UNITED STATES DISTRICT COURT

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Securities and Exchange Commission )

Plaintiff, ) No. 2:15 – cv – 09420 – CBM (SSx)

 )

Vs. ) HUI FENG ANSWER TO THE

 ) COMPLAINT

Hui Feng and Law Offices of Feng )

& Associates P.C., )

Defendant ) **DEMAND FOR JURY TRIAL**

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**PREAMBLE**

This is a case of first impression for this or any federal district court. The Plaintiff in this case is the Securities and Exchange Commission, a 4000 manpower strong federal government agency with 12 offices nationwide and a $1.5 billion annual budget funded by taxpayers’ money (the “SEC”). The Defendants in this case is Hui Feng (“Mr. Feng”) and his law office with just 5 employees in Queens County, New York and annual expenses of less than $500,000. There is hardly any match for this contest. However, Mr. Feng is determined to carry out his civic duty to litigate with the SEC to the end of the judicial review so that a mistake committed by the bureaucrats at the SEC can be corrected; so that hundreds of immigration attorneys like Mr. Feng can continue to serve their clients without any worry or hesitation; so that thousands of immigrant clients can continue to have direct access to licensed attorneys in the United States for legal advice and counsel; so that competent business and legal professionals in the United States can take full responsibility and control over the administration and service of the EB-5 program, a quintessential American immigration program, without having to outsource such responsibility and control to the offshore immigration agencies in countries like China and subject to their unreasonable and humiliating demands as a result of the SEC’s irresponsible and senseless enforcement actions; and ultimately so that the “justice for all” is not just an empty slogan but something can be achieved through actions.

Therefore, this case is beyond just self interest. This case concerns the interest of the public and the interest of the United States. The final outcome of this case will demonstrate that we, as ordinary citizens of this country, continue to believe and insist upon the **cherished American value of “a government of the people, by the people, for the people, shall not perish from the earth”.** And we are willing to fight to safeguard this value with anyone or any entity, foreign or **domestic**, and at any time.

With the above spirit, Mr. Feng and Law Offices of Feng & Associates P.C. (“Law Office”) hereby answer the Complaint of the SEC as follows. To the extent not explicitly admitted, all allegations of the Complaint are denied.

**INTRODUCTION**

 The SEC’s claims that Mr. Feng and Law Office (1) engaged in securities fraud and (2) failed to register as a broker-dealer are completely false and without merits. Mr. Feng is an entrepreneurial and successful immigration attorney who achieved 100% success rate for his EB5 clients who are seeking U.S. green card through EB5 program. Mr. Feng and Law Office did not engage in any securities transactions. Mr. Feng and Law Office did not commit any securities fraud. By providing exceptional immigration services to his clients, Mr. Feng and Law Office did not and do not need to register as a broker-dealer.

1. **Mr. Feng’s Background and History of EB5 Program**

 Mr. Feng, a native Chinese, came to the United States in 1991 to study at Hamilton College (one of the best liberal arts colleges in the nation named after Alexander Hamilton) on full scholarships where he obtained an economics degree. Mr. Feng then went to obtain his law degree from Columbia University Law School in New York in 1997. In 2003, Mr. Feng obtained his MBA degree from Dartmouth College. He then worked in the financial industry for a couple of years until 2005 when he established his own law firm in a Chinese immigrant community in Flushing, Queens County, New York.

EB-5 program is an immigration program created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The main purpose of the program is to use immigration benefits to attract foreign capital to help create jobs in the United States. To facilitate such job creation program, starting in 1992, USCIS pre-approved many entities called “regional centers” to pool investors’ funds together to invest in job-creating projects.

Mr. Feng first heard of the EB-5 visa program in 2008 when that program started to gain popularity. Wary of immigration fraud and afraid of potential losses to clients, Mr. Feng did not jump into this business opportunity right away. Then by 2009 as more and more Chinese clients started to inquire about this immigration program, he researched and studied the laws governing the EB-5 visa program and contacted a few regional centers then in existence to assess the success ratio and legitimacy of this program for his clients.

Upon research, Mr. Feng found that while not every EB-5 program is reliable or trustworthy, there were a handful of regional centers in 2009 that had proven to be capable of supplying solid EB-5 programs through which Chinese clients can obtain American green cards. However, since most of Chinese clients do not speak English and many regional centers do not provide project information or offering documents in languages other than English, Mr. Feng has to help these clients analyze and identify investment projects that meet the strict source of capital and job creation requirements required by EB-5 program.

**EB-5 program is not an ordinary investment program. In a typical investment, investors will be concerned about economic returns, i.e. how much money they can make from the investment. But for investors in EB-5 program, while the program regulation itself requires some expectation of return, the real coveted prize is the green card. In order to determine if an applicant is entitled to the green card, USCIS does not care how much return an applicant can obtain from the investment, the adjudication focuses on how many jobs an EB-5 project can create and whether each applicant can be allocated with at least 10 jobs created through such investment.**

Therefore, Mr. Feng’s analysis, as an immigration attorney, centers on whether an EB-5 project is economically viable enough so that it can create and sustain at least 10 jobs per foreign immigrant applicant.

1. **Business Structure of Mr. Feng’s Immigration Practice**

 Before April 2013, Mr. Feng consulted with clients on EB-5 related immigration issues from his New York office, mainly through telephone, email and text messages. From 2010 to April 2013, Mr. Feng had only total 10 EB-5 clients. In order to provide better immigration consultation assistance to Chinese immigrant clients, in April 2013, Mr. Feng set up 3 representative offices in China with one consultant for each office. After April 2013, all Mr. Feng’s EB-5 clients were served by these overseas operations. Later in 2013, Mr. Feng’s website for EB-5 immigration business was also hosted in China for avoiding Chinese internet blocks and for faster access by Chinese clients. 70-80% of Mr. Feng’s EB-5 clients never came to the United States to meet Mr. Feng before signing legal service agreements. Mr. Feng did travel to China once a year to meet some of his EB-5 clients in China. Therefore, most of the immigration consultation activities were conducted overseas by Mr. Feng’s overseas offices and entity.

 **In April 2014, in an effort to comply with federal securities laws, for which SEC had not (and to this day still has not) issued any direct written guidelines on how immigration attorneys will be treated in an EB-5 transaction to avoid being labeled as a “broker”, Mr. Feng set up a consulting company in Hong Kong to oversee the immigration consultation operations in China.** The consulting company took over all the former EB-5 clients from Mr. Feng’s overseas offices and entered business relationships with the regional centers. The consulting company was originally managed by Mr. Feng and then in December 2014, under the advice of his securities law attorney, the management responsibility of the consulting company was transferred to a Chinese partner and Mr. Feng only provides legal consultation to the consulting company. Mr. Feng and his law office in New York act as the immigration attorney for the consulting company’s EB-5 clients but do not provide any project specific materials to EB-5 clients directly.

**Mr. Feng’s securities attorney submitted the current business structure described above to SEC staff Megan Bergstrom (Plaintiff’s legal counsel) for review and comments in February 2015. To this day, SEC has not made any comments on the current business structure or what change needs to be done to make the structure compliant with the federal securities laws. Instead of enforcing laws by first announcing what the law is, the SEC staff is engaging in trapping honest citizens through devious litigation tactics.**

 As a summary, since April 2013, Mr. Feng’s offshore operations and later the consulting company in Hong Kong are responsible for obtaining EB-5 clients. Mr. Feng and his office in New York only act as immigration attorney for these clients. To accuse the overseas offices and consulting company as a nominee for Mr. Feng is without any legal basis or proof.

