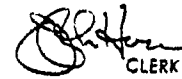


**FILED**

JAN 18 2012

  
CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

ZHANG YONGJUN, an individual resident of California; YAN JINGQI, an individual resident of California; ZHENG CAIWEN, an individual resident of California; and WANG XINPING, an individual resident of California

Plaintiffs,

vs.

SDRC, INC., a South Dakota corporation; SD INVESTMENT FUND LLC 6, a South Dakota limited liability company; and JOOP BOLLEN, an individual resident of South Dakota,

Defendants and Third-Party Plaintiffs,

vs.

HENRY ZOU, an individual resident of the People's Republic of China; and HENRY GLOBAL CONSULTING GROUP a/k/a HENRY GLOBAL a/k/a HENRY GLOBAL GROUP a/k/a HENRY GLOBAL CONSULTING USA, incorporated under the laws of the People's Republic of China,

Third-Party Defendants.

Case No. 11-cv-4148-KES

**THIRD-PARTY COMPLAINT**

Plaintiffs, Zhang Yongjun, Yan Jingqi, Zheng Caiwen, and Wang Xinping, have filed an Amended Complaint against Defendants, SDRC, INC., SD INVESTMENT FUND LLC 6, and Joop Bollen. A copy of the Amended Complaint is attached as Exhibit A. Defendants and Third-Party Plaintiffs, for their Third-Party Complaint against Third-Party Defendants, hereby state and allege as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because there is more than \$75,000.00 in controversy and there is complete diversity between the parties.

2. The South Dakota Department of Tourism and State Development is the economic development arm of the State of South Dakota. The agency is empowered and directed to promote economic development in South Dakota. The South Dakota Department of Tourism and State Development is made up of five divisions – Arts Council, Governor’s Office of Economic Development, State Historical Society, Tourism, and Tribal Government Relations.

3. The South Dakota International Business Institute (SDIBI) was created by official act of the State of South Dakota, through the South Dakota Board of Regents in 1994. It is funded by the South Dakota Board of Regents and the South Dakota Governor’s Office of Economic Development.

4. The Department of Tourism and State Development received Regional Center Designation pursuant to Section 610 of the Appropriations Act of 1993, in April 2004 for the purposes of attracting immigrant investor capital to the State of South Dakota, including EB-5 programs.

5. The EB-5 visa investor program involves making investments into a commercial enterprise and the creation of American jobs. Under specific terms, an investor can receive a permanent visa for themselves and each member of their family who is less than 21 years of age.

6. In April 2004, the South Dakota International Business Institute (SDIBI), Dairy Economic Development Region (DEDR) was designated as a regional center by the federal government.

7. A request for Amendment to the Dairy Economic Development Region (DEDR) was later submitted to the USCIS (United States Citizenship and Immigration Services). It

requested to change the name from Dairy Economic Development Region (DEDR) to South Dakota Regional Center. The DEDR Regional Center had experienced growth beyond the dairy industry. As a result, DEDR included activities unrelated to the dairy industry and therefore a request to change the name from DEDR to South Dakota Regional Center was appropriate.

8. Joop Bollen was the Director of SDIBI until December 2009.

9. SDRC, Inc., is sometimes referred to as South Dakota Regional Center, Inc., which is a company or entity that does not exist. There is a South Dakota Regional Center, which is sometimes referred to as SDRC. And there is an SDRC, Inc. These are two different entities. SDRC, Inc., is a private corporation. South Dakota Regional Center is the name of the regional center in South Dakota. This is the successor entity to SDIBI/DEDR, not SDRC, Inc.

10. SDRC, Inc., was established in 2008 and went into operation in December 2009. Joop Bollen is President of SDRC Inc. When SDRC, Inc., was formed, the export promotions and the dairy product projects were left solely to SDIBI. SDIBI also kept the equity EB-5 programs (vs. the loan EB-5 programs.)

11. The Department of Tourism and State Development now has an agreement in place with SDRC, Inc., for the purposes of having SDRC, Inc., administer the South Dakota Regional Center and the EB5 program and to market the EB5 program.

12. Hanul Professional Law Corporation is a law firm in South Korea, with offices in the United States and Shanghai. It is involved in EB-5 programs.

13. Henry Global Consulting Group (HGCG) holds itself out as “a professional organization providing services in wide areas including study abroad and visa consulting, immigration agent, overseas family settlement and new business development, related to different countries such as the United States, Canada, Australia and England, etc.”

[www.visa800.com/english/english-7.html](http://www.visa800.com/english/english-7.html) HGCG is a company incorporated under the laws of the People's Republic of China and has its United States headquarters office in Los Angeles, California and other offices in Detroit, Michigan and New York City, New York.

