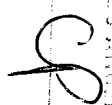


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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 Darley International, LLC, a Delaware  
13 corporation,

14 Petitioner,

15 vs.

16 South Dakota International Business Institute, a  
17 non-profit organization;

18 Respondent.

19 CASE NO.: CV08-05034 DDP PLAx  
20 RESPONDENT'S OPPOSITION TO NOTICE  
21 OF HEARING RE DARLEY  
22 INTERNATIONAL, LLC'S PETITION FOR  
23 ORDER COMPELLING ARBITRATION  
24 PURSUANT TO WRITTEN AGREEMENT;  
25 DECLARATION OF JOOP BOLLEN IN  
26 SUPPORT; [PROPOSED] ORDER  
27 DENYING PETITION

28 Hearing Date: September 8, 2008  
Time: 10:00 a.m.  
Court Room:

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**I. INTRODUCTION**

1  
2 The Petitioner in the present case seeks to compel Respondent to submit to an arbitration  
3 clause contained in an “Overseas Recruitment and Service Agreement for US EB-5 Permanent  
4 Residency Visa” (hereinafter “Agreement”). The Agreement is a contract between Petitioner and  
5 Hanul Professional Law Corporation (hereinafter “Hanul”), whereby the Petitioner agreed to recruit  
6 investors for Hanul. The Petitioner is forcing this court to decide whether the Respondent must join in  
7 the arbitration despite the fact that Respondent is not a signatory or beneficiary of said Agreement. As  
8 the evidence and case law will demonstrate, the Respondent is not bound by the Agreement or its  
9 arbitration clause.  
10  
11

12 Petitioner’s presentation falls woefully short of demonstrating that a non-signatory to a  
13 contract must adhere to an arbitration clause of said contract when a dispute between the signatories  
14 arises. Courts generally recognize that arbitration eliminates unnecessary burden and lightens the  
15 caseloads of the Court system. However, courts have consistently held that arbitration is governed by  
16 general principles of contract law, and thus any party who did not contract to a clause should not be  
17 bound by the process. The courts recognize only three situations in which non-signatories will be held  
18 by the terms of a contract. For the reasons explained below, none of these situations exist here.  
19

20 First, the Petitioner argues that Respondent received a direct benefit from the Agreement,  
21 and should thus be bound by its terms. However, the Petitioner utterly fails to show the benefit  
22 conferred on Respondent. In certain cases a non-signatory may be bound by a contract if he received a  
23 benefit flowing directly from the contract, or where the parties who formulated the contract intended a  
24 direct benefit to be conferred on the non-signatory. An indirect benefit, one not flowing directly from  
25 the terms of the contract, will not be sufficient to bind a non-signatory to the terms of the contract. In  
26 the present case the evidence will show that the Respondent was not a direct beneficiary of any benefit  
27  
28

1 conferred by the Agreement, nor was the Agreement formulated to directly benefit the Respondent,  
2 and thus Respondent is not bound by the Agreement.

3  
4 Second, the Petitioner requests that the Respondent be joined in the arbitration by the  
5 doctrine of Equitable Estoppel. It is true that courts have recognized that a party who knowing seeks  
6 and enjoys the benefits of an agreement cannot turn its back on a portion of the agreement when a  
7 dispute arises. However, the facts in the present case do not conform to this ideal. The Respondent  
8 did not intend to gain a benefit from the subject agreement as claimed by the Petitioner. In fact, the  
9 contract formation was for the benefit of the two signatories as well as the economy of South Dakota,  
10 not the Respondent.

11  
12 Third, courts have reasoned in previous holdings that an intimate relationship, such as an  
13 agency relationship, between a signatory and non-signatory third party can bind that third party to the  
14 terms of the agreement. A party who “stands in the shoes” of another must be enjoined as the acts of  
15 one party are the same as the acts of the other. The court will see evidence that this relationship does  
16 not exist between the Respondent and any of the signatories to the subject agreement. In fact, each  
17 party acts in its own interest and not for the benefit of any other party.

18  
19 Lastly, the court lacks personal jurisdiction on this matter over Respondent as shown below.  
20 A court is required to have subject matter jurisdiction as well as personal jurisdiction over the  
21 responding party in order to hear a case. Arbitration disputes are governed by the Federal Arbitration  
22 Act, and thus the subject matter jurisdiction is satisfied in this court. However, the court must also  
23 have personal jurisdiction over all parties. This court does not have personal jurisdiction over the  
24 Respondent, as SDIBI was not “present” in the state of California, is not domiciled here, did not  
25 consent to this action, and does not have “minimum contacts” sufficient to satisfy the personal  
26  
27  
28

1 jurisdiction requirement. As a result, the Petition should be denied as this court does not have personal  
2 jurisdiction over the Respondent.

3  
4 For the reasons outlined above, the court must reject the Petitioner's request.

5  
6 **II. STATEMENT OF FACTS**

7 SDIBI, on an annual renewable cost recovery contract with the South Dakota Governor's  
8 Office of Economic Development (GOED), has been conducting export promotion and foreign direct  
9 investment activities for GOED since 1995. SDIBI is part of the School of Business at the Northern  
10 State University, a public state university, located in Aberdeen, South Dakota. In 2001, SDIBI  
11 initiated recruitment of European dairy farmers to South Dakota to construct and manage large state-  
12 of-the-art dairy farms in eastern portion of the state. SDIBI was successful in recruiting 15 such  
13 projects whose owners all legally entered the United States of America to settle in South Dakota on E-  
14 2 non-immigrant visas.  
15  
16

17 The Regional Center Program is an investment visa program designated as EB-5 which grants  
18 legal permanent residency to foreign nationals who create 10 direct or indirect full-time jobs by  
19 investing at least \$500,000.00 in an area with a low population or a high unemployment rate. Such  
20 areas are designated as "regional centers". SDIBI applied for regional center status in 2003, and was  
21 granted regional center status by United States Citizens and Immigration Services (USCIS) in April of  
22 2004. SDIBI obtained regional center status to provide more security to the European investors that  
23 had settled in South Dakota and to provide South Dakota with a competitive advantage over other  
24 states which were also recruiting European dairy investors but were not able to offer permanent  
25 residency as they did not have regional center status.  
26  
27

