKB was likely a type of money-transfer scheme. (SEC’s 56.1 at ¶¶ 331–32.)

Despite his familiarity with the retail-sale guidelines of other MLMs from his past experiences and his knowledge that CKB did not follow those rules, Lin did nothing to independently evaluate accusations that CKB was a fraud.<sup>20</sup> Lee never asked Shern or any other founder to respond to the fraud accusations. He considered the widespread skepticism about CKB to be irrelevant; he was, as he put it, “stubborn.” Similarly, Lin never attempted to verify the statements he continued to make to OMAs and potential investors. He never asked CKB for financial disclosures and he made no effort to verify Shern and other OMAs’ statements that CKB would soon go public. (SEC’s 56.1 at ¶¶ 334–35.)

#### STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, interrogatories, admissions, and affidavits demonstrate that there are no genuine issues of material fact in dispute and that one party is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A genuine issue of material fact exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In determining whether a genuine issue of material fact exists, the evidence of the non-movant “is to be believed” and the court must draw all “justifiable” or “reasonable” inferences in favor of the non-moving party. *Id.* at 255,

106 S.Ct. 2505 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)); see also \*440 *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004). Nevertheless, once the moving party has shown that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law, “the nonmoving party must come forward with ‘specific facts showing that there is a genuine issue for trial,’ ” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis in original), and “may not rely on conclusory allegations or unsubstantiated speculation,” *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998) (citing cases). In other words, the nonmovant must offer “concrete evidence from which a reasonable juror could return a verdict in his favor.” *Anderson*, 477 U.S. at 256, 106 S.Ct. 2505. Where “the nonmoving party bears the burden of proof at trial, summary judgment is warranted if the nonmovant fails to make a showing sufficient to establish the existence of an element essential to [its] case.” *Nebraska v. Wyoming*, 507 U.S. 584, 590, 113 S.Ct. 1689, 123 L.Ed.2d 317 (1993) (quoting *Celotex*, 477 U.S. at 322, 106 S.Ct. 2548) (internal quotation marks omitted). Thus, “[a] defendant moving for summary judgment must prevail if the plaintiff fails to come forward with enough evidence to create a genuine factual issue to be tried with respect to an element essential to its case.” *Allen v. Cuomo*, 100 F.3d 253, 258 (2d Cir. 1996) (citing *Anderson*, 477 U.S. at 247–48, 106 S.Ct. 2505).

## DISCUSSION

### I. Section 10(b) of the Exchange Act, Rule 10b–5, and Section 17(a) the Securities Act

<sup>[1][2][3]</sup>The SEC alleges that all defendants violated Section 10(b) of the Exchange Act,<sup>21</sup> Rule 10b–5 promulgated thereunder,<sup>22</sup> and Section 17(a)(1) and (3) of the Securities Act.<sup>23</sup> The SEC also alleges \*441 violations of Section 17(a)(2) of the Securities Act against Shern and the promoters. These sections of the federal securities laws are intended to protect consumers against fraud and misrepresentations in the purchase or sale of securities. To prevail on its claims under Section 10(b) and Rule 10b–5, the SEC must show that each defendant: “(1) made a material misrepresentation or a material omission as to which he had a duty to speak, or used a fraudulent device; (2) with scienter; (3) in connection with the purchase or sale of securities.” *SEC v. Monarch Funding*

*Corp.*, 192 F.3d 295, 308 (2d Cir. 1999).<sup>24</sup> “According to the Second Circuit, in the context of violations of Section 10(b) and Rule 10b–5, scienter requires at least willful or reckless disregard for the truth or knowing misconduct.” *One or More Unknown Traders*, 2009 WL 3233110, at \*4 (internal quotation marks and citations omitted).

<sup>[4]</sup>For its Section 17(a) claims, the SEC must set forth “[e]ssentially the same elements ... though no showing of scienter is required for the SEC to obtain an injunction under subsections (a)(2) or (a)(3).” *Id.* Additionally, unlike private litigants, “[t]he SEC does not need to prove investor reliance, loss causation, or damages in an action under Section 10(b) of the Exchange Act, Rule 10b–5, or Section 17(a) of the Securities Act.” *SEC v. Credit Bancorp, Ltd.*, 195 F.Supp.2d 475, 490–91 (S.D.N.Y. 2002) (collecting cases).

As set forth below, the undisputed facts show that the SEC is entitled to judgment as a matter of law on its Section 10(b), Rule 10b–5, and Section 17(a) claims.

#### a. Material Misrepresentations

<sup>[5][6]</sup>As detailed in the facts above, Shern and the promoters each repeatedly made representations to investors that: (1) CKB was a legitimate company, (2) Prpts had cash value, (3) OMAS could make active returns by recruiting new investors, (4) OMAS could acquire stock, and (5) CKB would go public.<sup>25</sup> These representations were both false and material.

### \*442i. Defendants’ Representations that CKB was a Legitimate Company were False

<sup>[7]</sup>“A pyramid scheme is a mechanism used to transfer funds from one person to another.... A legitimate [MLM] includes a system of distributing products or services in which each participant earns income from sales of a product to his or her downline and also from sales to the public. *F.T.C. v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 531 (S.D.N.Y. 2000) (emphasis added).

Here, CKB offered no incentive for retail sales. CKB’s Dynamic Rewards Plan awarded OMAS with commissions solely for recruiting new investors or selling additional business packs to existing OMAS. See *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776, 782 (9th Cir. 1996)

(finding proof of a pyramid scheme where “[t]he mere structure of the scheme suggests that Omnitrition’s focus was in promoting *the program* rather than selling *the products*”). Due to this structure, CKB’s actual products largely went unused and unsold. See *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014) (affirming district court’s finding of a pyramid scheme where “rewards ... were primarily in return for selling the right to participate in the money-making venture ... The merchandise ... was simply incidental”). Indeed, CKB’s proceeds show no revenue attributable to retail sales of its software. See *SEC v. Better Life Club of Amer., Inc.*, 995 F.Supp. 167, 172 (D.D.C. 1998), *aff’d* 203 F.3d 54 (D.C. Cir. 1999) (finding that defendant corporation was a pyramid scheme, in part, because “almost all funds that were coming into [defendant’s] accounts were made up of new investments, not of profits from Club activities”).

CKB was not a legitimate MLM because it was set up with the “structural certainty of collapse”—its revenue from sale of goods to consumers was insufficient “to cover the production costs or costs of the goods sold, the various marketing expenses, and the promised rewards for recruiting new participants.” *Five-Star Auto Club*, 97 F.Supp.2d at 531. Moreover, not only was CKB structured like a pyramid scheme, but it functioned like one as well. CKB commissions were disproportionately concentrated among a minute percentage of promoters. The top 1% of OMAs earned more than 60% of all commissions. Meanwhile, more than 50% of accounts earned no commissions at all. Accordingly, the Court finds that CKB was not a legitimate company as a matter of law.

## ii. Defendants’ Representations that Prpts had Cash Value were False

Defendants told investors that each business pack contained Prpts worth “\$750 dollars” and that they could earn passive returns simply by allowing their Prpts to increase in number and value. These claims were false as a matter of law.

Prpts could not be converted to cash,<sup>26</sup> and their value appears to have been set by CKB—an illegitimate company with no retail sales. Worse, defendants claimed \*443 that the value of an OMA’s Prpt holdings would rise as CKB grew. Such claims of passive, rapid, and risk-free returns are a common basis for liability in pyramid and Ponzi cases. See, e.g., *SEC v. George*, 426 F.3d 786, 788 (6th Cir. 2005) (upholding summary judgment against defendants, who described an “investment opportunity

[that] had all of the hallmarks of a ‘free lunch’: The investments would be virtually risk-free and would generate lucrative returns”); *Better Life Club*, 995 F.Supp. at 176 (“[D]efendants continued to recruit and to entice investors with unequivocal, impossible promises of doubled money in 60 or 90 days. Defendants never revealed to potential investors that the Advertising Pool was nothing more than a pyramid scheme; thus, the entire solicitation process was itself a broad misrepresentation on the grandest scale.”); *SEC v. Gagnon*, No. 10-cv-11891 (GCS), 2012 WL 994892, at \*10 (E.D. Mich. Mar. 22, 2012) (granting summary judgment for SEC where defendants claimed “10 to 12.5% on your money per month with No Work and Little to No Risk!”); *SEC v. Art Intellect, Inc.*, No. 2:11-cv-357 (TC), 2013 WL 840048, at \*3 (D. Utah, Mar. 6, 2013) (granting summary judgment for SEC where defendants claimed “a 14% to 26% ... return, year after year ... even if you never lift a finger”).

## iii. Defendants’ Representations that OMAs Could Make Returns by Recruiting New Investors were False

Defendants told OMAs that they could make active returns by recruiting new members. While recruitment would produce commissions, in a pyramid scheme “the required number of new members cannot, in fact, be recruited on a perpetual basis, causing the scheme to collapse of its own weight ....” *Five-Star Auto Club*, 97 F.Supp.2d at 531. “[T]hose who have the greatest risk of loss are those who enter the pyramid when the market is closest to saturation .... The disclosure which would be necessary to inform a new investor of his prospects for success or failure would have to change almost daily ....” *SEC v. Int’l Loan Network, Inc.*, 968 F.2d 1304, 1309 (D.C. Cir. 1992) (quoting *Piambino v. Bailey*, 610 F.2d 1306, 1318 n.9 (5th Cir. 1980)). Because a pyramid scheme will collapse when it exhausts the pool of new recruits, the vast majority of investors will not recoup their investment—even if they actively recruit. Thus, it was false as a matter of law for defendants to claim that new investors could make active returns.

## iv. Defendants’ Representations that OMAs Could Acquire Stock were False

In SEC actions, courts impose liability for false claims that victims can acquire non-existent securities. See *SEC v. Roor*, No. 99-cv-3372 (HB), 2004 WL 1933578, at \*5

(S.D.N.Y. Aug. 30, 2004) (granting summary judgment for SEC where defendant promised “phantasmagorical returns on purportedly risk-free investments” that did not, in fact, exist); *SEC v. Gallard*, No. 95–cv–3099 (HB), 1997 WL 767570, at \*3 (S.D.N.Y. Dec. 10, 1997) (“It is clear by now that the antifraud provisions relied upon by the Commission are applicable even where, as here, the ‘security’ at issue does not exist.”); see also *SEC v. Lauer*, 52 F.3d 667, 670 (7th Cir. 1995) (“A central purpose of the securities laws is to protect investors and would-be investors in the securities markets against misrepresentations. An elementary form of such misrepresentation is misrepresenting an interest as a security when it is nothing of the kind.”); *SEC v. Milan Capital Grp., Inc.*, No. 00–cv–108 (DLC), 2000 WL 1682761, at \*2 (S.D.N.Y. Nov. 9, 2000) (granting summary judgment for SEC where defendant “convinced approximately 200 customers to pay almost \$9 million for IPO shares ... [even though defendant] had no \*444 access to IPO shares, and never provided any IPO shares to customers”).

Here, defendants claimed that OMAs could become CKB shareholders. In many cases, defendants held themselves out to OMAs as shareholders already. As discussed above, defendants were aware that those claims were false. With the exception of Yao Lin, they never acquired stock. OMAs, including defendants, tried to convert their Prpts, but were entirely unsuccessful. As the record shows, CKB had no actual stock to distribute. Accordingly, these claims were false as a matter of law.

#### **v. Defendants’ Representations that CKB Would Go Public were False**

Each defendant told victims that their CKB stock would become valuable when CKB achieved its imminent IPO. CKB, however, had not prepared to go public. Defendants’ claims had no basis in fact, and no defendant even attempted to verify that their claims that CKB was making such steps toward an IPO were correct. While certain defendants argue that CKB was taking steps to go public, the record belies such claims. Defendants produced no information regarding the preparation of an IPO, and the back-office data recovered by the SEC contained no communications or records related to CKB’s purported IPO.<sup>27</sup> As the SEC points out, CKB would have been precluded from public listing due to its fraudulent business model and lack of corporate structure. However, CKB never planned, initiated, or attempted any such necessary restructuring.<sup>28</sup> Accordingly, these representations were false as a matter of law.

#### **vi. These Misrepresentations were Material**

<sup>181</sup>“Summary judgment on matters of materiality in a securities fraud case is appropriate when the omissions and misrepresentations in question are ‘so obviously important to the investor that reasonable minds cannot differ on the question of materiality.’ ” *Credit Bancorp*, 195 F.Supp.2d at 492 (quoting *SEC v. Research Automation Corp.*, 585 F.2d 31, 35 (2d Cir. 1978)); see also *Better Life Club*, 995 F.Supp. at 177 (“The test of materiality is whether a reasonable investor would consider the representations important.”).