14. Henry Zou is the CEO of HGCG. *Id.*

15. Henry Zou studied in Canada in 1984, graduating with a PhD Degree, attended Canada national laboratory and conducted scientific research there for many years. *Id.*

16. Henry Zou started doing immigration business in Canada in the early 1990's setting up Canada Henry Global Consulting Group, developing it into a multi-national group. *Id.*

17. Henry Zou holds himself out as "paying close attention to every delicate change of immigration policies, regulations and laws with acute insights. He consistently maintains an intimate relationship with government organizations such as immigration offices and other related institutions, guiding HGCG developing step by step to a domestically and internationally reputed immigration and study abroad advisory organizations, successfully helping tens of thousands of applicants realize their dreams of going abroad." *Id.*

18. Henry Zou regularly conducts business in the United States.

19. For instance, on August 27, 2010, Zou participated in the summit meeting of investment immigration issues at Boston American Immigration Lawyers Association. *Id.*

20. On March 20, 2010, Henry Zou participated in the California Immigration Lawyers Association's EB-5 Large Scale Forum as the only representative of the Immigration Consulting Institution. *Id.*

21. One of the HGCG cooperant regional centers listed by HGCG on its website is "South Dakota Regional Center-South Dakota Buffalo Ridge II Wind Project." [www.visa800.com/english/english-3.html](http://www.visa800.com/english/english-3.html)

22. HGCG lists as its “successful cases,” 600 US EB-5 cases per year and 600 US study abroad cases per year. [www.visa800.com/english/english-4.html](http://www.visa800.com/english/english-4.html)

23. HGCG’s website indicates its clients are “hoping and eager to have their children participating in the world class educational system of the United States.” It goes on to indicate that “with the development of HGCG’s study abroad businesses, the number of students’ visas can be easily anticipated to reach 4,000 each year and HGCG’s study abroad advisory market will have a great upsurge!” *Id.*

24. Northern Beef Packers (NBP) is a slaughter and rendering plant located in Aberdeen, South Dakota.

25. Land was purchased for the plant in June 2006. In 2009, Oshik Song (one of 69 Korean equity investors under an EB-5 program), bought the general partnership entity. At that time, there were numerous liens totaling more than \$10,000,000.00 filed against the property.

26. To date, more than \$80,000,000.00 has been invested in the facility. The timeline estimate for completion of the building and operations to begin is early 2012.

27. In mid-2009, Third-Party Defendants entered into an oral agreement with Joe Kim, an individual who works with Hanul and now with SDRC, Inc., and Hanul Law Firm to solicit EB-5 investors in a limited partnership (SDIF LP 6) which would, in turn, make a loan to NBP, part of which would be secured by a first mortgage upon the building and a security interest in the equipment, for the completion of construction of the beef packing plant in Aberdeen, South Dakota. It was understood that eventually when government monies were invested that the EB-5 clients would have to subordinate their loans. The agreement provided that, for every investor who invested \$500,000 in the limited partnership, Third-Party Defendants would receive up to \$30,000.

28. The State of South Dakota was also involved in NBP.

29. For instance, Richard Benda, as Cabinet Minister of the South Dakota Department of Tourism and State Development, wrote a letter dated July 24, 2009 to James Park, foreign legal counsel at the Hanul Law Firm, to distribute to Investors that confirmed the State of South Dakota intended to work with company representatives and consultants to find a resolution to the NBP financing challenges.

30. Joop Bollen, as director of SDIBI, wrote a letter dated October 27, 2009, on letterhead from the South Dakota Governor's Office of Economic Development (GOED), to "potential EB-5 investor." The letter closes with "We invite you to explore the opportunity that NBP-LP offers."

31. In November 2009, Bollen was informed by Joe Kim (Joe Jin) that six signed clients of Third-Party Defendants wanted to visit South Dakota and NBP in December 2009.

32. On or about December 1, 2009, Joe Kim was in Beijing attending a meeting with Third-Party Defendants. Third-Party Defendants had thirty of their main consultants from all over China gather in Beijing to conduct this meeting with Joe Kim on the status of NBP. At the time, Third-Party Defendants had concerns over the liens related to the NBP project, but eventually went forward with the investments anyway.

33. On or about December 6, 2009, Joe Kim e-mailed Henry Zou a revised commission agreement draft. This e-mail also indicated Joe Kim would invite the CEO of NBP and Richard Benda for seminars in December.

34. Third-Party Defendants sent Frank Xu and others to Aberdeen to inspect the plant, meet with NBP personnel and do a comprehensive review of the project, after which they clearly understood the finances of the project.

35. On or about December 17-20, 2009, Richard Benda, Cabinet Minister of the South Dakota Department of Tourism and State Development, was in China participating in seminars.

36. In December 2009, Bollen left his position as the director of SDIBI. Any actions taken by Bollen before this date were on behalf of SDIBI.

37. In January 2010, five Chinese individuals (four potential clients and one interpreter), sent by Third-Party Defendants, arrived in Aberdeen and visited NBP.

38. In March 2010, Richard Benda, as Cabinet Minister of the South Dakota Department of Tourism and State Development, again traveled to China in order to present at NBP seminars put on by Third-Party Defendants.

39. As with previous seminars, Third-Party Defendants were responsible for arranging the sites of all seminars, promoting the seminars, advertising the seminars, scheduling the seminars and finding interpreters for all seminars.