28 Regional Center status resulted in many inquiries from Asian countries, including South Korea,

1 where interested parties wanted to invest in dairy projects in order to obtain permanent residency.  
2 This meant that additional Asian capital could now become available to South Dakota dairy farmers  
3 wishing to construct larger dairy farms, and thus benefit the economy of South Dakota. SDIBI went  
4 on a reconnaissance trip to South Korea where a working relationship was established with Hanul  
5 Professional Law Corporation (hereinafter "Hanul") to recruit investors which would be coupled with  
6 South Dakota dairy farmers. SDIBI's role was to locate and forward prospective projects to Hanul,  
7 and Hanul would locate South Korean and Asian investors and complete all paperwork related to the  
8 recruitment and green card petitions. SDIBI worked with various attorneys who pursued European  
9 markets for investors. The relationship with Hanul was not an exclusive one as SDIBI benefits from  
10 having as many recruiters of investors as possible. In fact, many of SDIBI's Regional Center cases  
11 were filed by European dairy-farmer-investors whom SDIBI recruited through various channels even  
12 when Hanul actively pursued the South Korean market. Because of trust gained by Hanul with their  
13 successful recruiting efforts, all inquiries SDIBI received related to recruiting South Korean and Asian  
14 investors subsequently were forwarded to Hanul including the one from Robert Stratmore, President of  
15 Darley International LLC (hereinafter "Darley").  
16  
17  
18

19 SDIBI does not charge nor receive any financial rewards for the utilization of the Regional  
20 Center nor does it claim that the projects offered are economically sustainable. In fact, each investor  
21 of the Regional Center is required to sign a Memorandum of Understanding that holds SDIBI and the  
22 State of South Dakota free of liability. The due diligence associated with the projects is the  
23 responsibility of the investors with the help of their service providers. SDIBI merely provides access  
24 to the Regional Center in order to benefit South Dakota's economy. Despite not assuming any legal  
25 responsibility for the viability of the business, SDIBI does have an interest in protecting the integrity  
26 of the Regional Center to guarantee the longevity of the state's economic benefit.  
27  
28

1 Recruitment by SDIBI's Regional Center and Hanul resulted in 12 successful dairy projects  
2 with pooled South Dakota/South Korean investors. All these equity projects required substantial bank  
3 financing which provided SDIBI with the confidence that the projects were economically feasible as  
4 the banks analyzed their viability before committing their funds.  
5

6 In 2007, it became clear that the increasingly competitive EB-5 market required SDIBI to  
7 source larger projects with a loan structure as opposed to the equity structure. A USCIS approved  
8 amendment allowed SDIBI to expand to include meat packing and processing projects with a loan  
9 structure. The Tilapia project, a meat processing center, was selected as a first project to test the  
10 market with this new loan structure. Because the number of jobs created in a meat packing and  
11 processing project is much larger than a dairy project, bank financing was no longer required as EB-5  
12 funds, even at the required 10 jobs per EB-5 investor, were sufficient to finance the entire project.  
13 However, the absence of bank financing, as was later learned, created a problem where the prospects  
14 were not and could not be properly screened.  
15  
16

17 In or around the middle of 2007, Robert Stratmore, President of Darley, contacted SDIBI and  
18 inquired about recruiting Chinese investors for the regional center. SDIBI, just as with any other such  
19 inquiry, explained the working relationship Hanul had with Asian Countries and referred Mr.  
20 Stratmore accordingly. On or around October 18, 2007, Hanul and Darley agreed upon a recruitment  
21 contract between the two parties and the said fact was made available to SDIBI. SDIBI answered  
22 questions related to the Tilapia project and questions associated with the Regional Center when asked  
23 by either of the parties to the contract. However, SDIBI never actively participated in the negotiation  
24 of the Agreement. SDIBI, with both Hanul and Darley clearly understanding that no formal written  
25 agreement was in place with either party, and that SDIBI was not in a position to formulate nor advise  
26 as to the working contents of the contract between Hanul and Darley, answered questions with the  
27  
28



1 hope that they would quickly start recruiting investors for South Dakota's benefit.

2 SDIBI, Hanul and Darley participated in 2 seminars in China in or around December of 2007  
3 to promote the Tilapia project to potential investors. However, during the seminar it became very  
4 clear that the Tilapia project was very risky based on new information revealed by the representative  
5 of the Tilapia project. Due to Tilapia's weak management and lack of equity, SDIBI was forced to  
6 pull the project in order to protect the foreign investors and the integrity of the Regional Center.  
7 Explanations for SDIBI's decision were e-mailed to Darley on December 27, 2007.  
8

9  
10 Shortly after the China seminars and the decision to pull the Tilapia project, Darley initiated  
11 false accusations as well as unfounded blame towards SDIBI and Hanul claiming that SDIBI had  
12 knowingly and willfully interfered with the recruitment process of Darley in PRC. Hanul and Darley  
13 had been advised previously that their unproductive quarrels related to disputes arising out of their  
14 failed contract were holding the State of South Dakota hostage with respect to Chinese investors while  
15 other regional centers were taking full advantage of the EB-5 opportunities. The recruiting impasse in  
16 China coupled with the needs to screen, qualify, and select all future projects in order to protect the  
17 integrity of the regional center led SDIBI to establish SDRC, INC. This entity performs the required  
18 screening process to select projects and enters into agreements with overseas recruiters to ensure  
19 robust recruiting efforts of the EB-5 projects. As of this date SDRC, INC. has only entered into  
20 agreements with overseas agencies but is not active from a financial perspective as no fees are charged.  
21

22  
23 On or about March 17, 2008, Darley demanded arbitration against Hanul on the basis of  
24 Breach of Contract for purported non-compliance with the Agreement. The Agreement contains an  
25 arbitration clause which states in part that any disputes between the parties shall be resolved through  
26 arbitration under the auspices of JAMS Alternate Dispute Resolution in San Francisco, California. An  
27 apparent dispute over the workings of the contract between the parties had occurred and the Petitioner  
28

1 initiated the Arbitration process via a Demand for Arbitration on or about March 17, 2008 through its  
2 Attorney of Record, Maxwell M. Blecher, Esq. Thereafter, Mr. Blecher sent correspondences to the  
3 Respondent stating that the Respondent must be included in the subject arbitration by reasons that the  
4 Respondent benefited from the Agreement signed between the Petitioner and Hanul.  
5