1. **The SEC’s Mistake and Failure in EB-5 Program**

To understand about this case, we shall review briefly what the SEC did in

the EB-5 space in the past.

 As discussed in Part I, U.S. Congress started EB-5 program 25 years ago in 1990 as an immigration program to attract foreign capital and stimulate job creation. Regional center program was set up in 1992. The SEC has done absolutely nothing for the last 20 plus years until February 6, 2013, when the SEC announced its first enforcement action in EB-5 industry targeting a regional center for using fraudulent documents in its marketing activities (thanks to Mr. Feng’s due diligence and guidance, none of Mr. Feng’s clients put their money in this fraudulent project while nearly 300 of other Chinese investors did, so far the SEC has not filed any lawsuits against any agencies or immigration attorneys involved in that offering.). One wonders where the SEC is from 1992 to 2012, almost 20 years of silence since the EB-5 Regional Center Program started. No single announcement or official written guideline was issued by the SEC in the 20 years prior to 2013.

 Then on October 9, 2013, the SEC, jointly with the USCIS, issued a document called Investor Alert: Investment Scams Exploit Immigrant Investor Program. Curiously enough, in that document, the SEC states that “These regional centers offer investment opportunities in “new commercial enterprises” that **may** involve securities offerings”. The SEC did not define what type of EB-5 offerings might be securities and what type of EB-5 offerings might not be securities. Whether any EB-5 offerings are securities is still up in the air.

In the same Investors Alert, in recommending steps that investors need to take to avoid fraud, the SEC states that “Ask if promoters are being paid. If there are supposedly unaffiliated consultants, lawyers, or agencies recommending or endorsing the investment, ask how much money or what type of benefits they expect to receive in connection with recommending the investment.” This sentence suggests that the SEC is aware of certain fees being paid for the EB-5 projects marketing activity and is alerting and asking investors to understand those terms. The sentence does not suggest in any way that those fees are illegal or not permitted to be received by any consultants, lawyers or agencies.

In the same Investors Alert, under “Look for warning signs of fraud. Beware if you spot any of these hallmarks of fraud”, the SEC states that “Unlicensed sellers. Federal and state securities laws require investment professionals and their firms who offer and sell investments to be licensed or registered. Designation as a regional center does not satisfy this requirement. Many fraudulent investment schemes involve unlicensed individuals or unregistered firms.” Again, the SEC fails to specify who needs to be licensed or registered for EB-5 offerings. The sentence suggests that only regional centers need to be licensed or registered.

Then in the end of the same Investors Alert, the SEC states that “**If your investment through EB-5 turns out to be in a fraudulent securities offering**, you may lose both your money and your path to lawful permanent residency in the United States.”

So much is the SEC’s first official announcement on EB-5 offerings, instead of making clear definitions and issuing clear guidelines for the industry participants like any competent law enforcement agency should do, the SEC used the undefined terms in an uncertain sentence and left the question open as to what EB-5 offerings will be found to be securities.

**While that is all the help foreign investors can get from the SEC, they would get much better and more concrete help from the immigration attorneys like Mr. Feng. While the SEC in the past 3 years uncovered about 20 fraudulent EB-5 offerings that claimed hundreds of foreign investors as victims, as you will learn in the latter part of this Introduction, none of Mr. Feng’s clients were caught in any fraudulent EB-5 offerings. Unlike the SEC that relied on investors’ complaints or tips to uncover fraudulent schemes after foreign investors were already trapped in them, Mr. Feng used his expertise to help his clients avoid any fraud by conducting legal due diligence ahead of any investment. Mr. Feng, not the SEC, is in the first line of defense against fraud in EB-5 offerings.**

No data illustrates the SEC’s complete regulatory failure than the EB-5 adjudication statistics issued by the USCIS. In the past 3 years as the SEC was suddenly getting active in the EB5 space, still a record 3,000 I-526 applications were denied by the USCIS. The main interest of these EB-5 clients was to obtain American green card through their investment. The SEC has failed their American dreams miserably.

At the end of 2015, after failing its mission to protect investors from fraudulent EB-5 schemes by detecting them early, the frustrated SEC turned its attention instead to the easy target, the immigration attorneys, composed of mostly small firms of less than 10 employees who are lack of the financial resources to litigate with the SEC, a 4,000 manpower strong national agency with an operating budget of $330,000 per employee. **Instead of cooperating and working with honest and competent immigration attorneys like Mr. Fent to prevent EB-5 fraud, the SEC is back stabbing them by accusing the immigration attorneys as “unlicensed or unregistered brokers”. This case, with other similar cases against the immigration attorneys either already settled or still ongoing, will forever live in infamy in the history of the SEC!**

1. **EB-5 Program First And Foremost IS An Immigration Program**

In order for SEC to frame Mr. Feng as a broker for securities violations, they must first prove EB-5 investments are “securities”. In order for an investment to be “securities”, based on U.S. Supreme Court decisions in SEC v. W. J. HOWEY and United Housing Foundation, Inc. v. Forman, one key element is that investors must enter the investment for profit.

In a typical EB-5 program engaged by Mr. Feng’s clients, a client would put in $500,000 investment plus paying $50,000 administration fees to regional centers that administer the EB-5 program. **The investment documents would spell out that investors are only entitled to less than 1% per year which is way below what normal market return is for this type of investment (according to one research paper done by Professor Jeanne Calderon at NYU Center for Real Estate Finance Research, a normal market return for this type of risky investment product should be around 6%-10% a year).** The typical investment term is for 5 years. So after 5 years, even assuming the best case scenario, the foreign investors would get $500,000 plus less than $25,000 in return. The economic reality of this entire transaction was that foreign investors would lose $25,000 when administration cost for EB-5 project was taken into consideration. **Whatever return that Mr. Feng’s clients expected to gain from their $500,000 EB-5 investment would be used to defray the cost of EB-5 program.**

**Were these EB-5 transactions entered by foreign nationals taken as a whole “for profits”? In the Supreme Court cases cited above, to reach the conclusion if an investment is entered for profits, the court requires us to look at the economic reality of the underlining transaction. What is the “economic reality” for foreign investors in EB-5 program? Is getting less than 1% return each year while risking $500,000 by foreign investors the “economic reality”? Or foreign investors putting their $500,000 investment at risk plus paying extra administration cost to obtain immigration benefits is the true “economic reality” of the EB-5 program? A reasonable person would know it is the latter.**

 To sum it up, EB-5 program is first and foremost an immigration program. Without immigration benefits, there can be no EB-5 program or investors. By labeling a EB-5 immigration transaction as a securities transaction, the SEC is forcibly and foolishly outsourcing this program to overseas immigration agencies which the SEC has no power to regulate. It leaves thousands of foreign immigrant clients open to overseas fraud without the protection of the laws of the United States and hurt the integrity of the EB-5 program.

1. **Mr. Feng is An Exceptional Immigration Attorney Not a Broker**

 Even if one believes Mr. Feng’s clients entered the EB-5 investment as a “securities” transaction, Mr. Feng still did not act as a broker and should not be required to register as a broker.