There can be no doubt that Shern and the promoters’ false claims of legitimacy, outsized returns, and pre-IPO stock were material to investors. See *SEC v. Platinum Invest. Corp.*, No. 02–cv–6093 (JSR), 2006 WL 2707319, at \*2 (S.D.N.Y. Sept. 20, 2006) (holding that “there can be no question” that claims regarding the timing of an IPO and the likely growth in share price, as well as false claims about the company’s business prospects and management, \*445 were material as a matter of law). Few OMAs ever even used CKB’s software. These misrepresentations were CKB’s primary inducements in recruiting new investors, and, as the victims’ statements show, they were essential to the decision to invest. *Five-Star Auto Club*, 97 F.Supp.2d at 529 (“The case law is clear that representations regarding the profit potential of a business opportunity are important to consumers, and therefore such are material misrepresentations.”); *Gallard*, 1997 WL 767570, at \*3 (“[T]here is no question a reasonable investor would consider important the fact that the ‘security’ at issue did not exist and that a secondary market did not exist for those securities, and that the money paid for those securities would be misappropriated.”).

#### **b. Scheme Liability**

<sup>191</sup>Rule 10b–5 and Section 17(a) also impose what courts have called “ ‘scheme liability’ for those who, with scienter, engage in deceitful conduct.” *SEC v. Jean-Pierre*, No. 12–cv–8886 (LGS), 2015 WL 1054905, at \*8 (S.D.N.Y. Mar. 9, 2015). Scheme liability “hinges on the performance of an inherently deceptive act that is distinct from an alleged misstatement.” *SEC v. Kelly*, 817 F.Supp.2d 340, 344 (S.D.N.Y. 2011); see also *SEC v. Sullivan*, 68 F.Supp.3d 1367, 1377 (D. Colo. 2014)

(explaining that the Second, Eighth, and Ninth Circuits require “deceptive conduct in addition to misrepresentations” that go beyond mere assistance with making the misrepresentation). Defendants “must have participated in an illegitimate, sham or inherently deceptive transaction where [their] conduct or role ha[d] the purpose and effect of creating a false appearance.” *Sullivan*, 68 F.Supp.3d at 1377 (internal quotation marks and citations omitted).

<sup>[10][11]</sup>To prove scheme liability, the SEC must show that defendants: “(1) committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter.” *SEC v. McDuffie*, No. 12–cv–02939 (TKK), 2014 WL 4548723, at \*10 (D. Colo. Sept. 15, 2014) (citing *SEC v. Lucent Tech., Inc.*, 610 F.Supp.2d 342, 360 (D.N.J. 2009)). “To prove liability under Securities Act Section 17(a)(3), however, the SEC only has to prove negligence rather than scienter.” *Id.* (citing *SEC v. Smart*, 678 F.3d 850, 857 (10th Cir. 2012)).

<sup>[12]</sup>Here, defendants’ conduct created a false appearance—namely, that CKB was a legitimate company. As a pyramid scheme, CKB was nothing but a “course of business which operates ... as a fraud.” Shern and each of the promoters thus committed inherently deceptive acts by engaging in what they claimed were the promotional activities of a legitimate MLM—organizing seminars and in-person meetings, providing training and support to downlines, providing access to back office accounts, and portraying CKB’s product as useful educational software. *See, e.g., id.* at \*10 (granting summary judgment for SEC on scheme liability where deceptive acts included falsely “presenting HMCU to the public as a legitimate credit union”); *SEC v. Constantin*, 939 F.Supp.2d 288, 308 (S.D.N.Y. 2013) (granting summary judgment for SEC where “false promises about expected returns,” combined with other conduct intended to further the fraud, “suggest[s] the existence of a wide-sweeping fraudulent investment scheme”). Shern and the promoters also each enrolled victims in the CKB pyramids through the purchase of business packs, *see Sullivan*, 68 F.Supp.3d at 1378 (finding transactions with investors were “inherently deceptive” because they were not “legitimate” business transactions), and offered victims false assurances about CKB’s legitimacy. *See\*446VanCook v. SEC*, 653 F.3d 130, 139 (2d Cir. 2011) (finding scheme liability, in part, for “false assurances”).

Shern also launched the scheme, ultimately ran the business, and controlled the manner in which CKB presented itself. Apart from his deceptive promotional acts, his role as scheme architect makes him liable as a

matter of law. *See id.* (finding scheme liability where defendant was not “merely associated with the late-trading scheme ...; he was its architect.... [He] was intimately involved with the creation, marketing, and implementation of the system”); *see also In re Glob.Crossing, Ltd. Sec. Litig.*, 322 F.Supp.2d 319, 336 (S.D.N.Y. 2004) (finding defendant’s “allegedly central role in these schemes, as their chief architect and executor, leaves no doubt as to [his] potential liability” where defendant “masterminded the misleading accounting” and “was intimately involved in all ... accounting functions”).

Finally, Leung administered the commission system, addressed OMA requests and complaints, and facilitated OMAs’ investments in CKB. She also controlled the back office system of accounts that operated as a deceit on investors by misstating the value of Prpts and other misrepresentations. *See Sullivan*, 68 F.Supp.3d at 1378–79 (granting summary judgment against accountant for Ponzi scheme where defendant “solicited further payments from existing note-holders ... accepted investment deposits in furtherance of the BPF Ponzi scheme ... [and] generated false reports”). She also signed and provided an illegitimate stock certificate to Yao Lin, which created the false appearance that CKB was a legitimate company that would soon go public.

All of this misleading conduct clearly furthered the scheme by creating the core false appearances at issue here—that CKB was a legitimate company and that OMAs would make, and were making, large returns. Accordingly, defendants are liable for engaging in a fraudulent scheme.

### c. Scienter

<sup>[13][14][15]</sup>“Liability for securities fraud requires proof of scienter, defined ‘as a mental state embracing intent to deceive, manipulate, or defraud.’ ” *SEC v. Obus*, 693 F.3d 276, 286 (2d Cir. 2012) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12, 96 S.Ct. 1375, 47 L.Ed.2d 668 (1976)). “Scienter is established by knowing or reckless conduct, or even in some cases, by willful blindness, i.e., a deliberate refusal to acquire information.” *Roor*, 2004 WL 1933578, at \*4 (internal quotation marks and citations omitted). “Representing information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy as to belie any genuine belief in its truth, are all circumstances sufficient to support a conclusion of scienter.”

F.Supp.2d 412, 424 (S.D.N.Y. 2007), *aff'd sub nom. SEC v. Altomare*, 300 Fed.Appx. 70 (2d Cir. 2008). For the following reasons, each of the defendants acted with scienter as a matter of law.

### i. Shern

<sup>[16]</sup>Shern helped to create CKB and directed its promotional efforts. Shern himself appears in promotional videos, and other defendants and victims describe him as the source of the key misrepresentations in this case. More than anyone, he knew those misrepresentations were false. *See, e.g., Milan Capital Grp.*, 2000 WL 1682761, at \*7 (granting summary judgment for SEC where “the SEC has offered ample evidence that Monas was at the center of the fraud”); *Better Life Club*, 995 F.Supp. at 177–78 (granting summary judgment for SEC where defendant “hatched the Advertising Pool \*447 scheme, oversaw its marketing, sale, and operation, and managed the finances”); *Art Intellect*, 2013 WL 840048, at \*19 (granting summary judgment in Ponzi case against defendants that “were involved in the operations of the business, with significant decision-making power” including being “chiefly responsible for [company’s] marketing materials”).

Specifically, Shern knew that CKB was not a legitimate company. Santos presented him with materials that explained the hallmarks of a legitimate MLM. The criteria therein—for example, sales to retail investors—placed CKB squarely on the wrong side of legitimate. Shern knew that CKB’s products contained numerous defects, were hardly used, and were often a source of dissatisfaction to the few who did use them. Shern must have known that CKB had no revenue attributable to retail sales and had no plans for an imminent IPO.<sup>29</sup>

In truth, Shern embraced the fact that CKB was a pyramid scheme. He helped create and distribute a Plan that had no incentives for retail sales. He made himself a top OMA despite being warned that it would create a conflict of interest. He explained to other OMAs how to arrange their downlines. He traveled frequently to the U.S. and other countries, appearing with and otherwise encouraging promoters. He told audiences that they could earn active returns. He claimed that OMAs could get stock, even though he knew it was illegal for stock to be distributed. In sum, he did everything he could to attract investors, but virtually nothing to sell retail products.

Shern then led a broad and diverse effort to suppress allegations that CKB was a pyramid scheme, including

direct written responses to such claims, emails that exhorted OMAs to fight the negative claims about CKB, and the use of technicians to alter search engine results. He took these steps despite knowing that promoters were making false claims and that, by January of 2013, government authorities were investigating CKB.

### ii. Leung

<sup>[17]</sup>Leung helped found CKB and served as one of WIN168’s directors. As CFO, she managed CKB’s finances, signed its checks and, with Shern, controlled its accounts. In short, she launched the scheme and then facilitated its operation. She could not have performed those roles had she not been intimately familiar with CKB’s Dynamic Rewards Plan, commission structure, and lack of retail sales. *See, e.g., Sullivan*, 68 F.Supp.3d 1367 (granting summary judgment against accountant who managed accounts on day-to-day basis and was aware of misconduct). Further, Leung knew of the widespread allegations that CKB was a pyramid scheme and she participated in internal conversations with Shern and others regarding how to respond. Despite these allegations, Leung continued to serve as CKB’s CFO. She also knew that it was illegal for CKB to issue stock—yet she signed Yao Lin’s stock certificate.

### iii. Promoters

<sup>[18]</sup>The undisputed record shows that the promoters acted with the requisite scienter when promulgating CKB’s claims of enormous, risk-free returns and the imminent acquisition of valuable stock. The undisputed record shows that each promoter either knew or recklessly adopted such false statements. *See Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 45 (2d Cir. 1978) (“There is of course no difficulty \*448 in finding the required intent to mislead where it appears that the speaker believes his statement to be false.”).

Each of the promoters knew that Prpts, in contrast to commissions, could not simply be exchanged for cash. Yet each promoter repeatedly told OMAs and potential investors that they would passively enjoy huge, dollar-denominated returns on their investment, and that each business pack would include “\$750” of Prpts. The promoters did not disclose that the purported returns, in the form of worthless Prpts, were an illusion.

The undisputed record also shows that, with the exception of Yao Lin, the promoters never acquired CKB stock. Yet the promoters repeatedly stated in person, in testimonials, at seminars and on the internet that OMAs could convert their Prpts to stock. See *Credit Bancorp*, 195 F.Supp.2d at 495 (“At the very least, Brandon’s actions were reckless as a matter of law when he failed to act after being unable to obtain investors’ securities and continued to represent that he had the authority to do so.”). Moreover, Guo and Ma both conveyed to OMAs that they actually had stock. They have since admitted that this was not true. See *In re MetLife Demutualization Litig.*, 262 F.R.D. 217, 234 (E.D.N.Y. 2009) (“A defendant who believes his statements to be false acts with requisite scienter.”); see also *Constantin*, 939 F.Supp.2d at 308.

The undisputed record also shows that the promoters were reckless as a matter of law with regard to the fact that CKB was a pyramid scheme. See *Rolf*, 570 F.2d at 45 (“[T]here is general agreement that [scienter] is present when the representation is made without any belief as to its truth, or with reckless disregard whether it be true or false.”). By fall 2012, each promoter had been confronted with widespread allegations that CKB was a fraud. Each promoter was also aware of other obvious signs that CKB was a fraud: the claims of rapid, risk-free returns; the lack of an incentive to make retail sales; the inability to convert Prpts to cash on the internal exchange or elsewhere; and the inability to acquire actual stock. Despite these warnings, they failed to investigate even though each of them was among CKB’s very top OMAs. The promoters did nothing to evaluate CKB’s legitimacy besides communicating with Shern. See *Milan Capital Grp.*, 2000 WL 1682761, at \*5 (“Where a defendant plays a central role in marketing an investment, his defense that he was unaware that the investment was a fraud is less credible.”).