6 The Respondent has strongly denied the contentions of the Petitioner that the Respondent had a  
7 part in the drafting of the Contract signed by the Petitioner and Hanul. Respondent has, on numerous  
8 occasions, strongly advised the Petitioner that the Respondent does not and cannot participate in the  
9 drafting of the Agreement on behalf of Hanul nor can it ratify a final version of the Agreement once it  
10 became available. The Respondent has, on numerous occasions, advised the Petitioner to stop trying  
11 to coax the Respondent into the Contract formulation between the Petitioner and Hanul. The  
12 Petitioner, through false accusations as well as misleading emails, has time and time again insinuated  
13 that the Respondent is wholly integrated with Hanul and that the Respondent had the right of final say  
14 in the Agreement formulation.  
15  
16

17 Thereafter, the Respondent was served with a copy of the Petitioner's Motion on August 5,  
18 2008, requesting this Court to determine whether the Respondent must be joined in the arbitration  
19 proceedings.  
20  
21

22 **III. ARGUMENTS**

23 **A. This court does not have personal jurisdiction over the Respondent**

24 In order to hear a controversy a court must have jurisdiction over the subject matter as well as  
25 personal jurisdiction over all parties. In the present case, this court does not have personal jurisdiction  
26 over the Respondent. Personal jurisdiction is satisfied when a defendant is (1) present in the forum  
27 state; (2) domiciled in the forum state; (3) consents to personal jurisdiction; or (4) has minimum  
28

1 contacts with the forum state. SDIBI is a South Dakota based nonprofit organization, and is not  
2 present or domiciled in any California district. Furthermore, SDIBI does not consent to personal  
3 jurisdiction of the California courts. Lastly, SDIBI does not have minimum contacts with the state of  
4 California sufficient to satisfy personal jurisdiction.  
5

6 Minimum contacts are established where a party has sufficient dealings or affiliations  
7 with the forum jurisdiction which makes it reasonable to require the party to defend a lawsuit brought  
8 in the forum state. (International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.)  
9 The threshold test for personal jurisdiction is that a defendant's activity in the forum state must be  
10 continuous and systematic, and the cause of action is related to that activity. *Id.* In the present case,  
11 Respondent conducts all of its activities exclusively in the state of South Dakota, and has no  
12 continuous or systematic contacts with the state of California. Respondent did not take part in any  
13 negotiations of the Agreement, never traveled to California, and does not conduct business in this state.  
14 Based on the foregoing, the forum state does not have personal jurisdiction over Respondent, and  
15 consequently the Petition should be denied.  
16  
17

18 **1. The US District Court Central Division of California is not the proper venue for**  
19 **the present action**

20 The proper venue of a civil action is governed by the Federal Rules of Civil Procedure and 28  
21 U.S.C. § 1391. The Code states, in relevant part: A civil action wherein jurisdiction is not founded  
22 solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a  
23 judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial  
24 district in which a substantial part of the events or omissions giving rise to the claim occurred, or a  
25 substantial part of property that is the subject of the action is situated, or (3) a judicial district in which  
26 any defendant may be found, if there is no district in which the action may otherwise be brought. 28  
27  
28

1 U.S.C. § 1391(b). For the reasons outlined below, the U.S. District Court of the Central District of  
2 California, Western Division is not the proper venue for the present action.

3  
4 SDIBI is a South Dakota nonprofit public organization which is deemed to “reside” in the State  
5 of South Dakota for venue purposes. (“For purposes of venue under this chapter, a defendant that is a  
6 corporation shall be deemed to reside in any judicial district in which it is subject to personal  
7 jurisdiction at the time the action is commenced.” 28 U.S.C. § 1391(c)). Therefore, this court is not  
8 the proper venue as this Respondent is not a resident of California. Additionally, as the present dispute  
9 stems from an Agreement which was drafted and negotiated in California, and the Respondent is not a  
10 signatory to the Agreement and did not participate in its drafting, the fact that the events giving rise to  
11 the claim occurred in California does not have any bearing on the Respondent. Finally, as SDIBI is not  
12 located in California, it is not subject to the jurisdiction of its courts under 28 U.S.C. § 1391 (b)(3), as  
13 it cannot be “found” in any district in California. It is evident from the foregoing that the present venue  
14 is improper as it relates to the Respondent, and therefore the Petition should be dismissed by this court  
15 on venue grounds.  
16  
17  
18

19 **B. The Standard for Compelling a Third Party Non-Signatory to be Bound by an**  
20 **Arbitration Agreement**

21 Arbitration is a matter of contract, therefore “a party cannot be required to submit to arbitration  
22 any dispute which he has not agreed so to submit.” United Steelworkers of Am. v. Warrior & Gulf  
23 Navigation Co., 363 U.S. 574, 582, (1960). The public policy in favor of arbitration has one crucial  
24 caveat: “[A]rbitration assumes that the parties have elected to use it as an alternative to the judicial  
25 process. Arbitration is consensual in nature.” County of Contra Costa v. Kaiser, 47 Cal.App.4<sup>th</sup> 237.  
26 Thus, while there is a strong and “liberal federal policy favoring arbitration agreements,” Mitsubishi  
27 Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 625, 105 S.Ct. 3346, 3353, 87 L.Ed.2d  
28

1 444 (1985), such agreements must not be so broadly construed as to encompass claims and parties that  
2 were not intended by the original contract. Thomson-CSF, S.A. v. American Arbitration Ass'n, 64  
3 F.3d 773.

4  
5 Under federal and California law, a nonsignatory may be compelled to arbitrate under three  
6 sets of circumstances: (1) where the nonsignatory is a third party beneficiary of the contract containing  
7 the arbitration agreement; (2) under the principle of equitable estoppel; and (3) where “a preexisting  
8 relationship existed between the nonsignatory and on the parties to the arbitration agreement, making  
9 it equitable to compel the nonsignatory to also be bound to arbitrate his or her claims.” (Contra Costa,  
10 supra, 47 Cal.App. 4<sup>th</sup> at p. 242) Crowley Maritime Corp. v. Boston Old Colony Insurance, 158  
11 Cal.App.4<sup>th</sup> 1061

12  
13 **1. The Respondent is not a Third Party Beneficiary to the Agreement signed between**  
14 **the Petitioner and Hanul.**

15  
16 As the purpose of the contract in dispute clearly states, SDIBI is not a Third Party Beneficiary.  
17 In order to be deemed a Third Party Beneficiary, the express terms of the agreement must manifest  
18 intent by the signatories to benefit the third party. Restatement Second of Contracts, §302(1)(b)(1932).  
19 While the contract discusses the marketing of SDIBI EB5-Projects, any direct benefit conferred is  
20 clearly assigned to Hanul according to its terms. All the fees, including service fees and Darley Agent  
21 Fees, specified in the Agreement are for the benefit of Hanul and Darley. In fact, the Agreement does  
22 not mention a single benefit flowing to SDIBI.