40. On April 22, 2010, Joe Kim signed an Overseas Marketing Agreement with Third-Party Defendants. **See Exhibit A attached to Answer and Counterclaim.**

41. Although aware of a meeting, it was without the knowledge of Defendants and Third-Party Plaintiffs, that on December 22, 2010, Third-Party Defendants, entered into a second compensation agreement, this one with NBP, whereby Third-Party Defendants agreed to recruit 100 investors, at \$500,000 per investor, to become limited partners in SDIF LP 6, and further agreed to provide consulting services to NBP with regard to the project. This agreement was supplemented by an "addendum" of the same date, and both the agreement, and the addendum, will be referred to as the "agreement." **See Exhibit B attached to Answer and Counterclaim.**

Defendants were unaware of the exorbitant commission being charged by Third-Party Defendants.

42. Before Third-Party Defendants entered into this agreement with NBP, Third-Party Defendants had already hired current Plaintiffs' counsel in order to question and disrupt the NBP project.

43. The agreement between Third-Party Defendants and NBP is ambiguous and confusing, but Third-Party Defendants claim that NBP had agreed to pay "interest" to Third-Party Defendants (not to the investors) upon funds lent to NBP by SDIF LP 6, even though Third-Party Defendants were not the lender, consisting of the following amounts: 2% per year for five years, on all money lent to NBP by SDIF LP 6, upon the first \$10,000,000 of funds released to NBP (a total of \$1,000,000 over the five years); 2% per year for five years, on the next \$10,000,000 released (a total of \$1,000,000 over the five years); 2% per year for five years on the next \$25,000,000 (for a total of \$2,500,000); and 4% per year for five years for the next \$15,000,000 (for a total of \$3,000,000). The total amount which Third-Party Defendants claim NBP agreed to pay them is \$10,500,000, which, when added to the amount which SDRC, Inc., agreed to pay Third-Party Defendants, totals \$13,500,000 payable to Third-Party Defendants for recruiting other people to invest \$50,000,000 in the NBP project. This equals a payment to Third-Party Defendants of 27% of the total amount recruited.

44. Third-Party Defendants negotiated an agreement whereby they charged a fee for recruiting investors for the project, which was in addition to the fee to be paid pursuant to their agreement with SDRC, Inc. Also, in the event of a default in paying the fee, Third-Party Defendants negotiated a remedy whereby Third-Party Defendants would receive a substantial ownership interest in NBP.



45. The agreement between Third-Party Defendants expressly acknowledges that the plant is not yet complete, but is in the process of completion.

46. The addendum to the agreement between Third-Party Defendants, bearing the same date as the original agreement, December 22, 2010, expressly provided that the investment of funds by the various investors must be completed—with the funds deposited into the escrow account-- by February 28, 2011 (the addendum provided February 28, 2010, but that was a typographical error, since that date had passed by eight months by the time of the signing of the addendum).

47. At the time of entering into the above agreements, and at the time they recruited investors, Third-Party Defendants had full qualitative and quantitative information about the project including its status, the costs to complete construction, budgets, financial projections, management forecasts and the risks associated with the project.

48. At the time of entering into the above agreements, and at the time they recruited investors, Third-Party Defendants were well aware of the fact that the entire reason they were approached to solicit investors for this project was that the project was not yet complete, that the owners could not obtain conventional financing for the completion of the plant, and that time was of the essence in getting the plant into operation.

49. In regard to Third-Party Defendants additional compensation agreement with NBP, the requisite funds had not been deposited into the escrow account by February 28, 2011 as required by the agreement.

50. The refusal of NBP to make the payment of the commissions, although justified by the agreement, as modified by the addendum, angered Third-Party Defendants, prompting them, with actual malice, to attempt to sabotage the NBP project.

51. At approximately the same time that NBP refused to make the payments set forth in the agreement, Third-Party Defendants had communications with Alex Shing, who was a former consultant to NBP, and who was bound by a confidentiality agreement with NBP. Upon information and belief, based in part upon information received from Shing, Third-Party Defendants initiated attempts to obtain control of NBP or damage NBP.

52. Since that time, Third-Party Defendants have made continuous deliberate attempts to interfere with the project and to keep SDIF LP 6 from honoring its obligation to release loans to NBP for the completion of the project, all with the intent of damaging NBP and Defendants and causing a default.

53. Third-Party Defendants objected to the decision of SDIF LP 6 to allow NBP to “take out” the loan from Epoch Star Ltd, and continue to represent to the investors that this action puts the project at risk, despite the fact that the effective interest rate of the Epoch Star loan was 29%, which would have created a significant obstacle to the completion and successful operation of the plant. The interest rate of the SDIF LP 6 loan is 3.5%. **See Exhibit C attached to Answer and Counterclaim.**

54. Third-Party Defendants falsely stated that, because Epoch Star was no longer in the picture, the project would be at risk because the project and loan releases to the project would not be properly monitored. These allegations were made despite the fact it was known to Third-Party Defendants that SDIF LP 6 had hired a full time employee, Richard Benda, the former South Dakota Secretary of Tourism and Economic Development, to remain on the project site full time to monitor the project.

55. Third-Party Defendants attempted to force SDIF LP 6 to allow them to appoint an agent, to be called a “Third-Party manager,” to participate in management decisions of NBP, in an effort to obtain control at a cost of four times the cost of Benda as monitor.