Courts in this Circuit have broadly condemned the failure of promoters to perform an adequate investigation in the face of doubtful facts, finding that such a failure amounts to recklessness as a matter of law. See *Credit Bancorp*, 195 F.Supp.2d at 495–96 (finding scienter where defendant “simply accepted Credit Bancorp’s excuses without undertaking any independent investigation whatsoever” and “simply ignored” numerous facts that should have “alerted” him to irregularities); *Constantin*, 939 F.Supp.2d at 309 (“To the extent that Solomon did not have direct knowledge of the falsity ... we conclude that he acted recklessly in failing to verify the accuracy of the information.”); *Milan Capital Grp.*, 2000 WL 1682761, at \*6 (finding that failure to investigate warning signs “sufficiently indicative of fraud” constituted recklessness); *Universal Express*, 475 F.Supp.2d at 427

(finding defendant could not have reasonably believed claims he made where he “neither possessed nor had sought to obtain any financial information about the entities”).

Furthermore, promoter defendants cannot avoid liability by claiming that they relied on the statements of Shern or other CKB officials. See *Credit Bancorp*, 195 F.Supp.2d at 495–96; *SEC v. Milan Grp., Inc.*, 962 F.Supp.2d 182, 201 (D.D.C. 2013), *aff’d in part, vacated in part, remanded*, 595 Fed.Appx. 2 (D.C. Cir. 2015)<sup>30</sup> (“Ms. Baylor has declared under oath that she relied entirely on Mr. Pavlico and had no knowledge that Milan and its products were fraudulent .... Even crediting her statements of ignorance, such statements only demonstrate extreme recklessness, not innocence.”); see also *Universal Exp.*, 475 F.Supp.2d at 427 (“[A]ny appearance of substantiation created by mention of [misleading corporate documents] in the press releases only underscores defendants’ wrongdoing, as press releases that purport to be substantiated would seem more likely to mislead the reasonable investor than those that do not.... [Defendants’] disregard of such a consequence was not at the least reckless.” (internal quotation marks and citation omitted)).

<sup>19</sup><sup>20</sup>Similar to the present case, in *Gagnon*, defendants promoted a Ponzi scheme by soliciting the purchase of “Mazu Business Packs.” Defendant Gagnon repeatedly touted the merits of the investment and vouched for its legitimacy. 2012 WL 994892, at \*2. The court awarded the SEC summary judgment because Gagnon:

Performed no due diligence concerning the profitability of the Legisi program. He did not obtain or review any ... trading records, bank and brokerage account statements, or e-currency account records at any point prior to, or during, his promotion of Legisi through the Mazu website or Mazu promotional materials.... Gagnon admits that he had no knowledge about the finances of the Legisi program.... Despite this lack of knowledge, Gagnon wrote of the Legisi program ... “10 to 12.5% of your money per month with No Work! And Little to No Risk!”

*Id.* at \*2. Similar here, even crediting defendant promoters’ claims that they relied on the statements of others, they acted recklessly as a matter of law.<sup>31</sup>

#### A. Ma’s and Lin’s Relevant Work History

Two of the promoters possessed specialized experience that further supports a finding that, at a minimum, they

recklessly ignored the fact that CKB was a fraud. Ma was a former licensed securities professional. *See, e.g., SEC v. Pittsford Capital Income Partners, LLC*, No. 06–cv–6353 (MAT), 2007 WL 2455124, at \*17 (W.D.N.Y. Aug. 23, 2007), *aff'd in part, appeal dismissed in part*, 305 Fed.Appx. 694 (2d Cir. 2008) (“[T]he defendants acted with a high degree of scienter; they were trained securities professionals who repeatedly made materially false and misleading statements and omissions to the \*450 investors.”); *SEC v. Hasho*, 784 F.Supp. 1059, 1108 (S.D.N.Y. 1992) (“Those who hold themselves out as professionals with specialized knowledge and skill to furnish guidance cannot be heard to claim youth or inexperience when faced with charges of violations of the antifraud provisions of the securities laws.”).

While not a formerly licensed securities professional like Ma, Lin had considerable prior experience with MLMs. He knew that legitimate MLM’s required promoters to make a high percentage of retail sales. He also understood the distinction between a promoter and a retail customer. Yet, he promoted CKB even though he knew that CKB did not reward OMAs for retail sales and that he himself had not sold software to retail purchasers. At minimum, this supports a finding that he exhibited reckless disregard for the truth.

#### d. In Connection with the Purchase or Sale of Securities

<sup>[21][22]</sup>Finally, for liability to attach, the SEC must establish that defendants’ fraud was in connection with the purchase or sale of securities. “The ‘in connection with’ factor has been broadly construed. ‘Any statement that is reasonably calculated to influence the average investor satisfies the “in connection with” requirement’ ” of the securities laws. *Credit Bancorp*, 195 F.Supp.2d at 491–92 (quoting *Hasho*, 784 F.Supp. at 1106) (internal citations omitted). The SEC has met its burden here as the undisputed record shows that defendants’ actions and statements were made for the sole purpose of influencing investors to invest in CKB.

The CKB investments here are securities because an investment in a pyramid scheme is itself a security. Under the *Howey* test, “developed by the Supreme Court, a transaction is an ‘investment contract’ [subject to regulation by the securities laws] if persons invest or loan money to a common enterprise with a promise or expectation of profits to come solely from the efforts of others (generally the promoter or a third party).” *Better Life Club*, 995 F.Supp. at 173 (citing *SEC v. W.J. Howey*

*Co.*, 328 U.S. 293, 299, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946)). Courts have found that pyramid schemes fit this definition. *Int’l Loan Network*, 968 F.2d at 1309; *see also Omnitrion*, 79 F.3d at 784 (“[W]e [previously] declared that investments in a pyramid scheme were ‘investment contracts’ and thus securities within the meaning of the federal securities laws.”).

Here, the *Howey* test is met because new investors purchased business packs to join CKB, a common enterprise,<sup>32</sup> expecting to receive “passive” returns and stock that would appreciate in value as a result \*451 of CKB’s legitimate corporate efforts. By definition, “passive” means investors sought to profit from others’ efforts. *See Int’l Loan Network*, 968 F.2d at 1308 (finding the *Howey* test met where “profits for CFBS investors are expected to accrue, if not solely, at least predominantly from the efforts of others, namely of the downline members”). As such, investment in CKB was an investment contract.

<sup>[23]</sup>CKB investments were also securities because defendants told investors that by purchasing business packs they could acquire pre-IPO CKB stock.<sup>33</sup> Although “ ‘the fact that instruments bear the label “stock” is not itself sufficient to invoke the coverage of the [securities] Acts,’ ” the instrument will be considered a security when it possesses “ ‘some of the significant characteristics typically associated with stock.’ ” *Constantin*, 939 F.Supp.2d at 304 (quoting *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 687, 105 S.Ct. 2297, 85 L.Ed.2d 692 (1985)). Here, defendants repeatedly compared CKB stock to stock in other well-known companies—in other words, stock in its ordinary meaning. Based on defendants’ misrepresentations, OMAs expected to acquire an ownership stake, and the right to enjoy dividends, in a legitimate company that would soon go public. The fact that the stock was pre-IPO has no bearing on whether it is a security. *See, e.g., Constantin*, 939 F.Supp.2d at 304; *SEC v. Shehyn*, No. 04–cv–2003 (LAP), 2010 WL 3290977, at \*5 (S.D.N.Y. Aug. 9, 2010) (finding efforts to sell pre-IPO stock in private companies is conduct in connection with the sale of securities). Nor does it matter for purposes of this analysis that the security did not actually exist. *See Local 8751B.T. Pension Fund v. Pollack*, 992 F.Supp. 545, 564 (E.D.N.Y. 1998) (“A fraud in connection with the purchase or sale of a fraudulent security is no less actionable for its fictitious quality.”). For these reasons, defendants’ fraud was in connection with the purchase or sale of securities.

## II. Section 5 of the Securities Act

<sup>124</sup><sup>125</sup><sup>126</sup>“Section 5 of the [Securities] Act provides that securities must be registered with the Commission before any person may sell or offer to sell such securities.” *SEC v. Kern*, 425 F.3d 143, 147 (2d Cir. 2005). To prove a violation, the SEC must show: “(1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale.”<sup>34</sup>*SEC v. Cavanagh*, 445 F.3d 105, 111 n.13 (2d Cir. 2006) (internal quotation marks and citation omitted). Once the SEC establishes a \*452 violation, the burden shifts to defendants to show that the securities were exempt from registration. *Id.*

<sup>127</sup><sup>128</sup>Section 5 can be violated by a direct participants and also by “[a]n indirect participant, who has not himself passed title to an unregistered security.” *SEC v. E. Delta Res. Corp.*, No. 10-cv-310 (SJF), 2012 WL 3903478, at \*4 (E.D.N.Y. Aug. 31, 2012), *aff’d*, 550 Fed.Appx. 52 (2d Cir. 2014) (quoting *SEC v. Universal Express, Inc.*, 475 F.Supp.2d 412, 422 (S.D.N.Y. 2007)). That indirect participant is liable if, but for their involvement, “the sale transaction would not have taken place—in other words, whether the defendant[’s] acts were a substantial factor in the sales transaction.” *Id.*; see also *SEC v. Verdiramo*, 890 F.Supp.2d 257, 271–72 (S.D.N.Y. 2011) (finding that defendant “violated Section 5 because he was a necessary and substantial participant in the unregistered sales” made by others).

Here, defendants did not register the securities described in Section I.d above. Each defendant, with the exception of Leung, offered those securities for sale—securities that could not be obtained on an exchange market and could only be sold by OMAs. The undisputed record shows that Shern and each of the promoters pursued new investors to join CKB as OMAs. In doing so, Shern and the promoters offered prospective investors the opportunity to purchase a \$1,380 “business pack.” The business pack entitled an OMA to receive Prpts, to purportedly acquire the right to stock, and to invest in what was, in fact, a pyramid scheme. Shern and each of the promoters successfully recruited downlines. To put it simply, defendants offered and sold securities, and therefore violated Section 5.

<sup>129</sup>As for Leung, even if she did not promote CKB, she was a necessary and “substantial factor in the sales transactions.” Nearly every CKB financial transaction concerned the sale of business packs—or commissions thereon. As CFO, she thus authorized, directed, and managed the issuance of securities to investors. See *Verdiramo*, 890 F.Supp.2d at 271 (holding officer liable under Section 5 because he “personally authorized

and directed the issuance of the RECOV shares ... that were later sold in unregistered transactions”); see also *SEC v. Curshen*, 888 F.Supp.2d 1299, 1308 (S.D. Fla. 2012) (finding liability under Section 5 because defendant opened accounts to facilitate scheme and gave specific buying and selling instructions). In addition, Leung managed CKB’s bank accounts, signed Yao Lin’s stock certificate, was featured in CKB promotional literature, and has, in court filings, already admitted that she knew it was unlawful to issue stock, and that she nonetheless did so in violation of Section 5.

As such, each of the defendants violated Section 5 of the Securities Act by offering and selling—or acting as a necessary or substantial participant in the sale of—unregistered securities.

## III. Shern and the Promoters violated Section 15(a) of the Exchange Act

<sup>130</sup>“Section 15(a)(1) of the Exchange Act makes it unlawful for a broker ‘to make use of ... interstate commerce to effect any transactions in, or to induce or attempt to induce the purchases or sale of, any security unless such broker is registered [with the SEC].’” *SEC v. Aronson*, No. 11-cv-7033 (JSR), 2013 WL 4082900, at \*7 (S.D.N.Y. Aug. 6, 2013) (quoting 15 U.S.C. § 78o(a)).<sup>35</sup> The Exchange Act \*453 broadly defines a “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” 15 U.S.C. § 78c(b)(4).

<sup>131</sup>In determining whether an individual is as a broker under Section 15(a), courts consider whether the alleged broker “1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors.” *SEC v. Martino*, 255 F.Supp.2d 268, 283 (S.D.N.Y. 2003). “Most courts do not require the SEC to establish each of the various cited factors in order to prevail on summary judgment, but rather determine that some combination of factors establishes that the defendant acted as a broker.” *SEC v. Collyard*, 154 F.Supp.3d 781, 789 (D. Minn. 2015) (collecting cases); see also *George*, 426 F.3d at 797 (rejecting argument that defendant was not a broker because “he was not employed by the issuer of the securities and that, because he ultimately suffered a net loss in the scheme, he did not receive compensation for

his work” where defendant “was regularly involved in communications with and recruitment of investors for the purchase of securities”); *SEC v. Hansen*, No. 83–cv–3692 (LPG), 1984 WL 2413, at \*11 (S.D.N.Y. Apr. 6, 1984).