In the past 6 years of providing EB-5 related legal services, Mr. Feng did due diligence on hundreds of EB5 projects on behalf of clients and only recommended projects with the safest prospect of obtaining immigration benefits to his clients. After reviewing project legal documents, conducting research on EB-5 project developers to verify their quality and experience, communicating with regional centers to confirm their integrity and experience, Mr. Feng would put qualified EB-5 projects in a pool for his clients to choose from (**as to today, there are total more than 600 regional centers approved by USCIS, Mr. Feng, after his due diligence work, only selected to work with less than ten regional centers**). **So far, all the EB-5 projects that Mr. Feng’s clients chose have a 100% successful rate in obtaining approvals, all the I-526 applications (first step in EB-5 visa program) that Mr. Feng submitted on behalf of his clients are 100% successful in obtaining approvals. All his clients are also 100% successful in obtaining conditional (second step in EB-5 visa program) and permanent green cards (third and final step in EB-5 visa program).**

Based on the data released by USCIS, as of September 30, 2015, there are total 39,645 I-526 applications submitted since 2008 having been adjudicated, among them, 34,660 applications are approved, and 4,985 applications are denied. The approval rate is only 87%. During the same time, there are about 6,500 I-829 applications, and the approval rate is only 92%. The combined success rate for EB-5 applications is just 80%. If anyone has to pay $500,000 for some product, can they tolerate a defect or failure rate of 20% or more? Shouldn’t a product be that expensive have a defect rate close to 0%?

Mr. Feng so far has zero failure rate at any stage of EB-5 application process. This is the exceptional quality service Mr. Feng has provided to his clients. From pre-qualifying EB-5 projects to preparing application documents, Mr. Feng has done utmost best to make sure that his clients obtain the best immigration services for EB-5 program. Every EB-5 immigrant investor would wish they have chosen Mr. Feng to represent them in obtaining a green card for their families. For all his clients who have achieved immigration approvals, they are full of gratitude and satisfactions for Mr. Feng’s outstanding service.

**To call such an exceptional immigration attorney an “unregistered broker” so that SEC can punish Mr. Feng for securities violation is without conscience and an abuse of justice system.** Instead of promoting or marketing EB-5 program as a “securities” investment as SEC wants you to believe, what Mr. Feng did market and promote in the past 6 years by opening 3 representative offices in China were his exceptional EB-5 immigration services and the high quality EB-5 immigration projects that he pre-selected through which clients can obtain immigrant visa. **Since there is really little economic return from these investments, Mr. Feng repeatedly warns and reminds his clients that EB-5 is an immigrant visa program and in the worst case scenario they could lose their entire investments and may still be without a green card.**

One key factor that SEC uses to label Mr. Feng as a “broker” is that Mr. Feng received a contingent fee from the regional centers (so called “marketing”, “referral” or “finder’s” fee) if his client’s immigration application is approved. This fee is contingent in nature. It comes out of the administration fees that immigrant clients pay to the regional centers to participate in a particular EB-5 project. It is not a commission paid out to Mr. Feng at the time of clients’ investment regardless of the immigration application outcome. Rather, **according to investment documents signed by clients, the administration fee is fully refundable back to clients if clients’ immigration applications are denied by USCIS. Mr. Feng will only obtain this fee from regional centers if clients’ immigration applications are approved.**

**Therefore, this contingent success fee is a reward for immigration success, not a typical commission in a broker’s transaction where it is paid out upon the commitment of capital investment. Without receiving any commission payment, Mr. Feng cannot be labled as a broker even by the SEC’s own guidelines.**

On the SEC’s own website, there is a document called “Guide to Broker-Dealer Registration”. In the section discussing “Who is a broker”, it states that “to determine whether any of these individuals (or any other person or business) is a broker……Here are some of the questions that you should ask to determine whether you are acting as a broker:

* Do you participate in important parts of a securities transaction, including solicitation, negotiation, or execution of the transaction?
* Does your compensation for participation in the transaction depend upon, or is it related to, the outcome or size of the transactions or deal? Do you receive trailing commissions, such as 12b-1 fees? Do you receive any other transaction-related compensation?
* Are you otherwise engaged in the business of effecting or facilitating securities transactions?
* Do you handle the securities or funds of others in connection with securities transactions?”

Based on the above guidelines, the analysis of Mr. Feng’s activity is as follows:

* Mr. Feng has never solicited for any investment clients. He only promoted his excellent EB-5 immigration service. EB-5 project structure and terms are provided by the regional centers, while Mr. Feng made some inquiries for clarification of the investment terms for his clients like any diligent attorney would do, Mr. Feng cannot negotiate for any change of the offering terms. While Mr. Feng and his employees help the clients sign the legal documents for getting into the EB-5 program, that is what any attorney would do in providing legal services in any business transactions whether it is in real estate closings, mortgage lending, commercial lease or shareholder agreements. Even in securities transactions, there are attorneys helping with drafting the legal documents and negotiating the legal terms of the transactions. Will all the securities attorneys be called “brokers” for assisting in the execution of the transactions?
* As we have explained above, Mr. Feng did not receive any transaction-based compensation. The contingent fee Mr. Feng did receive is not based on the close of the transactions but based on the approval of the immigration application. It is a fee related to the outcome of his legal services.
* Other than EB-5 immigration service which is the issue in dispute, Mr. Feng did not engage in any other business of effecting or facilitating securities transactions.
* Mr. Feng did not handle the securities or funds of others in connection with EB-5 transactions. Due to China’s foreign currency exchange restriction, Mr. Feng helped several of his clients receive and transfer their funds free of charge. Mr. Feng is not in the business of managing or handling the client’s investment funds.

Based on the above analysis, while the role that Mr. Feng did play in his EB-5 services is clearly not a “broker”, he may fit into the definition of a “finder” who helps to introduce his clients to the regional centers that are looking for immigrant investors. The term of a “finder” is not defined in the securities law statutes and it only appears in the SEC’s no action letters and some federal court cases. In a recent letter to the SEC’s Chairwoman Mary Jo White issued on September 23, 2015, the SEC’s Advisory Committee on Small and Emerging Companies notes that only 13% of a large quantity of private offerings uses any registered broker or finder. This is due, in part, to lack of interest from registered broker-dealers given the legal costs and risks involved in understanding a small transaction or ambiguities in the definition of “broker”. This void means that a number of smaller market participants rely on unregistered parties to identify and potential investors. **The Committee therefore recommends that the SEC take steps to clarify the current ambiguity in broker-dealer regulation by determining that persons that receive transaction-based compensation solely for providing names of or introductions to prospective investors are not subject to registration as a broker under the Securities Exchange Act.**

**While the above public policy discussion relating to the broker registration issue may not be applicable to Mr. Feng in this case, it nonetheless reveals the controversy and anachronism of the current “timely” litigation against Mr. Feng over a similar issue.**

1. **Mr. Feng Did Not Commit Any Fraud To Anyone**

SEC’s accusation that omission to discuss about the contingency fee above to his clients by Mr. Feng constitutes a fraud is stretching the definition for fraud.

