

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ZHAOYIN WANG  
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,  
AND ZHEJIANG BETA PHARMA  
CO., LTD.,  
Defendants.

Civil Action No. 3:14-cv-01790-VLB

MAY 11, 2015

MEMORANDUM IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISQUALIFY OPPOSING COUNSEL

Defendants' motion to disqualify attorney Jonathan Katz from representing plaintiff Zhaoyin Wang in this action lacks merit and should be denied. In their motion, defendants allege that Katz' representation violates Rule of Professional Conduct 1.9 because of his consultation with Attorney Lance Liu, whom defendants maintain acted as general counsel to defendant Beta Pharma, Inc. ("Beta Pharma") from July 2011 to November/December 2012. Defendants contend that Liu's prior representation of Beta Pharma has given him access to confidential information that he may use in this matter to the detriment of Beta Pharma, his former client. In turn, defendants contend that because Katz has consulted with Liu, Katz has been "infected" by Liu's alleged conduct and thus must be disqualified from representing plaintiffs in this action.

However, under the precedents established by the United States Court of Appeals for the Second Circuit and the United States District Court for the District of Connecticut, defendants have failed to demonstrate that Lance Liu's prior representation of defendant Beta Pharma was substantially related to Katz's

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current representation of plaintiff Wang. Further, defendants have not demonstrated that Liu had access to relevant privileged information in the course of any prior representation of Beta Pharma. Nor have defendants offered evidence that Katz received confidential or privileged information from Liu relevant to the claims made by Wang. Finally, defendants have made no showing that the balancing of interests required by the Second Circuit mandates disqualification. Rather, the balancing of the relevant, competing interests weighs in favor of denying defendants' motion to disqualify Katz.

**I. FACTUAL BACKGROUND**

Defendant Beta Pharma is a privately owned corporation engaged in research, development and marketing of pharmaceuticals. At the time of the events at issue in this case, defendant Don Zhang ("Zhang") was the majority stockholder and President of Beta Pharma. (Complaint at ¶¶1 – 3). In approximately 2002 and 2003, Beta Pharma scientists invented, patented and synthesized "Icotinib," a molecule that showed promise as a treatment for non-small cell lung cancer, and in 2002 Beta Pharma formed Zhejiang Beta Pharma Co. Ltd. ("Zhejiang Beta Pharma"), a privately owned corporation organized under the laws of the Peoples Republic of China. Zhejiang Beta Pharma was a joint venture to which Beta Pharma contributed the patent rights to Icotinib, and received, in return, a 45% interest in Zhejiang Beta Pharma. At all relevant times, defendant Zhang was Vice-President of Zhejiang Beta Pharma and one of its directors. (Complaint at ¶¶4 – 8). Zhejiang Beta Pharma has successfully developed Icotinib as a safe and effective treatment for non-small cell lung cancer, and now markets that compound in China as a prescription drug under the brand name "Conmana."

Plaintiff, Zhaoyin Wang, is a medicinal chemist who earned his Ph.D. in organic chemistry at Yale University. Wang's area of research is the discovery of

new drugs, and as of May 2013, he is a named inventor on 38 granted United States patents. (Wang Declaration at ¶3) (Exhibit A). As alleged in his complaint, Beta Pharma began negotiations with Wang from its principal place of business in Connecticut. In March of 2010, plaintiff and Don Zhang (on behalf of the Beta Pharma defendants) both signed a “Partnership Offering to Dr. Zhaoyin Wang by Betapharma, Inc.,” which is attached as Exhibit A to plaintiff’s complaint. (Wang Declaration at ¶4).<sup>1</sup> Under the agreement, plaintiff was to go into business with Beta Pharma, as well as to perform professional services for the company, for which plaintiff was to receive valuable consideration including a salary of 850,000 Chinese RMB yuan per year (about U.S. \$140,000 per year), 2 million shares or about 2% of the stock in BP, and 3 million shares or 1% of the stock in ZBP. (Complaint at ¶¶10-11).

In reliance on the promises contained in the Partnership Agreement, as well as defendants’ false and misleading statements and material omissions, plaintiff formed Beta Pharma Canada, Inc. (“BPC”) to do drug discovery research in Quebec, Canada. (Wang Declaration at ¶5). BPC was a Canadian corporation owned 51% by plaintiff and 49% by defendant Zhang, into which plaintiff Wang invested significant amounts of money and effort. (Complaint at 11). In addition to forming BPC, performing drug discovery research and developing new medicinal molecules for treatment of cancer and inflammatory disease at BPC,

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<sup>1</sup> As alleged in plaintiff’s complaint, defendants made several false and misleading statements to Wang in order to convince and induce him into entering this partnership agreement. When defendants made these inducing statements, they knew, or should have known that they were patently false. Additionally, to further persuade plaintiff to enter into a business agreement with them, Beta Pharma and Zhang failed to disclose material facts and information to plaintiff that would have impacted his decision to enter into any agreement with defendants. See, e.g. Complaint at ¶11.

Wang worked with Beta Pharma to develop Icotinib and to reinforce the Icotinib patent, and did other business to advance BPC, Beta Pharma and defendant Zhang. (*Id.*). Because defendants failed to perform under the agreement, plaintiff has brought claims for breach of contract, negligent misrepresentation, fraudulent misrepresentation, breach of fiduciary duty, and declaratory judgment.

Attorney Lance Liu performed legal work for defendant Beta Pharma from approximately late 2011 to November of 2012. (Affidavit of Lance Liu at ¶¶ 4 – 7; 12; 16) (Exhibit B).<sup>2</sup> There is dispute between Liu and Beta Pharma about when Liu commenced performing legal work for Beta Pharma. Liu avers that his legal work for defendants began in December of 2011 and concluded on November 3, 2012. (Liu Affidavit at ¶¶12; 16). For its part, Beta Pharma contends that Liu performed legal work beginning in July of 2011 and, although it admits that Liu terminated his representation in November of 2012, Beta Pharma contends that Liu continued to be involved in defendants' legal issues through December of 2012. (Affidavit of Don Zhang at ¶6) (Exhibit A to defendants' Motion to Disqualify).

Liu's relationship with Beta Pharma and defendant Zhang did not begin as legal representation. Rather, in July of 2011 Liu began discussions with Beta Pharma about collaborating on developing generic drugs as a consultant or business partner. (Liu Affidavit at ¶¶ 4 – 6). In connection with that collaboration, Liu and Beta Pharma entered into a "Mutual Non-disclosure and Non-use Agreement," dated July 26, 2011. A plain reading of this document demonstrates that its clear purpose is to facilitate the transfer of technology and scientific

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<sup>2</sup> Defendant Beta Pharma brought an action against Liu in the Superior Court of New Jersey Chancery Division, Mercer County. The action, Docket No. C-46-14, sought the return of certain documents and files that Beta Pharma alleged were in Liu's possession. Attorney Liu filed his affidavit in support of his opposition to Beta Pharma's motion for preliminary injunction in that case.

development information between the parties. It does not address the provision of legal services. (Exhibit A-1 to defendants' Motion to Disqualify).

Although Liu and Beta Pharma had drafted a collaboration agreement to develop generic drug products by August of 2011, Beta Pharma then proposed to Liu that he "handle certain legal issues with payment deferred because of Beta Pharma's liquidity issues." (Liu Affidavit at ¶¶ 6 – 7). Liu averred that, "[i]nitially I declined because my main interest with Beta Pharma was getting into generic drug business and I did not want to complicate the relationship." (*Id.* at ¶7). However, Liu agreed to perform legal work for Beta Pharma after defendant Zhang advised him that "the liquidity at Beta Pharma was only temporary and that I could help Beta Pharma to improve its liquidity problem by taking on some legal work on a deferred payment basis." (*Id.* at ¶8). To that end, Liu attested that "[b]etween December, 2011 and November 3, 2012, I performed legal work for Beta Pharma relating to patent applications, leasing, employee relations, and corporate issues." (*Id.* at ¶12).

Defendant Zhang asserts that Liu had access to broad categories of Beta Pharma corporate information such as "research projects, business contracts, investor information, financial information, tax filings and related information, employee information and settlements, and proposed stock valuations," as well as intellectual property issues, corporate issues, employment issues, stock sale issues, tax issues, and real estate issues. (Zhang Affidavit at ¶12).

With regard to plaintiff Wang, Zhang avers that Liu "counseled Beta Pharma on the purported agreement between Plaintiff and Beta Pharma from March 2010 (the '2010 Agreement'), including issues related to Beta Pharma Canada ('BPC'), a Canadian company; and a possible revision to the 2010 Agreement." (*Id.* at ¶13). Zhang offers assiduously redacted and edited e-mail correspondence among himself, plaintiff Wang, Liu and Jirong Peng, Ph.D., Vice-

President of Beta Pharma, to buttress this contention. (Id. at ¶¶14-15, Exhibits A4-A5). Zhang further maintains that “Liu also reviewed the 2010 Agreement in September 2012 and provided legal advice to Beta Pharma in connection with BPC and associated tax issues.” (Id. at ¶16).

Notwithstanding defendant Zhang’s statements, a full reading of the e-mail correspondence among Zhang, Wang, Peng and Liu demonstrates that Liu, in fact, did no work for the Beta Pharma defendants regarding revision of the 2010 Agreement. Indeed, the purported “revision” of Wang’s 2010 Agreement, in which Beta Pharma claims Liu was involved, was in actuality an effort by plaintiff Wang to obtain defendant Zhang’s signature on a tax document necessary under Canadian tax laws regarding BPC. Additional factual information is supplied and discussed, infra.

Katz began representing plaintiff Wang in late September, 2014 when Katz and Wang entered into a representation agreement. (Affidavit of Jonathan Katz ¶4) (Exhibit C). By that time, the New Jersey Superior Court had entered the order appended to defendants’ motion that enjoined Liu from communicating with Katz.<sup>3</sup> Even before the New Jersey order, however, Lance Liu never participated in this lawsuit on behalf of plaintiff Wang, has not had any responsibility whatsoever for the conduct of the litigation, nor has Katz ever

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<sup>3</sup> Although Katz is not a party to that order, he has had no had no communications with Liu after receiving the order, except to e-mail Liu in connection with a Connecticut Superior Court postponement in which Liu had an appearance. Katz e-mailed Liu on October 6, 2014 to advise him that a proceeding scheduled in Xie v. Beta Pharma had been postponed by the court, as follows:

Lance, Per attached court orders there are no proceedings before Judge Blue today, 10/6/14.

Thanks, Jonathan  
(Katz Affidavit at ¶28).

consulted him concerning this lawsuit. (Katz Affidavit at ¶ 27); (Wang Declaration at ¶¶19-20).

Katz currently represents plaintiff Guojian Xie, Ph.D. in a lawsuit pending in the Connecticut Superior Court alleging breach of contract and other claims against Beta Pharma and Zhang. (Katz Affidavit at ¶5). Dr. Xie's case against Beta Pharma and Zhang was initiated in Connecticut Superior Court by Attorney Thomas Flanagan in late December 2012, and was pending for nearly one year prior to the time Katz' firm, Jacobs & Dow, LLC, entered an appearance on Dr. Xie's behalf on November 25, 2013. Attorney Donald Altschuler represented defendants. (Id. at ¶6). Katz and Liu met when Dr. Xie brought Liu to a meeting on October 30, 2013. At that time, Dr. Xie informed Katz that Liu was helping him with some personal matters. (Id. at ¶7). By the time of this October 30, 2013 meeting, Katz had become aware that Dr. Xie already had a pending case against Beta Pharma and Zhang, and that Attorney Altschuler represented defendants Beta Pharma and Zhang. (Id. at ¶8).

In connection with his representation of Dr. Xie, through non-privileged sources, Katz became aware that Beta Pharma, through defendant Zhang, had sold stock in Zhejiang Beta Pharma to certain investors. (Id. at ¶9). In March of 2014, Liu brought to Katz' attention that some investors were interested in bringing lawsuits against Beta Pharma and Zhang in connection with those stock transactions. (Katz Affidavit at ¶10). Liu then informed Katz that he would communicate with those investors about whether any were interested in retaining Jacobs & Dow, LLC to bring suit against Beta Pharma and Don Zhang. (Id. at ¶11). Liu acted as contact between Katz and the stockholders who lived in China. In particular, in view of his facility with the Chinese language, Liu transmitted representation agreement to the stockholders, and transmitted the completed

representation agreements back to Jacobs & Dow.<sup>4</sup> Liu also transmitted the investors' stock purchase agreements to Katz for review, as well as certain e-mails between the investors and Don Zhang discussing Beta Pharma's repurchase of their shares. (Id. at ¶12).

None of these documents were Beta Pharma internal documents. None were marked confidential, and none are attorney-client privileged between Beta Pharma and its lawyers. (Id.). Further, after receiving these initial documents, Katz has dealt directly with all of the investors that he represents, and Liu's role as contact has ceased. (Id.). Katz is currently representing these investors in a case alleging breach of contract and various torts against Beta Pharma and Zhang pending in the United States District Court for the District of Connecticut as Shao, et al. v. Beta Pharma, et al. Docket Number 3:14-cv-01177-CSH. (Id. at ¶5). Liu has not participated with Katz in representing the Shao investors, nor did he have any responsibility for the conduct of that litigation. (Id. at ¶24).

On May 14, 2014, plaintiff Wang e-mailed Liu in connection with finding a lawyer to sue Beta Pharma. (Wang Declaration at ¶14 and Exhibit C thereto). Liu thereafter e-mailed Katz a copy of plaintiff Wang's 2010 partnership Agreement with Beta Pharma. That e-mail read, in its entirety, "Please see the enclosure." It contained no other documents. (Katz Affidavit at ¶15). On May 15, 2014, Katz sent Liu an e-mail for delivery to Wang, attaching a representation agreement and a questionnaire. (Id. at ¶16-18). Katz' e-mail to Wang did not concern any confidential Beta Pharma internal matters, or any activity during the period when Liu represented Beta Pharma, from roughly July, 2011 to November, 2012. (Id. at

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<sup>4</sup> Jacobs & Dow agreed with Liu that he would be entitled to a forwarding fee of 25% of the contingent fee, which constituted a referral fee. (Id. at ¶14).

¶17). Furthermore, Katz and Liu did not discuss Wang in person, nor did Liu give Katz any documents concerning plaintiff Wang. (Id. at ¶17).<sup>5</sup>

Although plaintiff Wang received Katz' May 15, 2014 e-mail and attached representation agreement, he took no action – he did not communicate with Katz at that time, nor did he communicate further with Liu at that time. (Wang Declaration ¶¶15-16); (Katz Affidavit at ¶19).

In connection with Dr. Xie's case in Connecticut Superior Court, in December of 2012, Katz served an interrogatory on Beta Pharma asking them to identify their lawyers in order to discover the identity of counsel who had prepared and managed Beta Pharma's stock option plan. Beta Pharma did not respond to that interrogatory until six months later, on June 23, 2014. Their response identified Lance Liu as having been their general counsel. (Id. at ¶15). Katz's review of the June 23, 2014 interrogatory responses was the first time that Katz became aware that Lance Liu had served as Beta Pharma's general counsel. (Id. at ¶21).

Plaintiff Wang had no other contact with Katz, either directly or indirectly through Lance Liu, until approximately September 15, 2014. (Wang Declaration at ¶19). Wang personally contacted Katz himself, and the two negotiated a written contingent fee agreement which Wang signed on September 22, 2014. (Id.). Liu was not involved with plaintiff Wang's discussions with Katz, and the representation agreement does not provide for payment of any forwarding fee. (Id.).

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<sup>5</sup> Katz and Liu also had brief phone conversations on May 14 and 15, 2014, in which Katz only had a vague recollection of any conversation with Liu about plaintiff Wang. (Katz Affidavit at ¶16). At the time of these conversations, however, Katz had no knowledge that Liu had ever represented Beta Pharma. (Id. at ¶17).

The representation agreement between Wang and Katz was fully executed and returned to plaintiff on September 30, 2014. (*Id.*). See also Katz Affidavit at ¶26.<sup>6</sup>

Liu has never provided Katz with any confidential, privileged or non-public information concerning the Beta Pharma defendants. (Katz Affidavit at ¶25). Indeed, Liu himself has certified, under oath, that “I did not disclose [or] identify any information regarding my representation of Beta Pharma and/or Beta Scientific to any lawyer or any person or entity in connection with any claim or potential claim or complaint against Don Zhang, Beta Pharma, Inc., or Beta

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<sup>6</sup> Although defendants submit that plaintiff was being pressured to commence a lawsuit against the Beta Pharma defendants, citing an e-mail from plaintiff to defendant Zhang dated May 24, 2014, a review of the entire e-mail thread, which consisted of approximately 25 e-mails, demonstrates that Beta Pharma has taken this statement out of context. As plaintiff explained in paragraph 17 of his affidavit:

“I have reviewed my email to Don Zhang of May 24, 2014. Beta Pharma has taken this out of context. It is part of a long thread of email communication between Don Zhang and me, consisting of about 25 emails between May 14, 2014 and July 14, 2014, titled, ‘Legal Action against you and BetaPharma US.’ The entire communication is part of the court record as Document 51, and is attached here as Exhibit D. I was attempting to avoid litigation. I wrote to Dr. Zhang on May 16, 2014 (email 3 in the thread):

I think you and I will also have to find a solution/decision for our partnership or my employment agreement with you/BetaPharma. We simply cannot ignore all of the issues and drag this on for too long. I hope we can reach an agreement/settlement without legal proceeding, which I would reserve as the last resource.

On May 24, 2014, in email 6, I wrote, ‘I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney.’ The pressure I was feeling was entirely my own, from having to decide whether or not to sue my business partners Zhang and Beta Pharma. Attorney Katz never pressured me to sign a representation agreement. Attorney Lance Liu never pressured me to sign a representation agreement. No other human being ever pressured me to sign the attorney service agreement.”