<sup>132]</sup>These factors overwhelmingly support the conclusion that defendants were brokers as a matter of law. The undisputed record shows that defendants, by the very nature of the CKB Plan, “received commissions as opposed to salary.” Defendants each promoted “the merits of the investment,” and advised others to invest therein. Defendants were undoubtedly “active rather than passive finder[s] of investors,” and urged downlines to find still more investors. Defendants acted as intermediaries between CKB and their downlines, helping to open accounts, accepting investments, and responding to questions and complaints. While the promoters may not have been formal CKB employees, they were clearly its most visible representatives—their testimonials were all visible on the CKB website. *See George*, 426 F.3d at 798 (rejecting argument that defendant “never ‘sold securities’ because [someone else] controlled the scheme”).

In short, defendants devoted themselves to “effecting,” and inducing, the purchase of securities. For these reasons, Shern and the promoters violated Section 15 of the Exchange Act by acting as unregistered brokers as a

matter of law.

## CONCLUSION

For the foregoing reasons, the SEC’s motion for summary judgment is granted in its entirety against defendants Howard Shern, Florence Leung, David Guo, JC Ma, Yao Lin, and Wendy Lee.

The Clerk is requested to email copies of this Memorandum and order to defendants Shern and Leung at the following addresses:

For defendant Shern: Hshern@hotmail.com

For defendant Leung: Florence\_Leung@hotmail.com

SO ORDERED.

## All Citations

210 F.Supp.3d 421, Fed. Sec. L. Rep. P 99,425

## Footnotes

- 1 The SEC has alleged violations of Rule 10b–5(a) and (c) against all defendants, as well as violations of Rule 10b–5(b) against Shern and the U.S. promoters.
- 2 The SEC’s summary judgment motion against Heidi Mao Liu (aka Heidi Mao) will be addressed in a separate order. Defendants Rayla Santos, Chih Hsuan (Kiki) Lin, Toni Tong Chen, and Cheongwha (Heywood) Chang have settled with the SEC. Additionally, on July 29, 2015, the Clerk of Court entered default against entity defendants CKB168 Holdings Ltd.; WIN168 Biz Solutions, Ltd.; CKB168 Ltd.; CKB168 Biz Solution, Inc.; and Cyber Kids Best Education, Ltd., which are not represented by counsel.
- 3 As discussed in the Court’s August 12, 2015 Order, *pro se* defendants and CKB founders Shern and Leung were precluded from “offering testimony, affidavits or declarations in connection with a dispositive motion or trial.” (Doc. No. 262.) Nonetheless, Shern and Leung both submitted affidavits in opposition to the SEC’s motion, though not 56.1 statements despite being provided with the requisite notice under Local Rule 56.2. While Shern and Leung additionally did not submit memoranda of law in opposition to the SEC’s motion, the Court has considered the legal arguments contained within the affidavits. Shern and Leung are proceeding *pro se*. As such, their arguments are construed liberally, and to raise in their favor the strongest inferences and arguments possible.
- 4 The following facts—drawn from the parties’ Local Rule 56.1 statements and the submissions filed in connection with this motion—are undisputed unless otherwise noted and are taken in the light most favorable to plaintiffs. *See Giannullo v. City of New York*, 322 F.3d 139, 140–41 (2d Cir. 2003).

- 5 Guo, Lee, Ma, and Lin “admit that they promoted CKB through” the various platforms described above, but do not address CKB’s statement that such promotions focused on the “business opportunity” of CKB. (Defs.’ 56.1 (Doc. No. 353–1) at ¶ 24.) Nonetheless, the record of evidence before the Court clearly supports the SEC’s statements, with the exception of their applicability to Leung.
- 6 Guo, Lee, Ma, and Lin dispute the SEC’s statement that the *only* way an OMA earned money was through commissions for recruiting other OMAs. (Defs.’ 56.1 at ¶ 52.) However, they have put forth no evidence of other mechanisms for an OMA to earn money, and, on review of the evidence, most notably the Dynamic Rewards Plan, there appears to be no other way for an OMA to earn income. (Dynamic Rewards Plan (Doc. No. 312–1 at 124–133 (ECF pagination).) See *SEC v. Greenstone Holdings, Inc.*, No. 10–cv–1302 (MGC), 2012 WL 1038570, at \*9 (S.D.N.Y. Mar. 28, 2012) (finding no material disputes of fact where defendant’s “assertion is contradicted by the evidence”).
- 7 Guo, Lee, Ma, and Lin “admit that they encouraged ‘new and existing OMAs to “grow” their business,’ ” and do not dispute the SEC’s statement that marketing efforts and training focused almost exclusively on the investment. (Defs.’ 56.1 at ¶ 59.) Nonetheless, the record of evidence before the Court clearly supports the SEC’s statements. See *Greenstone Holdings*, 2012 WL 1038570, at \*9.
- 8 Defendants dispute this claim. See *infra* Section IV for a discussion of each defendants’ knowledge. Additionally, defendants dispute the Kam Lee declaration relied upon by the SEC for such figures, arguing that the SEC has produced no evidence supporting its claims of CKB’s financials and OMA accounts. However, the record contradicts this argument. The back office data used by Kam Lee was obtained from the foreign defendants in response to Judge Mann’s discovery order, and no other defendant produced their own back office data to contradict such records. Once the SEC was able to access evidence, the SEC notified the Court and offered all parties copies. Though not relied upon by the Court in its ultimate determination, the evidence is admissible as summary evidence under *Federal Rule of Evidence* (“Rule”) 1006 and as statements against interest under Rule 804(b)(3). See *Tamarin v. Adam Caterers, Inc.*, 13 F.3d 51, 53 (2d Cir. 1993) (“Summary evidence is admissible as long as the underlying documents also constitute admissible evidence and are made available to the adverse party.”); *John Paul Mitchell Sys. v. Quality King Distrib., Inc.*, 106 F.Supp.2d 462, 472 (S.D.N.Y. 2000) (“[T]he act of production implicitly authenticated the documents.”) (collecting cases); see also *United States v. Gupta*, 747 F.3d 111, 127–28 (2d Cir. 2014).
- 9 Many defendants held more than one account. Holding multiple accounts enabled an OMA to function as his or her own downline. (SEC’s 56.1 at ¶ 63.)
- 10 Guo, Lee, Ma, and Lin argue that “bare declaration[s]” of the victims listed below “should be afforded no weight” because they were not deposed by counsel for any defendants in this action. (Defs.’ 56.1 at ¶¶ 101, 103, 111.) However, defendants offer no legal support for this statement nor reasons why such victims were not deposed by counsel.
- 11 Lee denied having knowledge of the SEC lawsuit in November 2013. (Defs.’ 56.1 at ¶ 116.) However, Lee was an active case participant by November 2013. For example, counsel for Lee filed appearances on the docket on October 22 and November 1, 2013. (Doc. Nos. 31, 29.) On November 9, 2013, Lee signed a verified accounting, which was submitted to the Court. (Doc. No. 47–7.) Accordingly, the Court finds that Lee was aware of this case in November 2013. See *Greenstone Holdings*, 2012 WL 1038570, at \*9.
- 12 An indirect downline refers to a new downline started by an OMA’s existing downline. CKB resembles a pyramid

structure because OMAs are promoted and compensated for recruiting done by existing OMAs. According to the SEC, Guo occupied the same pyramid level as Shern and Leung. (SEC's 56.1 at ¶ 193.)

13 Guo disputes that he "promised" that CKB would go public and argues that he understood that CKB *could* go public. (Defs.' 56.1 at ¶ 173.) Nonetheless, the undisputed record is clear that Guo represented to investors that CKB *would* go public. See *Greenstone Holdings*, 2012 WL 1038570, at \*9.

14 Guo states that he "never represented that CKB was 'issuing stock.'" (Defs.' 56.1 at ¶ 176.) However, he admits that he referred to Prpts and stock interchangeably when talking to OMAs and potential investors. (Defs.' 56.1 at ¶ 175.) See *Greenstone Holdings*, 2012 WL 1038570, at \*9.

15 Lee "denied that she intended this information to be for public consumption." (Defs.' 56.1 at ¶ 196.) However, this is immaterial. Lee was aware the public could access her website and admits to pointing her downlines toward her website.

16 Lee disputes that she knew Prpts could not be exchanged for cash. (Defs.' 56.1 at ¶ 211.) However, she testified that investors could not exchange their \$750 of Prpts to cash and that Prpts were "not something that could be cashed out immediately." See *Greenstone Holdings*, 2012 WL 1038570, at \*9.

17 Lin disputes the SEC's statement that it was his understanding that Prpts were valueless. (Defs.' 56.1 at ¶ 326.) Lin testified that he believed Prpts could be exchanged on the back office exchange in limited quantities (of 200 or 300 Prpts). Thus, Lin was at least aware that Prpts could not simply be exchanged for cash; rather they could only be sold in small batches, assuming the seller could find a buyer, which Lin, and all other OMAs he knew, had been unable to do.

18 Lin disputes that he told OMAs that the value of Prpts would increase over time, regardless of whether that OMA actively recruited. (Defs.' 56.1 at ¶ 324.) However, his deposition testimony says precisely that:

Q: But the OMA can refrain from doing anything and the Prpts may still increase in value?

A: If the company remains to have performant, yes.

(Lin Dep. (Doc. No. 312–1) at 196:21–197:2 at 86–87 (ECF pagination).)

19 Lin "does not admit" that he told OMAs that they could convert their Prpts to stock, that CKB's IPO would occur in July 2014, or that CKB would be as successful as other well-known companies. (Defs.' 56.1 at ¶ 327.) However, he testified that he shared materials with OMAs and potential investors, which did make such representations. Further, Lin testified that he told OMAs and potential OMAs that "we now have points. And we could use these points to exchange shares. So in the future we may have the opportunity to become shareholders of the company." This statement does in fact convey that points could become "shares."

20 Lin "does not admit" the SEC's statement that he did nothing to evaluate such claims of fraud. In support, he points to his deposition testimony where the following exchange occurred:

Q: But when people raised suspicions to you about CKB's business, did you do anything to check on those

suspicious?

A: I didn't, probably because I was either naive or stubborn. I was firmly believing that the company is having good business.

(Defs.' 56.1 at ¶ 334.) Because Lin fails to raise any dispute and, in fact, confirmed that he did not do anything to investigate, the SEC's statement is adopted.

21 Section 10(b) of the Exchange Act states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange ... to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j.

22 Rule 10b-5 states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

23 Section 17(a) of the Securities Act states:

It shall be unlawful for any person in the offer or sale of any securities ... by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q.

24 The SEC must also show that defendants engaged in or made use of the instrumentalities of interstate commerce. 17 C.F.R. § 240.10b-5. "[I]t is undisputed that the use of the internet is an 'instrumentality of interstate commerce.'" *SEC v. Straub*, 921 F.Supp.2d 244, 262 (S.D.N.Y. 2013) (internal citations omitted); *SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers*, No. 08-cv-1402 (KAM), 2009 WL 3233110, at \*4 (E.D.N.Y. Oct. 2, 2009). The same is true for wire transfers, *One or More Unknown Traders*, 2009 WL 3233110, at \*4, interstate travel, *Stampolis v. Provident Auto Leasing Co.*, 586 F.Supp.2d 88, 94-95 (E.D.N.Y. 2008), and email, *SEC v. Shehyn*, No. 2:09-cv-2003 (LAP), 2010 WL 3290977, at \*4 (S.D.N.Y. Aug. 9, 2010). It is undisputed that defendants used all of these means to perpetrate this scheme.

25 Defendants argue they cannot be credited with such statements because their misrepresentations were based on

information created and disseminated by CKB. Even crediting these assertions, defendants are still liable because they controlled their own communications with OMAs and potential investors. As the Supreme Court has explained:

For purposes of Rule 10b–5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it .... One who prepares or publishes a statement on behalf of another is not its maker .... This rule might best be exemplified by the relationship between a speechwriter and a speaker. Even when a speechwriter drafts a speech, the content is entirely within the control of the person who delivers it. And it is the speaker who takes credit—or blame—for what is ultimately said.

*Janus Capital Grp. v. First Derivative Traders*, 564 U.S. 135, 142–43, 131 S.Ct. 2296, 180 L.Ed.2d 166 (2011).

