SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

U.S. IMMIGRATION FUND LLC, U.S. IMMIGRATION FUND-NY LLC, 701 TSQ 1000 FUNDING, LLC, and 701 TSQ 1000 FUNDING GP, LLC,	Index No. _____/2018
Plaintiffs,	Date Purchased: October _, 2018
- against -	Plaintiff designates New York County as the Place of Trial
DOUGLAS LITOWITZ, ESQ., XUEJUN MAKHSOUS a/k/a MA XUEJUN a/k/a ZOE MA, and REVIV-EAST LEGAL CONSULTANTS (HK) LTD. a/k/a HONG KONG ZHENDONG LEGAL SERVICES CONSULTING CO., LTD.,	**SUMMONS**
Defendants.	

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if the summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is C.P.L.R. § 503(a).

Dated: New York, New York
October 4, 2018

OTTERBOURG P.C.

By:_____
Richard G. Haddad
William M. Moran
230 Park Avenue
New York, New York 10169
(212) 661-9100

Defendants addresses:

Douglas Litowitz, Esq.
413 Locust Place
Deerfield, Illinois 60015
(continued on next page)

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Xuejun Makhsous a/k/a Ma Xuejun a/k/a Zoe Ma
340 East Randolph Street, Unit 806
Chicago, Illinois 60601

Reviv-East Legal Consultants (Hk) Ltd. a/k/a Hong Kong
Zhendong Legal Services Consulting Co., Ltd.
Room1405A, Luk Centre
165-171 Wan Chai Road
Wanchaii, Hong Kong

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Plaintiffs,	
- against -	**VERIFIED COMPLAINT**
DOUGLAS LITOWITZ, ESQ., XUEJUN MAKHSOUS a/k/a MA XUEJUN a/k/a ZOE MA, and REVIV-EAST LEGAL CONSULTANTS (HK) LTD. a/k/a HONG KONG ZHENDONG LEGAL SERVICES CONSULTING CO., LTD.,	
Defendants.	

Plaintiffs U.S. Immigration Fund LLC, U.S. Immigration Fund-NY LLC, 701 TSQ 1000 Funding, LLC, 701 TSQ 1000 Funding GP, LLC, by and through their attorneys, Otterbourg P.C., as and for their Verified Complaint against defendants Douglas Litowitz, Esq. ("Litowitz"), Xuejun Makhsous, also known as Ma Xuejun, also known as Zoe Ma ("Zoe Ma") and Reviv-East Legal Consultants (HK) Co., Ltd., also known as Hong Kong Zhendong Legal Services Consulting Co. Ltd. ("Consultants") allege, on knowledge as to their own status and actions and otherwise upon information and belief, as follows:

INTRODUCTION

1. This action arises from the seedy side of the legal profession. It asserts claims for fraud and related causes of action against Litowitz, an Illinois attorney, Zoe Ma, Litowitz' purported "Chief Investigator," and Consultants, their purported "legal consulting" business in Hong Kong. The claims arise from a desperate, bankrupt lawyer, his willing cohort and the business they created for the purpose of the fraud, deceptively and maliciously insinuating

themselves, in furtherance of their own adverse interests, into an ongoing, U.S. government approved EB-5 program project affording certain accredited Chinese families much coveted green cards for themselves and their children to reside in the U.S., in return for investments by these Chinese investors in certain real estate development projects in the United States that under the program are designed to create, and have in fact created, a significant number of jobs for U.S. citizens. Among other things, defendants individually and in collusion with one another, and with knowledge of their fraudulent scheme, disseminated false and defamatory statements by which they attempted to raise their own profile while damaging the reputation of plaintiffs, their affiliates and the aforementioned EB-5 capital investment projects, to the detriment of plaintiffs, so as to engage these Chinese investors in an attorney-client relationship and to induce them to withdraw their substantial investments from these EB-5 projects, so as to have them pay a portion of the returned investment to defendants as "Contingency-Based Legal Fees." The violations of the codes and canons of legal ethics are numerous and are described here to illustrate the Defendants' malicious course of conduct.

2. Defendants improperly approached these Chinese investors at a time when they were most vulnerable, owing to a backlog in recent years for EB-5 visas to investors from China that resulted in their investments – here, in the form of a pooled $200,000,000 loan in the EB-5 project – being paid back in accordance with the loan's terms and conditions but before approval of the coveted green cards. This resulted in the need to redeploy those repaid funds into another approved investment during the backlog period, or to give up on the green cards.