56. Third-Party Defendants made continuing unreasonable demands upon SDIF LP 6 for measures to diminish the purported risk to the investors and when, out of an abundance of caution, those demands were met, Third-Party Defendants escalated their demands, insisting that SDIF LP 6 make no further releases to NBP, despite their knowledge of the fact that, if funds were not released, the project would fail.

57. Third-Party Defendants falsely stated that the Investors in SDIF LP 6 were not protected because the mechanic’s liens were not subordinated to the SDIF LP 6 loan. Despite the fact that the claim was false (because NBP had purchased Epoch and the lien-holders had consented in writing to the purchase), NBP went to the considerable trouble and expense of obtaining subordinations from all of the mechanic lien-holders, which still didn’t satisfy Third-Party Defendants.

58. Third-Party Defendants falsely stated that changes were needed in the Credit Agreement, and when, out of an excess of caution, those changes were made in the Credit Agreement, they came up with additional demands for changes, to sabotage the project.

59. Third-Party Defendants sent representatives to South Dakota who were very abrasive, who attempted to interfere with the project, who made unreasonable demands, and who alienated owners and employees of NBP, and many who were dealing with NBP.

60. Third-Party Defendants continue to falsely advise investors that the money they invested in the project is being used to pay off the original Korean EB-5 investors.

61. Third-Party Defendants continue to attempt to turn investors against the project. They have been contacting investors and urging them to refuse to sign consents to an amendment to the SDIF LP 6 Limited Partnership Agreement to allow SDIF LP 6 to make loan releases over \$30,000,000. For investors who have already signed the consents, they have been urging them, contrary to the advice of the investors' own attorneys, to rescind those consents. These actions have been taken with knowledge that the refusal of SDIF LP 6 to make releases in excess of \$30,000,000 will prevent completion of construction and cause default. Third-Party Defendants are also attempting to have the investors switch legal counsel.

62. Should the project fail and jobs are not created, not only will the Investors lose their \$500,000.00 investments, they will lose their green cards.

63. Hanul law firm represents each of the individual investors in regard to preparing and completing all necessary documents and paperwork to successfully meet the requirements of the EB-5 program and obtain their green cards.

64. Despite the fact Third-Party Defendants knew that the investors were represented by the Hanul Law Firm, Third-Party Defendants attempted to keep the investors from talking to representatives of Hanul, advised the investors that it was illegal for them to talk to Hanul, and continued to misrepresent both the project and the role of SDIF LP 6 in monitoring the project to the investors.

65. Despite the fact that Third-Party Defendants are promoting the project, Third-Party Defendants continue to attempt to use their relationship with the investors to turn the investors against the project, and to solicit them to bring suit against Defendants and Third-Party Plaintiffs to halt releases of loan proceeds to NBP and to cause default.

66. On or about August 9, 2011, Mr. Benjamin Li e-mailed Defendant and Third-Party Plaintiff Joop Bollen and carbon copied Henry Zou, Richard Benda and Joe Kim indicating that in late June he had attempted to arrange a trip to Aberdeen as a representative of EB-5 Investors. He expressed displeasure that this had not occurred and requested information.

67. On or about August 10, 2011, Defendant and Third-Party Plaintiff Joop Bollen responded to Benjamin Li apologizing for any miscommunication, indicating he would discuss the request with Richard Benda and one of them would get back to him with a more elaborate response. This e-mail also indicated Benjamin Li could call Bollen if he preferred to speak to him in person.

68. On or about August 16, 2011, Richard Benda e-mailed Benjamin Li, Joop Bollen, Henry Zou, James Park and Joe Kim indicating he would like to set up a time when it would be convenient for Mr. Li to travel to South Dakota to visit. He also informed them of investor access to a website which contained current photos of the construction and contact information on how to access the SDIF LP 6 website, which contains confidential financial information specific to investors.

69. Benjamin Li responded with an e-mail to Joop Bollen indicating he was disappointed with Richard Benda's response, that the Investors were becoming increasingly frustrated, that the Investors wanted to withdraw their applications and that others wanted Benjamin Li to file complaints with the SEC.

70. Defendants and Third-Party Plaintiffs have been advised there are no SEC violations because these are overseas investments, and therefore certain SEC regulations do not apply.

71. On or about September 16, 2011, counsel for Plaintiffs, specifically Jonathan D. Forstot, e-mailed Attorney Jeffrey T. Sveen indicating it represented Henry Global Consulting Group who was acting on behalf of a number of investors in SDIF Limited Partnership 6. The letter indicated that the clients had not received any satisfactory updates or reports from the partnership and that absent production of the requested items and answers, that they would assert various securities law and common law claims.