23  
24 **(a) Incidental benefits cannot bind a non-signatory to an Arbitration Agreement.**

25  
26 In order to be bound to a contract as a third-party beneficiary, the terms of the contract must  
27 clearly express intent to benefit that party or an identifiable class of which the party is a member. In  
28 cases where the contract lacks an express declaration of intent to benefit a third party, there is a strong

1 presumption that the third party is not a beneficiary and that the parties contracted to benefit only  
2 themselves. A mere incidental benefit to the third party is insufficient to bind that party to the contract.  
3  
4 Am. Jur. 2d Alternative Dispute Resolution § 60.

5 Further, the benefit conferred to compel third party beneficiaries to arbitration must be direct or  
6 material to the underlying contract. Guardian Constr. Co. v. Tetra Tech Richardson, Inc., 583 A.2d  
7 1378, 1386 (1990). (“In order for third-party beneficiary rights to be created, not only is it necessary  
8 that performance of the contract confer a benefit upon a third person that was intended, but the  
9 conferring of the beneficial effect on such third-party, whether it be creditor or donee, should be a  
10 material part of the contract's purpose.”) Id. Thus, if it was not the promisee's intention to confer  
11 direct benefits upon a third party, but rather such third party happens to benefit from the performance  
12 of the promise either coincidentally or indirectly, then the third party will have no enforceable rights  
13 under the contract, and cannot be bound by its terms. E.I Dupont De Nemours and Company v. Rhone  
14 Poulenc Fiber and Resin Intermediaries 269 F.3d 187.

17 Petitioner's argument that the language of the Agreement “evinces the requisite intent to  
18 make SDIBI a third-party beneficiary” is misguided. The Agreement notes that the role of SDIBI is  
19 solely to review and approve candidates for US EB-5. The Agreement states in Clause 1. A: “Hanul's  
20 right to grant exclusive marketing rights is based on the unofficial rights to exclusively market SDIBI  
21 EB-5 Projects...” Hence, there is no official or contractual relationship between Hanul and SDIBI,  
22 and thus SDIBI cannot be considered an intended third party beneficiary.

24 At no time did SDIBI manifest an intention to be bound by the Agreement. In fact, SDIBI  
25 explicitly disavowed any obligations arising out of the Agreement in numerous email responses to  
26 Petitioner's questions. (See Exhibit “1” of Declaration of Joop Bollen). Accordingly, it cannot be said  
27  
28

1 that SDIBI assumed the obligation to arbitrate. Thomson-CSF, S.A. v. American Arbitration Ass'n 64  
2 F.3d 773.

3  
4 Petitioner's Memorandum of Points and Authorities cites Medical Staff of Doctors Med.  
5 Center in Modesto v. Kamil, 132 Cal. App. 4<sup>th</sup> 679, 685-86. SDIBI agrees with the ruling of this case  
6 and believes that the case so cited by the Petitioner actually helps to clearly show why SDIBI should  
7 not be a party to the arbitration. The court concluded: "a third party beneficiary contract must either  
8 satisfy an obligation of the promisee to pay money to the beneficiary, or the circumstances indicate the  
9 promisee intends to give the beneficiary the benefit of the promised performance." Id. Just like the  
10 petitioner in that case, Darley fails to show that either of those circumstances apply here. The  
11 beneficiaries of the Agreement are Hanul and Darley who receive fees from new investors and the  
12 private businesses in the state of South Dakota that receive investment funds from new investors.  
13 There is no showing that SDIBI ever received or was intended to receive those or any other payments.

14  
15 To the extent SDIBI may benefit from Darley contract, the benefit, if any, is purely incidental.  
16  
17 Petitioner's argument that a direct benefit has been received by SDIBI does not hold weight as the  
18 benefit has always been for the Governor's Office of Economic Development and the economy of the  
19 state of South Dakota. SDIBI does not receive any financial reward from the contract between the  
20 signatories. SDIBI did not accept the benefits of the Agreement since the benefit contained in the  
21 Agreement was for Hanul, Darley, the EB-5 project participating business in South Dakota and the  
22 economy of South Dakota. SDIBI's incidental benefit is for the continued integrity of the Regional  
23 Center once the direct benefit is received by the economy and as a result, the economy improves. As  
24 such, SDIBI should not be bound to the arbitration clause of the Agreement signed between Petitioner  
25 and Hanul.  
26  
27  
28

1           **2. Respondent is not required to arbitrate under principles of equitable estoppel**

2           Petitioner also makes an argument for enforcing arbitration on equitable estoppel grounds.  
3  
4           Under the estoppel theory, a company knowingly exploiting an agreement with an arbitration clause  
5           can be estopped from avoiding arbitration despite having never signed the agreement. Guided by  
6           “[o]rdinary principles of contract and agency,” courts have concluded that where a company  
7           “knowingly accepted the benefits” of an agreement with an arbitration clause, even without signing the  
8           agreement, that company may be bound by the arbitration clause. Deloitte Noraudit A/S v. Deloitte  
9           Haskins & Sells, U.S., 9 F.3d 1060, 1064 (2d Cir.1993). The benefits must be direct, which is to say,  
10           flowing directly from the agreement. Thomson-CSF, 64 F.3d at 779. The benefit derived from an  
11           agreement is indirect where the nonsignatory exploits the contractual relation of parties to an  
12           agreement, but does not exploit (and thereby assume) the agreement itself. Thomson-CSF, 64 F.3d at  
13           778-79. MAG Portfolio Consultant, GMBH v. Merlin Biomed Group LLC, 268 F.3d 58, C.A.2 (N.Y.),  
14           2001.  
15

16  
17           Any benefit that may have been conferred on SDIBI was not direct in nature. SDIBI did not  
18           exploit, (and thereby assume), any part of the Agreement. In fact, SDIBI reiterated time and time  
19           again that it was not a signatory to the Agreement, and did not even read the Agreement until issues  
20           between Hanul and Darley arose.  
21

22           SDIBI was not a willing participant in the subject Agreement between the signatories and as  
23           such had no bearing on the proceeding or execution of the Agreement. SDIBI’s intent to remain a  
24           non-party to the contract and its negotiations was relayed to the Petitioner on numerous occasions via  
25           email and correspondence. As the Court in E.I. Dupont v. Rhone observed, “under the equitable  
26           estoppel theory, a court looks to the parties’ conduct after the contract was executed. Thus, the  
27           snapshot this Court examines under equitable estoppel is much later in time than the snapshot for third  
28



1 party beneficiary analysis.” E.I. Dupont De NeMours and Company v. Rhone Poulenc Fiber and Resin  
2 Intermediates, 269 F. 3d 187. Since the evidence shows that SDIBI has always held and will continue  
3 to hold the position that it was never an active participant who benefited from the Agreement, the  
4 Respondent should not be required to take part in the arbitration.