Pharma Scientific, Inc. except as discussed in paragraph 4 above.” (First Supplemental Certification of Lance Liu at ¶13) (Exhibit D).<sup>7</sup>

## II. LEGAL STANDARD FOR MOTIONS TO DISQUALIFY OPPOSING COUNSEL

A decision in this District has recently considered the standard of proof necessary to disqualify an attorney from representing a party. In Ardemasov v. Citibank, No. 3:12cv1570, 2014 WL 1614165 (D.Conn. April 23, 2014) (Haight, J.), the Court noted that a district court has “substantial latitude” to require disqualification. Id. at \*5 (citing United States v. Zichettello, 208 F.3d 72, 104 (2d Cir. 2000)). In considering whether disqualification is necessary, courts balance a client’s right to freely choose counsel with the need to preserve the highest standards of the profession. Id.<sup>8</sup> The focus of the disqualification inquiry is whether the attorney’s conduct would tend to “taint” the underlying trial. Id. (citation omitted).

As the Court recognized in Ardemasov, the party moving for disqualification bears “the heavy burden of proving facts required for disqualification.” Id. (quoting Evans v. Artek Sys. Corp., 715 F.2d 788, 794

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<sup>7</sup> Paragraph 4 of Liu’s certification states: “I did not disclose any Protected Information to any other party, except for the following disclosures permitted under RPC 1.6: (a) disclosures that were impliedly authorized during the representation in order to carry out the representation; (b) disclosures to Jonathan Katz in his capacity as my attorney in order to obtain legal advice relating to my potential claims against Beta Pharma, Inc. and Don Zhang; and (c) disclosures to my attorneys in this case in order to establish my defense to plaintiff’s civil claims.” (Exhibit D).

<sup>8</sup> See Rodriguez v. City of New Haven, 214 F.R.D. 66, 68 (D.Conn. 2003) (“There is a particularly trenchant reason for requiring a high standard of proof on the part of one who seeks to disqualify his former counsel, for in disqualification matters we must be solicitous of a client’s right freely to choose his counsel, a right which must be balanced against a need to maintain the highest standards of the profession.”) (quoting Evans v. Artek Systems Corp., 715 F.2d 788, 791 (2d Cir. 1983)).

(1983)). Further, “[i]n general, the Second Circuit ‘disfavors motions to disqualify because of the potentially adverse effect on a client’s right to engage counsel of his or her choosing, and because such motions are often made for tactical reasons.’” Id. (quoting Rodriguez, 214 F.R.D. at 68). See also Board of Education of City of New York v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979) (acknowledging that the Second Circuit’s reluctance to disqualify attorneys “probably derives from the fact that disqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and that disqualification motions are often interposed for tactical reasons. . . . And even when made in the best of faith, such motions inevitably cause delay.”) (citation omitted).

Disqualification of a party’s chosen counsel is viewed as a “drastic measure.” Ardemasov, 2014 WL 1614165 at \* 5 (citing First Interregional Advisors Corp. v. Wolff, 956 F.Supp. 480, 489 (S.D.N.Y. 1997)). Accordingly, and because motions to disqualify are generally disfavored in this Circuit, such motions are subject to “fairly strict scrutiny.” Id. at \*5 n. 8 (citing Lamborn v. Dittmer, 873 F.2d 522, 531 (2d Cir. 1989)). See Ardemasov, 2014 WL 1614165 at \*12 (“The Court recognizes that ‘[i]n view of their potential for abuse as a tactical device, motions to disqualify opposing counsel are subject to particularly strict scrutiny.’”). See also Norris v. City of New Haven, No. 3:04cv543, 2006 WL 2567866 (D.Conn. Sept. 5, 2006) (Kravitz, J.) (noting that “[b]ecause of a concern that such motions may be used for tactical reasons, and in order to safeguard the interests of clients in selecting the lawyers of their choice, the Second Circuit has emphasized that a party moving for disqualification carries a heavy burden, and for this reason, courts should approach motions to disqualify with caution.”).

### III. ARGUMENT

- A. Defendants have failed to sustain the heavy burden of demonstrating that the subject matter of Liu's prior representation of Beta Pharma is substantially related to the issues in the present lawsuit.

Defendants claim that Katz must be disqualified because he has been "infected" by the conduct of Lance Liu since Liu has "switched sides" in this litigation and is now in a position to use confidential information obtained during his representation of Beta Pharma to that party's disadvantage in this litigation. In support of their claim, defendants cite Goldenberg v. Corporate Air, Inc., 189 Conn. 504, 512-13 (1983) for the proposition that disqualifying conduct on the part of one attorney is sufficient to disqualify another attorney who, at a minimum, consults with that attorney.

In particular, defendants claim that Liu substantively consulted with Katz regarding plaintiff Wang and this litigation, and that this consultation violates Rule 1.9 of the Rules of Professional Conduct of the State of Connecticut which prohibits conflicts of interest relating to representation of a client whose interests may be adverse to those of a prior client.<sup>9</sup> Defendants claim that because Liu's

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<sup>9</sup> Rule 1.9 provides: (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9 (c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a

position as Beta Pharma's general counsel from July 2011 to December 2012 allowed him to receive confidential information about Beta Pharma and about its stock transactions, contracts, taxation and employment issues, he would be disqualified from representing plaintiff, and that this disqualification must be imputed to Katz as plaintiff's counsel in this case.

Thus, it is clear that, in order for Katz to be disqualified, defendants must shoulder the heavy burden of proving facts showing that Liu's actions require disqualification given that defendants are relying on Liu's conduct to have "infected" Katz. Specifically, defendants contend that Liu's actions violate Rule 1.9, supra, which addresses successive representation. The Second Circuit has reasoned that "[a]lthough our decisions on disqualification motions often benefit from guidance offered by the American Bar Association (ABA) and state disciplinary rules . . . such rules merely provide general guidance and not every violation of a disciplinary rule will necessarily lead to disqualification. . . ."

Hempstead Video, Inc. v. Village of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) (internal quotations and citations omitted).<sup>10</sup> Rather, disqualification is warranted

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client, or when the information has become generally known; or  
(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

<sup>10</sup> Rule 83.2(a) of the Local Rules of the District of Connecticut provides that: "[o]ther than the specific Rules enumerated in Rule 83.2(a)(2) of these Local Rules, this Court recognizes the authority of the 'Rules of Professional Conduct,' as approved by the Judges of the Connecticut Superior Court as expressing the standards of professional conduct expected of lawyers practicing in the District of Connecticut. Any changes made by the Judges of the Connecticut Superior Court to the Rules of Professional Conduct shall not be binding in the District of Connecticut, unless such changes are expressly adopted by order to the District Judges. The Clerk shall report to the Judges any such changes. The interpretation of said Rules of Professional Responsibility by any authority other than the United States Supreme Court, the United States Court of Appeals for the Second Circuit and the United States District Court for the District of Connecticut shall not be binding on disciplinary proceedings initiated in the United States District Court for the District of Connecticut."

only where an attorney's conduct would tend to "taint" the underlying trial. Board of Education of City of New York v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979). "One recognized form of taint arises when an attorney places himself in a position where he could use a client's privileged information against that client." Hempstead Video, 409 F.3d at 133.

Where a party alleges that opposing counsel previously represented that party, i.e. "successive representation," an attorney may be disqualified if:

- (1) the moving party is a former client of the adverse party's counsel;
- (2) there is a substantial relationship between the subject matter of the counsel's prior representation of the moving party and the issues in the present lawsuit; and
- (3) the attorney whose disqualification is sought had access to, or was likely to have had access to, relevant privileged information in the course of his prior representation of the client.

Id. (citing Evans v. Artek Sys. Corp., 715 F.2d 788, 794 (1983)). See Vincent v. Essent Healthcare of Connecticut, 465 F.Supp.2d 142, 145 (D.Conn. 2006) (Arterton, J.) (recognizing that "[p]rofessional rules of conduct do not bind this Court's broad discretion in deciding motions to disqualify.").

There is no factual dispute that Liu represented Beta Pharma as its general counsel, although the exact dates are disputed. However, the developed factual record shows that defendants have not met their substantial burden of demonstrating that the subject matter of Liu's prior representation of Beta Pharma is substantially related to the issues in present litigation under the precedents of the Second Circuit and this District.

"The key inquiry is whether the present and former matters are 'substantially related.'" Norris v. City of New Haven, No. 3:04cv543, 2006 WL

2567866 at \*1 (D.Conn. Sept. 5, 2006) (Kravitz, J.) (quoting Government of India v. Cook Industries, Inc., 569 F.2d 737, 739 (2d Cir. 1978)). Thus:

However, despite the seeming breadth of that phrase, the Rule's substantial relationship test 'has been honed in its practical application to grant disqualification only upon a showing that the relationship between the issues in the prior and present cases is 'patently clear' or where the issues are 'identical' or 'essentially the same.'

Id. (quoting Bergeron v. Mackler, 225 Conn. 391, 399 (1993) (citing Government of India, 569 F.2d at 739; Rodriguez v. New Haven, 214 F.R.D. 66, 68 (2003); InterAct Sys., Inc. v. Catalina Marketing Corp., Nos. 3:96cv274 (AWT), 3:98cv422 (AWT), 1999 WL 545533, at \* 1383 (D.Conn. Mar. 29, 1999); Colorpix Sys. of Am. v. Broan Mfg. Co., 131 F.Supp.2d 331, 338 (D.Conn.2001)). "Applying the substantial relationship element of the Evans test requires a painstaking factual analysis." Leslie Dick Worldwide, Ltd. v. Soros, No.08Civ7900, 2009 WL 2190207 (S.D.N.Y. July 22, 2009) (internal quotation marks and citation omitted).

The precise factual analysis required by Evans demonstrates that defendants cannot sustain their burden of proving that the substance of Liu's prior representation of Beta Pharma and the parties' performance of their 2010 partnership agreement -- at issue in this litigation -- are "identical" or "essentially the same." In support of their position, defendants claim that, during the representation, Liu received unfettered access to Beta Pharma's corporate information, including a variety of subjects such as proprietary research projects, business contracts, investor information, tax filings, financial information, etc. However, as the Commentary to Rule 1.9 makes clear in the case of organizational clients, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation.

In Vincent v. Essent Healthcare of Connecticut, 465 F.Supp.2d 142, 145 (D.Conn. 2006), the defendant medical practices in a birth trauma obstetric malpractice case moved to disqualify the plaintiffs' law firm because of its partner's former employment with a medical malpractice defense firm that had previously represented the defendant obstetric group PWH. In particular, defendants adduced facts showing that the attorney previously worked on PWH matters while at his prior firm, including birth trauma issues. Defendant also averred that the attorney participated in both "formal and informal discussions" about matters relating to PWH, including the "concerns and strategies of PWH in defending malpractice matters." Id. at 144.

Indeed, defendants offered the affidavit of the attorney's former law partner stating that the attorney had attended a "claims review meeting" with officers and agents of PWH where each of the claims pending against PWH being handled by the law firm was discussed, including potential strategies. Id. Nevertheless, the court concluded that the attorney's prior representation of PWH at his former firm was not substantially related to the matter at bar, rejecting defendants' argument that disqualification was warranted because the attorney had worked on PWH cases, and obtained information about its litigation plans and strategy during the course of his representation. The court concluded that "[t]he record has revealed no 'patently clear' relationship between [the attorney's] prior representation in obstetrical malpractice cases at [his former firm] and [the attorney's current firm's] representation of the plaintiffs." Id. at 147.

As Rule of Professional Conduct 1.9 and the court's decision in Vincent instruct, Liu's mere possession of Beta Pharma's confidential corporate information, including its general corporate strategies is insufficient to establish defendant's burden of demonstrating that Liu's prior representation of Beta Pharma is substantially related to the issues in this case.

Defendants also contend that, during the course of his corporate counsel representation of the Beta Pharma defendants, Liu provided legal advice to them with regard to the 2010 partnership agreement that is the subject of plaintiff Wang's claims in this lawsuit. Zhang avers that Liu "counseled Beta Pharma on the purported agreement between Plaintiff and Beta Pharma from March 2010 (the '2010 Agreement'), including issues related to Beta Pharma Canada ('BPC'), a Canadian company; and a possible revision to the 2010 Agreement." (*Id.* at ¶13). Zhang further maintains that "Liu also reviewed the 2010 Agreement in September 2012 and provided legal advice to Beta Pharma in connection with BPC and associated tax issues." (*Id.* at ¶16). Zhang offers carefully curated and redacted e-mail correspondence among himself, plaintiff Wang, Liu and Beta Pharma Vice President Peng in support of this assertion. (*Id.* at ¶¶14-15, Exhibits 4-5).

However, when the entire e-mail string among these participants is read in context, it becomes clear that Liu actually did not work for the Beta Pharma defendants regarding revision of the 2010 Agreement. Instead, defendant Zhang's claimed "revision" of Wang's 2010 Agreement, in which Beta Pharma claims Liu was involved, was in actuality an effort by plaintiff Wang to obtain defendant Zhang's signature on a tax document necessary under Canadian tax laws regarding BPC.

Specifically, Wang and Zhang, as owners of BPC, were entitled to research and development tax credits under the Canadian tax laws. (Wang Declaration at ¶6). On July 28, 2012, plaintiff drafted and transmitted to defendant Zhang a shareholder's agreement to be filed with Canadian tax authorities in order to obtain these tax credits. (Wang Declaration at ¶7). Although Wang did speak by phone with Liu concerning BPC Canada taxes and the requirement of Zhang's signature on this shareholder agreement for tax purposes, there was no substantive

discussion of Wang's 2010 partnership agreement with Beta Pharma. Indeed, during one of those calls Liu requested that Zhang send him a copy of that 2010 agreement, but Wang declined, instead e-mailing Zhang on July 30, 2012, and asking to speak to him ". . . before I deal with Mr. Liu." (Wang Declaration at ¶8).

Defendant Zhang responded by e-mail, stating that Beta Pharma's "top priority" is to "comply [with] Federal IRS law and regulations" while Zhang is ". . . still outside jail and have the chance to fix our problems related with our company 5471, 5472 and other tax filings and so on, and that Attorney Liu's role was to accomplish this."<sup>11</sup> A full reading of Zhang's e-mail, in context, makes clear that Zhang's reference to the "new agreement as you requested" clearly meant the tax document Wang requested for the Canadian authorities, and did not refer to Wang's 2010 agreement with Beta Pharma. (Wang Declaration at ¶9).

Wang never had any further communication from, or with, Liu concerning either the 2010 partnership agreement with Beta Pharma or the Canadian tax "shareholder agreement" Wang sent to defendant Zhang -- Liu never provided plaintiff with any proposed modified draft of either agreement. (Wang Declaration at ¶10).<sup>12</sup>

On September 29, 2013, nearly one year later, and well after Lance Liu ceased representing the Beta Pharma defendants, defendant Zhang contacted plaintiff by e-mail, indicating that he was seeking to "update" the 2010 Agreement, and that Zhang had provided all of their e-mail communications and agreements to his attorney:

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<sup>11</sup> See Exhibit A to the Affidavit of Zhaoyin Wang containing a complete and unredacted copy of defendant Zhang's e-mail response, as produced to the Beta Pharma defendants.

<sup>12</sup> In fact, defendant Zhang never signed the shareholder's agreement requested by plaintiff Wang. However, plaintiff was able to file BPC's Canadian tax return without Zhang's signature, and was able to obtain the appropriate tax credits for Beta Pharma Canada, defendant Zhang and himself. (Wang Declaration at ¶11).

.... for a new updated agreement between us. Our attorney is fully loaded! Good news is that he has the most legal stuff related with ZJBP well organized and resolved this week! So now then he can fully concentrates on have our stuff drafted sooner.

So please have all of the patents you filed from BetaPharma Canada sent to us so he can work on our draft as soon as he can. He mentioned that we should have those patents transferred under BetaPharma (USA) so he can help us handle the filings and monitoring.

(Wang Declaration at ¶12).<sup>13</sup> In view of Beta Pharma's admitted dates of Liu's employment as its general counsel, the record is clear that the "fully loaded" lawyer referred to by Zhang could not have been Liu given that Liu stopped representing Beta Pharma in November or December, 2012. Further, to date, Beta Pharma and its lawyers have never provided plaintiff Wang with a redraft or amendment to the 2010 partnership agreement. (Wang Declaration at ¶10, 13).<sup>14</sup>

Courts in this District have declined to disqualify an attorney even where that attorney had represented his former client for many years in areas of overlapping subject matter. In Norris v. City of New Haven, No. 3:04cv543, 2006 WL 2567866 (D.Conn. Sept. 5, 2006) (Kravitz, J.), the court considered whether Attorney Echter, a former Deputy Corporation Counsel for the defendant City, should be disqualified from representing the plaintiff in her employment claim against the City, which alleged that the City failed to comply with its Civil Service Rules & Regulations, the City's Charter and the Constitution. The court concluded that disqualification was not warranted because, after a careful comparison of the similarities between the issues in the former and present representation, the defendant City failed to demonstrate that the representations

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<sup>13</sup> See Exhibit B to the Affidavit of Zhaoyin Wang containing the complete, unredacted email string referenced.

<sup>14</sup> Of course, Liu could not have participated in the drafting and execution of the 2010 agreement itself since it is undisputed that he did not represent the Beta Pharma defendants prior to 2011.

were substantially related. In particular, although Attorney Echter defended litigation claiming that the City's promotional practices violated the City's Charter and Constitution – the same claim made against the City by the plaintiff he was currently representing – the court found that the issues were not sufficiently identical, nor essentially the same.