- 26 Defendants' arguments—that Prpts had cash value because they could be exchanged in the back office and could be converted to stock of commensurate value—are unavailing as such claims are false. Moreover, even if the back office exchange functioned as claimed by Lee and Lin, Prpts could still not be meaningfully liquidated. At best, OMAs could attempt to liquidate Prpts in the amount of \$75—reflecting the maximum limit of 300 Prpts that could be exchanged and their maximum value set by CKB of 25 cents—and this is only if the seller could find a buyer, which defendants had no success themselves in doing and, at best, knew OMAs would have to “wait in line” to find. This pales in comparison to defendants' representations that investors received \$750 in Prpts that would only grow.
- 27 In opposition to the SEC's motion for an adverse inference on this subject, Shern and Leung confirmed that no such evidence exists. Leung stated that she had turned over all CKB related documents and evidence she had and argued that “just because there are no written records to show there was a plan to go public ... [didn't] mean that CKB had no plans and had made no preparations to go public.” (9/18/15 Leung Letter (Doc. No. 283) at 2.) Similarly, Shern stated, “Yes, there are no documents as all the preparations made were by conduct” and “I did not make any extensive business proposals in writing ....” (9/21/15 Shern Letter (Doc. No. 284) at 2; Shern. Aff. (Doc. No. 284–1) at ¶ 7.)
- 28 In one communication highlighted by Judge Mann, Shern and Santos discussed an editorial titled “Is CKB186 a Pyramid Scheme?” Shern reassured Santos that he was “busy for two months['] time working with lawyers and accountants to restructure the company.” This communication appears to be just another one of Shern's misrepresentations. The record contains no evidence of any such communications with lawyers and accountants. (11/03/15 Report and Recommendation (Doc. No. 295) at 10 n.8.)
- 29 In fact, and as discussed in the previous footnote, Shern represented to Santos that he was in a position to be working with others to restructure CKB to enable the IPO. Yet he made no such preparations.
- 30 On appeal, the circuit court “affirm[ed] on the fraud counts because we agree with the District Court that no reasonable juror could find that Baylor did not act with scienter. Indeed, evidence of the requisite recklessness is overwhelming.” *Milan Grp.*, 595 Fed.Appx. at 2.
- 31 Further, by acting as brokers, each of the promoters acquired heightened duties to investigate and disclose. “A broker is under a duty to investigate the truth of his representations to clients, because ‘by his position he implicitly represents he has an adequate basis for the opinions he renders.’ ” *Milan Capital Group*, 2000 WL 1682761, at \*5 (quoting *Hanly v. SEC*, 415 F.2d 589, 596 (2d Cir. 1969)). These principles apply even where a defendant, while a broker in practice, is not registered. *SEC v. Randy*, 38 F.Supp.2d 657, 670 (N.D. Ill. 1999). Here, promoters each repeatedly recommended an investment in CKB. However, “in recommending a company's securities to investors, a broker may not rely solely on materials submitted by the company without independent investigation; this duty to investigate is even greater where promotional materials are in some way questionable.” *Milan Capital Group*, 2000 WL 1682761, at \*5 (internal citations omitted).

- 32 CKB was a common enterprise because it had both vertical and horizontal commonality. See *In re J.P. Jeanneret Assoc., Inc.*, 769 F.Supp.2d 340, 360 (S.D.N.Y. 2011) (“[C]ourts in this district have held that strict vertical commonality (like horizontal commonality) is sufficient to establish a common enterprise under *Howey*.”); see also *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994). “Horizontal commonality is characterized as the tying of each individual investor’s fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits.... Strict vertical commonality exists when the fortunes of the investor are tied to the fortunes of the promoter.” *In re J.P. Jeanneret Associates*, 769 F.Supp.2d at 359 (internal quotation marks and citations omitted); see also *SEC v. Morton*, No. 10–cv–1720 (LAK) (MHD), 2011 WL 1344259, at \*15 (S.D.N.Y. Mar. 31, 2011), report and recommendation adopted, 2011 WL 11768504 (S.D.N.Y. Nov. 3, 2011) (explaining horizontal and vertical commonality). Because investor money was pooled pending purported cash distributions and a supposed pro rata allocation of stock, and because the purported passive and active returns depended on the efforts of other above and below an OMA in the pyramid, both horizontal and vertical commonality are present here.
- 33 Similarly, Prpts themselves may qualify as securities. First, they may qualify as investment contracts. See *SEC v. Rose Fund, LLC*, No. 03–cv–04593 (WHA), 2004 WL 6069175, at \*6 (N.D. Cal. Sept. 17, 2004), *aff’d*, 156 Fed.Appx. 3 (9th Cir. 2005) (“[T]he ‘participation units’ sold by the Rose Fund were investment contracts and thus ‘securities’ under the Securities Act of 1933 and the Securities Exchange Act of 1934.”). Second, they may qualify as convertible instruments, given defendants’ representations that Prpts could be converted to stock. See *Leemon v. Burns*, 175 F.Supp.2d 551, 559 (S.D.N.Y. 2001) (“The fact that the Note’s original principal could be converted into AMDL common stock is a strong factor for holding that the Note is a security.”).
- 34 A violation of Section 5 is a strict liability offense. *SEC v. StratoComm Corp.*, 2 F.Supp.3d 240, 263–64 (N.D.N.Y. 2014), *aff’d* 652 Fed.Appx. 35 (2d Cir. 2016). Thus, the SEC does not have to show that the defendants violated Section 5 with scienter. See, e.g., *SEC v. Softpoint, Inc.*, 958 F.Supp. 846, 859–60 (S.D.N.Y. 1997) (“Scienter is not an element of a Section 5 violation.”); accord *Kern*, 425 F.3d at 153 (stating scienter was only at issue on remedies for Section 5 violation).
- 35 “Scienter is not an element of a Section 15(a) claim.” *Aronson*, 2013 WL 4082900, at \*7; see also *StratoComm Corp.*, 2 F.Supp.3d at 262.

# EXHIBIT 3

2022 WL 3347253  
Only the Westlaw citation is currently available.  
United States District Court, E.D. New York.

SECURITIES AND EXCHANGE  
COMMISSION, Plaintiff,  
v.  
CKB168 HOLDINGS, LTD., et al.,  
Defendants,  
and  
Rosanna LS Inc., et al., Relief  
Defendants.

13-cv-5584 (HG)

Signed August 12, 2022

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#### MEMORANDUM & ORDER

HECTOR GONZALEZ, United States District Judge:

\*1 Before the Court is the Securities and Exchange Commission's ("SEC") motion for a Permanent Injunction, Financial Remedies, and Final Judgment against CKB168 Holdings, Ltd., WIN168 Biz Solutions Ltd., CKB168 Ltd., CKB168 Biz Solution, Inc., Cyber Kids Best Education Ltd. (collectively, the "Entity Defendants"), Rayla Melchor Santos, Hung Wai Shern, Rui Ling Leung, Daliang Guo, Yao Lin, and Joan Congyi Ma (Guo, Lin, and Ma are collectively referred to as the "Promoter Defendants") and against Relief Defendants Rosanna LS Inc. and Ouni International Trading Inc. (collectively, "Relief Defendants") pursuant to [Fed R. Civ. P. 54](#) (the "Motion"). The Entity Defendants, Promoter Defendants, and Relief Defendants are collectively referred to herein as "Defendants."

For the reasons set forth below, the SEC's Motion is GRANTED.

## I. Background

The SEC filed this case as an emergency action on October 9, 2013<sup>1</sup> alleging violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder; Section 17(a)(1) and (3) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a)(1), (3); and Section 5 of the Securities Act, 15 U.S.C. § 77e. ECF No. 1. It additionally alleged violations of Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1), and Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), against Shern and the Promoter Defendants. *Id.* In short, the SEC alleged that Defendants were the architects and top U.S. promoters of “CKB,” a multi-national pyramid scheme made up of several collective entities, that purported to be a legitimate multi-level marketing company (“MLM”) selling educational software.

The Complaint sought relief in the form of: temporary, preliminary and permanent injunctions against further violations of the statutes and rules Defendants are alleged to have violated; disgorgement by the Defendants and Relief Defendants of all the money received as a result of the unlawful conduct alleged in the Complaint, plus pre-judgment interest; an accounting; an order compelling Defendants to pay a penalty; and such other and further relief as the Court deems just and proper. *Id.* The Court entered a temporary restraining order, asset freezes, and other emergency relief—including requiring each Defendant to provide a verified accounting—against all Defendants and Relief Defendants the day the Complaint was filed. ECF No. 12. Preliminary injunctions were later entered against all Defendants and Relief Defendants. ECF Nos. 36, 69, 70, 71.

\*2 On July 10, 2015, the Court entered judgment on all claims against Santos, who admitted liability. ECF No. 252 (“Santos Order”). The Santos Order enjoined her from violating the securities laws and from participating, directly or indirectly, “in any marketing or sales program involving a security.” *Id.* ¶ 2. The Santos Order also stated that the Court would, at a later date and on a motion by the SEC, order disgorgement, prejudgment interest, and a civil penalty as to Santos. *Id.* ¶ 3.

On July 29, 2015, the clerk entered a default against the Entity Defendants. *See* ECF Entry, July 29, 2015 (“Clerk’s Entry of Default”).

On September 28, 2016, the Court granted the SEC’s Motion for Summary Judgment on all claims against Shern, Leung, Guo, Lin and Ma, and the additional Defendants not subject to this Order. ECF No. 363 (“Summary Judgment”).

As this case currently stands, discovery is complete, and liability has been determined for all entity and individual Defendants. *See* ECF No. 462 (Joint Status Report). On May 26, 2022, the SEC filed the instant Motion seeking financial and other remedies against the five Entity Defendants, the remaining six individual Defendants as to whom final judgment has not been entered, and the remaining two Relief Defendants. ECF No. 460. Defendants Santos, ECF No. 459, and Guo, ECF Nos. 463, 465, oppose the Motion.

## II. Discussion

The SEC seeks a Final Judgment that:

1. Permanently restrains and enjoins:
  - a. Defendants, except for Santos,<sup>2</sup> from further violations of Sections 5 and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder;
  - b. Defendants Shern, Guo, Lin, and Ma from further violations of Section 15(a) of the Exchange Act; and
  - c. Defendants Shern, Leung, Guo, Lin, and Ma from directly or indirectly, including, but not limited to, through any entity owned or controlled by them, offering, operating or participating in any marketing or sales program involving a security, including but not limited to a program in which a participant is compensated or promised compensation solely or primarily for inducing another person to become a participant in the program, or if such induced person induces another to become a participant in the program.
2. Orders all Defendants and Relief Defendants to disgorge, and pay prejudgment interest thereon, the ill-gotten gains received as a result of the unlawful conduct found by the Court, or admitted to, in amounts set forth below;
3. Orders all Defendants, except Guo, to pay civil monetary penalties pursuant to Section 20(d)(1) of the Securities Act, and Section 21(d)(3) of the Exchange Act.

ECF No. 460.

The Court will first address the requested injunctive relief followed by the disgorgement and other monetary

remedies.

### A. Injunctions Against Further Violations of Securities Laws

Both the Securities Act and the Exchange Act give the Court authority to grant a permanent injunction. *See* 15 U.S.C. § 77t(b); *see also* 15 U.S.C. § 78u(d)(1). “[T]o show such injunctive relief is warranted, the SEC must demonstrate that there is a substantial likelihood of future violations of illegal securities conduct.” *SEC v. Genovese*, 553 F. Supp. 3d 24, 45 (S.D.N.Y. 2021) (quoting *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998) (internal quotation marks omitted)). To do this, courts consider: (1) whether a defendant has been found liable for illegal conduct; (2) what level of scienter defendant acted with; (3) whether defendant’s past fraudulent acts were an isolated occurrence; (4) if the defendant has acknowledged his wrongdoing; and (5) whether future violations are likely. *SEC v. Nadel*, No. 11-cv-215, 2016 WL 639063, at \*5 (E.D.N.Y. Feb. 11, 2016), *report and recommendation adopted*, 206 F. Supp. 3d 782 (E.D.N.Y. 2016); *Cavanagh*, 155 F.3d at 135.

\*3 After consideration of these various factors, the Court finds that they all weigh in favor of enjoining the Entity Defendants, Shern, Guo, Lin, and Ma.<sup>3</sup> First, the Court has already found the individual Defendants liable on all claims, *see* ECF No. 363, and the Entity Defendants have defaulted. *See* ECF Entry, July 29, 2015.

Second, the Court has also found that all individual Defendants operated with a high degree of scienter during their time working with or for CKB. *See* ECF No. 363 at 32–33 (finding that Shern and Leung were aware of CKB’s fraudulent nature), 35 (finding that Promoter Defendants were aware that their claims regarding CKB were false). The Entity Defendants can be said to have operated with the same degree of scienter as their officers, if those officers were “acting within the scope of [their] apparent authority.” *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 424 n.4 (S.D.N.Y. 2007), *aff’d sub nom. SEC v. Altomare*, 300 F. App’x 70, 71 (2d Cir. 2008). There is no dispute that the Entity Defendants were controlled by Defendants Shern and Leung and used as a means to carry out the scheme. *See* ECF Nos. 244, 245, 327, 328. Thus, the scienter of Shern and Leung can be imputed to the Entity Defendants.