5  
6 **3. An agency relationship does not exist between Hanul and SDIBI, and SDIBI is not bound**  
7 **by the arbitration clause of the Agreement under an agency theory.**

8 The additional test under which SDIBI may be obligated to be bound by the subject Contract is  
9 under an Agency theory. “Traditional principles of agency law may bind a nonsignatory to an  
10 arbitration agreement.” Thomson-CSF, S.A. v. American Arbitration Ass'n 64 F.3d 773. “Agency is  
11 the fiduciary relation which results from the manifestation of consent by one person to another that the  
12 other shall act on his behalf and subject to his control, and consent by the other so to act.” Restatement  
13 (Second) of Agency § 1 (1958).

14  
15 Given the above, Hanul is not an agent of SDIBI. There has never been any manifestation of  
16 consent between SDIBI and Hanul where SDIBI permitted Hanul to act on its behalf. In fact, the  
17 relationship between SDIBI and Hanul rests on the fact that SDIBI reviews and approves any investors  
18 Hanul may present. Hanul does not have the right to act on behalf of SDIBI, and is therefore not an  
19 agent for SDIBI. Furthermore, there is no contract anywhere between Hanul and SDIBI wherein both  
20 parties agrees to work within the scope of each other’s business practices. Hanul is acting for its own  
21 gains and interests, while SDIBI is acting for the gains and interests of the economy of South Dakota.  
22 Therefore, Hanul was not acting as an agent of SDIBI when signing the subject Contract, and SDIBI  
23 remains unbound by it.

24  
25 The Agreement between Hanul and Darley explicitly states: “Hanul’s right to grant exclusive  
26 marketing rights is based on the **unofficial** right to exclusive markets promised by SDIBI.” Hanul  
27  
28

1 does not work under SDIBI nor does SDIBI work under Hanul as an agent. SDIBI is a wholly  
2 separate entity working to benefit the economy for the State of South Dakota while Hanul is a wholly  
3 separate entity working to benefit its own purpose.  
4

5  
6 **IV. CONCLUSION**

7 Wherefore, based on the above that Respondent is NOT an intended third party beneficiary,  
8 does NOT have an agency relationship with a signatory to the subject contract, and because this court  
9 lacks personal jurisdiction over the Respondent, Respondent respectfully requests that this Court  
10 dismiss and deny Darley International, LLC's Petition for Order Compelling Arbitration Pursuant to  
11 Written Agreement.  
12

13  
14 DATED: August 22, 2008

Respectfully Submitted

15  
16  
17  
18   
19 JOOP BOLLEN, DIRECTOR  
20 South Dakota International Business Institute  
21  
22  
23  
24  
25  
26  
27  
28

1 **Joop Bollen, Director**  
2 **SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE.**  
3 **1200 South Jay Street**  
4 **Aberdeen, South Dakota 57401-7198**  
5 **Telephone (605) 626-3149**  
6 **Facsimile (605) 626-3004**

7 **SOUTH DAKOTA INTERNATIONAL**  
8 **BUSINESS INSTITUTE**  
9 **In Pro Per**

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 Darley International, LLC, a Delaware  
13 corporation,

14 Petitioner,

15 vs.

16 South Dakota International Business Institute, a  
17 non-profit organization;

18 Respondent.

)  
) **CASE NO.: CV08-05034 DDP PLAx**  
) **[PROPOSED] ORDER DENYING THE**  
) **PETITION FOR ORDER COMPELLING**  
) **ARBITRATION PURSUANT TO WRITTEN**  
) **AGREEMENT**

) **Hearing Date: September 8, 2008**  
) **Time: 10:00 a.m.**  
) **Court Room:**  
)

19 **WHEREUPON** considering the **OPPOSITION TO NOTICE OF HEARING RE DARLEY**  
20 **INTERNATIONAL, LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT**  
21 **TO WRITTEN AGREEMENT** of Respondent, South Dakota International Business Institute, and for  
22 **Good Cause Appearing therefore,**

23 **IT IS HEREBY ORDERED** that the Respondent, South Dakota International Business  
24 Institute shall be barred from participating in the arbitration proceeding between Petitioner and Hanul  
25 Professional Law Corporation.

26  
27 **DATED:** \_\_\_\_\_

28 \_\_\_\_\_  
**HONORABLE DEAN D. PREGERSON**

1 **Joop Bollen, Director**  
2 **SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE.**  
3 **1200 South Jay Street**  
4 **Aberdeen, South Dakota 57401-7198**  
5 **Telephone (605) 626-3149**  
6 **Facsimile (605) 626-3004**

7 SOUTH DAKOTA INTERNATIONAL  
8 BUSINESS INSTITUTE  
9 In Pro Per

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 Darley International, LLC, a Delaware  
13 corporation,

14 Petitioner,

15 vs.

16 South Dakota International Business Institute, a  
17 non-profit organization;

18 Respondent.

19 )  
20 ) CASE NO.: CV08-05034 DDP PLAx

21 )  
22 ) DECLARATION OF JOOP BOLLEN IN  
23 ) RESPONSE TO PETITION FOR ORDER  
24 ) COMPELLING ARBITRATION

25 )  
26 ) Hearing Date: September 8, 2008  
27 ) Time: 10:00 a.m.  
28 ) Court Room:

**DECLARATION OF JOOP BOLLEN**

I, JOOP BOLLEN, hereby declare and state as follows:

1. I am the Director of the South Dakota International Business Institute (hereinafter "SDIBI"). I have personal knowledge of each of the facts stated herein and can testify competently thereto, except as to matters stated under information and belief, and to such matters as I believe them to be true.

2. SDIBI, on an annual renewable cost recovery contract with the South Dakota Governor's Office of Economic Development (GOED), has conducted export promotion and foreign direct investment activities for GOED since 1995.

3. SDIBI is part of the School of Business at the Northern State University, a public state university, located in Aberdeen, South Dakota.

4. In 2001, SDIBI initiated recruitment of European dairy farmers to South Dakota to construct and manage large state-of-the-art dairy farms in the eastern portion of the state. SDIBI was successful in recruiting 15 such projects whose owners all legally entered the United States of America to settle in South Dakota on E-2 non-immigrant visas.