In the earlier case of Rodriguez v. New Haven, 214 F.R.D. 66, 68 (2003) (Underhill, J.), the court denied the plaintiff's motion to disqualify Attorney Echter. In Rodriguez, the plaintiff, Coppola, was a New Haven police detective who alleged that he had been wrongfully investigated and disciplined by defendants. He moved to disqualify Echter, who was representing the City defendants on behalf of the Corporate Counsel's office, because Echter had previously represented Coppola in a lawsuit filed against him and other City officers alleging that he filed false police reports. Judge Underhill concluded that the representations were not substantially related, and that any information related by Coppola to Echter in defense of the false report case would not be relevant to the alleged improper discipline of Coppola – the issue in the current litigation. Id. at 69.<sup>15</sup>

Norris and Rodriguez stand for the proposition that even where an attorney was deeply involved in the affairs of a prior client, including on subject matters that overlap with the litigation in which disqualification is sought, it does not necessarily follow that the two representations are substantially related as contemplated by Second Circuit precedent. As demonstrated in plaintiff's complaint in this case, the subject matter of plaintiff's claims is the formation and

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<sup>15</sup> Coppola asserted that he and Echter drove to court together and discussed the earlier case, claiming that Echter thereby learned confidential information about Coppola that could be used to cross-examine Coppola in the current case. Echter denied any present knowledge of any such confidential information, and Coppola rejected the court's offer to make an in camera showing in support of that claim. Id. at 69 n. 2.

execution of the “2010 Partnership Offering to Dr. Zhaoyin Wang by Betapharma, Inc.,” which is attached as Exhibit A to plaintiff’s complaint in this matter. The entirety of the factual record demonstrates that the matter at issue in this litigation is actually outside the period of Liu’s service as Beta Pharma’s general counsel. In particular, the 2010 partnership agreement was drafted before Liu was associated with Beta Pharma as general counsel, and defendant Zhang sought to renegotiate that agreement in 2013 -- after Liu left Beta Pharma’s employ. The work defendants claim that Liu performed on the partnership agreement in 2012, in fact, related to an issue unrelated to performance of the 2010 partnership agreement, but rather to plaintiff Wang’s attempt to obtain a Canadian tax credit for himself and defendants.

Indeed, at the time Liu represented Beta Pharma, this litigation was not pending at all, unlike in the cases on which defendant relies. See Goldenberg v. Corporate Air, Inc. 189 Conn. 504 (1983) (successive representation involved the same ongoing litigation); MMR/Wallace Power & Industrial, Inc. v. Thames Associates, 764 F.Supp. 712 (D.Conn. 1991) (Burns, J.) (successive representation involved same ongoing litigation). Thus, these cases are distinguishable on this factual record.<sup>16</sup>

Even where Liu may have been privy to issues involving Beta Pharma Canada generally, disqualification is not mandated. In American International Group, Inc. v. Bank of America Corp., 827 F.Supp.2d 341, 347 (S.D.N.Y. 2011), the court denied disqualification of the plaintiff’s firm where one of its attorneys previously represented the defendants in the same litigation at another law firm, and did a small amount of work on the case. The court held that this work

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<sup>16</sup> Defendants also cite Geffert Co., Inc. v. Dean, No. 09cv266, 2011 WL 683963 (E.D.N.Y. Feb. 16, 2011), however the district court disqualified the attorney in Geffert Co. because of a conflict of interest arising from concurrency of representation.

presented no substantial risk of tainting the trial, stating: “[t]he Court declines to create a per se rule that any amount of work on a case requires disqualification.” Id. (citing Hempstead Video, Inc. v. Incorporated Village of Valley Stream, 409 F.3d 127 (2005)).

Thus, as in American International Group, Inc., supra, that Liu may have had involvement, on some level, in Beta Pharma Canada taxation issues does not, by itself, require qualification. By defendants’ own admission that Liu’s representation was limited to the period of July 2011 through December 2012 -- Liu was not involved in the negotiation and drafting of the 2010 partnership agreement, nor was he involved in the later, 2013 attempt by defendants to renegotiate that agreement with plaintiff Wang. The substantial relationship inquiry “requires a careful comparison of the similarities between the issues raised in the former and present representation.” Id. (citing Prisco v. Westgate Entertainment, Inc., 799 F.Supp. 266, 270 (D.Conn.1992)). This precise factual analysis discloses that defendants cannot sustain their heavy burden of proving that Liu’s prior representation of Beta Pharma and the creation and performance of the 2010 agreement at issue in this litigation are “identical” or “essentially the same.”

B. Defendants have failed to meet their heavy burden of showing that Liu had access to privileged information relevant to this litigation during the course of his prior representation of Beta Pharma.

Review of the facts concerning Liu’s prior representation of Beta Pharma demonstrates that that representation was not substantially related to the instant litigation against Beta Pharma. Defendants have made no showing that the issues Liu handled in the prior representation are identical or essentially the same as those involved in this case. Accordingly, under the Second Circuit’s

decision in Evans and its progeny, defendants have failed to prove that plaintiffs' chosen counsel should be disqualified from representing them in this action.

Defendants' attempt to disqualify plaintiffs' counsel lacks merit for an additional reason: defendants have failed to show a likelihood that Liu's prior representation of Beta Pharma gave him access to privileged information that is relevant to the instant litigation brought by plaintiff Wang, nor can defendants make any such showing.

Specifically, should a court conclude that a substantial relationship exists between an attorney's former representation of a client and the litigation in which disqualification is sought, a presumption may arise that the attorney who participated in both likely had access to pertinent privileged information. Leslie Dick Worldwide, 2009 WL 2190207 at \*12 (citing Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 518 F.2d 751, 754 (2d Cir. 1975)). In Silver Chrysler Plymouth, the Second Circuit stated, however, that this presumption may be rebutted. 518 F.2d at 754. Explaining that an attorney who previously worked on behalf of an opposing party could rebut the presumption of confidential information, the Court cautioned:

It will not do to make the presumption of confidential information rebuttable and then to make the standard of proof for rebuttal unattainably high. This is particularly true where, as here, the attorney must prove a negative, which is always a difficult burden to meet.

Id. (quoting Laskey Brothers of West Virginia, Inc. v. Warner Brothers Pictures, 224 F.2d 824, 827 (2d Cir. 1955)). See also Miroglio, S.P.A. v. Morgan Fabrics Corp., 340 F.Supp.2d 510, 512 (S.D.N.Y. 2004) (presumption of access is rebuttable); Almonte v. City of Long Beach, No. cv044192, 2007 WL 951863 at \*3 (E.D.N.Y. March 27, 2007) (same).

As the District Court explained in Leslie Dick Worldwide, 2009 WL 2190207 at \*13, “[p]ursuant to the third Evans factor, attorneys may attempt to show that their work for the party seeking disqualification did not put them in a position to access confidential material. The inquiry focuses on what role the lawyer played in the prior matter, and the nature of the attorney’s relationship with the client.” Accordingly, where an attorney can demonstrate that the level of involvement in a prior case was minimal, and that the attorney was not “heavily involved in the facts,” a court may conclude that the attorney was not likely to have had access to confidential information. Id. (citing Silver Chrysler Plymouth, 518 F.2d at 756–57; Evans, 715 F.2d at 791). Importantly, the party seeking disqualification must demonstrate the likelihood that the attorney’s role in the prior case gave him access to privileged information that is actually relevant to the current litigation. New York v. Monfort Trust, No. CV 12-3755, 2014 WL 5018607 (E.D.N.Y. Oct. 7, 2014) (citing Government of India v. Cook, 569 F.2d 737, 739 (2d Cir. 1978)).

Plaintiffs have adduced rebuttal facts on this record demonstrating that Liu’s prior general counsel work for Beta Pharma: (1) was outside the relevant time at issue in plaintiff’s complaint given that the 2010 partnership agreement was drafted before Liu was associated with Beta Pharma as general counsel, and that Zhang’s attempt to “update” that agreement occurred 2013, after Liu left Beta Pharma’s employ; and (2) did not involve restructuring the 2010 agreement in July of 2012, but rather related, at most, to Wang’s attempt to obtain a Canadian tax credit for himself and defendants. See Monfort Trust, supra, (denying disqualification where the court was “unconvinced” that the attorney at issue had access to relevant privileged information during the course of the prior representation since the attorney’s prior representation did not involve the negotiation and sale of the property at issue in the later litigation, nor did it involve the preparation of the agreements “at the heart” of the later action);

Norris v. City of New Haven, No. 3:04cv543, 2006 WL 2567866 (D.Conn. Sept. 5, 2006) (Kravitz, J.)(denying disqualification after concluding that there was no substantial relationship between the attorney's former representation and the matter before the court, and finding that "[n]or is the Court convinced that Mr. Echter is in possession of any confidential information from the City that bears on the specific issues in this case").

Additionally, Katz' affidavit explains that he never consulted with Lance Liu in connection with Dr. Wang's lawsuit, and that Liu has not participated in this litigation in any way. (Katz Affidavit at ¶4; ¶27). Further, other than the non-confidential materials transmitted for the Shao investors, Liu has given Katz no documents in connection with representing those investors or plaintiff Wang. (Katz Affidavit at ¶12; ¶17). Nor did Liu ever provide Katz with any confidential, privileged or non-public information concerning Beta Pharma. (Katz Affidavit at ¶25).<sup>17</sup>

Liu himself has stated, under oath, that he did not disclose or identify any confidential information regarding his representation of the Beta Pharma defendants to any lawyer, or any person, in connection with any claim or potential claim or complaint against the Beta Pharma defendants. (First Supplemental Certification of Lance Liu at ¶13) (Exhibit D).

Defendants' attempt to disqualify plaintiff's counsel fails under the third prong of Evans because they have failed to meet their burden of proving that

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<sup>17</sup> An affidavit given by an attorney who is the subject of a disqualification motion is competent evidence regarding whether confidences have been shared. See American International Group, Inc. v. Bank of America Corp., 827 F.Supp.2d 341, 346 (2011) ("Though Defendants argue that affidavits from potentially 'infected' attorneys are insufficient to rebut the presumption of shared confidences, there is no such categorical rule. The authority on which Defendants rely for that proposition is questionable, as courts in this jurisdiction have since found that such affidavits are reliable proof that confidences have not been shared.") (citing cases).

Liu's prior representation of Beta Pharma gave him access to privileged information that is relevant to the instant litigation brought by plaintiff Wang.

C. The balance of interests does not weigh in favor of disqualification.

As Judge Arterton observed in Vincent v. Essent Healthcare of Connecticut, 465 F.Supp.2d 142, 145 (D.Conn. 2006), "[p]rofessional rules of conduct do not bind this Court's broad discretion in deciding motions to disqualify. See Glueck, 653 F.2d at 748; Hempstead Video, 409 F.3d at 132. The rules and their commentary provide guidance, but Second Circuit courts must also conduct a balancing of interests. See Hull, 513 F.2d at 570." The three competing interests at issue are:

(1) the client's interest in freely selecting counsel of her choice, (2) the adversary's interest in the trial free from the risk of even inadvertent disclosures of confidential information, and (3) the public's interest in the scrupulous administration of justice.

Hull v. Celanese Corp., 513 F.2d 568, 570 (2d Cir. 1975).

On this record, the balance of interests weighs against disqualification of Attorney Katz. First, plaintiff Zhaoyin Wang would be significantly prejudiced by disqualification of his counsel because retention of an entirely new law firm would compromise the effectiveness of plaintiffs' discovery and trial preparation. Additionally, plaintiffs would suffer the cost burden of retaining new counsel and the concomitant cost of new counsel becoming familiar with the case.<sup>18</sup> As this

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<sup>18</sup> See Wang Declaration at ¶21 ("I have been working with Attorney Katz since September, 2014. He has been representing me since then, and he has acquired knowledge concerning my case. I am satisfied with his representation to date. I want him to continue to represent me. I believe that it would be difficult for me to

Court has noted, plaintiff's litigation costs will have substantially increased. See Ardemasov v. Citibank, No. 3:12cv1570, 2014 WL 1614165 at \*12 (D.Conn. April 23, 2014) (Haight, J.) ("At the outset, the Court is mindful of the hardship that Plaintiff would endure should his counsel be disqualified and also the resulting delay that would burden both parties. Plaintiff would have the larger burden and expense of securing new counsel, but both sides would likely suffer delay while the newly acquired counsel became acquainted with the facts and prior proceedings in this case.").

As to defendants' interest in a trial free from the risk of even inadvertent disclosures of confidential information, the record in this case discloses: (1) that Liu's prior representation of Beta Pharma and the 2010 partnership agreement at issue in this litigation are not "identical" or "essentially the same;" and (2) that Liu's prior representation of Beta Pharma did not give him access to privileged information relevant to this litigation. Accordingly, defendants will not be prejudiced by Katz' continuing representation of this plaintiff.

Finally, the public interest will be served by denying disqualification. As Judge Arterton noted in Vincent:

Third, the public interest will be better served by keeping this case on track for trial with the counsel who have represented the parties all along. The duplicative costs of bringing in new counsel and pressures to delay the start of trial of this nearly three-year-old case would undermine one of the Congressional purposes underlying the Civil Justice Reform Act—reducing delay and cost in civil litigation in federal courts. See 28 U.S.C. § 471 et seq.

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obtain replacement counsel if he is disqualified, because this is a complicated case, because it is being aggressively defended, and because I am a citizen of Canada and I spend much of my time in China.").



**CERTIFICATE OF SERVICE**

I hereby certify that on May 11, 2015, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/*

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**Jonathan Katz, Esq.  
Jacobs & Dow, LLC  
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New Haven, Connecticut 06511  
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Facsimile: (203) 772-1691  
Federal Juris No.: ct00182  
Email [jkatz@jacobsllaw.com](mailto:jkatz@jacobsllaw.com)**

**EXHIBIT A—DECLARATION OF ZHAOYIN WANG**

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ZHAOYIN WANG  
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,  
AND ZHEJIANG BETA PHARMA  
CO., LTD.,  
Defendants.

Civil Action No. 3:14-cv-01790-VLB

April 25, 2015

DECLARATION OF ZHAOYIN WANG

I, Zhaoyin Wang, hereby declare under penalty of perjury that the following facts are true:

1. My name is Zhaoyin Wang and I am the plaintiff in this case. I am over the age of 18 and believe in the obligation of an oath.
2. I am making this declaration in opposition to defendants' motion to disqualify Attorney Jonathan Katz and Jacobs & Dow, LLC from acting as my lawyers in this case.
3. I am a medicinal chemist. I received my Bachelor of Science degree from Lanzhou University in China in 1982 and earned my Ph. D. in organic chemistry from Yale in 1988. I was employed by Merck Frosst Canada, Inc. from

1988 to 2010. My area of interest is discovery of new drugs. As of May, 2013 I am a named inventor on 38 granted U.S. patents.

4. In March, 2010, Don Zhang and I signed the "Partnership Offering to Dr. Zhaoyin Wang by Betapharma, Inc." attached to my Complaint as Exhibit A.

5. Don Zhang and I formed Beta Pharma Canada, Inc., to do drug discovery research in Quebec in October, 2010.

6. Beta Pharma Canada was required to pay income tax in Canada, and the owners were entitled to research and development tax credits under the Canadian tax laws.

7. In July, 2012, I believed that in order to get the research and development tax credits, I needed to have Don Zhang sign a shareholder's agreement that I could file with the Canadian tax authorities. I drafted and transmitted this agreement to Dr. Zhang by email on July 28, 2012.

8. In about July, 2012, I had phone conversations with Lance Liu concerning Beta Pharma Canada taxes and my need for Don Zhang's signature on the shareholder agreement. During one of those calls Liu asked me to send him a copy of my 2010 agreement with Zhang, attached as Exhibit A to my complaint. I emailed Don Zhang on July 30, 2012, asking to speak to him ". . . before I deal with Mr. Liu".

9. Dr. Zhang responded three hours later (July 31, 2012, 6:52 EDT, but 12 hours later, August 1, 2012, China time). A complete and unredacted copy of his response, in context as I produced it to Beta Pharma, is set forth in Exhibit A attached hereto. Zhang states that Beta Pharma's "top priority" is to "comply [with]

Federal IRS law and regulations” while Zhang is “. . . still outside jail and have the chance to fix our problems related with our company 5471, 5472 and other tax filings and so on,” and that Attorney Liu’s role was to accomplish this. Zhang’s reference to the “new agreement as you requested” clearly meant the tax document I needed for the Canadian authorities, and did not refer to my 2010 agreement with Beta Pharma.

10. I never heard anything further from Lance Liu concerning my 2010 agreement or the “shareholder agreement” I sent to Don Zhang. Attorney Liu never sent me any proposed modified draft of either agreement.

11. Don Zhang never signed my shareholder’s agreement. With the help from an agent of Canadian Revenue Agency, I was able to file the Canadian tax return without Don Zhang’s signature and I was able to obtain the appropriate tax credits for Beta Pharma Canada, Don Zhang and myself.

12. Over a year later, on September 29, 2013, Don Zhang emailed me, stating that he had given all of our email communications and all of our agreements to his attorney

. . . . for a new updated agreement between us. Our attorney is fully loaded! Good news is that he has the most legal stuff related with ZJBP well organized and resolved this week! So now then he can fully concentrates on have our stuff drafted sooner.

So please have all of the patents you filed from BetaPharma Canada sent to us so he can work on our draft as soon as he can. He mentioned that we should have those patents transferred under BetaPharma (USA) so he can help us handle the filings and monitoring.

The complete, unredacted email string is attached here as Exhibit B and is previously filed in the record as Document 52. The “fully loaded” lawyer was not

Lance Liu, because Dr. Zhang has previously filed affidavits in this case stating that Attorney Lance Liu stopped representing Beta Pharma in November or December, 2012.

13. Beta Pharma and its lawyers have never provided me with a redraft or amendment to my March, 2010 agreement with Beta Pharma.

14. On May 14, 2014, I sent the email attached hereto as Exhibit C to Attorney Lance Liu. I was looking for a lawyer to bring my case against Beta Pharma.

15. The next day I received an email from Attorney Liu, containing a proposed representation agreement from Attorney Katz.

16. After I received the email, I took no action. I did not communicate with Attorney Katz at that time and I did not communicate further with Attorney Liu at that time.