Third, this was not an isolated incident. The Court found Defendants regularly engaged in and/or promoted this fraudulent scheme over a period of two years. *See* ECF

No. 363 at 9–21 (discussing Defendants’ specific conduct and roles in the scheme over the period CKB was active).

Fourth, except for Santos<sup>4</sup> and Guo,<sup>5</sup> it is undisputed that “[n]o defendant has renounced his, her, or its misconduct,” ECF No. 460-2 at 12, and thus there is no evidence that those Defendants recognize the wrongful nature of their conduct.

Finally, the Court finds that there is a significant likelihood of future violations. Shern, Leung, Lin, and Guo have a history of being involved in other MLM schemes, and so it is reasonable to conclude that barring an injunction they could do so again. ECF No. 460-2 at 12–13. While no such evidence has been alleged for Defendant Ma, she has experience working in securities, something that other courts have found weighs in favor of granting injunctive relief. *See SEC v. Curative Biosciences, Inc.*, No. 18-cv-925, 2020 WL 7345681, at \*3 (C.D. Cal. Oct. 22, 2020) (citing *SEC v. Baccam*, No. 17-cv-172, 2017 WL 5952168, at \*9 (C.D. Cal. June 14, 2017) (finding that the defendant’s “more than a decade of experience in the securities industry” raised the possibility that he would engage in future misconduct)).

\*4 The Court finds that these factors all weigh in favor of granting the SEC’s requested injunctive relief. Accordingly, the Court will enter a permanent injunction enjoining Defendants WIN168 Biz Solutions Ltd., CKB168 Holdings, Ltd., CKB168 Ltd., CKB168 Biz Solution, Inc., Cyber Kids Best Education Ltd., Shern, Leung, Guo, Lin and Ma from further violations of Section 10(b) and Rule 10b-5 of the Exchange Act and Sections 5 and 17(a) of the Securities Act. The Court will also enter a permanent injunction enjoining Defendants Shern, Guo, Lin, and Ma from violating Section 15(a) of the Exchange Act.

### B. Conduct-Based Injunction

The Court has wide discretion to impose a conduct-based injunction in SEC actions. Here, the SEC argues that “Defendants’ egregious conduct and high degree of scienter, the scope of the fraud, their lack of contrition and their connection to MLMs” make such an injunction appropriate. ECF No. 460-2 at 14 (quotation marks omitted). For the same reasons laid out in Section II.A, *supra*, the Court finds this argument persuasive. Except for the letters from Defendant Guo, *see* ECF Nos. 463, 465, who does not specifically address this issue, the SEC’s Motion is unopposed. Therefore, the Court will enter a permanent injunction prohibiting Defendants

Shern, Leung, Guo, Lin, and Ma from offering, operating, or participating in any marketing or sales program involving a security.

### C. Disgorgement, Prejudgment Interest and Civil Penalties

#### 1. Disgorgement and Prejudgment Interest

While district courts have broad discretion both in determining whether to order disgorgement and in calculating the amount to be disgorged, *SEC v. Contorinis*, 743 F.3d 296, 301 (2d Cir. 2014), they may not enter “disgorgement awards that exceed the gains made upon any business or investment” and should “deduct legitimate expenses before ordering disgorgement.” *Liu v. SEC*, 140 S. Ct. 1936, 1949–50 (2020) (internal quotation marks and citations omitted). However, courts have recognized that “separating legal from illegal profits exactly may at times be a near-impossible task.” *SEC v. de Maison*, No. 18-cv-2564, 2021 WL 5936385, at \*2 (2d Cir. Dec. 16, 2021) (internal quotation marks omitted). Thus, “the amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation, and any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.” *Id.* (internal quotation marks omitted). Once the SEC establishes a reasonable approximation of the profits causally related to the fraud, the burden shifts to the Defendant to “clearly [ ] demonstrate that the disgorgement figure was not a reasonable approximation.” *Id.* (internal quotation marks omitted).

Here, the SEC has used Defendants’ verified accountings and back-office records to calculate the appropriate disgorgement totals. *See* ECF No. 460-2 at 15–19, *see also* ECF No. 47 (verified accountings), ECF No. 311-5 (Kam Lee declaration), ECF No. 460-3 (Supplemental Declaration of Devon Staren). It has asked for the architects of the scheme, Shern and Leung, as well as the Entity Defendants, to disgorge the proceeds of the illicit scheme, minus distributions. ECF No. 460-2 at 15–17; *see, e.g., SEC v. McGinn, Smith & Co., Inc.*, No. 10-cv-457, 2015 WL 12780597, at \*13 (N.D.N.Y. Feb. 17, 2015) (ordering a similar disgorgement). It has asked the Promoter Defendants to disgorge their commissions less the original investments they made before they could have known the scheme was fraudulent. ECF No. 460-2 at 17–18; *see, e.g., SEC v. Dang*, No. 20-cv-1353, 2021 WL

1550593, at \*6–7 (D. Conn. Apr. 19, 2021) (ordering a similar disgorgement). It has asked Santos to disgorge the payments she received from the scheme less her original investment. ECF No. 460-2 at 19. It has asked the Relief Defendants to disgorge their ill-gotten funds to which they have no legitimate claim, *see Nadel*, 2016 WL 639063, at \*27 (discussing when a relief defendant may be subject to disgorgement), and to each be jointly and severally liable with its associated Promoter Defendant for disgorgement of the funds transferred to that Relief Defendant so as to ensure the total disgorgement does not exceed the associated promoter’s actual proceeds. ECF No. 460-2 at 18–19; *see also SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996) (prohibiting disgorgement that exceeds proceeds); *see, e.g., Curative Biosciences*, 2020 WL 7345681, at \*7 (holding relief defendants jointly and severally liable with defendants for the amount transferred to each relief defendant).

\*5 The Court is satisfied that the SEC has established a reasonable approximation of the profits causally related to the fraud. No Defendant except for Santos has filed an opposition suggesting that the disgorgement figure is not reasonable.

Santos requests that her disgorgement amount be reduced by \$150,000 because CKB’s payment to her of \$150,000 was merely a repayment of her original investment of \$150,000. ECF No. 451 at 14. The SEC has already reduced its proposed disgorgement figure of \$667,231 by \$150,000 to account for this.<sup>6</sup> Santos does not assert that the SEC miscalculated the total funds CKB paid to her, nor does she contest the SEC’s contention in any other way. Therefore, the Court declines to grant Defendant Santos’ request for an additional \$150,000 reduction.

Santos further requests that her disgorgement amount be reduced by \$399,710 because she allegedly used this sum to develop a game titled Memory Max, which CKB intended to use as an educational tool for children in Hong Kong and China. *See* ECF No. 459 at 14–15. As noted above, courts are required to deduct legitimate expenses from disgorgement awards. *See Liu*, 140 S. Ct. at 1950. However, the Supreme Court has also carved out an exception to that requirement where the “entire profit of a business or undertaking” results from wrongful activity. *Id.* at 1945, 1950.

Santos has not provided any evidence that she used the funds CKB paid her for expenses incurred in developing Memory Max. Even if she could provide such evidence, however, the Court would decline to deduct the total of these expenses from the disgorgement award because Santos has failed to show that developing Memory Max

involved legitimate expenses. She offers no evidence that Memory Max was used as an educational tool by children, rather than a tool to solicit new investors in order to perpetuate the illegal pyramid scheme. She has already admitted she knew Memory Max was released for “sale” more than a year before it was complete. *See* ECF No. 252 ¶ 21. The Court therefore finds that any funds spent developing the game are “merely wrongful gains under another name.” *Liu*, 140 S. Ct. at 1950 (internal quotation marks omitted).

The SEC further requests that Defendants be ordered to pay prejudgment interest in addition to disgorgement. *See* ECF No. 460-2 at 20. The question of whether to award prejudgment interest in addition to disgorgement is left to the “broad discretion” of the district court. *SEC v. Westport Cap. Markets, LLC*, 547 F. Supp. 3d 157, 170 (D. Conn. 2021). It is a decision “governed by the equities, reflecting considerations of fairness rather than a rigid theory of compensation,” with the goal of “depriv[ing] the wrongdoer of the benefit of holding the illicit gains over time by reasonably approximating the cost of borrowing such gain from the government.” *Id.* (quoting *Contorinis*, 743 F.3d at 307–08). Courts generally consider the following when deciding whether to award prejudgment interest: “(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court.” *SEC v. Arias*, No. 12-cv-2937, 2021 WL 7908041, at \*7 (E.D.N.Y. Nov. 11, 2021) (quoting *First Jersey*, 101 F.3d at 1476). In cases such as this one, courts have often found that the equities weigh in favor of awarding prejudgment interest, and no Defendant offers a reason why prejudgment interest should not be awarded. *See, e.g., id.* at \*7 (ordering prejudgment interest to ensure defendants are not “unjustly enriched by an interest-free use of the funds they fraudulently obtained from investors”).

\*6 Additionally, the Court finds the SEC’s calculations to be reasonable. The SEC has properly accounted for: (i) Defendants’ frozen assets, *see SEC v. Razmilovic*, 738 F.3d 14, 36–38 (2d Cir. 2013) (finding that the SEC may not recover prejudgment interest on assets that were frozen pursuant to a Court order); (ii) Defendants’ initial investment, *see Liu*, 140 S. Ct. at 1949–50 (requiring disgorgement awards to be discounted by any initial investment); (iii) the additional time that has elapsed; and (iv) the IRS underpayment rate—a generally accepted rate of interest, *see Westport Cap. Markets*, 547 F. Supp. 3d at 171—to calculate prejudgment interest in this case. *See* ECF No. 460-2 at 20.

Accordingly, the Court finds:

- Defendants CKB168 Holdings Ltd., WIN168 Biz Solutions Ltd., CKB168 Ltd., CKB168 Biz Solution, Inc., Cyber Kids Best Education Ltd., Shern, and Leung are jointly and severally liable for \$178,749,545, consisting of:
  - disgorgement of \$137,238,985; and
  - prejudgment interest of \$41,510,560.
- Defendant Santos is liable for a total of \$883,680, consisting of:
  - disgorgement of \$667,231; and
  - prejudgment interest of \$216,449.
- Defendant Guo and Relief Defendant Rosanna LS Inc. are jointly and severally liable for \$5,133,651, consisting of:
  - disgorgement of \$3,979,867,
  - prejudgment interest of \$1,153,784.
- Defendant Lin and Relief Defendant Ouni International Trading Inc. are jointly and severally liable for \$2,359,315, consisting of:
  - disgorgement of \$1,893,114,
  - prejudgment interest of \$466,201.
- Defendant Ma is liable for \$975,274, consisting of:
  - disgorgement of \$975,274.<sup>7</sup>

## 2. Civil Penalties

In addition, the SEC seeks civil penalties against all Defendants except Guo. The Securities Act and the Exchange Act each grant the Court the authority to impose penalties for violations of these acts. *See* 15 U.S.C. §§ 77t(d), 78u(d)(3). There are three tiers of penalties that can be imposed. The third tier is the most severe, available when violations (1) involve “fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement” and (2) “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” *See Razmilovic*, 738 F.3d at 38 (citing 15 U.S.C. §§ 77t(d), 78u(d)(3)). When considering third-tier penalties “for each violation, the

amount of penalty shall not exceed the greater of [1] a specified monetary amount or [2] the defendant's gross amount of pecuniary gain." *Arias*, 2021 WL 7908041, at \*8 (citing *Razmilovic*, 738 F.3d at 38) (internal quotation marks omitted). In addition, "civil penalty statutes require that such awards be based on the pecuniary gain of each defendant and do not allow the penalties to be imposed jointly and severally." *Id.* (citing *SEC v. Pentagon Cap. Mgmt., PLC*, 725 F.3d 279, 287–88 (2d Cir. 2013)).<sup>8</sup> The "disgorgement amount is a helpful starting point for calculating that defendant's gross pecuniary gain." *Id.* (internal quotation marks and citation omitted).

\*7 Beyond these restrictions regarding the maximum penalty, the Court has broad discretion in setting the amount. *See Razmilovic*, 738 F.3d at 38. In exercising its discretion, the Court may consider the following factors: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *SEC v. Malik*, No. 15-cv-1025, 2016 WL 670032, at \*2 (S.D.N.Y. Feb. 9, 2016) (citing *SEC v. Tourre*, No. 10-cv-3229, 2014 WL 969442, at \*11 (S.D.N.Y. Mar. 12, 2014)); *see also SEC v. Haligiannis*, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007).

The Court has already taken most of these factors into account when discussing whether to grant a permanent injunction against Defendants in Section II.A, *supra*, and finds they weigh in favor of civil penalties.