3. Importantly, had any of these Chinese investors properly requested from plaintiffs a withdrawal of their capital without defendants' interference, their entire investment would have been returned in full *without any fees paid to defendants*. In addition, withdrawal from these

projects would jeopardize, if not extinguish, the investors' opportunity to obtain the green cards that they had been working towards, which is apparently of no concern to Defendants, who seek only to enrich themselves at the expense of both Plaintiffs and Defendants' own "clients." To date, approximately seventy Members have been refunded.

4. Worse still, upon information and belief, Defendants maliciously waged this campaign of fraud and defamation because of immense financial pressure upon both Litowitz and Zoe Ma arising from: *first* Litowitz's recent termination from his previous employers, Duff & Phelps, where he worked as a legal consultant, and SBI Securities (HK) Ltd., where he worked as an in-house lawyer; *second,* Litowitz filing for personal bankruptcy in January of 2018; *third,* the final and non-appealable adjudication on May 4, 2018 by the United States Bankruptcy Court in the Northern District of Illinois that a portion of Litowitz's debt was nondischargeable as it was obtained by Litowitz under "false pretenses, a false representation, or actual fraud" (*see* Exhibit A); and *fourth* the "financial ruin" of Zoe Ma arising from the failure of her actual business and sanctions imposed by the Wisconsin Department of Health Services in connection with her operation of two assisted living facilities in Marionette County, Wisconsin that "has cost her all of her life savings."

5. Defendants' fraudulent and otherwise wrongful conduct here has caused the Plaintiffs substantial harm for which they are entitled to relief, including punitive damages, both in an individual capacity and derivatively in their capacity as principals in Consultants.

THE PARTIES

6. Plaintiff U.S. Immigration Fund, LLC ("USIF") is a Delaware limited liability company with a registered address of 115 Front Street, Suite 300, Jupiter, FL. USIF is one of America's leading EB-5 regional centers with 25 ongoing EB-5 projects across the United States,

assisting nearly 6,000 EB-5 investor clients and their families from around the globe. The EB-5 Program is more fully described below.

7. Plaintiff U.S. Immigrations Fund-NY, LLC (the "Regional Center") is a New York limited liability company with a registered address of 115 Front Street, Suite 300, Jupiter, FL, and is an affiliate of USIF in New York City. The Regional Center has been approved by the United States Citizenship and Immigration Services ("USCIS") as a regional center under the EB-5 Program to undertake EB-5 capital investment projects in the New York City area, including a project at 701 Seventh Avenue, New York, New York at Times Square (the "701 Project").

8. Plaintiff 701 TSQ 1000 Funding, LLC (the "Company") is a Delaware limited liability company with a registered address of 115 Front Street, Suite 300, Jupiter, FL, and is sponsored by the Regional Center. The Company's affiliation with the Regional Center allows subscribers in the Company (known as "Members") to rely on both direct and indirect job creation for the purposes of the Members qualifying for green cards under the EB-5 Program (the primary objective of the investment).

9. Plaintiff 701 TSQ 1000 Funding GP, LLC (the "Manager") is a Delaware limited liability company with a registered address of 115 Front Street, Suite 300, Jupiter, FL, and manages the Company.

10. Individual Defendant Litowitz is an individual believed to be resident at 413 Locust Place, Deerfield, Illinois.

11. Individual Defendant Zoe Ma is an individual believed to be resident at 340 East Randolph Street, Unit 806, Chicago, Illinois.

12. Defendant Consultants is, upon information and belief, a private company limited by shares, registered under the laws of Hong Kong, with an address at Room 1405A, Lok Centre, 165-171 Wan Chai Road, Wanchai, Hong Kong. Upon further information and belief Litowitz and Zoe Ma are principals of Consultants.

FACTUAL BACKGROUND

The EB-5 Program

13. The EB-5 program was created in 1990 by Congress to encourage the flow of capital into the U.S. economy and to promote employment in the United States. Foreign investors are offered the prospect (but not the guarantee) of lawful permanent residence in the U.S. (evidenced by an issued green card) if they invest a minimum of $500,000 in a commercial enterprise in the U.S., and that investment results in the creation or maintenance of 10 full-time jobs in the U.S. for American citizens.