17. I have reviewed my email to Don Zhang of May 24, 2014. Beta Pharma has taken this out of context. It is part of a long thread of email communication between Don Zhang and me, consisting of about 25 emails between May 14, 2014 and July 14, 2014, titled, "Legal Action against you and BetaPharma US." The entire communication is part of the court record as Document 51, and is attached here as Exhibit D. I was attempting to avoid litigation. I wrote to Dr. Zhang on May 16, 2014 (email 3 in the thread):

I think you and I will also have to find a solution/decision for our partnership or my employment agreement with you/BetaPharma. We simply cannot ignore all of the issues and drag this on for too long. I hope we can reach an agreement/settlement without legal proceeding, which I would reserve as the last resource.

On May 24, 2014, in email 6, I wrote, "I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney." The pressure I was feeling was entirely my own, from having to decide whether or not to sue my business partners Zhang and Beta Pharma. Attorney Katz never pressured me to sign a representation agreement. Attorney Lance Liu never pressured me to sign a representation agreement. No other human being ever pressured me to sign the attorney service agreement.

18. On July 31, 2014, I emailed Lance Liu, asking him a couple of questions about the proposed fee arrangement with Attorney Katz's law firm. Attorney Liu and I had a brief conversation during which he told me that it might be possible to obtain a couple of point reduction in the contingent fee. Katz was not a party to those conversations. Liu and I did not discuss any Beta Pharma confidential information.

19. I had no other contact with Attorney Katz, either directly or indirectly through Lance Liu, until approximately September 15, 2014, when I called Attorney Katz myself. He called me back. He and I negotiated a written contingent fee agreement which I signed on September 22, 2014. Attorney Liu was not involved with my discussions with Attorney Katz at that time. The representation agreement does not provide for payment of any forwarding fee. Katz returned a fully executed copy of the representation agreement to me on September 30, 2014.

20. I have never had an attorney-client relationship with Lance Liu. To my knowledge he has not participated in my lawsuit against Beta Pharma and he has no financial interest in my case.

21. I have been working with Attorney Katz since September, 2014. He has been representing me since then, and he has acquired knowledge concerning my case. I am satisfied with his representation to date. I want him to continue to represent me. I believe that it would be difficult for me to obtain replacement counsel if he is disqualified, because this is a complicated case, because it is being aggressively defended, and because I am a citizen of Canada and I spend much of my time in China.

Signed under penalty of perjury this 25<sup>th</sup> of April, 2015.



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Zhaoyin Wang

**EXHIBIT A**

Jonathan Katz

From: 王召印 [zywang@sioc.ac.cn]  
Sent: Friday, December 12, 2014 7:29 AM  
To: Jonathan Katz  
Subject: Fw: Fwd: call me

-----原始邮件-----

发件人: Zed <zwang.ca@gmail.com>  
发送时间: 2014年12月12日 星期五  
收件人: "zywang@sioc.ac.cn" <zywang@sioc.ac.cn>  
抄送:  
主题: Fwd: call me

发自我的 iPhone

以下是转发的邮件 :

发件人: "Don Zhang" <[don\\_zhang@betapharma.com](mailto:don_zhang@betapharma.com)>  
日期: 2012年8月1日 GMT+8上午6:51:55  
收件人: "z. wang" <[zwang.ca@gmail.com](mailto:zwang.ca@gmail.com)>  
抄送: "Jirong Peng" <[jirong\\_peng@betapharma.com](mailto:jirong_peng@betapharma.com)>, "Lance Liu" <[Lance.Liu@betapharma.com](mailto:Lance.Liu@betapharma.com)>  
主题: 回复 : call me

Hi Zhaoyin,

US Federal IRS agent has been auditing our company more than half year since January 19<sup>th</sup> of this year and looks like the audit and investigation will keep going for while. Also we have received IRS notices on filing IRS form 5471 last year. So the top priority for our company is "comply Federal IRS tax law and regulations". It seems to me that IRS is waiting for our filings and then decide what to do with us next!

Good thing is that I am still outside jail and have the chance to fix our problems related with our company 5471, 5472 and other tax filings and so on. Very fortunately, we have Dr. lance Liu take care of our legal affairs to make our operation better compliance with IRS and other regulatory

12/12/2014

ZWANG BP v LIU 00028

authorities. So at this point, please feel free to pass our agreements to him and also explain your problems, concerning and so on to him. The bottom line is to comply with IRS regulations and clearly resolve our past and sign a new agreement as you requested. It is OK to call me and have a chat anytime you like since I am back from my travel.

Thanks and please stay in touch!

Don

BetaPharma, Inc.

**From:** z. wang [<mailto:zwang.ca@gmail.com>]  
**Sent:** Monday, July 30, 2012 3:57 PM  
**To:** Don Zhang  
**Subject:** Re: call me

Hi Don,

I had a chat with your legal adviser (Mr. Liu) today, and It looks like that we have to change all of our previous agreement. I do appreciate to have a chat with you before I deal with Mr. Liu. If it's possible, please let me know a phone number that you can be reached at. I only have time tonight and tomorrow since I am leaving for China on Wednesday morning. If you prefer, we can have a Skype chat.

Best,

ZW

On Fri, Jul 27, 2012 at 11:00 PM, Don Zhang <[don\\_zhang@betapharma.com](mailto:don_zhang@betapharma.com)> wrote:

Hi Zhaoyin,

We have trip to North Carolina and Miami to promote Icotinib in South America region, such as Chile, Argentina and Brazil. Please mail your documents that need signature to our office in Branford and I will have it signed as soon as I get back by the end of the month.

Thanks a lot! Please stay in touch!

Don

BetaPharma, Inc.

**From:** zed [mailto:[zwang.ca@gmail.com](mailto:zwang.ca@gmail.com)]  
**Sent:** Friday, July 27, 2012 6:47 PM  
**To:** Don Zhang  
**Subject:** Re: call me

Hi, Don,

I have an important tax document for you to sign before I leave for China on the 1st of August. Please just do me a favor and let me know when you will be available. Thanks.

ZW

On 2012-07-26, at 8:51 PM, "Don Zhang" <[don\\_zhang@betapharma.com](mailto:don_zhang@betapharma.com)> wrote:

Hey Zhaoyin,

Very nice to see your email! I will call you shortly after we get back to NJ office. I will be in touch!

Thanks a lot!

Don

**From:** z. wang [mailto:[zwang.ca@gmail.com](mailto:zwang.ca@gmail.com)]  
**Sent:** Thursday, July 26, 2012 12:08 PM  
**To:** Don Zhang; Don Zhang  
**Subject:** call me

Hi Don,

Hope all is well for you and we have not communicated for a while. When you have time, please give me a call at [514-693-0478](tel:514-693-0478).

Best,

Zhaoyin

Zhaoyin Wang, Ph.D.  
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Interdisciplinary Research Center on Biology and Chemistry  
345 Ling Ling Road, Shanghai 200032  
The People's Republic of China  
Tel. +86-21-54925610, 86-18602560157

王召印

中国科学院生物与化学交叉研究中心  
电话：021-54925610/18602560157

地址：上海市徐汇区零陵路345号君谋楼602室

**EXHIBIT B**

Jonathan Katz

From: 王召印 [zywang@sioc.ac.cn]  
Sent: Tuesday, December 16, 2014 7:05 AM  
To: Jonathan Katz  
Subject: Fw: Fwd: Decision?

-----原始邮件-----

发件人: Zcd <zwang.ca@gmail.com>  
发送时间: 2014年12月16日 星期二  
收件人: "zywang@sioc.ac.cn" <zywang@sioc.ac.cn>  
抄送:  
主题: Fwd: Decision?

发自我的 iPhone

以下是转发的邮件：

发件人: Don Zhang <don.pharmaman@gmail.com>  
日期: 2013年9月29日 GMT+8上午8:51:26  
收件人: "z. wang" <zwang.ca@gmail.com>  
抄送: jirong Peng <jpeng108@gmail.com>  
主题: 回复： Decision?

Hi Zhaoyin, Thanks!

As I mentioned to you early even before we met in Montreal, I had passed the whole email communication between us and all of our agreements stuff to our attorney for a new updated agreement between us. Our attorney is fully loaded! Good news is that he has the most legal stuff related with ZJBP well organized and resolved this week! So now then he can fully concentrates on have our stuff drafted sooner.

So please have all of the patents you filed from BetaPharma Canada sent to us so he can work on our draft as soon as he can. He mentioned that we should have those patents transferred under BetaPharma (USA) so he can help us handle the filings and monitoring. Please stay in touch! Thanks!

Don

On Thu, Sep 26, 2013 at 12:40 PM, z. wang <zwang.ca@gmail.com> wrote.

Hi Don,

I am expecting a quick decision from you since we have been talking for at least four months by now. My next step is depending on our agreement if it can be reached. I have provided you with almost everything you want to know and you have come to see everything with your own eyes. I just want get a clear answer from you for my proposal or you lay down your bottom-line, and we can then come to a conclusion. I have to transfer IP's out of BPCI for project development if you reach a NO GO decision now, and we can have a resolution on the ownership of BPCI. Anyway, I am sorry for my frustration and hope for a quick action from you.

Best,

Zhaoyin

[qian\\_liu60@hotmail.com](mailto:qian_liu60@hotmail.com) for Mr. Qian Liu  
[linda\\_zi@yahoo.com](mailto:linda_zi@yahoo.com) for Ms Lin Ju

On Thu, Sep 26, 2013 at 9:03 AM, Don Zhang <[don.pharmaman@gmail.com](mailto:don.pharmaman@gmail.com)> wrote:  
: Hi Zhaoyin,

: We are working on those things that we are discussing and will request more info from you and Steve shortly. There are a lot of things going on here such as the IRS audit related tax matters that easily lead anyone has trouble end up with jail. And Lawsuits, several against us, that we have to deal with and win those cases for our reputation and overall business. A lot of things going on. It require good patience to do long term stuff. will be in touch! Thanks!

: One more thing: returning the money with both preliminary and interests/capital gains to your relatives Ju Lin and Qian Liu is also very urgent for ZJBP, just wonder if we can have their current addresses and email addresses. Thanks again!

Don

On Tue, Sep 24, 2013 at 11:02 PM, z. wang <[zwang.ca@gmail.com](mailto:zwang.ca@gmail.com)> wrote:  
Hi Don,

I wonder how and what you are dealing with Steve, and your thoughts about the whole thing. Your silence is driving me crazy! It is OK for you to walk away from all of these and don't feel bad if you tell me it's a NO GO decision. Anyway, I remain to be flexible and we all have room to negotiate. The bottom-line is that we have to be serious and straightforward to each other.

Best,

ZW

Zhaoyin Wang, Ph.D.  
Chinese Academy of Science  
Interdisciplinary Research Center on Biology and Chemistry  
345 Ling Ling Road, Shanghai 200032  
The People's Republic of China  
Tel. +86-21-54925610, 86-18602560157

王召印

中国科学院生物与化学交叉研究中心  
电话：021-54925610/18602560157

地址：上海市徐汇区零陵路345号君谋楼602室

**EXHIBIT C**

Jonathan Katz

From: 王召印 [zywang@sioc.ac.cn]  
Sent: Friday, December 12, 2014 7:26 AM  
To: Jonathan Katz  
Subject: Fw: Fwd: My case against Don(betaPharma)  
Attachments: Zhaoyin Wang-BetaPharma Employment agreement.pdf; ATT00004.html

-----原始邮件-----

发件人: Zed <zwang.ca@gmail.com>  
发送时间: 2014年12月12日 星期五  
收件人: "zywang@sioc.ac.cn" <zywang@sioc.ac.cn>  
抄送:  
主题: Fwd: My case against Don(betaPharma)

发自我的 iPhone

以下是转发的邮件：

发件人: "z. wang" <zwang.ca@gmail.com>  
日期: 2014年5月14日 GMT+8下午10:51:15  
收件人: Lance Liu <lanceliu2000@gmail.com>  
主题: My case against Don(betaPharma)

Hi Lance,

Attached is the employment agreement that I had with Don (BetaPharma) back in year 2010. A few key points I should emphasize for you:

1. my career was deeply effected by the attached offer which persuaded me to decline quite a few very good offers;
2. I founded Beta Pharma Canada inc. with Don. With his consensus, Beta Pharma Canada Inc was structured as the ownership: Zhaoyin Wang (51%), Don Zhang (49%), inorder to gain the R&D tax credit from the Canadian government;
3. Don invested a total of ` \$400,000.00 US from October 2010 to June 2011;
4. I was never paid any salary during my entire service to the company;

12/12/2014

ZWANG BP v LIU 00204

6. Don breached the agreement without fulfill his obligation to me and beta Pharma Canada Inc.

7. I was never released from my position of CSO of BetaPharma.

Please take a look at the attached document and If you need more information or have any questions, please don not hesitate to contact me.

best,

Zhaoyin

Zhaoyin Wang, Ph.D.  
Chinese Academy of Science  
Interdisciplinary Research Center on Biology and Chemistry  
345 Ling Ling Road, Shanghai 200032  
The People's Republic of China  
Tel. +86-21-54925610, 86-18602560157

王召印

中国科学院生物与化学交叉研究中心  
电话：021-54925610/18602560157

地址：上海市徐汇区零陵路345号君谋楼602室

**EXHIBIT D**

**PLAINTIFF'S EXHIBIT 1**

**Emails May 14, 2014 and later**

z. wang <zwang.ca@gmail.com>

Wed, May 14, 2014 at 11:23 AM

To: Don Zhang <don.pharmaman@gmail.com>, Don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jirong\_peng@betapharma.com>, Jirong Peng <jpeng108@yahoo.com>  
Bcc: linda\_zi@yahoo.com, liu qian <qian\_liu60@hotmail.com>, wei yuan <chemiefek@atlnet>, Wu Buo-Lin <wb1405@126.com>

Dear Don,

I am deeply disturbed by your failure to fulfill your obligation to the investors that I have been involved with. As a witness for the agreements, I am deplored by what you are trying to do to these investors. As a friend, I am ashamed to be associated with what you are trying to do, without mentioning two of the investors are our college classmates. All of them are going to participate in a legal action against you and BetaPharma. I think it is a good thing to get rich, however, honesty and integrity are far more important than money in life. I hate to see a legal action is becoming the way to fight the things and I hope you can find an alternative way to resolve this to everyone's satisfaction.

Best,

Zhaoyin,

Don Zhang <don.pharmaman@gmail.com>

Wed, May 14, 2014 at 11:10 PM

To: "z. wang" <zwang.ca@gmail.com>

Cc: Don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jirong\_peng@betapharma.com>, gary.wood@betapharma.com

Hi Zhaoyin,

Thanks for the note! We will try to communicate with those lenders to find out solutions that both meet the IRS rules and also are acceptable to them. As managers of US corporation, as long as stay outside of jails, we are under restricted tightly by the IRS laws and enforced to handle every transaction and report everything (even small transactions) to the IRS. And though stay outside of jail, cash penalty is pretty sever sometimes from the IRS and Jirong and Gary are handling penally payments for our company for those wrong transactions related with those deals.

Nevertheless, we are willing to talk with those peoples who are related with both you and our company and try to work out something that make us stay outside jail and also make the friends feel acceptable. Gary is our financial manager who is handling our finance now. Hope you help him should he needs some paper works from you in order to satisfy the IRS. Thank again!

Regards,

Don

(Quoted text hidden)

z. wang <zwang.ca@gmail.com>

Thu, May 16, 2014 at 9:11 AM

To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,

Thanks for your attention to these matters. I think you and I will also have to find a solution/decision for our partnership or my employment agreement with you/BetaPharma. We simply cannot ignore all of the issues and drag this on for too long. I hope we can reach an agreement/settlement without legal proceeding, which I would reserve as the last resource. I am in Montreal until the 20th of May and please give me a call at your earliest convenience. My phone number is 514-3151719 and I look forward to hearing from you.

Best,

Zhaoyin

(Quoted text hidden)

Don Zhang <don.pharmaman@gmail.com>  
To: "z. wang" <zwang.ca@gmail.com>  
Cc: "jirong\_peng@betapharma.com" <jirong\_peng@betapharma.com>

Mon, May 19, 2014 at 2:22 PM

Hi Zhaoyin,

Thanks for the note! Will try to call you this week. Gary is also working on the clear up on this regard. The key factor is to satisfy the IRS. Will be in touch!

Don  
[Quoted text hidden]

---

Zed <zwang.ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>

Mon, May 19, 2014 at 5:32 PM

Hi Don,  
Thanks for your reply. I will leave for Shanghai this coming Wednesday and hope we can have a conversation tomorrow, or you may reach me at 18602580157 after I arrive in Shanghai on Thursday. Anyway, I certainly hope we can find a solution that not only satisfy IRS, also be fair to everyone involved. I look forward to hearing from you.

Best,

Zhaoyin

发自我的 iPhone

在 2014年5月19日, 下午2:22, Don Zhang <don.pharmaman@gmail.com> 写道:

[Quoted text hidden]

---

z. wang <zwang.ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>

Sat, May 24, 2014 at 6:15 PM

Hi Don,

I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney. I certainly hope we can resolve everything by some other means instead of going through legal procedures. Anyway, June 1st is my deadline to sign the contract and that gives us only a week of time.

Best,

Zhaoyin  
[Quoted text hidden]

---

Don Zhang <don.pharmaman@gmail.com>  
To: "z. wang" <zwang.ca@gmail.com>  
Cc: "jirong\_peng@betapharma.com" <jirong\_peng@betapharma.com>, "gary.wood@betapharma.com" <gary.wood@betapharma.com>

Wed, May 28, 2014 at 8:20 AM

Hi Zhaoyin,

How about you or your attorney start to draft a proposal for closing up the partnership of Beta Pharma (Canada). It is a lot easy to discuss and make modification on it if have a proposal in writing. We can have it signed up as soon as we reach agreement. Please let us know should you have any problems. Thanks a lot!

Don  
Beta Pharma, Inc.  
[Quoted text hidden]

Wed, May 28, 2014 at 10:17 PM

z. wang <zwang.ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>  
Cc: "jirong\_peng@betapharma.com" <jirong\_peng@betapharma.com>, "gary.wood@betapharma.com" <gary.wood@betapharma.com>

Hi Don,

It looks that I will have to initiate a legal proceedings to close up ALL of the partnership including Beta Pharma Canada and my service contract with BetaPharma, since there is a lack of initiations from your side. I will discuss the matter with my attorney and start the process since this appears to be the only way to do it properly.