#### ***i. Shern, Leung, Lin, Ma, and the Entity Defendants***

Shern and Leung egregiously orchestrated an illegal scheme which collected hundreds of millions of dollars from investors, most of whom suffered substantial losses on their investment. *See* ECF No. 363 at 26. Promoter Defendants Lin and Ma aggressively marketed the scheme to potential investors, even after they knew it was a fraud. ECF No. 363 at 35. Neither Shern, Leung, Lin, nor Ma have expressed remorse, nor have they refuted the SEC's calculations of what civil penalty is appropriate. ECF No. 460-2 at 12. Under these circumstances, a third-tier penalty based on the pecuniary gain of each Defendant is reasonable to deter future violations. *See, e.g., SEC v. Enrenkrantz King Nussbaum, Inc.*, No. 05-cv-4643, 2013 WL 831181, at \*6–7 (E.D.N.Y. Feb. 14, 2013).

The Court thus agrees with the SEC's recommendations and orders Defendants Shern and Leung to pay a penalty equal to ten percent of their joint and several disgorgement, or \$13,700,000 each. It will order the Entity Defendants, who were controlled and directed by Shern and Leung, *see* ECF Nos. 244, 245, 327, 328, to pay the maximum statutory penalty of \$775,000 for a corporation. 15 U.S.C. § 78u(d); 17 C.F.R. § 201.1001. It will order that Defendants Lin and Ma pay a penalty equal to their disgorgement—\$1,893,114 for Lin and \$975,274 for Ma.

#### ***ii. Santos***

Only Defendant Santos has requested that the Court reduce the SEC's requested penalty.<sup>9</sup> Her initial objections relate primarily to the egregiousness of her conduct and/or her degree of scienter. *See* ECF No. 459 at 10 ("[s]he made a mistake in judgment in her only foray into public companies and certain co-defendants took advantage of her naiveté"). Under Sections 5(a) and (c), and 17(a)(1) and (3) of the Securities Act, scienter can be proven through "strong circumstantial evidence of conscious misbehavior or recklessness." *See Novak v. Kasaks*, 216 F.3d 300, 307 (2d Cir. 2000). Santos admits in her opposition that she acted with a degree of recklessness sufficient to establish scienter. *See* ECF No. 459 at 15. It is true that she has shown contrition, and that should be taken into account. However, it appears the SEC has already taken Santos' cooperation and contrition into account by seeking the smaller statutory penalty rather than seeking a penalty equal to her disgorgement. *See* ECF No. 461 at 4 (noting the SEC is "seeking a reduced penalty of only \$160,000" as acknowledgement of "Santos' cooperation and acceptance of liability").

\*8 Santos' additional objections relate to her ability to pay. *See* ECF No. 459 at 11 ("The SEC's recommended penalty reflects a First World penalty scale that is detached from the reality of Ms. Santos' Third World situation."). However, she has not provided documentation to support that assertion. *See SEC v. Spongetech Delivery Sys., Inc.*, No. 10-cv-2031, 2015 WL 5793303, at \*11 (E.D.N.Y. Sept. 30, 2015) (imposing maximum third-tier penalties because, although the defendant claimed inability to pay, he "failed to make any showing regarding his actual financial condition" and did "not support[ ] his claims with any documentation"). The Court thus agrees with the SEC's request for the imposition of a one-time, third-tier statutory penalty. Therefore, the Court finds Defendant Santos is liable for a

\$160,000 penalty.<sup>10</sup>

SO ORDERED.

**All Citations**

Slip Copy, 2022 WL 3347253

**III. Conclusion**

For the foregoing reasons, the SEC's Motion is GRANTED. A separate final judgment will follow.

**Footnotes**

- 1 That Complaint included the Defendants named in this Order, as well as additional Defendants Heywood Chang, Toni Chen, Kiki Lin, Wendy Lee, and Heidi Mao, as well as Relief Defendants USA Trade Group, Inc., E Stock Club Corp., EZ Stock Club Corp., HTC Consulting LLC, and Arcadia Business Consulting, Inc. The Court has already entered Final Judgment against these additional Defendants. See ECF Nos. 253, 358, 359, 396, 397, 433, 455.
- 2 Santos has already consented to a permanent injunction. See ECF No. 252 ¶ 2.
- 3 No Defendant other than Guo has opposed the SEC's Motion for injunctive relief. See ECF No. 463.
- 4 Santos' contrition, while welcome, is irrelevant here as she has already consented to permanent injunctions. See ECF No. 252.
- 5 Since the SEC filed the Motion, Defendant Guo, proceeding *pro se*, filed two letters on the docket. See ECF Nos. 463, 465. In his first letter, he states "I am deeply remorseful for any harm I have caused others. I should have ma[d]e better informed [sic] about CKB before promoting it." ECF No 463 at 1. However, Defendant Guo then spends the rest of his response, and the entirety of his second letter, seemingly relitigating his culpability. The Court is not satisfied that these letters reflect recognition of the wrongful nature of his conduct.
- 6 The total amount that Santos was paid by CKB was \$817,231. See ECF No. 425-3 ¶ 5.
- 7 The SEC has not assessed any prejudgment interest against Defendant Ma, as her total frozen assets exceed the amount the SEC is requesting from her in disgorgement. ECF No. 460-2 ¶ 2.
- 8 In addition, "gross pecuniary gain may only include gains from frauds occurring within the five-year statute of limitations for civil penalties." *Arias*, 2021 WL 7908041, at \*8; see also *Gabelli v. SEC*, 568 U.S. 442, 446–48 (2013). As CKB's scheme began less than five years before the SEC initiated this action, this limitation is not at issue here.
- 9 Defendant Santos does not seek to waive the penalty, as she has already agreed in her Consent Agreement that the Court would impose some civil monetary penalty. See ECF No. 252 ¶ 3.

- 10 For violations occurring between March 6, 2013, and November 2, 2015, the maximum statutory penalty for natural persons is \$160,000 for a third-tier violation. See [17 C.F.R. § 201.1001](#), Table 1.

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End of Document

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# EXHIBIT 4

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21225**

**In the Matter of**

**DALIANG “DAVID” GUO,**

**Respondent.**

**PROOF OF SERVICE OF ORDER**  
**INSTITUTING PROCEEDINGS**

The Commission issued its Order Instituting Proceedings (“OIP”) in this matter on November 2, 2022. On or about November 3, 2022, the Office of the Secretary mailed by USPS a copy of the OIP to Respondent Daliang “David” Guo at a federal prison in Berlin, New Hampshire. Commission records obtained from the Bureau of Prisons indicate the Respondent is currently incarcerated there. Attached hereto as Exhibit A is a true and correct copy of the USPS certified mail receipt and tracking information, which shows that it was delivered on November 7, 2022.

Dated: November 14, 2022

Respectfully submitted,

/s/ Devon L. Staren

Devon L. Staren  
Daniel J. Maher  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
Tel: (202) 551-5346 (Staren)  
Tel: (202) 551-4737 (Maher)  
StarenD@SEC.gov  
MaherD@SEC.gov  
*Counsel for Division of Enforcement*

## CERTIFICATE OF SERVICE

I certify that on November 14, 2022, I caused a copy of the forgoing to be mailed by commercial carrier to Respondent David Guo.

/s/ Devon Leppink Staren  
Devon Leppink Staren

# EXHIBIT A

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Berlin, NH 03570

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November 5, 2022

OS Received 04/19/2023

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November 4, 2022, 7:51 pm

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**FAQs**

# EXHIBIT 5



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
100 F STREET, N.E.  
WASHINGTON, D.C. 20549

**DIVISION OF  
ENFORCEMENT**

**DEVON LEPPINK STAREN  
TRIAL COUNSEL  
DIRECT DIAL: (202) 551-5346  
EMAIL: STAREND@SEC.GOV**

November 30, 2022

**VIA U.S. POSTAL SERVICE**

Daliang "David" Guo  
Register Number: 86175-053  
FCI Berlin  
P.O. Box 9000  
1 Success Loop Road  
Berlin, NH 03570

Re: In the Matter of Daliang "David" Guo; Administrative Proceeding File No. 3-21225

Dear Mr. Guo:

We write in connection with the above-referenced case against you. As you may be aware, this follow-on administrative proceeding is predicated on an order of final judgment that was issued against you on August 12, 2022 in the case titled *SEC v. CKB168 Holdings Ltd., et. al.*, 13-cv-5584 in the U.S. District Court for the Eastern District of New York. (ECF No. 467.) You actively litigated that matter and we made several document productions to you through your lawyer at the time, John Golaszewski. Specifically, we provided documents to Mr. Golaszewski on or about June 19, 2014; September 5, 2014; November 13, 2014; and January 7, 2015. Our records indicate that these prior productions satisfy the requirements of Rule 201.230 of the SEC's Rules of Practice [17 C.F.R. § 201.230].

If you have any additional questions or wish to discuss this case further, please feel free to contact me.

Sincerely,

/s/ Devon Leppink Staren

Devon Leppink Staren  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
202-551-5346  
[starend@sec.gov](mailto:starend@sec.gov)

**OS Received 04/19/2023**

# EXHIBIT 6

Note:

My case manager did work in the campo recently. I do not know when he will come. I send my respond first, I will ask him to send you the certification that why I cannot comply with the electronic filing requirements.

The type machine was broken. I have to write with my hand.

Thank you!

Respondent, Daliang Guo TO SEC.

SEC. V. Daliang Guo

Case NO. 13-cv-5584

1. Background. p1~2
2. I was not the top in New York. p1~2
3. About the E-wallet point. p2~3
4. About the Leadership p4.
5. About obstruction of Justice. p5
6. About my Trial. p5~6
7. About my Sentence position p6~8
8. About my Sentence Hearing p8~14
9. About my appeal. p14~15
10. About my Self-defence. p15-16.

1.

1. Background:

I am fifty-nine years old. My friend and family describe me as a kind and thoughtful man; I would make the effort gently remove a spider from my home rather than cause it harm, or purchase a turtle from the local seafood market in order to take it home and set it free. As a devout Buddhist, my deep faith allows me to see the best in people. I'm vegetarian. There is a red heart sign on my ID card for donated organs. Sadly, my earnest nature and eagerness to please combined with my almost youthful naiveté, allow me to be easily manipulated by others. After my criminal case, I have been diagnosed with major depressive disorder with severely mentally ill. I had been in mental hospital for 3 times. I believe United Nations showcased CKB products. Hundreds of media outlets that the products good. The biggest company in China, Alibaba, invested CKB. I believed the founder Santose. She owns a big foundation in U.N. and U.N. promote the products of CKB in the worldwide teacher meeting. There were a lot of famous people support CKB. I'm so regret to join the CKB. I just want to do something good for the world. I really didn't know anything inside the CKB.

2. I was not the Top Sales in New York.

I was introduced by John Joe (a manager of a big company in New York) and Jason He (Ph.D degree

2.

in U.S.A). They earn more real money than me. Jason He get the same title with me. They are good friends of CKB founder before CKB Business and all the meeting and training in U.S.A was arranged by them. SEC did not charge them.

3. About the E-wallet point.

My initial investment was \$30,000. I brought in people, mostly family and friends. Most of the time I was in China taking care my father in the hospital. I couldn't see my father last eyes because my criminal case. I had visit two schools of CKB in China and its give me more confidence.

The real money went to CKB, the virtual E-wallet went to investor. The investor invested the E-wallet point to CKB again and again and earn more E-wallet point and prpt. point. You can earn a lot of E-wallet point even you do not sponsor anybody. Most E-wallet point come from their own investment. The E-wallet point is not real money. It's unfair to use the E-wallet point as real money to punish me. There are still a lot of E-wallet point in many investors back office in the CKB'S computer now. The SEC plus my family member's E-wallet point into my account. Every people believed the CKB would go public and E-wallet point would have high value in future.

3.

During the discovery the defence requested that government provide the back office data. The defence was provided with a drive that purported contained the raw data. But this was virtually inaccessible without the CKB operating system which was in Shern's control, and never provide the master database.

Shern had told Yao Lin: "The Government will never understand the database!"

The Part in this case is in the database. We just could use the E-wallet point to buy products to sell to some customers to earn a little money. Nobody could sell a lot of products. Most E-wallet have to invest again and again and earn more and more new E-wallet point. Most name in the program is not real people. That's why we can't find more victims. There was not one victims in my sentence meeting.

My total E-wallet point was about 2.6 million. I learn English in prison. I have no computer skill, I worked in Chinese restaurant before. My income in 2 years totally less 400,000, Most of the money used to return to the customer and business. I got stroke and seizure in prison. My family, my wife, my kids have a lot of disaster now. I can't help them. I'm a really poor man. I need help, mercy and justice.