5. The Regional Center Program is an investment visa program designated as EB-5 which grants legal permanent residency to foreign nationals who create 10 direct or indirect full-time jobs by investing at least \$500,000.00 in an area with a low population or a high unemployment rate. Such areas are designated as "regional centers."

6. In 2003 SDIBI applied for regional center status, which was approved by United States Citizens and Immigration Services (USCIS) in April of 2004.

7. SDIBI obtained regional center status in order to provide more security to the European investors that had settled in South Dakota and to provide South Dakota with a competitive advantage

1 over other states which were also recruiting European dairy investors, but were not able to offer  
2 permanent residency as they did not have regional center status.

3  
4 8. Regional center status resulted in many inquiries from Asian countries, including South  
5 Korea. Interested parties wanted to invest in dairy projects in order to obtain permanent residency.  
6 This interest meant that additional Asian capital could now be available to South Dakota dairy farmers  
7 wishing to construct larger dairy farms and thus benefit the economy of South Dakota.

8  
9 9. SDIBI does not charge nor receive any financial rewards for utilization of the regional  
10 center nor does it claim that the projects offered are economically sustainable.

11 10. The due diligence associated with the projects is the responsibility of the investors with  
12 the help of their service providers. SDIBI merely provides access to a regional center for the benefit of  
13 South Dakota's economy.

14  
15 11. At this time, Hanul Professional Law Corporation (hereinafter "Hanul") contacted  
16 SDIBI with Korean investors willing to invest in the State of South Dakota's dairy farms under the  
17 EB-5 investor visa program to receive permanent residency.

18 12. SDIBI's Regional Center with Hanul recruiting resulted in 12 successful dairy projects  
19 with pooled South Dakota/South Korean investors.

20  
21 13. SDIBI's role was to locate and forward prospective projects to Hanul and Hanul would  
22 locate South Korean and Asian investors and complete all paper work related to recruitment and green  
23 card petitions.

24 14. Because of trust gained by Hanul with their successful recruiting efforts of the South  
25 Korean investors, all inquiries SDIBI received related to recruiting South Korean and Asian investors  
26 subsequently were forwarded to Hanul including the one from Robert Stratmore, President of Darley  
27 International LLC (hereinafter "Darley").  
28

1           15.     In 2007, it became clear that the increasingly competitive EB-5 market required SDIBI  
2 to source larger projects with a loan structure as opposed to the equity structure. An USCIS approved  
3 amendment allowed SDIBI to expand to include loan structure based meat packing & processing  
4 projects.  
5

6           16.     One meat processing center, Tilapia, was selected as a first project to test the market  
7 with this new loan structure.

8           17.     In or about the middle of 2007, Robert Stratmore contacted SDIBI requesting a  
9 relationship to recruit Chinese investors and was referred to Hanul. (See Declaration of Robert D.  
10 Stratmore, ¶ 3, filed by the Petitioner)  
11

12           18.     On or about October 18, 2007, Hanul and Darley agreed upon a recruitment contract  
13 between the two parties and the said fact was made available to SDIBI.  
14

15           19.     SDIBI did answer questions related to the Tilapia project and any questions associated  
16 with the regional center when asked by either of the parties to the contract. However, both parties were  
17 made aware that SDIBI would not be in a position to formulate nor advise as to the contents of the  
18 contract between Hanul and Darley. (Exhibit "1", ¶ 2)

19           20.     SDIBI, with both Hanul and Darley clearly understanding that no formal agreement  
20 was in place with SDIBI, merely was providing information to the two parties with the hope that they  
21 would quickly start recruiting investors for South Dakota's benefit. (Exhibit "1", ¶ 1)  
22

23           21.     In or about December of 2007, two seminars were held in the People's Republic of  
24 China (PRC) to promote the Tilapia project to potential investors. However, during the seminar, it  
25 became very clear that the Tilapia project was very risky based on new information revealed by the  
26 representative of the Tilapia project. Due to Tilapia's weak management and lack of equity, SDIBI  
27 was forced to pull the project in order to protect the foreign investors and the integrity of the regional  
28

1 center. (Exhibit "1", ¶ 6)

2 22. Given the failure of the Tilapia project, it became increasingly clear that Hanul, Darley,  
3 or any other service providers were not able to perform the due diligence needed to protect the  
4 investors. A separate entity was needed to screen, qualify, and select all future projects in order to  
5 protect the integrity of the regional center. SDRC was created to meet these roles. SDRC, Inc. was  
6 established to select projects and enter into agreements with overseas recruiters. To date, SDRC, INC.  
7 has only entered into agreements with overseas agencies but is not active from a financial perspective  
8 as no fees are charged.  
9

10  
11 23. At or about this time, Darley initiated false accusations as well as unfounded blame  
12 towards SDIBI and Hanul stating that SDIBI had knowingly and willfully interfered with the  
13 recruitment process of Darley in PRC.

14 24. Hanul and Darley had been advised previously that their unproductive quarrels in  
15 regards to disputes arising out of their failed contract is holding the State of South Dakota hostage  
16 with respect to China's investors while other regional centers were taking full advantage of the EB-5  
17 opportunities.  
18

19 25. Darley's claim that the China seminars resulted in 30 interested parties and that  
20 SDIBI/Hanul's failure to cooperate properly resulted in loss of Darley's credibility with its Chinese  
21 sub-agents, interfere with its business relationship, and drastically affect its ability to recruit investors  
22 for SDIBI's Tilapia project is unfounded as shown by the Declaration signed by Frank Lin, whom  
23 Robert Startmore described as colleague, not sub-agent, and who claims to be solely responsible for  
24 Darley's activities in China. (Exhibit "2")  
25

26 26. As is shown by Mr. Lin's Declaration, Darley did not have "definite and concrete"  
27 interest from 30 investors to invest in the Tilapia project nor did it have "sub-agents" in China to  
28



1 recruit these potential investors.