Best,

Zhaoyin  
[Quoted text hidden]

Thu, May 29, 2014 at 12:12 AM

Don Zhang <don.pharmaman@gmail.com>  
To: "z. wang" <zwang.ca@gmail.com>  
Cc: "jirong\_peng@betapharma.com" <jirong\_peng@betapharma.com>, "gary.wood@betapharma.com" <gary.wood@betapharma.com>

Hi Zhaoyin,

If you are busy and prefer to have me write a proposal, I will be happy to do so if you prefer. It is intended to respect you and check with your preference first. It is my understanding that you would like to reach an agreement with Beta Pharma (USA) so that you can move on with the business you like to pursue. So please let me know if your preference and certainly I can start to draft a proposal as well. Thanks a lot!

Regards,

Don  
[Quoted text hidden]

Thu, May 29, 2014 at 1:16 AM

z. wang <zwang.ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>

Don,

It is about everything, including my service contract with BetaPharma USA, which will be part of the resolution. Please write a proposal with your thoughts as soon as possible. Please put down your preference when you do so. To me, I could continue to work for "BetaPharma" as long as it is fair to me and our agreement is respected. I understand that both of us have gone through some difficult time, and we all survived. If it is too far apart from a fairness to me, I would assume a legal proceeding would be the best way to reach an agreement.

Best,

Zhaoyin  
[Quoted text hidden]

Fri, May 30, 2014 at 11:45 AM

Don Zhang <don.pharmaman@gmail.com>  
To: "z. wang" <zwang.ca@gmail.com>

Hi Zhaoyin,

Are you attending ASCO in Chicago? If you are, please let me know your hotel info or the best way to reach you during the conference. Please stay in touch! Thanks!

Don  
[Quoted text hidden]

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Case 3:14-cv-01790-VLB Document 51 Filed 03/23/15 Page 4 of 16

Case 3:14-cv-01790-VLB Document 76-1 Filed 05/11/15 Page 25 of 36  
Case 3:14-cv-01790-VLB Document 51 Filed 03/23/15 Page 5 of 16

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z. wang <zwang.ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>

Sat, May 31, 2014 at 2:00 PM

Don,

Unfortunately I am not going to the ASCO. However we can have a Spype chat to discuss the issues or you may call my cell phone in China 18602560157. Anyway, I am hoping we can have this resolved instead of going to the court proceedings. As we know that once the procedure starts, it is going to be irreversible. I look forward to further discussing with you.

Best,

ZW  
[Quoted text hidden]

Don Zhang <don.pharmaman@gmail.com>  
To: Zed Wang <zwang\_ca@yahoo.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "z. wang" <zwang.ca@gmail.com>

Sat, Jun 14, 2014 at 11:35 PM

Hi Zhaoyin,

Looks like you have made really great progress in ALK(m) inhibitors! Congratulations to your new progresses!

When comes to new drug discovery, of course, I am very serious and very excited about it and like to explore every possibility to work out something with you for those great projects with great potentials!

We currently have a good discovery team that we assembled from former employees of Novartis, J&J and other pharma companies in New Jersey. In particular, both Michael Greco and Michael Costanzo have extensive discovery experience. We currently mainly focus on oncology. It would be really great if you come to meet with our team and discuss projects with them extensively. We will try to work out every aspect of collaboration plan. So I would like to invite you come to Princeton to meet our teams (RD, RA, Financial and so on). Anyway it is very exciting to explore those great potential with you. Also I would like to pay a visit to your lab in Shanghai if you like. Maybe both Jirong and I would visit you if you like. That would be very good to talk and work out things for the future. Please let me know. So I am looking forward to hearing from you again! Hope you have a wonderful weekend there in Shanghai!

Don  
[Quoted text hidden]

Zed Wang <zwang\_ca@yahoo.com>  
Reply-To: Zed Wang <zwang\_ca@yahoo.com>  
To: Don Zhang <don.pharmaman@gmail.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "z. wang" <zwang.ca@gmail.com>

Sun, Jun 15, 2014 at 9:48 PM

Hi Don,

Thanks for your reply and the kind words!

I think it would be a good idea for you and Jirong to visit my lab in Shanghai, perhaps Nanjing too if time permits. Cost for R&D in China is still more cost-effective provided that a good analytical capacity is available. In Shanghai, the Institute's facility is perfectly serving that purpose. Human cost is also much lower for now if the productivity is kept reasonably high. For now, discovery work is done for Beta Pharma Canada, and we just have to find a way to move these molecules into development stage.

We can have a Skype conference call, and preferably, you and Jirong can visit here at your earliest convenience. The bottom-line is that you have to be serious and take actions. Talk is cheap, and we all know that.

Best,

Zhaoyin  
[Quoted text hidden]

15.

Don Zhang <don.pharmaman@gmail.com>  
To: Zed Wang <zwang\_ca@yahoo.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "z. wang" <zwang.ca@gmail.com>, Jirong Fang <jpeng108@gmail.com>

Sat, Jun 21, 2014 at 3:28 PM

Hi Zhaoyin,

I chatted with Jirong about visiting your labs at both Shanghai and Nanjing and he is excited about the trip too! What are the best dates for you for us to come? Please give several options so that we can select the one that fit all of us.

Recently there are several investors in China with deep pockets like to work with BetaPharma (USA) and we may need to meet them together to close deals. The new venture can be very exciting and with very significantly larger size! By the way, how many team members you have there? how many turtles with Ph. D.? Will try to find time to chat more with you over phone. Looking forward to hearing from you again! (We have a lot of headache things happened here so have to work even in the weekends). Please stay in touch!

Regards,

Don

On Sun, Jun 15, 2014 at 9:48 PM, Zed Wang <zwang\_ca@yahoo.com> wrote:

Hi Don,

Thanks for your reply and the kind words!

I think it would be a good idea for you and Jirong to visit my lab in Shanghai, perhaps Nanjing too if time permits. Cost for R&D in China is still more cost-effective provided that a good analytical capacity is available. In Shanghai, the Institute's facility is perfectly serving that purpose. Human cost is also much lower for now if the productivity is kept reasonably high. For now, discovery work is done for Beta Pharma Canada, and we just have to find a way to move these molecules into development stage.

We can have a Skype conference call, and preferably, you and Jirong can visit here at your earliest convenience. The bottom-line is that you have to be serious and take actions. Talk is cheap, and we all know that.

Best,

Zhaoyin

On Sunday, June 15, 2014 11:35 AM, Don Zhang <don.pharmaman@gmail.com> wrote:

---

Zed <zwang.ca@gmail.com>

Sat Jun 21, 2014 at 9:27 PM

to: Don Zhang <don.pharmaman@gmail.com>

Hi Don,

What is new at the ASCO meeting? Just update you that our Crizotinib "me too" compound is moving along well and Ibrutinib "me too" compound is also picking up the pace. In addition, we have also initiate other high value "me too" programs with great promise. I certainly hope we can resolve all of the issues and move things forward together if that is what you wants. I have to know what you are thinking and what is your position on all of these issues. As I mentioned earlier, it could be irreversible once the lawyer is involved and things could be very unpleasant for everyone. Hope to hear back from you soon.

Best,

Zhaoyin

-----

Don Zhang <don.pharmaman@gmail.com>  
To: zhaoyin wang <zwang.ca@gmail.com>

Wed, Jun 4, 2014 at 9:41 AM

Hi Zhaoyin,

It was very busy and very exciting conference at ASCO! Also it is very exciting for me to know those new discoveries you are making there! Certainly we have a lot of new drug discovery interest and passion like to share with you and hopefully we can be more useful for patients, in particular, cancer patients. I will share more stuff with you and I am excited about knowing more about your thoughts and ideas as well. I flew back from Chicago this morning (about 2:30AM). Will be in touch! Thanks!

Don  
[Quoted text hidden]

Don Zhang <don.pharmaman@gmail.com>  
To: zhaoyin wang <zwang.ca@gmail.com>

Sat, Jun 7, 2014 at 12:42 PM

Hi Zhaoyin,

I am very excited to explore even greater opportunity with you in new drug discovery, in particular, oncology field. I guess you are currently working with research institute managed by Junying Yuan in Shanghai?

Anyway, I am thinking about building a company very much like Zhejiang Beta Pharma in Shanghai. Since we have more experience and knowledge than a decade ago, if we find out a way to work together efficiently, we can do much better than what we did within ZJBP with sustainable growth. I believe in that you are one of the bests in medicinal chemistry on the earth so we should come out the best oncology products on the earth if we can find out a way to work together. Just wonder if a great potential like much better than ZJBP is kind of dream you are dreaming?

I will share more with you about our new progresses on R&D, RA, BD, legal affairs and financial if you like later.

How about your works with Prof. Yuan? How is the business relationship you have with them in Shanghai? Please share your thoughts and ideas! please stay in touch! Thanks!

Don  
[Quoted text hidden]

Zed <zwang.ca@gmail.com>  
To: "zwang\_ca@yahoo.com" <zwang\_ca@yahoo.com>

Mon, Jun 9, 2014 at 7:30 AM

Sent from my iPad

Begin forwarded message:

From: Don Zhang <don.pharmaman@gmail.com>  
Date: 2014年6月8日 GMT+8上午12:42:04  
To: zhaoyin wang <zwang.ca@gmail.com>  
Subject: Re: Legal action against you and BetaPharma US

[Quoted text hidden]

Zed Wang <zwang\_ca@yahoo.com>  
Reply-To: Zed Wang <zwang\_ca@yahoo.com>  
To: don Zhang <don\_zhang@betapharma.com>, Don Zhang <don.pharmaman@gmail.com>  
Cc: "z. wang" <zwang.ca@gmail.com>

Hi Don,

Gmail is down in China and I have use to use other mailbox to write you.

Taking a position is to use the government resource to serve our purpose, as you know how things are run in China now. I have the freedom to work on anything that i am interested in, and I have the resource to move BPCI's projects now. Attached is a xenograft study results of BPCI's lead cMet/ALK dual inhibitor, BC-00061. Although BC-00061 is somewhat less active than Pfizer' crizotinib at 30 mg/kg, it showed a clear dose response and completed eliminated the tumor at 100 mg/kg (n = 6). We suspected the the PK can be improved with a selection of a suitable salt and the compound is very same at 100 mg/kg dose in mice. Anyway, I think it is a low-risk project with a good possibility of success. We also have a "very-low" risk CV drug with a huge potential in the world market. BPCI's BTK inhibitor is also a low risk project and need only the so called "development". With this kind of combination of projects and some seed money, a successful company can be easily built in China.

I would like to see how serious you are on this since I am tired of empty promises, and this is all about promises and obligations. I also would like to know if you intend to honor our "employment agreement" and I hope we can continue with the mission we have set out before. The New-Co will have all of the assets from BPCI and its ownership can be structured as we have originally agreed on. Otherwise, I don't have time to drag this any longer and a legal process will be the only way resolve all of the issues.

Let's be honest to each other and have a serious discussion and I look forward to hearing back from you soon.

Best,

Zhaoyin  
[Quoted text hidden]

To: Don Zhang <don.pharmaman@gmail.com>  
Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jpeng108@gmail.com>

Don,

I would say the sooner, the better, so we can resolve things ASAP. The only "bad" time is between Aug15-28, since I have a travel plan with my family. Anyway, as I said, I hope you can come ASAP. With regards to the manpower here, two out 3 employees left for school last month and I am looking for replacements now in Nanjing. I have 8 people in shanghai lab and trying to hire more, but lab space is limited until our new lab renovation is finished toward to the end of the year. Due to cost issues, I don't have any "sea turtles" and the employees in Nanjing are very good by my standard.

Best,

Zhaoyin

Sent from my iPhone  
[Quoted text hidden]

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Case 3:14-cv-01790-VLB Document 51 Filed 03/23/15 Page 8 of 16

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Tue, Jun 24, 2014 at 9:28 AM

Don Zhang <don.pharmaman@gmail.com>

To: Zed <zwang.ca@gmail.com>

Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, jirong Peng <jpeng108@gmail.com>

Hi Zhaoyin,

That is great! Both Jirong and I are excited about a trip to visit you! We will contact the potential investors/partners as soon as we can in China and work out the best dates ASAP. And I will keep you posted on the progress on our side.

Regards,

Don

[Quoted text hidden]

Thu, Jun 20, 2014 at 8:15 PM

Zed <zwang.ca@gmail.com>

To: Don Zhang <don.pharmaman@gmail.com>

Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>

Hi Don,

I would like to know some real dates for your future visit. If you are serious about all of this, maybe you can let me connect me with your potential investors and get some pre-work done before you come for serious discussion since most of the Chinese investors are just bluffing. The other issue is the employment agreement we have and I would like to know how you are going to "honor" it. Hope you are serious and I cannot wait forever.

Best,

ZW

Sent from my iPad

[Quoted text hidden]

Sun, Jun 29, 2014 at 9:13 PM

Don Zhang <don.pharmaman@gmail.com>

To: Zed <zwang.ca@gmail.com>

Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, jirong Peng <jpeng108@gmail.com>

Hi Zhaoyin,

Yeah, it is a good idea to start some preparation works now.

Currently the major investment projects we are talking about with the potential investors are the projects we initiated in Princeton. We were planning to have your projects included after our talk in Shanghai. Now then, in order to have your projects included in the deal and start to talk about them now, we need you send the list of the projects and stages of each project you like to put on the table for discussion. I think that if we work together by sharing the similar vision, we should work out a good deal and practical plan to move forward to reach new stage of success.

Jirong is traveling with his family and will be back to Princeton next week. And we will meet with one of the most important potential investors on Wednesday again in Princeton. As we are engaging those activities, the date of meeting in China will be determined accordingly. So I will update dates of our trip after our meeting (fourth meeting to discuss the agreement) to you next week. Also look forward to hearing from you too.

Don

[Quoted text hidden]

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Zed Wang <zwang\_ca@yahoo.com>

Reply-To: Zed Wang <zwang\_ca@yahoo.com>

To: Don Zhang <don.pharmem@ymail.com>, Zed <zwang\_ca@gmail.com>

From: Don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jpeng108@gmail.com>

Hi Don,

Attached please find an introduction of projects that Beta Pharma Canada has developed. I believe the most promising ones are the last three projects, though the IP protection on EP4 are the most sold one and we already have US and Japanese issued patents.

I just hope to resolve all of the issues as soon as possible and the pace of communication with you is just too slow. Please expedite the work at your end.

Best,

Zhaoyin

[Quoted text hidden]

Beta Pharma Canada Program Summary-General slides (for Don).ppt  
2132N

Zed <zwang\_ca@gmail.com>

To: Zed Wang <zwang\_ca@yahoo.com>

From: Don Zhang <don.pharmem@ymail.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jpeng108@gmail.com>

Best

Zhaoyin

Sent from my iPhone  
[Quoted text hidden]

! <Beta Pharma Canada Program Summary-General slides (for Don).ppt>

Hi Don, I hope we all doing this with a good faith, not trying to wait each other's time. I am waiting for your actions with regards to all of the issues we are facing. Please be serious and the way you are communicating with me will take another life time to get anything done. Please let me know what you are really thinking and we can move to the next step.

Mon, Jul 14, 2014 at 10:29 AM

Tue, Jul 1, 2014 at 8:25 AM

COM 11

zhaoyin.wang <zwang.ca@gmail.com>

Legal action against you and BetaPharma US

27 messages

1. Z. Wang <zwang.ca@gmail.com> Wed, May 14, 2014 at 11:23 AM  
To: Don Zhang <don.pharmaman@gmail.com>, Don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jirong\_peng@betapharma.com>, Jirong Peng <jirong109@yahoo.com>  
(cc: linda\_zhang@yahoo.com, liu jian <lian\_jian@hotmail.com>, wei yuan <chordatek@aol.net>, Wu Bao-Lin <wb405@126.com>)

Dear Don,  
I am deeply disturbed by your failure to fulfill your obligation to the investors that I have been involved with. As a witness for the agreements, I am deplored by what you are trying to do to these investors. As a friend, I am ashamed to be associated with what you are trying to do, without mentioning two of the investors are our college classmates. All of them are going to participate in a legal action against you and BetaPharma. I think it is a good thing to get rich, however, honesty and integrity are far more important than money in life. I hate to see a legal action becoming the way to right the wrongs and I hope you can find an alternative way to resolve this to everyone's satisfaction.  
Best,  
Zhaoyin

2. Don Zhang <don.pharmaman@gmail.com> Wed, May 14, 2014 at 1:10 PM  
To: "Z. Wang" <zwang.ca@gmail.com>  
Cc: Don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jirong\_peng@betapharma.com>, Gary Wood <gary.wood@betapharma.com>

Hi Zhaoyin,  
Thanks for the note! I will try to communicate with those investors to find out solutions that both meet the IRS rules and also are acceptable to them. As managers of US corporation, as long as they are outside of jail, we are under restricted tightly by the IRS laws and enforced to handle every transaction and report everything (even small transactions) to the IRS. And though stay outside of jail, cash penalty is pretty severe sometimes from the IRS and Jirong and Gary are handling penalty payments for our company for those wrong transactions related with those deals.  
Nevertheless, we are willing to talk with those peoples who are related with both you and our company and try to work out something that make us stay outside jail and also make the friends feel acceptable. Gary is our financial manager who is handling our finance now. Hope you help him should he needs some paper works from you in order to satisfy the IRS. Thank again!  
Regards,  
Don  
(Quoted text hidden)

3. Z. Wang <zwang.ca@gmail.com> Fri, May 16, 2014 at 9:19 AM  
To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,  
Thanks for your attention to these matters. I think you and I will also have to find a solution/decision for our partnership or my employment agreement with you/BetaPharma. We simply cannot ignore all of the issues and drag this on for too long. I hope we can reach an agreement/settlement without legal proceedings which I would reserve as the last resource. I am in Montreal until the 26th of May and please give me a call at your earliest convenience. My phone number is +1-514-391-7743 and I look forward to hearing from you.  
Best,  
Zhaoyin  
(Quoted text hidden)

4. Don Zhang <don.pharmaman@gmail.com> Mon, May 16, 2014 at 2:22 PM  
To: "Z. Wang" <zwang.ca@gmail.com>  
Cc: "Jirong Peng" <jirong\_peng@betapharma.com>, "Jirong Peng" <jirong\_peng@betapharma.com>

Hi Zhaoyin,  
Thanks for the note! Will try to call you this week. Gary is also working on the clear up on this regard. The key factor is to satisfy the IRS. Will be in touch!  
Don  
(Quoted text hidden)

5. Zed <zwang.ca@gmail.com> Mon, May 19, 2014 at 5:32 PM  
To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,  
Thanks for your reply. I will leave for Shanghai this coming Wednesday and hope we can have a conversation tomorrow, or you may reach me at [redacted] after I arrive in Shanghai on Thursday.  
Anyway, I certainly hope we can find a solution that not only satisfy IRS, also be fair to everyone involved. I look forward to hearing from you.  
Best,  
Zhaoyin  
发自我的 iPhone  
在 2014年5月19日, 下午2:22, Don Zhang <[redacted]> 写道:  
(Quoted text hidden)

6. Z. Wang <zwang.ca@gmail.com> Sat, May 24, 2014 at 6:15 PM  
To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,  
I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney. I certainly hope we can resolve everything by some other means instead of going through legal procedures. Anyway, June 1st is my deadline to sign the contract and that gives us only a week of time.  
Best,  
Zhaoyin  
(Quoted text hidden)

Tue, May 27, 2014 at 4:45 AM

王竹林 <wzhang12@126.com>  
For: Z. Wang <zwang@global.com>

王竹林 敬好  
王五各同 敬告大家  
桂林

Wed, May 28, 2014 at 8:20 AM

Don Zhang <donzhang@global.com>  
To: Z. Wang <zwang@global.com>

Hi Zhenyuan,  
How about you or your attorney start to draft a proposal for closing up the partnership at Bole Pharma (Canada). It is a lot easy to discuss and make modification on it if it has a proposal in writing. We can have it signed up as soon as we reach agreement. Please let us know what you have any problems. Thanks a lot!