4.

#### 4. About My Leadership.

The governments oversimplification of the complex sales network of CKB in the United States has created the misleading impression that I was important people to CKB. I just joined CKB earlier than other people. I was nothing more than a downstream seller of the CKB product.

As we learned at trial, I have no managerial or decision-making authority within CKB. My sales volume was inflated by those who joined after me.

As Wendy Lee observed at trial, there were many different groups or pods each doing "their own thing" to generate sales volume. Many of the sales figures attributed to the E-wallet was based on the virtual valuation generated by Sherrn. A large amount of real money was sent to Compan and CKB use the money to build 5 schools and to buy 9 companies.

The probation office concedes that because of CKB's accounting structure, "loss can not be reasonably determined". (PSR 154). There was no lifestyle presented at trial to establish that I was living lavishly. The opposite to be true. I lived modestly during the relevant. I have no air-condition in the kitchen. The officer in the NY Court know about that.

I object to the 4 level organizer/leader enhancement. Nothing could be more untrue especially given the fact that true master mind behind CKB was never charged with a crime.

5.

5. About obstruction of Justice Enhancement.

I object to the obstruction of Justice Enhancement. The Probation office contend that my failure to provide CKB back office to SEC amounts to obstruction of justice. It was a limited value because Shern failed to provide the operation system for the back office. It also appears that at the time of the SEC investigation I was frozen out of the back office by Shern. I provided what documents I could. I was not a participant in the months of recovered Wechat (Social Media) conversations between shen, chang, chen and others. It can not be said I knowingly joined in a conspiracy with them. This is especially true that it was shen who was true holder of the back office.

6. About my trail:

At Page 140, in my trail transcription, Ms. Kim, the Government lawyer said: "You will learn that CKB's investors rarely got any money from CKB directly for the commissions in their cash wallet or for the profit."

It's true. I'm also an investor, I also rarely got money from the Cash wallet.

Ms. Kim said at Page 334: "Don't think about the company. If there's no Salesman, there would be no Sales volume for the company"

The DNA of the CKB in in the CKB's back office — The black box.

6.

At page 714. Wendy said: "Guo didn't speak English and didn't use computer." "Different team had their own way of doing things." "I had a high title but I was not involved CKB's policy".

At p872, FBI agent said: "I know Guo had upline named John Joa."

At p1027~p1062: My lawyer Browns said: "where is the life style evidence that Guo was power player? why don't we have a witness: 'Guo talk to me, he lied to me'? FBI agent said: 'I don't know who change of CKB. I don't know where the headquarters are ...'. This is FBI. Is that the type of evidence that we're ... in a criminal case when a man's very life is on the line? — The SEC sat down and talked with Santos, why didn't FBI? ... Guo's SEC testimonial ... , Government has a lot of slicing and cutting and mixing. Can you really trust a case like this, when you are not getting the full information? As the court indicated, we have the best jury system in the world, and the founding father know that power accumulated in hand of prosecutors had the risk of being abused ... If anyone should be arrested, it should be Sherr. where is the evidence that Guo had secret bank accounts?"

7. About My sentence position From Federal public Defender.

Santos held herself out as an education missionary

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and former UN emissary whose vision was the education of children worldwide. She spoke at CKB events and on online video to her followers and future investors. Her presentations promulgated the myth of CKB as a company whose goal was the education of children based on cultural values central to the community.

Howard Shern was the master of the CKB universe.

I had no Leadership, Managerial or Executive Role within CKB. The government makes the unsubstantiated and baseless claim that I was the "the top promoter" at CKB. I was not in direct communication with the founders of CKB. I merely echoed the same CKB mantra which I learned from those who recruited me. (John Joa and Jason Me).

I object to the loss figure of more than \$305 million. Shern developed a sophisticated system to issue reward points and virtual currency in the seller's e-wallet. Many of the sales were discussions about the often inflated value of their virtual wallets. There was no lifestyle evidence presented at trial to establish that I was living lavishly. Again, the opposite appears to be true. I live modestly during the relevant.

I was not a top promoter. Nothing could be more untrue, especially given the fact that the true mastermind behind CKB were never charged with a crime. The defense was provided with a drive that purported contained the

8.

raw data, but this was virtually inaccessible without the CKB operating system which was in Shern's control and never provided.

Based on the factors under 18 U.S.C. § 3553(a), the defense submits that a sentence of 24-months' imprisonment.

I am deeply remorseful for any harm I has caused others and recognizes that I should have made myself better informed about CKB.

8. About My Evidentiary and Sentencing Hearing.

At page 24: Q: Did the FBI do a forensic evaluation of the metadata in the back office to determine if somehow Howard Shern had manipulated or changed the data that became the content of yours and the SEC's database?

A. (FBI agent): i'm not entirely sure.

page 28. Q. you did not make any specific finding that Mr. Guo had life-style evidence associated with substantial gains; isn't that true?

A. I think he made in one statement that somebody showed up at hotel room with a million dollars in cash. He showed cash in his his youtube videos.

[ My explain to my Lawyer and Government many times. Q. Somebody in china have a Group about 40 people

9.

in china. They collected money from their family member and friends and they have a meeting in the hotel. It's about one million chinese yuan, not dollars. It's about equal about 100 thousands more dollars. They get together to send the money to CKB in Hong Kong and ~~that~~ they can save the transaction fee. We can find in the Government report that a lot of people send money to CKB in group. We will understand this situation from the data base in the CKB office. The real money go to CKB that why just in 2 years they can build up 5 schools in china, Buy a company and created many products and so on.

I showed cash in the youtube videos just about \$2000 in a small white envelope.

FBI had talk to John Joo. He was my upline and he make more money than me. He organize all the meeting in New York and Los Angeles. I don't know why he had no civil and criminal charge.

Q28. Q. What I'm asking you is what did you specifically find in the course of your investigation. Did you go to Mr. Guo's home in New York?

A. I did not, no.

Q. - Did you send an agent to Mr. Guo's home?

A. I don't know whether or not we did.

Q: -- do you recall the testimony at trial

10.

that a lot of people were trying to inflate the value of their e-wallet so they could convert that evaluation into future stock shares?

A. I'm not sure I understand what you're saying.

Q. Let me ask you a different and perhaps better question. ... the PRPT point system, was generated by Howard Shern out of Hong Kong; isn't that true?

A. I don't know who generated. but this points equated to a cash value when you looked in the back office.

[ my explain: The cash value is estimate about the Stock share in future ] [ It's not value at this time ].

P32. A. ... you got your own commissions in to your e-wallet which is what they wanted.

[ my explain: That's true: Every people use the false name to invest the e-wallet again ~~and~~ and again and earn more and more e-wallet point ].

P35. The Court: did you understand it?

The Defendant: there were a lot of errors in the PSR report.

P35-48. Mr. Brown:

the codefendants received a year, two years.

I think this case is unique. This is not a typical pyramid scheme despite the government's efforts to paint it that way.

It was rooted in education, and Chinese culture. It was known as Cyber Kids Best. It promoted character, knowledge, and balance. ... you're going to be doing something good for children and you're going to be educating your community.

... I think perfectly, how Mr. Guo could find himself in a situation where he thinks he's doing something good.

If Mr. Guo is guilty, he's guilty is being a promoter but he's also like everyone else in his situation equally misled by the company itself, Your Honor.

Mr. Guo joined the company earlier in time does not make him more culpable than the people who joined downstream and were engaged in activity that was not foreseeable to him.

So I think that that's one of the ultimate question in a case that's this complex and this layered is how do we determine culpability?

... economic harm. well, what's the loss? what did the victims loss in this case?

We don't have any concrete evidence of direct economic victim loss directly attributable to Mr. Guo.

The government relies on this back office that we got ... that they got directly from Shern but that's of dubious provenance. Your Honor, when Shern is

on wechat talking with other codefendants about how they're going to manipulate the back office data. Mr. Guo was never a part of those conversations.

There's no lifestyle evidence, there's no concrete independent evidence aside from this dubious, mysterious black back office that the government is trying to hang its hat on that directly connects Mr. Guo to ill-gotten gains, your Honor.

The government is trying to assign co-conspirator liability in a complex, multi-level marketing scheme that ranged from Hong Kong to Canada to Japan to the United States -- the SEC says 65,000. The FBI is saying 10,000 individuals involved.

And the government, the prosecutor, the agent wants to say: well, Mr. Guo, he's responsible for half of all that based on what we determined from the back office.

Howard Shern, after he was held in contempt by the SEC, sent a locked hard drive that didn't contain an operating system. It was just raw data.

Who knows where that raw data came from? We knew that Howard Shern was trying to avoid going in front of the SEC.

The raw data -- and according to the SEC analyst's declaration, there are millions and millions of fields that were part of this -- the content of this information was undigestible.

13.

So we have this black box that the government is relying on to attribute ~~loss~~<sup>Gain</sup> to my client.

This is from Shern himself, the main architect of this entire worldwide fraud who's never been brought to justice.

I think for lack of a better word from my humble perspective.

The government wants a leadership role enhancement. The trial testimony was clear that he had no leadership role.

I think the back office is the Rosetta stone. It's the Rubik's cube. It's the black box. -- the secret to CKB is hidden in the back office, in the true back office.

Where were those funds transferred? Where did all the money go? It went to Shern in Hong Kong. It didn't go to Mr. Guo.

But the back office is really the troubling heart of this case.

... that there issues regarding the e-wallet and whether that was virtual money or how those monies were generated.

... as well as under 3553, the sentence that government is asking for is far, far greater than necessary to further the interests of justice.

Mr. Guo has learned his lesson. He will never do this again.

page 58:

page 54. Mr. Guo: during two years period, I even haven't purchased one new furniture. My family, eight of us, we don't even have a sofa. We have no dining room. In the kitchen, we don't even have an ~~AC~~ A.C. I have a small and broken dining table, not even enough to accommodate my whole family.

We also didn't have the money to hire a babysitter. My wife's ex-husband pays \$3000 per month to raise for the children. I also reported this as part of my CKB income.

→ In the beginning I was provided with a free civil attorney and she told me if I reported more income, then I can avoid the dreadful ~~new~~ SEC hearing. She said if I speak one thing wrong, I might become mad or end up being in jail.

I feel so sad I trust CKB too much. I have no ability to invest in the company deeper.

9. The issues my direct appeal:

- 1). Insufficiency of the evidence for counts 1, 3, 6-7, 9, 11-12 to sustain convictions;
- 2). Insufficiency of the evidence for count 3 concerning the wire transfer of \$47,000;
- 3) District court incorrectly charged the jury on Pinkerton's requirement;
- 4). District court committed abused its discretion

15.

in excluding a statement made by co-defendant Tonichen when she was arrested; and

5. District Court erred in imposing 4-level role in the offense enhancement.

10. About My Self-defence on pre-trial report :

Most e-wallet point being repeatedly invested. We can see in the SEC report that Kiki Lin loaned a 180,000 E-wallet point to somebody, she only took back a few pieces of clothing from her friend. The 180,000 E-wallet point can create a large number of fake heads and new E-wallet point and prpt, and to help more people to a higher level. I also lent a lot of virtual E-wallet point to help downlin up grade, but I didn't take anything from anyone else. This is one of the reasons why so few people have lost their money.

The company's commission is issued by virtual E-wallet points. Most of the virtual E-wallet points are returned, loaned, re-invested and so on.

I have only a very small part of the virtual points into real money. It's not enough to maintain basic living and business expenses.

He Guozhi, Pang Xingmin, Ms Hu, Chen Ai Xin have proof letter to my lawyer that I ~~refund~~ refund

16.

Cash to them. The CKB no refund money after one week. I refund money to many people. That's why I haven't bought a new piece of furniture. I don't have a sofa at home. My wife drives an old car more than 10 years old. ~~any~~ Chang admitted at the trial that he didn't have ~~any~~ contact method with me. What I said to Lee for a few minutes was the basic rule of the company.

I stopped the business after SEC indicted. I always believed the company would go public in 2014 to solve all problems. When the company has negative news, there is more positive news. Shern said the CKB had passed the Hong Kong government's investigation and everything was fine. CKB ready to go to public.

Lee admitted at the SEC hearing that I rarely answer her phone calls.

The CKB founded the CKBmax Group is because CKB buy ~~a~~ another 9 companies.

So far only one people complained to me for \$1000. There are a lot of CKB member write letter to my lawyer that I am a good people. They just believe the CKB company.

There's a lot of story I want to say. My English no good. I just began to learn English in prison.