72. On or about September 21, 2011, counsel for Defendants and Third-Party Plaintiffs, Jeffrey T. Sveen, sent a responsive letter indicating if Mr. Forstot was able to provide documentation as to the investors the Denton firm was representing that SDRC, Inc., would provide copies of the loan documents and loan security documents. This letter went on to indicate that if litigation was undertaken it would “no doubt stop the project.” This letter also attached the following documents:

- a. Assignment “EPOCH Star Limited – SDIF Limited Partnership 6”;
- b. Assignment “Northern Beef Packers – SDIF Limited Partnership 6”;
- c. Agreement “Northern Beef Packers – SDIF LP 6”;
- d. UCC-1 “SDIF Limited Partnership 6 – Northern Beef Packers, Limited Partnership”;
- e. Mortgage “Northern Beef Packers, L.P., – SDIF Limited Partnership 6”;
- f. Security Agreement “Northern Beef Packers, L.P. – SDIF Limited Partnership 6”;
- g. Subordination Agreement “SDIF LP 6 – MNDK Concrete – Northern Beef Packers, L.P.”;

- h. Subordination Agreement “SDIF LP 6 – Concrete Contractors, Inc. – Northern Beef Packers, L.P.”;
- i. Subordination Agreement “SDIF LP 6 – McNeil Refrigeration, Inc. – Northern beef Packers, L.P.”;
- j. Subordination Agreement “SDIF LP 6 – Industrial Builders, Inc. – Northern Beef Packers, L.P.”;
- k. Subordination Agreement “SDIF LP 6 – Dakota Supply Group, Inc. – Northern Beef Packers, L.P.”;
- l. Subordination Agreement “SDIF LP 6 – Red Wilk Construction, Inc. – Northern Beef Packers, L. P.”;
- m. Subordination Agreement “SDIF LP 6 – Hanlon Bros. – Northern Beef Packers, L.P.”;
- n. Subordination Agreement “SDIF LP 6 – Pierce and Harris Engineering, Inc. – Northern Beef Packers, L.P.”;
- o. Subordination Agreement “SDIF LP 6 – Arctic Industries, Inc. – Northern Beef Packers, L.P.”;
- p. Subordination Agreement “SDIF LP 6 – Fargo Tank & Steel Co. – Northern Beef Packers, L.P.”;
- q. Subordination Agreement “SDIF LP 6 – Pogleasa Company, Inc. – Northern Beef Packers, L.P.”; and
- r. Subordination Agreement “SDIF LP 6 – Jensen Rock and Sand, Inc. – Northern Beef Packers, L.P.”.

73. On or about August 31, 2011, Mr. Benda emailed Mr. Li that the data that would help make his trip to South Dakota productive would be provided. In addition, the email informed Mr. Li that a complete set of photographs demonstrating the current state of construction would be posted on the website.

- a. On or about September 20, 2011, Mr. Li emailed Mr. Bollen and copied Mr. Zou indicating that if satisfactory responses were not received by September 21, that the investors would turn the matter over to the Governor of the State of South Dakota, the Office of US Senator Tim Johnson, the Securities and Exchange Commission (SEC), the United States Customs and Immigration Services (USCIS) and the Public Security Bureau in China. After this threat, USCIS has received a multitude of complaints from various individuals at the urging of Third-Party Defendants.
- b. In response to Mr. Li's claim of disappointment in Mr. Benda's August 16, 2011 e-mail, on or about September 25, 2011, Joop Bollen e-mailed Benjamin Li and carbon copied Richard Benda, Henry Zou, James Park and Joe Kim indicating that Attorney Jeffrey T. Sveen had already provided multiple copies of the requested documents to the group and that they had been invited to personally come and visit the plant on several occasions. This e-mail goes on to indicate that in order to keep Limited Partners fully informed, periodic updates are posted on a secure website to which the investors have full access. This e-mail again requested to communicate directly with the Limited Partners to verify that they indeed requested the information. This request was denied.



74. On or about September, 28, 2011, Zou emailed Bollen with an attachment of a September 26, 2011 letter. This letter was signed by someone as a supposed authorized representative on behalf of SDIF 6 Limited Partners. It referenced both the Forstot and Sveen letters asserting that Defendants and Third-Party Plaintiffs were ignoring both contractual and statutory rights of the Limited Partners of SDIF 6. The letter indicates they had obtained legal advice that there may have been gross negligence that may be tantamount to fraud on the part of the General Partner, that such substantiation of fraud or gross negligence could pierce the corporate veil, and thereby were instructing their attorneys to assert various securities law, common law and equitable claims to pursue the General Partner to the fullest extent for all liabilities if they did not receive “Ordinary Resolutions before September 28, 2011.”

75. This letter also requests evidence to show that a completely separate partnership managed by SDRC, Inc., specifically SDIF 8, had properly registered with the SEC. The letter alleges that SDIF 8 pertains to the Limited Partners of SDIF 6 because both are managed by the same USCIS designated regional center, SDRC, Inc.

76. The letter indicates that SDRC, Inc.’s potential failure to register or seek proper exemption could result in criminal liabilities potentially disqualifying SDRC, Inc.’s regional center status with the USCIS, which would be detrimental to SDIF 6’s Limited Partners.

77. The letter finally indicates that they were copying the letter to the Denton law firm for further action and copying the letter to the office of US Senator Tim Johnson and the Governor’s Office of Economic Development of South Dakota since the State was “actively involved in the SDIF 6 matters as the Limited Partners explained that they were in part induced into investing into SDIF 6 by representations made by then Secretary of the Department of Tourism and State Development, Mr. Richard Benda.”