Don  
Bole Pharma, Inc.  
(quoted text hidden)

Wed, May 28, 2014 at 10:17 PM

Z. Wang <zwang@global.com>  
To: Don Zhang <donzhang@global.com>

Hi Don,  
I look back I will have to initiate a legal proceeding to close up All of the partnership including Bole Pharma Canada and my service contract with BolePharma, since there is a lack of willpower from your side. I will discuss the matter with my attorney and start the process since this appears to be the only way to do it properly.

Best,  
Zhenyuan  
(quoted text hidden)

Thu, May 29, 2014 at 12:12 AM

Don Zhang <donzhang@global.com>  
To: Z. Wang <zwang@global.com>

Hi Zhenyuan,  
If you are busy and prefer to have no write a proposal, I will be happy to do so if you prefer. It is intended to respect you and check with your preference that. It is my understanding that you would like to reach an agreement with Bole Pharma (USA) so that you can move on with the business you like to pursue. So please let me know if your preference and whether I can start to draft a proposal as well. Thanks a lot!

Regards,  
Don  
(quoted text hidden)

Thu, May 29, 2014 at 1:10 AM

Z. Wang <zwang@global.com>  
To: Don Zhang <donzhang@global.com>

Hi Zhenyuan,  
It is about everything including my service contract with BolePharma USA, which will be part of the resolution. Please write a proposal with your thoughts as soon as possible. Please put down your preference what you do. To me, I could continue to work for "InterPharma" as long as it is not to my mind our agreement is respected. I understand that both of us have gone through some difficult times, and we are moved. It is too far apart from a business to me. I would resolve it legal proceeding would be the best way to reach an agreement.

Best,  
Zhenyuan  
(quoted text hidden)

Fri, May 30, 2014 at 11:46 AM

Don Zhang <donzhang@global.com>  
To: Z. Wang <zwang@global.com>

Hi Zhenyuan,  
Are you attending ASCO in Chicago? If you are, please let me know your hotel info or the best way to reach you during the conference. Please stay in touch! Thanks!

Don  
(quoted text hidden)

Sat, May 31, 2014 at 2:00 AM

Z. Wang <zwang@global.com>  
To: Don Zhang <donzhang@global.com>

Hi Don,  
Unfortunately I am not going to the ASCO. However we can have a Skype chat to discuss the issues or you may call my cell phone in China 1550742127. Anyway, I am hoping we can have this resolved instead of going to the court procedure. As we know that once the procedure starts, it is going to be irreversible. I just forward to further discussing with you.

Best,  
Z. Wang  
(quoted text hidden)

Sat, Jun 21, 2014 at 8:45 PM

Don Zhang <donzhang@global.com>

2 attachments

- Graph-1.pdf  
211K
- graph-2.pdf  
166K

13. Don Zhang <don.pharmamen@gmail.com>  
To: Zed Wang <zwang\_ca@yahoo.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "Z. Wang" <zwang.ca@gmail.com>

Sat, Jun 14, 2014 at 11:35 PM

Hi Zhaoyin.

Looks like you have made really great progress in ALK(m) inhibitors! Congratulations to your new progresses!

When comes to new drug discovery, of course, I am very serious and very excited about it and like to explore every possibility to work out something with you for those great projects with great potentials!

We currently have a good discovery team that we assembled from former employees of Novartis, J&J and other pharma companies in New Jersey. In particular, both Michael Grace and Michael Costanzo have extensive discovery experience. We currently mainly focus on oncology. It would be really great if you come to meet with our team and discuss projects with them extensively. We will try to work out every aspect of collaboration plan. So I would like to invite you come to Princeton to meet our teams (RD, RA, Financial and so on). Anyway, it is very exciting to explore those great potential with you. Also I would like to pay a visit to your lab in Shanghai if you like. Maybe both Jirong and I would visit you if you like. That would be very good to talk and work out things for the future. Please let me know. So I am looking forward to hearing from you again! Hope you have a wonderful weekend there in Shanghai!

Don  
(quoted text hidden)

14. Zed Wang <zwang\_ca@yahoo.com>  
Reply-To: Zed Wang <zwang\_ca@yahoo.com>  
To: Don Zhang <don.pharmamen@gmail.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "Z. Wang" <zwang.ca@gmail.com>

Sun, Jun 15, 2014 at 9:49 PM

Hi Don,

Thanks for your reply and the kind words!

I think it would be a good idea for you and Jirong to visit my lab in Shanghai, perhaps Nanjing too if time permits. Cost for R&D in China is still more cost-effective provided that a good analytical capacity is available. In Shanghai, the Institute's facility is perfectly serving that purpose. Human cost is also much lower for now if the productivity is kept reasonably high. For now, discovery work is done for Beta Pharma Canada, and we just have to find a way to move these molecules into development stage.

We can have a Skype conference call, and preferably, you and Jirong can visit here at your earliest convenience. The bottom-line is that you have to be serious and take actions. Talk is cheap, and we all know that.

Best,

Zhaoyin  
(quoted text hidden)

15. Don Zhang <don.pharmamen@gmail.com>  
To: Zed Wang <zwang\_ca@yahoo.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, "Z. Wang" <zwang.ca@gmail.com>, Jirong Peng <jpeng109@gmail.com>

Sat, Jun 21, 2014 at 3:28 PM

Hi Zhaoyin,

I chatted with Jirong about visiting your labs at both Shanghai and Nanjing and he is excited about the trip too! What are the best dates for you for us to come? Please give several options so that we can select the one that fit all of us.

Recently there are several investors in China with deep pockets like to work with BetaPharma (USA) and we may need to meet them together to close deals. The new venture can be very exciting and with very significantly larger size. By the way, how many team members you have there? how many turtles with Ph. D.? Will try to find time to chat more with you over phone. Looking forward to hearing from you again! (We have a lot of headache things happened here, so have to work even in the weekends). Please stay in touch!

Regards,

Don

On Sun, Jun 15, 2014 at 9:49 PM, Zed Wang <zwang\_ca@yahoo.com> wrote:  
Hi Don

Thanks for your reply and the kind words!

I think it would be a good idea for you and Jirong to visit my lab in Shanghai, perhaps Nanjing too if time permits. Cost for R&D in China is still more cost-effective provided that a good analytical capacity is available. In Shanghai, the Institute's facility is perfectly serving that purpose. Human cost is also much lower for now if the productivity is kept reasonably high. For now, discovery work is done for Beta Pharma Canada, and we just have to find a way to move these molecules into development stage.

We can have a Skype conference call, and preferably, you and Jirong can visit here at your earliest convenience. The bottom-line is that you have to be serious and take actions. Talk is cheap, and we all know that.

Best,

Zhaoyin

On Sunday, June 15, 2014 11:35 AM, Don Zhang <don.pharmamen@gmail.com> wrote:

16. Zed <zwang.ca@gmail.com>

Sat, Jun 21, 2014 at 6:37 PM

To: Don Zhang <don.pharmaman@gmail.com>

Hi Don,

What is new at the ASCO meeting? Just update you that our Crizotinib "me too" compound is moving along well and forzinib "me too" compound is also picking up the pace. In addition, we have also initiate other high value "me too" programs with great promise. I certainly hope we can resolve all of the issues and move things forward together if that is what you want. I have to know what you are thinking and what is your position on all of those issues. As I mentioned earlier, it could be irreversible once the lawyer is involved and things could be very unpleasant for everyone. Hope to hear back from you soon.

Best,

Zhuoyin  
[Quoted text hidden]

17. Don Zhang <don.pharmaman@gmail.com>  
To: zhaoyin wang <zwang\_ca@gmail.com>

Wed, Jun 4, 2014 at 8:41 AM

Hi Zhuoyin,

It was very busy and very exciting conference at ASCO! Also it is very exciting for me to know those new discoveries you are making there! Certainly we have a lot of new drug discovery interest and passion like to share with you and hopefully we can be more useful for patients, in particular, cancer patients. I will share more stuff with you and I am excited about knowing more about your thoughts and ideas, not well. I flew back from Chicago this morning (about 2:30AM). Will be in touch! Thanks!

Don  
[Quoted text hidden]

18. Don Zhang <don.pharmaman@gmail.com>  
To: zhaoyin wang <zwang\_ca@gmail.com>

Sat, Jun 7, 2014 at 12:42 PM

Hi Zhuoyin,

I am very excited to explore even greater opportunity with you in new drug discovery, in particular, oncology field. I guess you are currently working with research institute managed by Junying Yuan in Shanghai?

Anyway, I am thinking about building a company very much like Zhejiang Beta Pharma in Shanghai. Since we have more experience and knowledge than a decade ago, if we find out a way to work together efficiently, we can do much better than what we did with ZBP with sustainable growth. I believe in that you are one of the bests in medicinal chemistry on the earth so we should come out the best oncology products on the earth if we can find out a way to work together. Just wonder if a great potential like much better than ZBP is kind of dream you are dreaming?

I will share more with you about our new progresses on R&D, RA, BD, legal affairs and financial if you like later on

How about your works with Prof. Yuan? How is the business relationship you have with them in Shanghai? Please share your thoughts and ideas! please stay in touch! Thanks!

Don  
[Quoted text hidden]

19. Zed <zwang\_ca@gmail.com>  
To: "zwang\_ca@yahoo.com" <zwang\_ca@yahoo.com>

Mon, Jun 9, 2014 at 7:30 AM

Sent from my iPad

Begin forwarded message:

From: Don Zhang <don.pharmaman@gmail.com>  
Date: 2014年6月8日 上午12:42:04  
To: zhaoyin wang <zwang\_ca@gmail.com>  
Subject: Re: Legal action against you and BetaPharma US

[Quoted text hidden]

20. Zed Wang <zwang\_ca@yahoo.com>  
Reply-To: Zed Wang <zwang\_ca@yahoo.com>  
To: don Zhang <don.pharmaman@gmail.com>, Don Zhang <don.pharmaman@gmail.com>  
Cc: "z. wang" <zwang\_ca@gmail.com>

Mon, Jun 9, 2014 at 8:30 AM

Hi Don,

Gmail is down in China and I have use to use other mailbox to write you.

Taking a position is to use the government resource to serve our purpose, as you know how things are run in China now. I have the freedom to work on anything that I am interested in, and I have the resource to move BPCI's projects now. Attached is a xenograft study results of BPCI's lead cMet/ALK dual inhibitor, BC-00061. Although BC-00061 is somewhat less active than Pfizer's crizotinib at 30 mg/kg, it showed a clear dose response and completely eliminated the tumor at 100 mg/kg (n = 6). We suspected the PK can be improved with a selection of a suitable salt and the compound is very safe at 100 mg/kg dose in mice. Anyway, I think it is a low-risk project with a good possibility of success. We also have a "very-low" risk CV drug with a huge potential in the world market. BPCI's BTK inhibitor is also a low risk project and need only the so called "development". With this kind of combination of projects and some good money, a successful company can be easily built in China.

I would like to see how serious you are on this since I am tired of empty promises, and this is all about promises and obligations. I also would like to know if you intend to honor our "employment agreement" and I hope we can continue with the mission we have set out before. The New-Co will have all of the assets from BPCI and its ownership can be structured as we have originally agreed on. Otherwise, I don't have time to drag this any longer and a legal process will be the only way to resolve all of the issues.

Let's be honest to each other and have a serious discussion and I look forward to hearing back from you soon.

Best,

Zhuoyin  
[Quoted text hidden]

To: Don Zhang <don.pharmaman@gmail.com>  
Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jrpeng108@gmail.com>

Don,

I would say the sooner, the better, so we can resolve things ASAP. The only "bad" time is between Aug15-23, since I have a travel plan with my family. Anyway, as I said, I hope you can come ASAP. With regards to the manpower here, two out of 3 employees left for school last month and I am looking for replacements now in Guangzhou. I have 8 people in Guangzhou and trying to hire more, but job space is limited until our new lab renovation is finished toward the end of the year. Due to cost issues, I don't have any "sea horses" and the employees in Guangzhou are very good by my standard.

Best,

Zhaoyin

Sent from my iPhone  
[Quoted text hidden]

Tue, Jun 24, 2014 at 9:28 AM

21

Don Zhang <don.pharmaman@gmail.com>  
To: Zed <zwang\_ca@gmail.com>  
Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jrpeng108@gmail.com>

Hi Zhaoyin,

That is great! Both Jirong and I are excited about a trip to visit you! We will contact the potential investors/partners as soon as we can in China and work out the best dates ASAP. And I will keep you posted on the progress on our side

Regards,

Don  
[Quoted text hidden]

Thu, Jun 25, 2014 at 9:13 PM

22

Zed <zwang\_ca@gmail.com>  
To: Don Zhang <don.pharmaman@gmail.com>  
Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>

Hi Don,

I would like to know some real dates for your future visit. If you are serious about all of this, maybe you can let me connect me with your potential investors and get some pre-work done before you come for serious discussion since most of the Chinese investors are just bluffing. The other issue is the employment agreement we have and I would like to know how you are going to "handle" it. Hope you are serious and I cannot wait forever.

Best,

ZW

Sent from my iPad  
[Quoted text hidden]

Sun, Jun 28, 2014 at 9:52 PM

23

Don Zhang <don.pharmaman@gmail.com>  
Re: Zed <zwang\_ca@gmail.com>  
Cc: Zed Wang <zwang\_ca@yahoo.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jrpeng108@gmail.com>

Hi Zhaoyin,

Yeah, it is a good idea to start some preparation works now.

Currently the major investment projects we are talking about with the potential investors are the projects we included in Princeton. We were planning to have your projects included after our talk in Shanghai. Now then, in order to have your projects included in the deal and start to talk about them now, would you send the list of the projects and stages of each project you like to put on the table for discussion. I think that if we work together by sharing the similar vision, we should work out a good deal and practical plan to move forward to reach new steps of success.

Jirong is traveling with his family and will be back in Princeton next week. And we will meet with one of the most important potential investors on Wednesday again in Princeton. As we are engaging those activities, the date of meeting in China will be determined accordingly. So I will update dates of our trip after our meeting (fourth meeting) to discuss the agreement) to you next week. Also look forward to hearing from you too.

Don  
[Quoted text hidden]

Tue, Jul 1, 2014 at 1:25 AM

24

Zed Wang <zwang\_ca@yahoo.com>  
Reply-To: Zed Wang <zwang\_ca@yahoo.com>  
To: Don Zhang <don.pharmaman@gmail.com>, Zed <zwang\_ca@gmail.com>  
Cc: don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jrpeng108@gmail.com>

Hi Don,

Attached please find an introduction of projects that Beta Pharma Canada has developed. I believe the most promising ones are the last three projects, though the IP protection on EP4 are the most solid one and we already have US and Japanese issued patents.

I just hope to resolve all of the issues as soon as possible and the pace of communication with you is just too slow. Please expedite the work at your end.

Best,

Zhaoyin  
[Quoted text hidden]

 Beta Pharma Canada Program Summary-General slides (for Don).pdf  
2132K

Mon, Jul 14, 2014 at 10:29 AM

25

Zed <zwang\_ca@gmail.com>  
To: Zed Wang <zwang\_ca@yahoo.com>  
Cc: Don Zhang <don.pharmaman@gmail.com>, don Zhang <don\_zhang@betapharma.com>, Jirong Peng <jrpeng108@gmail.com>

Hi Don,

I hope we all doing this with a good faith, not trying to win each other's idea. I am waiting for your actions with regards to all of the issues we are facing. Please be serious and the way you are communicating with me will take another life time to get anything done. Please let me know what you are really thinking and we can move to the next step.