First, such contingency fees are generally disclosed in various offering documents of EB-5 projects. **EB-5 projects are created by companies and individuals in the United States. In order to reach overseas foreign investors, there are typically consultants or agents who will act as the bridge between foreign investors and project companies. According to Feng’s knowledge through talking with various industry participants, 90% of all EB-5 foreign investors are introduced through overseas immigration agencies.** **Since SEC has investigated many regional centers since 2012, SEC should have reliable data on the percentage of regional centers that pays the contingency fees to either domestic or overseas immigration entities to obtain clients.**  EB-5 project companies have disclosed in their offering documents that they will use administration fees collected from foreign investors to pay these marketing costs. EB-5 project companies also pledge that they will fully refund the administration fees back to clients in case the immigration applications are denied.

Second, the information about the existence of this contingency fee is publicly available in both English and Chinese in popular websites, blogs or chat rooms that discuss EB-5 program. As discussed earlier in Part II of this Introduction, the SEC also issued an Investors Alert back in October 2013, discussing about the EB-5 related marketing fees. In fact, some of Mr. Feng’s clients knew about the existence of this contingency fee and negotiated for some rebate of this fee upon immigration application approval. Therefore, most of Mr. Feng’s clients knew or should have known about the existence of this legal fee reward for immigration success.

Third, the existence of this contingency fee has no bearing on Mr. Feng’s objective assessment of EB-5 projects. It needs to point out that most of EB-5 project companies offer such fees to anyone who can introduce immigrant investors to them. Given such is the industry practice, Mr. Feng was able to select best EB-5 projects solely on the merits of the project itself. In fact, Mr. Feng’s clients had a list of pre-qualified projects to consider and these projects paid different amount of contingency fees. Mr. Feng also welcomed and accepted clients who chose an EB-5 project on their own and Mr. Feng will help them file immigration applications as well. This level of professional objectivity shows up in the result. **As has been discussed earlier, while the industry had an overall 80% success rate for an EB-5 immigration application, Mr. Feng’s clients achieved 100% success rate so far.**

Forth, there is no conflict of interest issue for Mr. Feng accepting the contingency fee based upon clients’ immigration success. Mr. Feng’s clients come to Mr. Feng for immigration advice, not investment advice. To these clients, obtaining American green card is the ultimate prize they covet for. This legal contingency fee arrangement is consistent with clients’ interest.

Fifth, the information about the contingency fee payment to Mr. Feng upon clients’ immigration application approval is not material for clients in choosing which EB-5 project they participate to obtain green cards. As mentioned earlier, the Officering documents of all EB-5 projects have disclosed that the administrative fees collected from each client will be used for marketing costs, and most the clients acknowledged the use of this fee without objection by signing the Offering documents. **Some clients negotiated for some fee rebate with Mr. Feng indicated they did not believe such a contingency fee is material in changing their assessment of the overall ability of Mr. Feng in helping them reach their immigration goal. Further, since Mr. Feng has chosen to disclose such contingency fee in all his legal service agreements with clients since early 2015, the percentage of clients asking for some kind of fee rebate actually dropped. It is another proof that this contingency fee is not material to clients’ decision making.**

The SEC’s accusation of Mr. Feng defrauding the regional centers lacks basic credibility which should be dismissed right away. **Mr. Feng had successful business relationships with several reputable regional centers who have not been accused of any fraud after repeated SEC investigations.**  What’s more, these regional centers sponsored many EB-5 projects over the years that have helped immigrant investors obtain American green cards.

Initially, most of these entities had no problems entering direct business relationship with Mr. Feng for paying contingency fees based on clients’ immigration application success. **Sometime during 2013, although the SEC did not (and to this day still has not) issue any direct written guidelines on the contingency fee payment issues, due to a fear of the SEC interference with the EB-5 business, some regional centers asked Mr. Feng to provide offshore bank accounts and names for purposes of wiring the contingency fees later.**

At that time, while Mr. Feng had opened offices in China for providing EB-5 immigration services to Chinese clients, he had not setup bank accounts to receive these payments in US dollars. Therefore, Mr. Feng complied with the request of these regional centers by providing some relatives’ bank accounts for receiving these contingency fee payments on behalf of the offshore operations of Mr. Feng’s law offices as a matter of convenience. These fees are legitimate income of Mr. Feng’s overseas entities which could be used to cover those overseas expenses. **Mr. Feng’s overseas relatives in China are whom Mr. Feng can trust with the money. They are custodians of income earned by Mr. Feng’s overseas immigration operations. There are no legal requirements that these custodians have to directly interact with immigrant clients.**

**This particular information about the true functions that the custodians of Mr. Feng’s overseas operations play is neither material nor “in connection with” the purchase or sale of EB-5 offerings. Even if Mr. Feng did cause some misunderstanding by the regional centers as to the true identities of these custodians, Mr. Feng did not do it with an intention to mislead. Mr. Feng is simply telling the regional centers those are the people overseas that he can trust with receiving funds for Feng’s overseas operations.**

1. **The SEC Is Creating Problems Not Solutions in EB-5 Industry**

 The current SEC enforcement action, particularly this law suit is creating problems and not solutions in EB-5 industry which hurts foreign clients’ interest.

Since the SEC currently treats EB-5 immigration products as “securities” and requires anyone analyzing and introducing EB-5 projects to clients within the U.S. to be registered as brokers, immigration attorneys are not allowed to screen and introduce reliable EB5 projects to clients. The traditional securities sales and distribution channels, the registered broker and dealers, deem the immigration part of EB-5 program to be out of their expertise, and the cost of legal compliance is too high to justify their involvement in such a niche market. Therefore, there are few professionals capable of helping foreign clients in EB-5 project selection in the U.S., and all EB-5 distribution and sales activities are forced into overseas.

80% of EB-5 clients are coming from China, where most EB-5 project sales are monopolized by the so-called immigration agencies. There are hundreds of such agencies in China. Generally speaking, anyone that has a good relationship with the local government may obtain a license for such business without taking any investment qualification exams. In some provinces of China, one does not even needs any license to provide immigration intermediary services. Chinese version of the SEC currently has no oversight over these immigration agencies either. They are treated as providing immigration services not as engaging in securities sales in China. In addition, some U.S. law firms or regional centers and project companies set up direct representative offices overseas to carry out EB-5 distribution activities.

Though without specific industry data, based on the talks with some industry experts or management of some EB-5 regional centers, it is estimated that 90% of EB-5 clients are coming from overseas immigration agencies. These immigration agencies are not subject to the U.S. laws, and the SEC is incapable or has made no effort to investigate and oversee what schemes they take or what representations they make when advertising EB-5 products overseas. The staff quality of these agencies is questionable. Although they recruit some returnees with overseas study or work experience, most staff has no legal or financial investment background. For those agencies to guide EB-5 clients is like the blind leading the blind.

Due to lack of qualification and competency in screening and identifying EB-5 projects by many immigration agencies, many shady EB-5 projects were presented and sold to overseas clients that resulted in both financial losses and time delay for them. As previously discussed, the overall success rate for EB-5 applications is just 80%. **If any consumer has to pay $500,000 for some product, can anyone tolerate a defect or failure rate of 20% or more? Shouldn’t a product be that expensive have a defect rate close to 0%?** As mentioned previously, Mr. Feng’s clients so far has 0% denial rate at any stage of EB-5 application process which shows the true value of the licensed U.S. immigration attorney.