78. On or about September 29, 2011, Third-Party Defendants corresponded with Defendant and Third-Party Plaintiff, Joop Bollen, indicating that because Joe Kim had threatened to return the Third-Party Defendants' forty-eight Investors for the Iberdrola Project (another EB-5 project), that attorneys were investigating the Iberdrola cases on behalf of Limited Partners as they believe it violates the law, that Iberdrola will likely be shut down and that it could bring criminal liabilities for the individuals involved as a violation was a federal/SEC offense.

79. In response to an accusation of Third-Party Defendants excessive compensation, on or about September 30, 2011, Henry Zou e-mailed Joop Bollen falsely asserting that Mr. Bollen had initially offered 2% interest, but later arranged for NBP owner, Mr. Song, to meet Third-Party Defendants and to sign a new arrangement. It further asserted Henry Zou never communicated, never contacted and never met Mr. Song before Mr. Bollen's supposed arrangement. In truth, the original plan was that 5.5% interest would be charged, 2% of this would go to the Investors. Third-Party Defendants indicated that the project could be sold to the Investors without the 2% interest. Third-Party Defendants wanted this 2% interest themselves. Defendants did not want to be involved in this and were not involved in the agreement between Third-Party Defendants and NBP.

80. On that same date, Joop Bollen responded to Henry Zou indicating that he had never seen the agreement or signed it. The e-mail goes on to indicate that Mr. Bollen has on several occasions has requested information to allow him to contact the Limited Partners directly to verify that they indeed wanted the loan documents and that if so, upon completion of a confidentiality statement, SDRC, Inc., would provide the information immediately to the Limited Partners.

81. Again, on that same date, Henry Zou responded to Mr. Bollen indicating the matter was now “in good hands” with SNR Denton’s New York and Chicago Offices, that Denton was going to examine the registration status of Iberdrola under the Investment Company Act 1940 and that failure to register under this act would not only constitute a criminal offense, but could also make all the loan documents unenforceable.

82. On October 1, 2011, Mr. Bollen responded to Henry Zou indicating that he had requested on many occasions the contact information so he could contact the Limited Partners directly and obtain a notarized confidentiality statement before providing the requested information. Then again on October 1, 2011, in another e-mail, Mr. Bollen e-mailed Henry Zou indicating that if the Limited Partners contacted Joe Kim and completed a confidentiality agreement, that Joe Kim would forward the requested information directly to the Limited Partners.

83. Defendants have made repeated attempts to supply the limited partners with financial information, but Third-Party Defendants have not allowed direct contact with the limited partners and have attempted to force the information to go through Third-Party Defendants.

84. On or about October 10, 2011, Third-Party Defendants sent a letter to Guangdong Development Bank, Joop Bollen and James Park asking, in part, for the bank to cease releasing funds and indicating that the Investors would be obtaining their own lawyers in the next few days who would contact the bank.

85. On or about October 18, 2011, Plaintiffs’ counsel sent correspondence to Guangdong Development Bank advising the bank that it represented the four original Plaintiffs and not to release any more money that was held in escrow to NBP.

86. The original Complaint in this matter was filed on October 18, 2011. The original Complaint listed four individual Plaintiffs. All of those Plaintiffs have since voluntarily dismissed their actions. Notably, there is no claim regarding SEC violations.

87. On or about November 3, 2011, Henry Zou e-mailed Joop Bollen and James Park indicating four of the LP 6 Investors had instructed Third-Party Defendants to send rescission letters to rescind their amendment on the Limited Partnership Agreement. (As set forth in ¶ 22 of Defendants' Answer, the Amended LP Agreement was prepared because there are significant differences between the Offering Memorandum and the LP Agreement.)

88. Two of the original Plaintiffs dismissed their actions on November 7, 2011. On that same date an Amended Complaint was filed adding four additional Plaintiffs.

89. On November 15, 2011, the last two of the original four Plaintiffs voluntarily dismissed their actions.

90. On or about November 15, 2011, Li Dan, an EB-5 Project Manager from HGCG, e-mailed James Park, with a copy to Henry Zou, indicating that James Park and Hanul Professional law firm should resign as immigration attorneys for LP 6 investors within 24 hours and that otherwise they would make a complaint to the California Bar Association, the South Dakota Government and the USCIS immediately.

91. In December 2011, Bollen traveled to China and provided all the requested documents.

92. Based on information and belief, on or about December 26, 2011, Third-Party Defendants, using the pseudonym "Steve," e-mailed Deer Creek Station II (SDRC LP 3) (an additional EB-5 project) indicating that the EB-5 offering might violate SEC regulations and further indicating that "SDRC has a series of lawsuits relating to its former issuing."

- a. Based on information and belief, on or about January 6, 2012, Third-Party Defendants, again using the name "Steve," e-mailed Ignacio Cuenca Arambarri at Iberdrola alleging an SEC violation.