Best,



**EXHIBIT B—AFFIDAVIT OF LANCE LIU, ESQ.**

**(Retyped, bold transcription of text of affidavit, followed by photocopy of original document executed by the affiant.)**



### **Background**

3. I am a patent attorney with technical expertise in chemical and pharmaceutical sciences and in the last four years I have devoted the majority of time in drug development in partnership with pharmaceutical companies either as a consultant or as a business partner.

4. In July, 2011, I began business discussions with plaintiff Beta Pharma, Inc. ("Beta Pharma") in the development of certain pharmaceuticals.

5. As the first step of collaboration, I began recruiting drug formulation scientists and purchasing certain formulation equipment while Beta Pharma provided laboratory space and paid the expenses of purchasing chemicals.

6. By August, 2011, a collaboration agreement to develop generic drug products between Beta Pharma and I was drafted. My plan was to work with Beta Pharma on generic drugs as a consultant or a business partner.

7. Beta Pharma's business manager, Amy Chen, initially asked me to help Beta Pharma handle certain legal issues with payment deferred because of Beta Pharma's liquidity issues. Initially I declined because my main interest with Beta Pharma was getting into generic drug business and I did not want to complicate the relationship.

8. Don Zhang, Beta Pharma's CEO, advised me that the liquidity at Beta Pharma was only temporary and that I could help Beta Pharma to improve its liquidity problem by taking on some legal work on a deferred payment basis.

9. In addition to the use of laboratory space, Don Zhang further promised to make a cash investment in the company as contemplated in the

collaboration agreement drafted in August 2011 when the liquidity situation improved.

10. In reliance on Don Zhang's promises, I also began to purchase equipment at my own costs, for Beta Pharma's drug formulation work including: (i) an Agilent 1100 HPLC (ii) an HPLC made by Waters Corporation and (iii) a Vankel 7000 dissolution apparatus. In total I spent approximately \$19,000 on equipment.

11. I also recruited a pharmaceutical formulator, Dr. Yimin Sun of Southbury, CT, to help with the equipment set up and drug product screening at Beta Pharma's laboratory in Branford, CT.

12. Between December, 2011 and November 3, 2012, I performed legal work for Beta Pharma relating to patent applications, leasing, employee relations and corporate issues.

13. I billed Beta Pharma for this work at \$180/hour with 6% annual interest for any unpaid balance. In 2012, the amount of unpaid legal fees accumulated but the collaboration projects moved on a slow track and Dr. Yimin Sun, the formulator I recruited for the collaboration, moved on to a different company.

14. Don Zhang promised to convert the balance of my unpaid legal fees from December, 2011 to September 13, 2012 in an amount of approximately \$89,600 into shares of Zhejiang Beta Pharma at the same price he sold such shares to others.

15. When the liquidity issue started to improve in October, 2012, my unpaid legal fees from December, 2011 to September 13, 2012 of approximately \$89,600 would have been worth approximately \$215,000 in Zhejiang Beta Pharma stock. Beta Pharma, however, reneged on both promises: (i) to make a cash investment into collaboration projects as stated in the agreement drafted in August, 2011 and (ii) to convert the unpaid legal fees into Zhejiang Beta Pharma shares.

16. On November 3, 2012, I terminated my relationship with Beta Pharma including any legal representations that I had previously provided.

17. In December, 2012, Beta Pharma made a partial payment of legal fees in the amount of approximately \$70,000. The payment was in cash because the value of the shares in Zhejiang Beta Pharma had substantially increased and Beta Pharma intended to keep the appreciation on the shares for itself. The remaining legal fee balance of approximately \$50,000 was paid in cash in 2013.

18. Because Beta Pharma reneged on its promise to pay the legal fees stock I lost the significant appreciation in the value of such shares in an amount of approximately \$125,000.

#### The Client Files

19. During my work for Beta Pharma I only kept electronic copies of certain documents on my laptop and relied on Beta Pharma server for file storage and backup of all communications.

20. At the height of Beta Pharma's liquidity crisis in 2012 it was unable to pay for the copying/printing fees.

21. While I terminated my representation of Beta Pharma, I believed that the client had duplicates of all these files. In any event I sent Don Zhang and Jirong Peng copies of any important or time-sensitive documents at the time I stopped my work for the company. For examples, in January, 2013, I delivered all patent and trademark files to Beta Phama electronically.

**This Proceeding**

22. Plaintiffs commenced this proceeding on June 27, 2014 to compel me to deliver their client files.

23. That same day, counsel for plaintiffs contacted me by e-mail and offered to “withdraw this legal action” if I would deliver to them “all files associated with [my] representation of Beta Pharma, Inc., Beta Pharma Scientific, Inc. and Don Zhang...” A copy of this e-mail is annexed as Exhibit A.

24. Immediately after receiving this e-mail, I began to deliver, again, plaintiffs' client files to their new attorneys. Between June 27-30, 2014, I sent plaintiffs' counsel numerous documents relating to my representation of plaintiffs that had been stored on my personal laptop. Even though I believe they already had many of these documents, I delivered scores of files comprising over 5,000 documents.

25. After I delivered the files, plaintiffs changed their position. Even though they, in all likelihood had the files to begin with and even though I had acceded to their request and had delivered the client files again, they were no longer willing to drop the lawsuit but now insisted that I sign a consent order. I

objected to this additional requirement and asked them to discontinue the case because I had delivered the client files. They refused to do so.

26. On July 3, 2014, plaintiffs' changed their position yet again and their attorney wrote and advised the Court that they "would accept a letter from Mr. Liu to the Court representing that he has turned over all of the files." A copy of counsel's letter is annexed as Exhibit B.

27. Because of their ever-changing demands, I was forced to retain counsel to respond to this lawsuit. I have produced additional documents. Exhibit C is a chart setting forth, in detail, a catalog of the 6,199 pages I have produced to plaintiffs' counsel.

#### Files Delivered

28. As noted above, initially, I produced all the electronic files from my laptop related to my work for Beta Pharma. These were all saved in an electronic folder I had on the computer for the purpose of storing Beta Pharma work and I have produced them as documents Liu 0037-5769 as cataloged on the chart annexed as Exhibit C. It took me many hours over the course of three days to deliver these files.

29. The only documents I have withheld from production from the Beta Pharma electronic folder on my laptop are approximately 13 files that I had saved to that same Beta Pharma folder but that are unrelated to my legal work for Beta Pharma, including: (i) files concerning to an antibiotics patent that is owned by an unrelated third party; (ii) documents related to my visa application for business travel to China for the company; and (iii) one of my e-mail communications with

my personal attorney from January, 2011, from a time before I began acting as attorney for Beta Pharma. Out of an excess of caution, and to be thorough, I offered to provide these documents (except for my privileged e-mail with my personal attorney) to plaintiffs' counsel for attorneys' eyes only provided they gave me a non-disclosure agreement. A copy of my e-mail proposal is annexed as Exhibit D. Plaintiffs' counsel has not responded and has not offered any means of securing the confidentiality of these documents.

30. In addition to the electronic files from my laptop computer, I have also now reviewed my Yahoo e-mail account and produced all the e-mails from my personal Yahoo account relating to my work for Beta Pharma that remain available. Any other e-mails I may have sent or received on my Yahoo account relating to legal work for Beta Pharma have been deleted. I have produced the Yahoo e-mails to plaintiffs' counsel as documents Liu 5770-6199 as cataloged on the chart annexed as Exhibit C. Virtually all these e-mails were exchanged with plaintiff Don Zhang and with Beta Pharma's COO Jirong Peng to their Beta Pharma e-mail addresses so I assume plaintiffs already had copies of all these e-mails. While I worked for Beta Pharma I had the use of a company e-mail address which I used for most of my e-mail communications. I no longer have access to the e-mails I sent and received using this e-mail address.

31. I have also produced all my legal bills to the company. I have produced them as documents Liu 0001-0037 as cataloged on the chart annexed as Exhibit C. Again, I assume that the company has copies of these bills since they paid them, at least in part.

**The Motion Should Be Denied**

**32. When I ceased work for Beta Pharma I did not keep any physical files and I sent the company electronic copies of all important and time sensitive client files.**

**33. When plaintiffs commenced this proceeding, they offered, twice (see Exhibits A-B) to drop the case if I would deliver all client files. I again delivered copies of all client files to their attorneys as cataloged in Exhibit C.**

**34. I have delivered all the client files to plaintiffs so their motion to compel me to do so should be denied and the case should be dismissed.**

**Conclusion**

**35. I respectfully submit that I have fully honored my obligations as an attorney by providing plaintiffs with their client files. I respectfully request that the Court deny the motion and dismiss this proceeding. If the plaintiffs persist in maintaining this proceeding after the service and filing of this affidavit, I respectfully request that the court award me legal fees.**

---

**LANCE LIU**

**Sworn to before me this  
29<sup>th</sup> day of July, 2014**

---

**Notary Public**

EXHIBIT 3

SCHWARTZ & PONTERIO, PLLC  
 Attorneys for Defendant Lance Liu  
 By: John Pontario (ID# 005311992)  
 134 West 29<sup>th</sup> Street - Suite 1006  
 New York, New York 10001  
 Telephone: (212) 714-1200

BETA PHARMA, INC., BETA PHARMA SCIENTIFIC, INC., and DON ZHANG,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION
Plaintiffs,	MERCER COUNTY
v.	DOCKET NO.: C-46-J4
LANCE LIU,	Civil Action
Defendant.	AFFIDAVIT OF LANCE LIU

STATE OF Connecticut )  
 ) ss.:  
 COUNTY OF New Haven )

LANCE LIU, being duly sworn, deposes and says:

1. I am the defendant in this proceeding and I respectfully submit this affidavit in opposition to plaintiffs' motion for a preliminary injunction.

2. In 2011-2012, I performed certain legal work for plaintiffs. They have brought and maintained this proceeding, unnecessarily, to compel me to deliver their legal files. I have, however, already delivered all plaintiffs' client files in my possession to them. Plaintiffs agreed twice, in writing, to dismiss this proceeding upon delivery of the client files and I ask the Court enforce plaintiffs' agreement. As discussed more fully below, I have fulfilled my obligations as an attorney and I respectfully request that the Court dismiss the proceeding.

Background

3. I and a patent attorney with technical expertise in chemical and pharmaceutical sciences and in the last four years, I have devoted the majority of time in drug development in partnership with pharmaceutical companies, either as a consultant or as a business partner.
4. In July, 2011, I began business discussions with plaintiff Beta Pharma Inc. ("Beta Pharma") in the development of certain pharmaceuticals.
5. As the first step of collaboration, I began recruiting drug formulation scientists and purchasing certain formulation equipment while Beta Pharma provided laboratory space and paid the expenses of purchasing chemicals.
6. By August, 2011, a collaboration agreement to develop generic drug products between Beta Pharma and I was drafted. My plan was to work with Beta Pharma on generic drugs as a consultant or a business partner.
7. Beta Pharma's business manager, Amy Chen, initially asked me to help Beta Pharma to handle certain legal issues with payment deferred because of Beta Pharma's liquidity issues. Initially I declined because my main interest with Beta Pharma was getting into generic drug business and I did not want to complicate the relationship.
8. Don Zhang, Beta Pharma's CEO, advised me that the liquidity at Beta Pharma was only temporary and that I could help Beta Pharma to improve its liquidity problem by taking on some legal work on a deferred payment basis.
9. In addition to the use of laboratory space, Don Zhang further promised to make a cash investment in the company as contemplated in the collaboration agreement drafted in August 2011 when the liquidity situation improved.

10. In reliance on Don Zhang's promises, I also began to purchase equipment, at my own costs, for Beta Pharma's drug formulation work, including: (i) an Agilent 1100 UPLC (ii) an HPLC made by Waters Corporation and (iii) a Vankel 7000 dissolution apparatus. In total, I spent approximately \$19,000 on equipment.

11. I also recruited a pharmaceutical formulator, Dr. Yimin Sun of Southbury, CT, to help with the equipment set up and drug product screening at Beta Pharma's laboratory in Branford, CT.

12. Between December, 2011 and November 3, 2012, I performed legal work for Beta Pharma relating to patent applications, leasing, employee relations, and corporate issues.

13. I billed Beta Pharma for this work at \$180/hour with 6% annual interest for any unpaid balance. In 2012, the amount of unpaid legal fees accumulated but the collaboration projects moved on a slow track and Dr. Yimin Sun, the formulator I recruited for the collaboration, moved on to a different company.

14. Don Zhang promised to convert the balance of my unpaid legal fees from December, 2011 to September 13, 2012 in an amount of approximately \$89,600 into shares of Zhejiang Beta Pharma at the same price he sold such shares to others.

15. When the liquidity issue started to improve in October, 2012, my unpaid legal fees from December, 2011 to September 13, 2012 of approximately \$89,600 would have been worth approximately \$215,000 in Zhejiang Beta Pharma stock. Beta Pharma, however, reneged on both promises: (i) to make a cash investment into collaboration projects as stated in the agreement drafted in August, 2011 and (ii) to convert the unpaid legal fees into Zhejiang Beta Pharma shares.

This Proceeding

22. Plaintiffs commenced this proceeding on June 27, 2014 to compel me to deliver their client files.

23. That same day, counsel for plaintiffs contacted me by e-mail and offered to "withdraw this legal action," if I would deliver to them "all files associated with [my] representation of Beta Pharma Inc., Beta Pharma Scientific, Inc., and Don Zhang..." A copy of this e-mail is annexed as Exhibit A.

24. Immediately after receiving this e-mail, I began to deliver, again, plaintiffs' client files to their new attorneys. Between June 27-30, 2014, I sent plaintiffs' counsel numerous documents relating to my representation of plaintiffs that had been stored on my personal laptop. Even though I believe they already had many of these documents, I delivered scores of files comprising over 5,000 documents.

25. After I delivered the files, plaintiffs changed their position. Even though they, in all likelihood had the files to begin with, and even though I had acceded to their request and had delivered the client files again, they were no longer willing to drop the lawsuit but now insisted that I sign a consent order. I objected to this additional requirement and asked them to discontinue the case because I had delivered the client files. They refused to do so.

26. On July 3, 2014, plaintiffs changed their position yet again and their attorney wrote and advised the Court that they "would accept a letter from Mr. Liu to the Court representing that he has turned over all of the files." A copy of counsel's letter is annexed as Exhibit B.

27. Because of their ever-changing demands, I was forced to retain counsel to respond to this lawsuit. I have produced additional documents. Exhibit C is a chart setting forth, in detail, a catalog of the 6,199 pages I have produced to plaintiffs' counsel.

#### Files Delivered

28. As noted above, initially I produced all the electronic files from my laptop related to my work for Beta Pharma. These were all saved in an electronic folder I had on the computer for the purpose of storing Beta Pharma work and I have produced them as documents Liu 0037-5769 as cataloged on the chart annexed as Exhibit C. It took me many hours over the course of three days to deliver these files.

29. The only documents I have withheld from production from the Beta Pharma electronic folder on my laptop are approximately 13 files that I had saved to that same Beta Pharma folder, but that are unrelated to my legal work for Beta Pharma, including: (i) files concerning to an antibiotics patent that is owned by an unrelated third party; (ii) documents related to my visa application for business travel to China for the company; and (iii) one of my e-mail communications with my personal attorney from January, 2011, from a time before I began acting as attorney for Beta Pharma. Out of an excess of caution, and to be thorough, I offered to provide these documents (except for my privileged e-mail with my personal attorney) to plaintiffs' counsel for attorneys' eyes only, provided they gave me a non-disclosure agreement. A copy of my e-mail proposal is annexed as Exhibit D. Plaintiffs' counsel has not responded and has not offered any means of securing the confidentiality of these documents.

30. In addition to the electronic files from my laptop computer, I have also now reviewed my Yahoo e-mail account and produced all the e-mails from my personal Yahoo account relating to my work for Beta Pharma that remain available. Any other e-mails I may

have sent or received on my Yahoo account relating to legal work for Beta Pharma have been deleted. I have produced the Yahoo e-mails to plaintiffs' counsel as documents Liu 5770-6199 as cataloged on the chart annexed as Exhibit C. Virtually all these e-mails were exchanged with plaintiff Don Zhang and with Beta Pharma's COO, Jirong Peng to their Beta Pharma e-mail addresses, so I assume plaintiffs already had copies of all these e-mails. While I worked for Beta Pharma, I had the use of a company e-mail address which I used for most of my e-mail communications. I no longer have access to the e-mails I sent and received using this e-mail address.

31. I have also produced all my legal bills to the company. I have produced them as documents Liu 0001-0037 as cataloged on the chart annexed as Exhibit C. Again, I assume that the company has copies of these bills since they paid them, at least in part.

#### The Motion Should Be Denied

32. When I ceased work for Beta Pharma, I did not keep any physical files and I sent the company electronic copies of all important and time sensitive client files.

33. When plaintiffs commenced this proceeding, they offered, twice (see Exhibits A-B), to drop the case if I would deliver all client files. I again delivered copies of all client files to their attorneys as cataloged in Exhibit C.

34. I have delivered all the client files to plaintiffs so their motion to compel me to do so should be denied and the case should be dismissed.

Conclusion

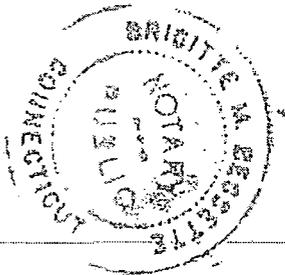
35. I respectfully submit that I have fully honored my obligations as an attorney by providing plaintiffs with their client files. I respectfully request that the Court deny the motion and dismiss this proceeding. If the plaintiffs persist in maintaining this proceeding after the service and filing of this affidavit, I respectfully request that the court award me legal fees.

Lance Liu  
LANCE LIU

Sworn to before me this  
25<sup>th</sup> day of July, 2014

Brigitte M. Bessette  
Notary Public

Brigitte M Bessette  
Notary Public  
Connecticut  
My Commission Expires 04/30/2017



**EXHIBIT C—AFFIDAVIT OF JONATHAN KATZ, ESQ.**



I did not enter into a representation agreement with Zhaoyin Wang till late September, 2014. Lance Liu was enjoined from communicating with me by then. I have never consulted him in connection with this lawsuit and he has no financial interest in the case. The facts are set forth in detail below.