Not only the quality of Mr. Feng’s service is better, Mr. Feng also offers clients cost savings by allowing clients bypassing overseas immigration agencies which charge a separate consulting fee between $10,000 and $15,000.

**What's worse, once overseas immigration agencies have a monopoly over EB-5 projects sales, they will force clients to hire only attorneys appointed by them, and some even force their customers to sign legal services agreements with overseas consulting firms controlled by them who will does most of the paper work and pay some immigration attorneys in the U.S. with a token legal fee payment for filing purpose.**  In fact, the Chinese clients cannot directly communicate with the U.S. attorneys for any legal assistance. In some cases, the U.S. attorneys are also the attorneys for project developers or regional centers, and if any problem occurs to the project, the attorneys may refuse to represent clients' interests by citing conflict of interest.

Also, **since overseas immigration agencies control 90% of the EB-5 distributions, they sometimes use this as leverage to require regional centers and developers in the U.S. to conduct business according to the business practice or norms of their own countries. The consequence of this is EB-5 service practice could be in total disregard of the U.S. laws and regulations. It creates a tremendous risk to overseas clients.** It also compromises the enforcement actions by authorities in the U.S. and makes their efforts futile and useless.

**The SEC needs to reform its enforcement activities if it wants to break the monopoly power of the overseas immigration agencies and truly protect EB-5 clients’ interest both inside and outside the United States. An enforcement scheme that simply pushes everything overseas is not a real responsible solution by a national government agency with 4,000 employees and $1.5 bilion budget a year.**

1. **Conclusion**

**The entire case is a chilling example of a powerful national government agency abusing its regulatory power to trample on a legitimate small business successfully run by an entrepreneurial and competent immigration attorney. It also exposes the complete regulatory failure by the SEC to issue direct official guidelines for the EB-5 industry participants to avoid being trapped by federal securities laws.** Since EB-5 program started in early 1990s, over the past 25 years, SEC had ample time and opportunity to issue such official guidelines to guide the industry. Instead, the SEC’s repeated and ongoing policy failure as a result of its incompetency causes confusion and misunderstandings among regional centers and immigration attorneys. **Mr. Feng, being brought into this court by the SEC, is just a victim of its cover up of this policy failure. This SEC policy failure continues to this day.**

**Mr. Feng is proud of his immigration service to his EB-5 clients which has not resulted in a single failure for his clients in achieving immigration success.** **Mr. Feng has done a much better job than the SEC in both understanding and protecting the true interest of the foreign immigrants. For the SEC to bring this shameless law suit against Mr. Feng, it is wrong on the facts, wrong on the law and especially wrong on the public policy.**

Mr. Feng does not believe he has done anything wrong and refuses to settle with the SEC on their terms. **Mr. Feng, as an immigrant himself coming from a country lack of democracy and a rule of law, believes in American democracy and the rule of law and decides to seek justice in this court for the sake of the public interest to stop the bureaucrats at the SEC from abusing their power on small business owners like Mr. Feng.**

**While this is going to be a costly litigation for Mr. Feng, he is willing to make the personal sacrifice so that our democratic government can live to its true claim of “of the people, by the people and for the people”.** In the interest of justice, the SEC’s claims should be dismissed in its entirety and a penalty and compensation shall be imposed on the SEC for its recklessness in brining this wrongful and frivolous law suit into this court which causes irrevocable harm to the Defendant’s business and reputation.

**ANSWER TO SPECIFIC ALLEGATIONS**

 Mr.Feng and Law Office incorporate the Introduction of this Answer as if fully set forth therein and answers each specific allegation as follows:

1. Answering Paragraph 1, Mr. Feng and Law Office admit this Court has jurisdiction. Mr. Feng and Law Office deny the remaining allegations in this paragraph, except to the extent that the allegations constitute legal conclusions that do not require a response.
2. Answering Paragraph 2, Mr. Feng and Law Office admit they have, directly or indirectly, made use of the means of instrumentalities of interstate commerce. Mr. Feng and Law Office deny the remaining allegations in this paragraph, except to the extent that the allegations constitute legal conclusions that do not require a response.
3. Answering Paragraph 3, Law Office admits that venue in this district is proper. Mr. Feng denies that venue in this district is proper. Mr. Feng and Law Office deny the remaining allegations in this paragraph, except to the extent that the allegations constitute legal conclusions that do not require a response.
4. Answering Paragraph 4, Mr. Feng and Law Office deny the allegation, except Mr. Feng states that he with his law office is a legitimate and successful immigration law firm in Flushing, New York that achieved 100% success rate in helping clients obtaining EB-5 immigration visa. He was entitled to receive any contingency fee based on immigration success.
5. Answering Paragraph 5, Mr. Feng and Law Office admit the allegation except for the last sentence. Mr. Feng states that under the EB-5 program regulations, foreign investors are required to be “engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment”.
6. Answering Paragraph 6, it states legal conclusions to which Mr. Feng and Law Office need not respond. To the extent any response to those allegations is necessary, Mr. Feng and Law Office deny them.
7. Answering Paragraph 7, Mr. Feng and Law Office deny the allegation except Mr. Feng complied with the request of several regional centers for overseas persons and bank account to receive contingency fees on behalf of Mr. Feng’s overseas operations as a matter of courtesy.
8. Answering Paragraph 8, it states legal conclusions to which Mr. Feng and Law Office need not respond. To the extent any response to those allegations is necessary, Mr. Feng and Law Office deny them.
9. Answering Paragraph 9, Mr. Feng admits the allegation.
10. Answering Paragraph 10, Mr. Feng admits the allegation except that Law Office’s office in Alhambra, CA was for a brief period from October 2013 to October 2014 with a part-time non attorney personnel there. Neither Mr. Feng nor Law Office’s other full time employees ever visited or conducted any business at that office.
11. Answering Paragraph 11, Mr. Feng denies the allegation except Mr. Feng states that Atlantic Business Consulting Limited (“ABCL”) is a Hong Kong entity that Mr. Feng founded in April 2014 for the purpose of taking over Mr. Feng and Law Office’s overseas immigration consultation services to Chinese clients. It is a legitimate business with a legitimate purpose. By December 2014, Mr. Feng transferred the management responsibility of ABCL to his Chinese partner in China. Mr. Feng still provides legal consultation to ABCL.
12. Answering Paragraph 12, Mr. Feng and Law Office admit the allegation.
13. Answering Paragraph 13, Mr. Feng and Law Office admit the allegation.
14. Answering Paragraph 14, Mr. Feng and Law Office deny the allegation except the EB-5 Immigrant Investor Program is designated to attract individuals from other countries who are willing to put their capital at risk with expectation of a green card. Whatever return Mr. Feng and Law Office’s clients expected to gain from their EB-5 investment would be used to defray the program cost that foreign investors have to pay.
15. Answering Paragraph 15, Mr. Feng and Law Office admit the allegation.
16. Answering Paragraph 16, Mr. Feng and Law Office admit the allegation.
17. Answering Paragraph 17, Mr. Feng admits the allegation except Mr. Feng states that whatever return Mr. Feng and Law Office’s clients expected to gain from their EB-5 investment would be used to defray the program cost that foreign investors have to pay. The entire transaction, taken as a whole, is not making any real profits for foreign investors. EB-5 Program, from foreign clients’ point of view, is first and foremost an immigration program.
18. Answering Paragraph 18, Mr. Feng and Law Office admit the allegation.
19. Answering Paragraph 19, Mr. Feng and Law Office admit the allegation.
20. Answering Paragraph 20, Mr. Feng and Law Office admit the allegation except Mr. Feng and Law Office state that under the EB-5 program regulations, foreign investors are required to be “engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment”.
21. Answering Paragraph 21, Mr. Feng and Law Office deny the allegation except Mr. Feng and Law Office state that while majority of immigrant clients pursue the EB-5 program through regional centers, they do have some clients that conduct direct investment in the United States by setting up new commercial enterprises themselves. Mr. Feng and Law Office help those clients as an immigration attorney as well.
22. Answering Paragraph 22, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that starting in 2010, they received inquiries from Chinese clients, many of whom located in China about obtaining immigrant visa through EB-5 program.
23. Answering Paragraph 23, Mr. Feng and Law Office denies the allegation, except Mr. Feng and Law Office states that starting in 2012, Mr. Feng and Law Office began using a Chinese language website that was hosted in the United States initially (later moved the website hosting to overseas in 2013) to let viewers know about his EB-5 immigration services. Mr. Feng and Law Office believed that viewers of his website can obtain some independent and professional opinions about some EB-5 projects available to them. How did viewers actually feel about his website was purely speculation based on some clients’ feedback.
24. Answering Paragraph 24, Mr. Feng admits the allegation.
25. Answering Paragraph 25, Mr. Feng denies the allegation, except Mr. Feng states that he opened offices in China in April 2013 that were staffed with one non-lawyer assistant each. Mr. Feng and his overseas office employees actively responded to EB-5 immigrant program inquiries from potential clients both online and offline.
26. Answering Paragraph 26, Mr. Feng admits the allegation, except Mr. Feng states that offshore employees had a base salary plus a performance based bonus depending on how many EB-5 immigrant clients sign immigration service agreement with Mr. Feng and Law Office.
27. Answering Paragraph 27, Mr. Feng and Law Office admit the first two sentences but deny the last sentence, except that Mr. Feng and Law Office state that the retainer agreement explains why Mr. Feng and Law Office’s interest is in line with clients’ interest. It states that if immigration application is not successful, Mr. Feng and Law Office agree to refund all legal fees back to the clients. As a result, Mr. Feng and Law Office must try their best to select the most reliable immigration project for their clients.
28. Answering Paragraph 28, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state the retainer agreements did not disclose the contingency fee that Mr. Feng and Law Office would receive when clients’ immigration applications were approved.
29. Answering Paragraph 29, Mr. Feng admits the allegation except Mr. Feng states he primarily communicated with his clients and regional centers over the phone, via email and through online platforms. Mr. Feng and Law Office employees also met less than 30% of EB-5 clients in his office in New York for immigration legal consultation. At the time they retained Mr. Feng and Law Office as the immigration attorney, some of the clients were traveling or residing in the United States on a temporary basis.
30. Answering Paragraph 30, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that upon request by clients, he would provide a list of pre-qualified EB-5 immigration projects for his immigrant clients to consider. Some regional centers have multiple immigration projects to consider.
31. Answering Paragraph 31, Mr. Feng and Law Office have no knowledge to determine if this allegation is accurate except Mr. Feng and Law Office state that some regional centers are located in Los Angeles area.
32. Answering Paragraph 32, Mr. Feng and Law Office admit the allegation, except Mr. Feng and Law Office state that a EB-5 immigration project typically requires either $1 million or $500,000 plus a separate administration fee which was used to pay other operating expenses of regional centers including the contingency fees paid to Mr. Feng and Law Office upon clients’ immigration success.
33. Answering Paragraph 33, Mr. Feng and Law Office admit the allegation.
34. Answering Paragraph 34, Mr. Feng and Law Office deny the paragraph, except Mr. Feng and Law Office state that at the end of the loan term, regional centers are expected to receive the capital investment back and regional centers then have to pay each investor the capital investment back.
35. Answering Paragraph 35, Mr. Feng and Law Office deny the allegation and states that under the EB-5 program regulations, foreign investors are required to be “engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment”.
36. Answering Paragraph 36, Mr. Feng and Law Office deny the allegation and state that his clients usually are required to make some policy decisions as limited partners which is required by the EB-5 Immigrant Program.
37. Answering Paragraph 37, Mr. Feng and Law Office reincorporate their answer to Pragraph 36.
38. Answering Paragraph 38, Mr. Feng and Law Office reincorporate their answer to Pragraph 36.
39. Answering Paragraph 39, Mr. Feng and Law Office reincorporate their answer to Pragraph 36.
40. Answering Paragraph 40, Mr. Feng and Law Office deny the allegation except Mr. Feng and Law Office state that they would provide EB-5 immigration project documents upon request to clients so that they can choose a project on their own to be eligible for filling for immigrant visa application.
41. Answering Paragraph 41, Mr. Feng and Law Office deny the allegation and state that these immigration project documents explain to clients what costs are associated with the program and what little return if any they might obtain to mitigate the immigration program cost. The return is typically between 0.1 to 1% a year which is way below what a reasonable return of this kind of investment risk should require if this is a typical financial transaction. All documents emphasizes that the capital must be at risk in order to obtain EB-5 immigrant visa.
42. Answering Paragraph 42, Mr. Feng and Law Office reincorporate their answer to Pragraph 41.
43. Answering Paragraph 43, Mr. Feng and Law Office have no knowledge which project document this allegation is referring to.
44. Answering Paragraph 44, Mr. Feng and Law Office deny the allegation and state that some EB-5 projects could run into financial difficulty and could not pay back immigrant investors their capital contribution on time which is typically 5 years and therefore, as a comfort or compensation for immigrant investors to accept a longer term for the loan, borrowers would the option to unilaterally extend the loan terms for another couple of years with a slightly higher percentage return which is still way below normal market returns. EB-5 clients in those projects have no choice but to accept these loan extension terms. These loan extension terms are unfavorable to foreign investors who want to get their money back as soon as they obtain permanent green cards so that they can put their money into some real investment projects earning market returns.
45. Answering Paragraph 45, Mr. Feng and Law Office have no knowledge which project document this allegation is referring and Mr. Feng and Law Office reincorporate their answer to Pragraph 41 and 44.
46. Answering Paragraph 46, Mr. Feng and Law Office admit the allegation.
47. Answering Paragraph 47, Mr. Feng and Law Office admit the allegation, except Mr. Feng and Law Office state whether something is a “securities” or not is not based on the name it is called.
48. Answering Paragraph 48, Mr. Feng and Law Office reincorporate their answer to Pragraph 47.
49. Answering Paragraph 49, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that starting in 2010, they received inquiries from Chinese clients, many of whom located in China about obtaining immigrant visa through EB-5 program. In about 2013, Chinese interest in EB-5 immigrant visa surged. As a response, Mr. Feng and Law Office worked harder to meet clients’ demand.
50. Answering Paragraph 50, Mr. Feng denies the allegation, except Mr. Feng states that in 2012, Mr. Feng began using a Chinese language website that was hosted in the United States (later the website hosting was moved to overseas in the fall of 2013) to let viewers know about his EB-5 immigration services.