14. USCIS regulations governing the EB-5 Program require applicants' investments to be "at risk"— *i.e.*, subject to the possibility of gain or loss—at least until the applicant has completed a two-year conditional residence period (which traditionally had taken roughly 4 years from the time of the initial EB-5 application). EB-5 loans were typically structured to come due between 5 and 7 years.

The EB-5 Visa Process

15. The primary steps in the EB-5 visa process are as follows:

- The foreign investor invests in a new commercial enterprise ("NCE") (here, the 701 Project) in the U.S. The NCE may be affiliated with a regional center (here, the Regional Center), which allows it to deploy the proceeds of the EB-5 investments, as debt or equity, to one or more job creating entities (here, the

developer of the 701 Project), which will use the funds to directly or indirectly create at least ten jobs for U.S. workers per investor.

- The investor then files an I-526 petition with USCIS in order to be designated as an "alien entrepreneur" under the EB-5 program.
- Upon approval of the investor's I-526 Petition, the investor typically files a form I-485 requesting that the investor and qualifying family members be granted "conditional permanent" residency. Upon approval of the I-485 the investor is granted an immigrant visa, and upon entering the U.S. with that visa the investor becomes a conditional permanent resident ("CPR"). CPR status is initially granted for a two-year period, during which the investor must maintain the investment in the NCE.
- Between 21 and 24 months after the date of becoming a CPR, the investor must file an I-829 petition with USCIS to remove the conditions on the investor's residence. The approval of the I-829 petition generally requires the investor to demonstrate that the requirements under the EB-5 program have been fulfilled during the prior two-year period, including showing that the NCE has created a minimum of 10 permanent jobs as a result of the investment and that the investor's investment in the NCE has been sustained "at risk" for the entire two year CPR period.
- If the I-829 Petition is approved, the investor and qualifying family members will be granted unconditional permanent resident status in the U.S., and they are issued green cards. They may also apply for U.S. citizenship after approximately five years of residency. If denied, the investor and family members will be placed in

removal proceedings, where they may lose their immigration status and face deportation.

Relevant USCIS Regulations

16. USCIS regulations impose specific requirements on the use of the investor's capital during the pendency of their immigration application. In particular, an investor must sustain their investment "at risk" for the entire two-year period of conditional I-526 residency.[1] Pursuant to the "at risk" requirement, the immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return, and there "must be a risk of loss and a chance for gain." Funds held in reserve that are not actively being used by a commercial enterprise are not considered "at risk."

17. Accordingly, EB-5 loans have typically been structured so that they remain outstanding throughout the time required for all investors to make their way through the two-year period of conditional permanent residence and through to I-829 petition approval. Hence, most loan terms have traditionally been 5 to 7 years.

18. This traditional structure has been undermined in recent years by a growing backlog in the EB-5 visa program for Chinese residents—it can now take up to **10 or more** years for Chinese EB-5 applicants to obtain permanent residence. Therefore, most EB-5 loans will be paid back – and if not redeployed investors' funds will not be "at risk" -- years before the investors complete the two-year CPR period.

19. Consequently, USCIS has recently introduced a "redeployment" policy, first formally stated in the EB- 5 Policy Manual in 2016 and 2017. Under this policy:

[1] The more conservative view is that it would be most prudent for capital to be sustained "at risk" through the final adjudication of the I-829 petition.

- If an NCE makes an EB-5 loan and receives repayment of the EB-5 loan before its EB-5 investors have completed the two year CPR period, as is the case here, the NCE **must** reinvest—*i.e.*, redeploy—the repaid funds in a new investment.
- The reinvestment must be in a commercial activity, "in commerce" within the corporate scope of the commercial enterprise.
- The redeployment must occur within a "commercially reasonable" period of time. The USCIS has not defined what constitutes a "commercially reasonable" period of time, but the industry understanding is between 3 to 6 months of repayment of the original investment. *See* PM Chap. 4, § C.

20. Failure to redeploy under these terms would likely result in denial or revocation of an EB-5 investor's immigration application.

21. Moreover, a regional center or commercial enterprise **must** report any redeployment of investor capital or material change in the status of an EB-5 investor, including any change in the "at- risk" status of the investor's capital. In addition to an annual certification requirement on Form I-924A, USCIS regulations also impose an ongoing duty to notify of any redeployment of capital or material change in investor status. Failure to comply with these reporting requirements can result in termination of regional center status.