5. I currently represent plaintiff Guojian Xie, Ph.D. in a lawsuit pending in the Connecticut Superior Court alleging breach of contract and other claims against Beta Pharma and Zhang. I also currently represent Shanshan Shao and other investors in a case alleging breach of contract and various torts against Beta Pharma and Zhang pending in the United States District Court for the District of Connecticut as Shao, et al. v. Beta Pharma, et al. Docket Number 3:14-cv-01177-CSH.

6. Dr. Xie's case against Beta Pharma and Zhang was initiated in Connecticut Superior Court by Attorney Thomas Flanagan in late December 2012, and was pending for nearly one year prior to the time my firm entered an appearance on Dr. Xie's behalf on November 25, 2013. Attorney Donald Altschuler represented defendants.

7. Dr. Xie brought Lance Liu to a meeting with me on October 30, 2013. He told me that Liu was helping him in connection with some personal matters.

8. By the time of this October 30, 2013 meeting, I had become aware that Dr. Xie already had a pending case against Beta Pharma and Zhang, and that Attorney Altschuler represented defendants Beta Pharma and Zhang. Accordingly, when Liu arrived with Dr. Xie, there was no reason for me to believe that he represented, or had represented Beta Pharma. Indeed, it was reasonable for me to believe that if Liu had a potential conflict of interest, i.e. a prior representation of Beta Pharma, he would act accordingly in compliance with the Rules of Professional Conduct.

9. In connection with my representation of Dr. Xie, through non-privileged sources, I became aware that Beta Pharma, through defendant Zhang, had sold stock in Zhejiang Beta Pharma, a People's Republic of China corporation, to certain investors.

10. In March of 2014, Liu did bring to my attention that some of those investors were interested in bringing lawsuits against Beta Pharma and Zhang in connection with those stock transactions.

11. Accordingly, Liu informed me that he would communicate with those investors about whether any were interested in retaining Jacobs & Dow, LLC to bring suit against Beta Pharma and Don Zhang.

12. Attorney Liu acted as a contact between me and the stockholders, including Song Lu and Xinshan Kang, who live in China. In particular, in view of his facility with the Chinese language, Liu transmitted my representation agreement to the stockholders, and transmitted the completed representation agreements back to me. Liu also transmitted the investors' stock purchase agreements to me for review, as well as certain e-mails between the investors and Don Zhang, discussing Beta Pharma's repurchase of their shares. None of these documents were Beta Pharma internal documents. None were marked confidential, and none were attorney-client privileged between Beta Pharma and its lawyers. After I received these initial documents, I have dealt directly with all of the investors that I represent. Liu's role as contact has ceased.

13. The investors' email communications with Don Zhang establish that the investors warned Zhang that they were contemplating legal action against him and Beta Pharma as early as November, 2013.

14. Liu and I agreed that Liu would be entitled to a forwarding fee of 25% of the contingent fee on the investor cases, which constituted a referral fee. Liu never had any interest in any fee I might earn from representing Guojian Xie.

15. On May 14, 2014, Liu emailed me a copy of Zhaoyin Wang's "Partnership Offering" contract, Exhibit A to the Complaint. Liu's email to me read, in its entirety, "Please see the enclosure." It contained no other documents.

16. According to Liu's cell phone records, produced by Beta Pharma, Liu called me on May 14, 2014 and we spoke for 8 minutes; I called Liu on May 15, 2014 and we spoke for 30 minutes; and Liu called me on May 15 and we spoke for 3 minutes. I have only the vaguest recollection of any conversation with Liu about Dr. Wang. Based on an email I sent to Liu for delivery to Zhaoyin Wang on May 15, 2014 however, I believe it is likely that Liu told me the contents of Wang's email to Liu dated May 14, 2014, re "My case against Don(betaPharma)". Wang produced this email to Beta Pharma when they deposed him on December 19, 2014, as "ZWANG BP v. LIU 00204", copy attached hereto.

17. When I spoke with Liu on May 14 and 15, 2014 I did not know that he had ever represented Beta Pharma. Nothing in my email to Zhaoyin Wang deals with confidential Beta Pharma internal matters or any activity during the period when Liu represented Beta Pharma, from roughly July, 2011 to November, 2012. Liu and I did not discuss Zhaoyin Wang in person and Liu gave me no other documents concerning Zhaoyin Wang.

18. Along with my May 15 email, I sent Liu a representation agreement for Dr. Wang, and a questionnaire for him.

19. Dr. Wang did not sign the May 15 representation agreement, or fill out the questionnaire, or otherwise communicate with me at that time, or until mid September. I did not follow up with him, directly or through Lance Liu.

20. In December, 2012, in Dr. Xie's case in Connecticut Superior Court, I served an interrogatory on Beta Pharma asking them to identify their lawyers, in order to identify the lawyers who had prepared and managed Beta Pharma's stock option plan. Beta Pharma did not respond to that interrogatory until six months later, on June 23, 2014. Their response identified Lance Liu as having been their general counsel.

21. My review of Beta Pharma's June 23, 2014 discovery response was the first time I became aware that Lance Liu had served as Beta Pharma's general counsel.

22. After I learned that Beta Pharma claimed that Liu had acted as its general counsel, Liu and I terminated the forwarding fee arrangement, and I notified the investors in the Shao case.

23. Liu no longer has any financial interest in the Shao investor cases.

24. Attorney Liu has not participated with me in representing the investors. He had no responsibility for the conduct of the litigation.

25. Other than the materials he transmitted from the investors, Attorney Liu has given me no documents in connection with representing the investors. He has never provided me with any confidential, privileged, or non-public information concerning Beta Pharma, including, but not limited to, information regarding Beta Pharma's dealings with Zhejiang Beta Pharma stock.

26. I did not hear at all from Dr. Wang till about September 15, 2014, when he called me. We negotiated a representation agreement, which he signed on September

22 and I returned to him, fully executed, on September 30, 2014. That agreement does not provide for payment of any forwarding fee to anyone.

27. Lance Liu has no interest in any fee I might earn from representing Dr. Wang. He has never participated in the lawsuit I filed for Dr. Wang, and I have never consulted him concerning that lawsuit. He has never had any responsibility for the conduct of the litigation.

28. Counsel for Beta Pharma provided me with a copy of a New Jersey Superior Court order on September 26, 2014, enjoining Lance Liu from communicating with me. I am not a party to that order. I have had no communications with Liu since I received the order, except that I emailed him on October 6, 2014 to advise him that a proceeding scheduled in Xie v. Beta Pharma had been postponed by the court, as follows:

Lance, Per attached court orders there are no proceedings before Judge Blue today, 10/6/14.

Thanks, Jonathan

29. On October 2, 2014, I noticed the deposition of Lance Liu in the Xie case and issued a Subpoena Duces Tecum for his attendance, with documents. The marshal was not able to serve the subpoena.

30. On October 1, 2014 and October 2, 2014, I advised Attorney Glen Duhl, who represents Beta Pharma and Zhang in the Xie action, that Liu has non-privileged discoverable information in this case. The bases for that statement were: public sworn

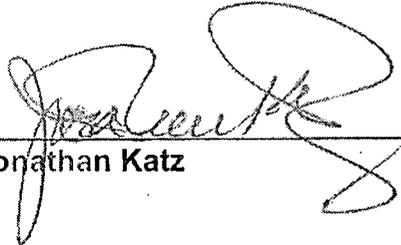
statements that have been made by Don Zhang in the Verified Complaint for injunction that he filed in a pending Superior Court of New Jersey case against Liu; Attorney Liu's own affidavit filed in a prior, dismissed New Jersey Superior Court case against Liu; and Beta Pharma's own prior deposition notice and document subpoena for Lance Liu. Subsequently, Beta Pharma has identified that Lance Liu is a witness in this case.

31. Although I am not a party to the New Jersey court's order, in deference to that court I moved in the Connecticut Superior Court for orders to govern the conduct of the Lance Liu deposition, so that Liu's deposition could proceed in concert with the New Jersey Order.

32. I have never seen any written modifications or proposed or draft modifications of the Exhibit A partnership agreement prepared by Lance Liu or anyone else. Zhaoyin Wang has stated under oath that he has seen none. See Wang Affidavit, Paragraph 13. His affidavit, Paragraphs 12 and 13, discusses communications with a later Beta Pharma lawyer for a "new updated agreement." Based on documents that have been filed elsewhere by Beta Pharma and Lance Liu, I believe it is likely that Beta Pharma's later lawyer was Wansheng "Jerry" Liu, employed by Fox Rothschild.

33. I have never represented Beta Pharma, Beta Pharma Scientific, Zhejiang Beta Pharma or Don Zhang. I have never been asked to represent any of those parties.

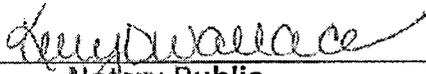
34. Lance Liu consulted me concerning some matters, and asked me to represent him. The consultations are attorney-client privileged. I am not representing him and I do not intend to do so.



---

Jonathan Katz

Subscribed and sworn to before me this 11th day of May, 2015.



---

Notary Public

KELLY D. WALLACE  
NOTARY PUBLIC  
MY COMMISSION EXPIRES OCT 31, 2015

Jonathan Katz

**From:** 王召印 [zywang@sioc.ac.cn]  
**Sent:** Friday, December 12, 2014 7:26 AM  
**To:** Jonathan Katz  
**Subject:** Fw: Fwd: My case against Don(betaPharma)  
**Attachments:** Zhaoyin Wang-BetaPharma Employment agreement.pdf; ATT00004.html

-----原始邮件-----

**发件人:** Zed <zwang.ca@gmail.com>  
**发送时间:** 2014年12月12日 星期五  
**收件人:** "zywang@sioc.ac.cn" <zywang@sioc.ac.cn>  
**抄送:**  
**主题:** Fwd: My case against Don(betaPharma)

发自我的 iPhone

以下是转发的邮件：

**发件人:** "z. wang" <zwang.ca@gmail.com>  
**日期:** 2014年5月14日 GMT+8下午10:51:15  
**收件人:** Lance Liu <lanceliu2000@gmail.com>  
**主题:** My case against Don(betaPharma)

Hi Lance,

Attached is the employment agreement that I had with Don (BetaPharma) back in year 2010. A few key points I should emphasize for you:

1. my career was deeply effected by the attached offer which persuaded me to decline quite a few very good offers;
2. I founded Beta Pharma Canada inc. with Don. With his consensus, Beta Pharma Canada Inc was structured as the ownership: Zhaoyin Wang (51%), Don Zhang (49%), inorder to gain the R&D tax credit from the Canadian government;
3. Don invested a total of \$400,000.00 US from October 2010 to June 2011;
4. I was never paid any salary during my entire service to the company;

12/12/2014

ZWANG BP v LIU 00204

6. Don breached the agreement without fulfill his obligation to me and beta Pharma Canada Inc.

7. I was never released from my position of CSO of BetaPharma.

Please take a look at the attached document and If you need more information or have any questions, please don not hesitate to contact me.

best,

Zhaoyin

Zhaoyin Wang, Ph.D.  
Chinese Academy of Science  
Interdisciplinary Research Center on Biology and Chemistry  
345 Ling Ling Road, Shanghai 200032  
The People's Republic of China  
Tel. +86-21-54925610, 86-18602560157

王召印

中国科学院生物与化学交叉研究中心  
电话：021-54925610/18602560157

地址：上海市徐汇区零陵路345号君谋楼602室

**EXHIBIT D—FIRST SUPPLEMENTAL CERTIFICATION OF  
LANCE LIU, ESQ.**

Richard A. Reinartz  
NJ Attorney ID Number 032592001  
THE REINARTZ LAW FIRM, LLC  
Court Plaza South - West Wing  
21 Main Street, Suite 205  
Hackensack, New Jersey 07601  
Telephone: (201) 289-8614

-and-

Matthew F. Schwartz  
NJ Attorney ID Number PHV 032146  
SCHWARTZ & PONTERIO, PLLC  
134 West 29th Street - Suite 1006  
New York, New York 10001  
Telephone: (212) 714-1200

*Attorneys for Defendant Lance Liu*

BETA PHARMA, INC.,  
BETA SCIENTIFIC, INC., and  
DON ZHANG,

Plaintiffs,

vs.

LANCE LIU,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MERCER COUNTY

DOCKET NO. L-2040-14

CIVIL ACTION

**FIRST SUPPLEMENTAL  
CERTIFICATION OF LANCE LIU**

LANCE LIU, of full age, deposes and hereby says:

1. I am the defendant in this lawsuit and I respectfully submit this First Supplemental Certification in compliance with my obligations under the Consent Order dated January 14, 2015 annexed as Exhibit A.
2. I did not solicit anyone to sue plaintiffs.
3. I never disclosed Protected Information (as that term is defined in the Consent Order) to any of the following (including their family members, lawyers, employees, or agents):
  - a. Shanshan Shao

- b. Hongliang Chu
- c. Qian Liu
- d. Song Lu
- e. Xinshan Kang
- f. Wei Yuan
- g. Bolin Wu
- h. Ju Lin
- i. Any individual known by me to have entered into any Stock Purchase Agreement with Beta Pharma and/ or entered into negotiations for the same (except for Guojian Xie who claims to have entered into such an agreement and is discussed in detail below).

4. I did not disclose any Protected Information to any other party, except for the following disclosures permitted under RPC 1.6: (a) disclosures that were impliedly authorized during the representation in order to carry out the representation; (b) disclosures to Jonathan Katz in his capacity as my attorney in order to obtain legal advice relating to my potential claims against Beta Pharma, Inc. and Don Zhang; and (c) disclosures to my attorneys in this case in order to establish my defense to plaintiffs' civil claims.

**Authorized Disclosures During Representation**

5. During my representation of Beta Pharma, I had many communications with third parties in my capacity as attorney for Beta Phrama. I also had conversations with many Beta Pharma employees and representatives. Many of these communications are described in my legal bills to Beta Pharma annexed as Exhibit B and indicated in the highlighted sections. The vast majority of the legal work I did for Beta Pharma involved communicating with officers, employees and representatives of the company as well as outside parties with whom Beta Pharma had issues. During these communications, it was often necessary to disclose Protected

Information to the other party and Beta Pharma either expressly or impliedly consented to this disclosure.

6. For example, I represented Beta Pharma in connection with the negotiation of severance with several of its employees, including Kevin Lin (See Exhibit B - 2/15 – 2/26/2012 entries from page LL 0006). In some of my conversations with Kevin Lin, I conveyed to him Beta Pharma's settlement position which may be considered Protected Information as that term is defined under the Consent Order. Beta Pharma consented to such disclosure in, either impliedly or expressly.

7. In addition, during my representation of Beta Pharma, I spoke with its employees, including Guojian Xie (See, for example, Exhibit B - 2/15/2012 entry from page LL 0006 and the 4/2 – 4/6/12 entries from page LL 0010). Because Protected Information is broadly defined, I am certain that I disclosed Protected Information to him in the course of our communications relating to patent applications and other matters in which I was representing the company. These disclosures were necessary for the work I was doing for Beta Pharma and the company consented to the disclosures, either impliedly or expressly.

8. In addition, during my representation of Beta Pharma, I spoke with Zhaoyin Wang who was employed by Beta Pharma Canada. We discussed tax filing issues (See Exhibit B – 7/26 – 7/31/2012 entries from page LL 0030). Because Protected Information is broadly defined, I may have disclosed Protected Information to him in the course of our communications relating to the tax filings in which I was representing the company. These disclosures were necessary for the work I was doing for Beta Pharma and the company consented to the disclosures, either impliedly or expressly.

9. In addition, during my representation of Beta Pharma, I may have spoken with representatives of Beta Pharma Shanghai. Again, because Protected Information is broadly defined, I may have disclosed Protected Information to them in the course of our communications relating to the matters in which I was representing the company. These disclosures were necessary for the work I was doing for Beta Pharma and the company consented to the disclosures, either impliedly or expressly.

10. Similarly, I traveled to China to represent Don Zhang at board meetings of Zhejiang Beta Pharma Co., Ltd. (See Exhibit B – 9/10 – 9/13/2012 entries from page LL 0026). During these meetings, I disclosed Protected Information to the other participants relating to Mr. Zhang's position on various issues in which I was representing the company. These disclosures were necessary for the work I was doing for Beta Pharma and the company consented to the disclosures, either impliedly or expressly.

11. The bills annexed as Exhibit B include many highlighted sections indicating when I communicated with third-parties and Beta Pharma employees or representatives during my representation. It would be quite burdensome for me to recount the substance of all these communications (as there were hundreds of them) most of which are not relevant to this case. I will be happy to answer any specific questions about them at the next session of my deposition.

**Zhejiang Beta Pharma Co., Ltd.**

12. I did not disclose any Protected Information regarding my representation of Beta Pharma and/or Beta Scientific to Zhejiang Beta Pharma Co., Ltd. except that I did disclose to them that Don Zhang threatened me by telling me that he personally knew an wealthy Chinese investor named Huang Hao who could force people to commit suicide and did make at least six people to do so in the past by insinuating that Huang Hao indirectly owns shares of Zhejiang

Beta Pharma through a subsidiary of his investment company and anyone taking actions against Beta Pharma, Inc. should be ready to face the backlash from Huang Hao, and by threatening that with US \$10 million, it would be sufficient to kill a whole family.

**Disclosures to Persons or Entities in Connection with Claims**

13. I did not disclose identify any information regarding my representation of Beta Pharma and/or Beta Scientific to any lawyer or any person or entity in connection with any claim or potential claim or complaint against Don Zhang, Beta Pharma, Inc., or Beta Pharma Scientific, Inc. except as discussed in paragraph 4 above.

I certify that the foregoing statements made by me are true and correct. If any of the foregoing statements made by me are willfully false, I understand that I am subject to punishment.

  
LANCE LIU

Dated: February 26, 2015