2 27. In the interest of protecting potential investors purported to be recruited by Darley,  
3 Tilapia's information could not be provided to Darley because the feasibility of the project came into  
4 serious doubt and the investors would not have a sufficient justification to invest in the Tilapia project.  
5 Therefore, Darley's accusation that SDIBI did not provide the information to hinder Darley's  
6 recruitment process is unfounded. (Exhibit "1", ¶ 6)

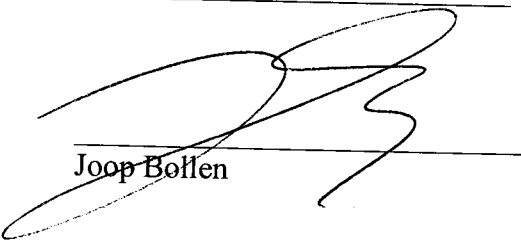
7  
8 28. On or about March of 2008, Darley, through its attorney of record, Maxwell Blecher,  
9 Esq., initiated the arbitration proceedings with JAMS ADR service in San Francisco, California  
10 against Hanul for alleged Breach of Contract.

11  
12 29. Thereafter, Mr. Blecher demanded that SDIBI be joined in the arbitration process  
13 between Hanul and Darley to which SDIBI has responded stating that SDIBI should not and cannot be  
14 joined in an arbitration proceeding where SDIBI is not a signatory nor a willing participant in the  
15 formation of the contract.

16  
17 30. Thereafter, on or about August 5, 2008, SDIBI was served with the subject Petition for  
18 Order Compel Arbitration.

19  
20 I declare under penalty of perjury under the laws of the United States of America that the  
21 foregoing is true and correct.

22  
23  
24 Executed this 22nd day of August, 2008, at Aberdeen, South Dakota

25  
26  
27   
28 Joop Bollen



# **EXHIBIT “1”**

----- Original Message -----

**From:** Bollen, Joop

**To:** [Sovtrade@pacbell.net](mailto:Sovtrade@pacbell.net)

**Cc:** James Park ; [Richard.Benda@state.sd.us](mailto:Richard.Benda@state.sd.us)

**Sent:** Tuesday, January 08, 2008 8:50 AM

**Subject:** RE: SD-HANUL Ltr Jan 7, 2007

Mr. Robert Stratmore:

After reading your e-mail I felt compelled to set the record straight which I will do as follows:

- 1) SDIBI has no written agreement with Hanul which has been reiterated and explained to you time and time again. Upon your suggestion in the PRC, you e-mailed me a copy of the Hanul/Darley agreement (I told you I never reviewed your agreement the first time you e-mailed it to me as I had little time to review it and it was really not that important as SDIBI was not a party to the agreement) in order for me to mediate your differences with James Park so that we all could move forward in a constructive fashion. Now after reading section 1A of that agreement I must emphasize that even your own document clearly states that no formal written agreement between SDIBI and Hanul exists.
- 2) Your suggestion that SDIBI negotiated an agreement is false!! Since SDIBI was not part of the Darley-Hanul agreement and since all parties clearly understood that there was no SDIBI-Hanul agreement, I was willing to assist in forming an working agreement between Hanul and Darley, nothing more. You now stating that SDIBI negotiated and ratified the Hanul-Darley contract is completely manipulative!! Again, refer to your own agreement which clearly outlines the facts.
- 3) I want to make it very clear that SDIBI never approached your "sub-agents" and attempted to undermine your relationship with them. Your sub-agents initiated conversations and I merely was forced to listen as I did not want to be rude. Based on their initiated communications it became clear that a problem with respect to financial rewards existed that would make our projects uncompetitive. It also became evident that your partners felt they had an unfair deal with you and that was all.
- 4) You well know that Hanul prepares documents and SDIBI does not get involved with the preparation of legal documents. Upon your request I asked James to get the documents to you ASAP which he promised to do.
- 5) I never promised to work directly with Darley but merely expressed my interest in mediating your differences with Hanul as the current impasse is not constructive for anyone. To state that SDIBI would be working directly with Darley is again manipulative and incorrect.
- 6) SDIBI, because it does not have the resources to do so and because it can not assume legal responsibility, never makes or made any claims to the financial viability of any project and leaves it up to the investors to do their own due diligence with the assistance of their service providers!! With past equity participation projects commercial banks were willing to provide money to the projects and SDIBI reasoned that if commercial banks were willing to lend their own money than the project probably was financially sound. The Tilapia project is the first project without participation of a commercial bank and that created a problem that SDIBI was unaware of until Gary's presentation in the PRC. I will quote what I stated in the e-mail to you dated December 31: "SDIBI is freezing the Tilapia project until the owners increase their equity contribution and improve their management plan. This snafu is the result of the recent switching from an equity scenario with conventional financing to a loan scheme without the participation of a commercial institution. SDIBI is now working with a separate legal entity that would review the proposed projects from now on and which would contract with a local financial institution to monitor the loan. As you know SDIBI does not, and never did, get involved in deciding on the financial soundness of the projects and hoped that the

marketers, banks, lawyers and investors would do so. It is now apparent that a separate legal entity is needed to fulfill this function!!”  
SDIBI felt compelled to freeze the Tilapia project as it became apparent that your and Hanul’s due diligence was not sufficient and therefore would endanger future EB-5 projects. SDIBI never had to make such a difficult decision before but it became apparent that the lack of involvement of a commercial bank endangered the future of our regional center!! I object that SDIBI failed to do its due diligence as that is your and your investor’s function. SDIBI’s interest is merely to protect the longevity of our regional center and that is what we are attempting to do!!

Robert, based on your e-mail I must state that I am very leery to communicate with you as all communications, even in a relaxed setting, are loaded with legal hooks!! I am perplexed at the manipulations, twisting and accusations. SDIBI, based on unrequested but volunteered information by your sub-agents, is very concerned that your financial take will make SDIBI’s projects uncompetitive in the PRC. I was also very surprised to find out that you did not have a working structure with employees in place in China, as was presented to me, but that you are attempting to obtain certain rights from James based solely on Linda’s performance, not yours. I also would have thought that you would be glad that I pulled on the alarm with respect of the Tilapia project as it for the protection of your own investors!! Finally, I again emphasize that I assisted with the communications between Hanul and Darley as it was clear to all that no written agreement existed between Hanul and SDIBI.

Despite your unfair accusations, SDIBI hopes that Hanul and Darley can work together and that South Dakota will not suffer as a result of your current impasse. The Tilapia debacle has not just negatively affected Darley but Hanul and SDIBI as well!!! Hanul also encountered damages but are not blaming SDIBI as they realize that SDIBI had no choice. If it becomes evident that Hanul and Darley can not constructively work together then SDIBI will be forced to develop the PRC opportunities in a way that best serves the State of South Dakota without the marketing involvement of either party. I sincerely hope that this move will not be necessary.

Greetings, Joop

PS I apologize to Richard for being drawn into this mess.