93. This January 6, 2012 e-mail identifies Buffalo Ridge II, LLC, as a subsidiary of Iberdrola Renewables, Inc., and says it is in violation of security laws. The e-mail indicates "Investors in another related pooled fund managed by the same General Partners (SDIF 6) have already been named in a lawsuit filed in federal courts (see attached SDIF 6 Lawsuit). The case number is Case 4:11-cv-04148-KES. It is our belief that SDIF 6 was promoted in a similar manner as SDIF 8."

94. This January 6, 2012 e-mail goes on to indicate "It is our intention to escalate this matter to senior management and directors of Iberdrola S.A., the Securities and Exchange Commission (SEC) and other relevant authorities unless there is a successful resolution provided as soon as possible."

95. Third-Party Defendants continue to deceive the investors and solicit them to bring the lawsuit, by misrepresenting the status of the project and the viability of the loan from SDIF LP 6 to NBP. In fact, when *the original four* Plaintiffs in the lawsuit were advised of the true facts by their own separate attorneys, they requested that their names be removed from the lawsuit. Based on information and belief, the original Plaintiffs may not have even known they were in a lawsuit.

96. At the time of its commencement of the suit, Third-Party Defendants knew that, by urging the commencement of this lawsuit, they could destroy the project. They knew that, by urging the bringing of this lawsuit, they would endanger the release of loan and bond funds, including the USDA guaranteed loan, the REDI loan, the EDFA loan, the Aberdeen

Development Loan, and the tax incremental bond financing, which will allow the project to pay off all mechanics' liens and allow the plant to go into operation. They knew that it could effectively destroy the project and result in the forced sale of the plant.

97. Based on information and belief, Third-Party Defendants have guaranteed the return of the Plaintiffs' investments in exchange for initiating this suit. The guaranteed return of investment is a violation of federal law and endangers the Plaintiffs' green cards.

98. USCIS regulations provide the investor's capital must be "at risk." 8 CFR 204.6(j)(2). Such actions also violate the EB-5 decision referred to "as Matter of Izumi", which explicitly prohibits any guarantee or redemption guarantee to the investor by any party associated with the requisite investment in order for the alien's I-526 and issuance of a conditional Green Card to be valid and approvable.

99. Third-Party Defendants' clients, such as the remaining Plaintiffs, who enter into the alleged "guarantee" or money back "redemption" arrangement, are subject to having their i-526 approvals "revoked" and to be denied their visa.

100. Based on information and belief, Third-Party Defendants are paying the attorney fees for the Plaintiffs.

101. All of the actions of Third-Party Defendants, as above alleged, were taken out of a desire for revenge and to cause the project to default and to destroy SDRC, Inc., and the South Dakota Regional Center.

102. There exists a civil conspiracy between Third-Party Defendants, and the Plaintiffs, through the actions alleged above, to sabotage the loan between SDIF LP 6 and NBP and to destroy SDRC, Inc., and the South Dakota Regional Center, by the breach of their fiduciary duty, the violation of their duty of good faith and fair dealing, by their defamation, by

their tortious interference with business relationships and by their engagement in abuse of process and barratry. All of the actions set forth above were undertaken in furtherance of that civil conspiracy.

**Breach of Fiduciary Duty**

103. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 102, above.

104. Plaintiffs and Third-Party Defendants had a fiduciary duty toward Defendants.

105. By their conduct set forth above, Plaintiffs and Third-Party Defendants directly breached their fiduciary duty to the Defendants and Third-Party Plaintiffs.

106. Plaintiffs and Third-Party Defendants, by virtue of the civil conspiracy alleged above, are liable for all damages caused by their violation of fiduciary duty.

107. As a result of said breach and said conspiracy, NBP may default on its obligations to SDIF LP 6; causing both monetary damages to SDIF LP 6 and to the other limited partners of SDIF LP 6, and causing the loss of their EB-5 program green cards.

**Good Faith and Fair Dealing**

108. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 107, above.

109. Plaintiffs and Third-Party Defendants had a duty of good faith and fair dealing in their business relationships with the Defendants and Third-Party Plaintiffs.

110. By the conduct set forth above, Plaintiffs and Third-Party Defendants violated their duty of good faith and fair dealing toward Defendants and Third-Party Plaintiffs.

111. Plaintiffs, by virtue of the civil conspiracy alleged above, are liable for all damages caused by their violation of their duty of good faith and fair dealing.

112. As a result of said violation of duty, NBP may default on its obligations to SDIF LP 6; causing both monetary damages to SDIF LP 6 and to the other limited partners of SDIF LP 6, and causing the loss of their EB-5 program green cards.

### **Defamation**

113. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 112, above.

114. Third-Party Defendants published false and unprivileged communications to various limited partners of SDIF LP 6 charging the President of the General Partner of SDIF LP 6, Joop Bollen, with a crime, that is, the crime of aiding and abetting an embezzlement of funds.

115. These communications directly injured SDIF LP 6 and Bollen in their profession, trade or business.

116. These communications, by natural consequences, caused actual damage to SDIF LP 6 and Bollen.

117. Said communications were made with actual malice and with a reckless disregard for the truth of those allegations.

118. Plaintiffs and Third-Party Defendants, by virtue of the civil conspiracy alleged above, are liable for all damages caused by their defamatory communications.