51. Answering Paragraph 51, Mr. Feng denies the allegation, except Mr. Feng states that he did everything possible to accommodate the immigrant clients’ request for assistance in helping them with paper work. Considering the time lag and the language barriers between his clients (most Chinese clients do not speak English) and the regional centers, Mr. Feng had to make extra effort and incur physical and economic cost (including working past midnight every day) to assist his clients. Mr. Feng carries out all the normal duties that an attorney should do in helping his clients in any ordinary business or personal transactions which includes printing out signature pages, telling clients how to sign properly and email or mail documents to the parties involved. Mr. Feng and Law Office provide the same kind of service for real estate transactions as well. It is essentially what lawyers do, that is to facilitate business or personal transactions and make sure they are done properly.
52. Answering Paragraph 52, Mr. Feng denies the allegation, except Mr. Feng interfaced directly with the regional centers to make sure his clients are eligible for filing immigrant visa applications. Sometimes, to protect his clients’ interest, Mr. Feng would ask very specific questions to the regional centers about their EB-5 projects.
53. Answering Paragraph 53, Mr. Feng admits the allegation and states Mr. Feng helps clients to meet all the requirements set by the regional centers. Due to the time lag and language barriers between his clients (most Chinese clients do not speak English) and the regional centers, Mr. Feng tried his best to facilitate the communications between his clients and the regional centers.
54. Answering Paragraph 54, Mr. Feng and Law Office admit the allegation and state that due to foreign currency exchange control mechanisms administered by China, in a couple of instances, Mr. Feng and Law Office have to use their own bank accounts to help clients transfer funds to the regional centers. Mr. Feng and Law Office did this for free without any additional legal fee charge to clients. It was not a regular business for Mr. Feng and Law Office.
55. Answering Paragraph 55, Mr. Feng denies the allegation and states that he has told the regional centers that he is letting many clients know that they have a reliable way to obtain American green cad through his EB-5 immigration services.
56. Answering Paragraph 56, Mr. Feng denies the allegation and states that good EB-5 immigrant projects are valuable to his clients and many Chinese immigrant investors are competing for those spots. He tries to let his clients get into the most reliable EB-5 projects for American green card.
57. Answering Paragraph 57, Mr. Feng and Law Office deny the allegation except Mr. Feng and Law Office assert that they only received contingency fees from the regional centers based on immigration application approval. One regional center advances partial contingency payment before the immigration approval which needs to be refunded back to the regional center or clients in case of immigration denial. Due to the 100% approval rate achieved by Mr. Feng and Law Office, no such refund is ever necessary. Those contingency fees go anywhere between $15,000 to $45,000 each and sometimes Mr. Feng and Law Office will refund a portion of the contingency fee back to his clients based on the prior agreements. Only in one occasion, there is a contingency fee of $70,000 and Mr. Feng and Law Office refunded $15,000 back to the friend client voluntarily. ABCL is an independent company that Mr. Feng set up in Hong Kong in April 2014 to take over Mr. Feng and Law Office’s immigration consultation services overseas. It was not and is not a nominee of Mr. Feng and Law Office.
58. Answering Paragraph 58, Mr. Feng and Law Office reincorporate their answer to Paragraph 57.
59. Answering Paragraph 59, Mr. Feng and Law Office deny the allegation and state Mr. Feng and Law Office only received contingency fees if clients’ immigration applications are approved. Mr. Feng and Law Office have not received any other fees for clients that Mr. Feng and Law Office did not file immigration applications. And in some instances, Mr. Feng and Law Office will not receive any contingency fees even after his clients’ immigration applications are approved because those clients find those projects by themselves or through other agents.
60. Answering Paragraph 60, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that they did receive some contingency fee based on clients’ immigration success.
61. Answering Paragraph 61, Mr. Feng and Law Office deny the statement in the entirety. Mr. Feng and Law Office admit that there are contingency fee agreements. The payment of which is contingent upon USCIS approving the immigrant I-526 application.
62. Answering Paragraph 62, Mr. Feng admits the allegation and states that Mr. Feng did not and still does not need to register with SEC as a broker.
63. Answering Paragraph 63, Mr. Feng admits the allegation and states his law office did not and still does not need to register with SEC as a broker.
64. Answering Paragraph 64, Mr. Feng and Law Office deny the allegation. Mr. Feng and Law Office state that there is no duty to disclose a contingency fee when there is no conflict of interest involved. Mr. Feng and Law Office’s interest is in line with his clients’ interest when the contingency fee is only received when his clients obtain the immigration approval. Even if there is a question regarding the disclosure of the conflict of interest between Mr. Feng and Law Office and his clients, that is an issue to be resolved under New York State Law, not a federal securities law issue.
65. Answering Paragraph 65, Mr. Feng and Law Office reincorporate their answer to Paragraph 64.
66. Answering Paragraph 66, Mr. Feng and Law Office reincorporate their answer to Paragraph 64. Mr. Feng and Law Office further state that such contingency fees are generally disclosed in various offering documents of EB-5 projects. The information about the existence of this contingency fee is publicly available in both English and Chinese in popular websites, blogs or chat rooms that discuss EB-5 immigrant program.
67. Answering Paragraph 67, Mr. Feng denies the allegation. Mr. Feng states that there is no proof that this information is material to clients’ choice of EB-5 projects. In fact, the proof is to the contrary. Some of Mr. Feng’s clients knew about the existence of this contingency fee and negotiated for some rebate of this fee upon immigration application approval. They did not change their choice of project after knowing about this contingency fee. Further, since Mr. Feng discloses such contingency fees in all retainer agreements with clients from early 2015, the percentage of clients requested some fee rebates actually declined. Most clients do not even questions about this. That is another proof that this contingency fee is in fact insignificant to clients’ decision making.
68. Answering Paragraph 68, Mr. Feng and Law Office reincorporate answers to Paragraph 64, 66 and 67.
69. Answering Paragraph 69, Mr. Feng and Law Office reincorporate their answers to Paragraph 64, 66 and 67.
70. Answering Paragraph 70, Mr. Feng and Law Office reincorporate their answers to Paragraph 64,66,and 67.
71. Answering Paragraph 71, Mr. Feng and Law Office reincorporate their answers to Paragraph 64, 66 and 67.
72. Answering Paragraph 72, Mr. Feng and Law Office reincorporate their answer to Paragraph 64, 66 and 67.
73. Answering to Paragraph 73, Mr. Feng and Law Office reincorporate their answers to Paragraph 64, 66 and 67 and states further that there is no reliable data on how many clients knew this contingency fee. Some clients might know this fee but did not think it is significant enough to mention it.
74. Answering Paragraph 74, Mr. Feng and Law Office reincorporate their answers to Paragraph 64, 66 and 67 and 73.
75. Answering Paragraph 75, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that they only received contingency fees based on immigration success from the regional centers. There was and still is no commission involved. Initially, they did receive these contingency fees in the United States.
76. Answering Paragraph 76, Mr. Feng denies the allegation, except Mr. Feng states that in or about May 2013, some regional centers told him that they could not wire contingency fees to U.S. based bank accounts. Mr. Feng did not understand why because **there was no and still there is no official published SEC guidelines addressing this EB-5 industry specific issue at that time**. Another regional center that Mr. Feng worked with continued to pay contingency fees based on clients' immigration success to Mr. Feng Law Office’s US based bank accounts. **Without official guidelines, Mr. Feng did not know at that time which advice was correct or how SEC would deal with this issue later.**
77. Answering Paragraph 77, Mr. Feng denies the allegation, except Mr. Feng states that at the request of the regional centers, he provided some relatives’ names and bank accounts to enter agreements with the regional centers and help the regional centers wire those contingency fees to overseas accounts. Mr. Feng understands that those funds could be used to pay for the expenses of his legitimate overseas immigration service operations in China.
78. Answering Paragraph 78, Mr. Feng denies the allegation and states that he specifically asked those regional centers whether the overseas receivers of the contingency fees had to be people working with clients. The regional centers told him no. Mr. Feng then chose to use his relatives to sign agreements and receive these contingency fees on behalf of Law Office’s overseas operations. After Mr. Feng provided the names of his relatives, the regional centers did not ask any further questions or seek any documentary proof as to what roles they were playing in providing immigration services. Mr. Feng set up ABCL to take over the overseas immigration consultation operations in April 2014.
79. Answering Paragraph 79, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
80. Answering Paragraph 80, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
81. Answering Paragraph 81 Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
82. Answering Paragraph 82, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
83. Answering Paragraph 83, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
84. Answering Paragraph 84, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
85. Answering Paragraph 85, Mr. Feng and Law Office reincorporate their answers to Paragraph 76, 77 and 78.
86. Answering Paragraph 86, Mr. Feng denies the allegation, except Mr. Feng and states that ABCL is a Hong Kong entity that Mr. Feng founded in April 2014 for the purpose of taking over Mr. Feng and Law Office’s overseas immigration consultation services to Chinese clients. It is a legitimate business with a legitimate purpose. Initially, Mr. Feng’s relatives signed contingency fee agreements with the regional centers on behalf of ABCL. By December 2014, Mr. Feng transferred the management responsibility of ABCL to his Chinese partner in China. Mr. Feng still provides legal consultation to ABCL.
87. Answering Paragraph 87, Mr. Feng and Law Office reincorporate their answer to Paragraph 86.
88. Answering Paragraph 88, Mr. Feng and Law Office reincorporate their answer to Paragraph 86.
89. Answering Paragraph 89, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that in total Mr. Feng and Law Office have more than 100 EB-5 clients. Mr. Feng and Law Office are separate entities from ABCL which is a Hong Kong entity that Mr. Feng founded in April 2014 for the purpose of taking over Mr. Feng and Law Office’s overseas operations. ABCL is not a nominee for Mr. Feng and Law Office. ABCL has its own manager and another shareholder since December 2014. These entities shall be separately treated in accordance of the law.
90. Answering Paragraph 90, Mr. Feng and Law Office deny the allegation, except Mr. Feng and Law Office state that Mr. Feng and Law Office received total $190,000 of contingency fees based on clients’ immigration success from all the regional centers combined. ABCL and other receivers of the contingency fees are receiving these fees for Law Office’s or ABCL’s overseas operations. They are not nominees of Mr. Feng and Law Office. And Mr. Feng and Law Office do not answer for them.
91. Answering Paragraph 91, Mr. Feng and Law Office reincorporates his answers to Paragraph 86, 89 and 90.
92. Answering Paragraph 92, Mr. Feng and Law Office reincorporates his answers to Paragraph 86, 89, and 90.