---

**From:** Sovtrade@pacbell.net [mailto:sovtrade@pacbell.net]  
**Sent:** Monday, January 07, 2008 2:21 PM  
**To:** Bollen, Joop; james@hanullaw.com; Richard.benda@state.sd.us  
**Cc:** alydar88@pacbell.net  
**Subject:** SD-HANUL Ltr Jan 7, 2007

Gentlemen,

Please see the attached.

Robert D. Stratmore



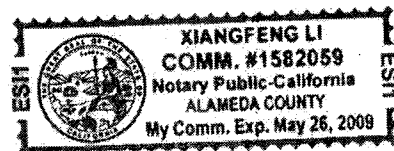
# **EXHIBIT “2”**

## Statements of Frank Lin

June 1, 2008

I, Frank Lin of California, certify that the following is the true recollection of facts that I have personal knowledge on the affairs of Darley International and its efforts to secure China marketing rights of South Dakota Regional Center EB-5 Programs:

1. That I have been an acquaintance of Robert Stratmore, principal of Darley International, for many years and have been associating with him in the initial stages of Darley International's efforts to secure marketing rights to China from Hanul Professional Law Corporation ("Hanul");
2. That Robert Stratmore and Darley International, at the time of entering in to agreement with Hanul or anytime thereafter, had no Chinese marketing force, mechanism or agents in place to handle SDIBI Regional Center EB-5 projects in China;
3. That I have been the one person with all contacts and means to promoting and marketing SDIBI EB-5 projects in China that Darley International have been representing and promoting to the third parties;
4. That I am not an employee of Darley International, and I have never entered in to any agreement or contract with Robert Stratmore or Darley International in this regard, and I am completely independent of Darley International and Robert Stratmore;
5. That Joe Zhou, a purported employee of Darley International as represented to others by Robert Stratmore, is not, and never have been, an employee of Darley International; and he had never been paid, remunerated or compensated by Darley International in regards to marketing and promotion of SDIBI EB-5;
6. That I, in my personal capacity, am the one with contacts to Jinghong, Dragon Horse and other agents in China that Darley International has represented to third parties as Darley International's own agents in China;
7. That Robert Stratmore and Darley International always depended on me for any communication to China in this regard, and that I have never purported to be working for Darley International;
8. That Darley International did not have 20 Chinese clients to fill SDIBI EB-5 beef






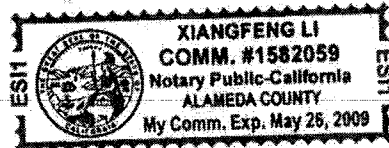
plant project in September~October of 2007, when Darley International entered in to agreement with Hanul based on the claim that it had 20 cases ready for processing;

9. That Jinghong and Dragon Horse, purported subagents of Darley, never worked with Darley or had direct dealing with Darley in regards to SDIBI EB-5 marketing;
10. That Jinghong and other Chinese agents whom I introduced to Darley have conducted seminar with Hanul and SDIBI on the Tilapia project back in December 2007 but that particular project was cancelled by SDIBI due to project being unfit for EB-5 marketing;
11. That Jinghong and other agents have then made their own connections with SDIBI and some are now working directly with SDIBI on the new EB-5 project;
12. That Jinghong or any of the other agents working directly with SDIBI have yet to produce a single case for SDIBI as of this statement date;
13. That Darley International is not engaged in immigration marketing business in China back in September~October of 2007, and still is not engaged in the immigration business in China;
14. That Darley International has no employees, agents or other entities in China working on its behalf, or will work on its behalf for promoting and marketing SDIBI EB-5 projects in China;
15. That Darley International did not spend any money in arranging or conducting SDIBI EB-5 project promotions in China; and,
16. That I believe Robert Stratmore and Darley International have been bargaining for rights to market SDIBI EB-5 projects in China based on powers or ability that neither Robert Stratmore nor Darley international possessed both then and now.

The foregoing is the truth as I personally have knowledge of based on my recollection of events then occurred. Please do not hesitate to contact me for any further clarification of the matter at hand.

Sincerely yours,

  
Frank Lin



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

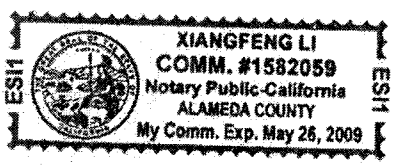
County of Alameda

On June 2nd, 2008 before me,

Xiangfeng Li  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Frank Lin  
Name(s) of Signer(s)

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that (he)/she/they executed the same in (his)/her/their authorized capacity(ies), and that by (his)/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

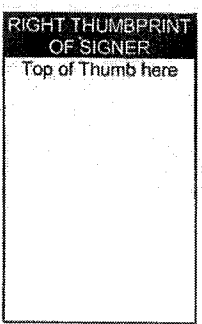
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

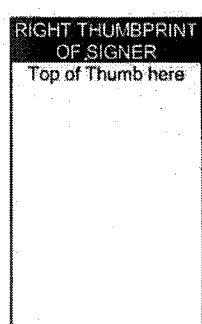
- Individual
- Corporate Officer
- Titles(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**PROOF OF SERVICE BY MAIL**  
**(C.C.P. Section 1013)**

STATE OF SOUTH DAKOTA, COUNTY OF BROWN

I, Cherry Brick, am employed in the County of Brown, State of South Dakota. I am over the age of 18 and not a party to the within action. My business address is 1200 South Jay Street, Aberdeen, South Dakota 57401.

On 8/22/2008, I served the following documents:

**RESPONDENT'S OPPOSITION TO NOTICE OF HEARING RE DARLEY INTERNATIONAL, LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT; DECLARATION OF JOOP BOLLEN IN SUPPORT; [PROPOSED] ORDER DENYING PETITION**

on all interested parties in this action by placing the original thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED MAILING LIST**

I am readily familiar with the practice of this office of collection and processing of correspondence for mailing. Under that practice, mail would be deposited with the United States Postal Service on the same day which is stated in the proof of service, with postage fully prepaid, at Aberdeen, South Dakota in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing on this proof of service.

I declare under the penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on 8/22/2008, at Aberdeen, South Dakota.

  
\_\_\_\_\_  
Cherry Brick

**MAILING LIST**

Jennifer S. Elkayam, Esq.  
Maxwell M. Blecher, Esq.  
Blecher & Collins, P.C.  
515 South Figueroa Street, 17<sup>th</sup> Floor  
Los Angeles, California 90071  
**Attorney for Petitioner**