### **Tortious Interference with Business Relationships**

119. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 118, above.

120. There is a valid business relationship between SDIF LP 6 and NBP, that is, a lender-borrower relationship, out of which there arose an expectation, on the part of SDIF LP 6,



that it would be able to properly carry out its obligations as a lender, and that NBP would be able to begin operations as a beef packing plant, repaying its loan to SDIF LP 6.

121. Plaintiffs and Third-Party Defendants, had knowledge of that relationship and the business expectation.

122. Plaintiffs and Third-Party Defendants, by the intentional and unjustified acts alleged, interfered with that business relationship.

123. As a result of that interference, SDIF LP 6 was damaged, in that NBP will not be able to reach completion and will not receive the financing necessary to begin operations, and will not be able to repay the loan to SDIF LP 6. Further, SDIF LP 6 may be liable to NBP for breach of its commitment to loan funds to NBP for the completion of construction of the beef packing plant.

124. Plaintiffs and Third-Party Defendants, by virtue of the civil conspiracy alleged above, are liable for all damages caused by their tortious interference with business relationships.

125. There is also a valid business relationship among SDRC, Inc., the South Dakota Regional Center, SD Investment Fund LLC 6, and numerous other EB-5 projects. Plaintiffs and Third-Party Defendants have knowledge of these relationships and the business expectations therein.

126. Plaintiffs and Third-Party Defendants, by their intentional and unjustified acts alleged above interfered with those business relationships.

127. As a result of that interference, all of these entities are damaged.

128. Plaintiffs and Third-Party Defendants, by virtue of the civil conspiracy alleged above, are liable for all damages caused by their tortious interference with business relationships.

**Abuse of Process**

129. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 128, above.

130. The remaining Plaintiffs, at the urging of Third-Party Defendants, have maliciously misused or misapplied the legal process after this case was initiated in order to accomplish a collateral purpose not warranted or properly obtainable thereby.

131. The remaining Plaintiffs and Third-Party Defendants have an ulterior purpose for continuing to maintain this lawsuit against Defendants and Third-Party Plaintiffs.

132. The remaining Plaintiffs and Third-Party Defendants have engaged in a willful act in the use of the process not proper in the regular prosecution of the proceedings.

**Indemnity/Contribution**

133. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 132, above.

134. Should any judgment be issued against one or more of the Defendants, Defendants are entitled to indemnity and/or contribution from the remaining Plaintiffs and Third-Party Defendants.

**Punitive Damages**

135. Defendants and Third-Party Plaintiffs incorporate by this reference herein the allegations set forth in paragraphs 1 through 134, above.

136. The actions of Plaintiffs and Third-Party Defendants, set forth above, were undertaken in willful and wanton disregard for the rights of Defendants and Third-Party Plaintiffs and other limited partners of SDIF LP 6. Defendants and Third-Party Plaintiffs are therefore entitled to an award of punitive damages.

137. Plaintiffs and Third-Party Defendants, by virtue of the civil conspiracy alleged above, are liable for all punitive damages caused by their actions.

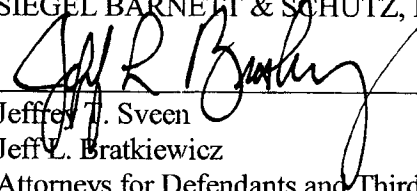
WHEREFORE, Defendants request this Court:

1. Dismiss Plaintiffs' claims with prejudice and award them their costs and attorney fees.
2. Enter judgment in favor of Defendants and Third-Party Plaintiffs on their claims and award damages as determined by the trier of fact.
3. Any other damages the Court deems just and equitable.

DEFENDANTS AND THIRD-PARTY PLAINTIFFS HEREBY DEMAND A JURY  
TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 18th day of January, 2012.

SIEGEL BARNETT & SCHUTZ, L.L.P.



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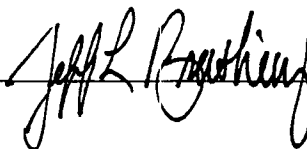
CERTIFICATE OF SERVICE

The undersigned, attorneys for Defendants, certifies that on the 18th day of January, 2012, a true and correct copy of the within and foregoing THIRD-PARTY COMPLAINT will be filed with the Clerk of Courts using the CM/ECF System, which will automatically send a e-mail notification of such filing to the following:

- Mr. Vince M. Roche  
[vroche@dehs.com](mailto:vroche@dehs.com)
- Mr. Shane E. Eden  
[seden@dehs.com](mailto:seden@dehs.com)
- Mr. John Grossbart  
[John.grossbart@snrdenton.com](mailto:John.grossbart@snrdenton.com)
- Mr. Anthony T. Eliseuson  
[Anthony.eliseuson@snrdenton.com](mailto:Anthony.eliseuson@snrdenton.com)
- Ms. Maria L. Domanskis  
[Maria.domanskis@snrdenton.com](mailto:Maria.domanskis@snrdenton.com)

Dated this 18th day of January, 2012.

SIEGEL, BARNETT & SCHUTZ, L.L.P.



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