**FIRST CLAIM FOR RELIEF**

1. Answering Paragraph 93, Mr. Feng and Law Office reincorporate their answers in Paragraph 1 through 92 above.
2. Answering Paragraph 94, Mr. Feng and Law Office aver that Paragraph 94 sets forth SEC’s characterization of this action as well as legal conclusions and does not purport to require a response from Mr. Feng and Law Office. To the extent this paragraph purports to contain factual assertions requiring a response, Mr. Feng and Law Office deny the allegations contained therein.
3. Answering Paragraph 95, Mr. Feng and Law Office reincorporate their answers to Paragraph 94.

**SECOND CLAIM FOR RELIEF**

1. Answering Paragraph 96, Mr. Feng and Law Office reincorporate their answers in Paragraph 1 through 95 above.
2. Answering Paragraph 97, Mr. Feng and Law Office aver that Paragraph 97 sets forth SEC’s characterization of this action as well as legal conclusions and does not purport to require a response from Mr. Feng and Law Office. To the extent this paragraph purports to contain factual assertions requiring a response, Mr. Feng and Law Office deny the allegations contained therein.
3. Answering Paragraph 98, Mr. Feng and Law Office reincorporate their answers to Paragraph 97.

**THIRD CLAIM FOR RELIEF**

1. Answering Paragraph 99, Mr. Feng and Law Office reincorporate their answers in Paragraph 1 through 98 above.
2. Answering Paragraph 100, Mr. Feng and Law Office avers that Paragraph 100 sets forth SEC’s characterization of this action as well as legal conclusions and does not purport to require a response from Mr. Feng and Law Office. To the extent this paragraph purports to contain factual assertions requiring a response, Mr. Feng and Law Office deny the allegations contained therein.
3. Answering Paragraph 101, Mr. Feng and Law Office reincorporate their answers to Paragraph 100.

**PRAYER FOR RELIEF**

To the extent that any response is required to Plaintiff’s prayer for relief, Mr. Feng and Law Office deny each and every allegation contained therein.

**JURY DEMAND**

Mr. Feng and Law Office demand a trial by jury on all triable issues.

Mr. Feng and Law Office reserve the right to amend his Answer as necessary once the precise nature of the relevant circumstances or events is determined through discovery.

 **AFFIRMATIVE DEFNESES**

 Without assuming the burden of proof for such defenses that he would not otherwise have, Mr. Feng and Law Office assert the following affirmative defenses:

**First Affirmative Defense**

 SEC’s Complaint, and each claim alleged therein, fails to state a claim upon which relief can be granted.

 **Second Affirmative Defense**

 SEC’s claims are barred, in whole or in part, because Mr. Feng and Law Office acted in good faith at all material times and in conformity with all applicable federal statues, including the Securities Act and Exchange Act, and all applicable rules and regulations promulgated thereunder.

**Third Affirmative Defense**

 SEC’s claim for injunctive relief is barred because, inter alia, there has been no violation of the Securities Act or the Exchange Act, and because there is no reasonable likelihood that any violation will be repeated. SEC’s injunctive relief claim is further barred because the adverse effects of any injunction far outweigh any benefit from an injunction.

**Fourth Affirmative Defense**

 SEC’s claim for penalties is barred because, inter alia, any alleged violation was isolated and/or unintentional.

**Fifth Affirmative Defense**

 SEC’s claim for disgorgement is barred because, inter alia, Mr. Feng and Law Office never received any ill-gotten commissions or direct economic gains as a result of any of the actions alleged in the Complaint.

**Six Affirmative Defense**

 SEC’s is precluded from pursuing a claim for civil penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act and 15 U.S.C. 78u(d)(3) because those penalties are not available for the conduct charged in the Complaint.

 Mr. Feng and Law Office hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserve all rights to amend this Answer and all such defenses.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Feng and Law Office respectfully request that the Court enter an Order:

1. Enter judgment in favor of Mr. Feng and Law Office and against SEC on all alleged claims for relief;
2. Dismissing the Complaint with prejudice;
3. Granting such other and further relief as the Court deems just and proper.

Date: February, 2016 Respectfully submitted,