The 701 Project Is Redeployed

22. The EB-5 project at issue here is the 701 Project, wherein the Company was formed to make a loan (the "701 Loan") to a third-party developer -- with no affiliation to Plaintiffs -- so as to finance a mixed-use development at 701 Broadway, Times Square, New York City. The accredited Chinese Members each invested $500,000 into the Company, which

pooled all of the investments and in turn procured the 701 Loan to the developer in the amount of $200,000,000, payable on or before May 31, 2020.

23. But in February 2018, the developer informed the Manager that it had decided to sell the 701 Project and prepay the 701 Loan, pursuant to the rights to do so in the loan documents. Construction on the 701 Project was near completion and the developer had entered into an agreement to sell the project to a purchaser who wanted to refinance the project with long term financing.

24. To date, none of the Members have an EB-5 visa giving them the right to conditional permanent residence in the United States. As a result, the prepayment of the 701 Loan triggered a need to redeploy the repaid loan funds so the Members' capital remain "at risk" while the Members' EB-5 applications are pending. However, the Operating Agreement for the Company did not specifically provide for reinvestment of the repaid 701 Loan in any projects other than the 701 Project. Accordingly, the Manager sought and received approval from a majority of the Members to permit funds to be redeployed into a very similar project located in close proximity to the 701 Project, at 1568 Broadway, NY, NY, otherwise known as 702 Times Square (the "702 Project").

25. The 702 Project was identified by the Manager as the best option for redeployment based on an extensive exploration of available options that satisfy all of the EB-5 redeployment requirements and its due diligence of the 702 Project. This analysis was based on a variety of factors, including the Manager's business judgment regarding the experience and financial capability of the developer of the 702 Project (an entity unaffiliated with Plaintiffs), evaluation of the 702 Project's capital structure, pro forma financial projections, independent appraisals of the 702 Project on completion and stabilization, the location of the 702 Project in

the highest retail traffic area in the world, and the fact that the developer of the 702 Project has commitments in hand from construction lenders (major financial institutions) and equity investors sufficient to complete the project. The 702 Project features the construction of a 3,780 key hotel with multiple brands, 390,000 square feet of meeting and ballroom space, 170,000 square feet of retail, 200,000 square feet of food and beverage, a 115,000-square-foot pool deck, a 40,000-square-foot spa, 16,000-square-foot fitness center, and 6,200 parking spaces.

26. The majority vote was brought about by the Manager circulating to the Members a consent solicitation and a proposed amended operating agreement. A method by which the solicitation was discussed among the Members was online, in a 701 Project group chat room commonly referred to as "WeChat."

27. The WeChat chat room, upon information and belief, is a Chinese-language social media site used by the Chinese Members to communicate and coordinate together, but it has also been used by some outside of the 701 Project to steer Members that may be getting disillusioned, because of the back-log with the EB-5 process, to become potential clients of lawyers and bring claims against Plaintiffs for the return of their investments.

28. Indeed, upon information and belief, a group of Members were persuaded in such a manner to commence an action in the Supreme Court of the State of New York, New York County (the "NY Action"), to seek an injunction enjoining the redeployment of the investments into the 702 Project pending an arbitration of various claims that the redeployment was improper. But the NY Action has since been settled, the claims therein have been dismissed and the request for arbitration has been withdrawn.

Evolution of the Fraudulent Scheme

29. Upon information and belief, during his legal career Litowitz worked as a visiting or adjunct teacher at various law schools, but never achieved tenured status and never became a full professor. Between 2005 and 2015 Litowitz was employed by a hedge fund in Illinois as a compliance lawyer, and thereafter he moved to Hong Kong where he was employed as an in-house lawyer for a retail securities broker, known as SBI Securities (HK) Ltd. ("SBI"), from 2016 to 2017. Upon further information and belief, in 2017 SBI fired Litowitz.

30. Thereafter in 2017, upon information and belief, Litowitz was hired in Hong Kong as a compliance lawyer by a Duff & Phelps affiliate known as D&P China (HQ) Ltd. ("D&P"). Upon further information and belief, before the year was out D&P also fired Litowitz.

31. As a direct result, upon information and belief, Litowitz experienced overwhelming financial pressure. His debts went unpaid and his income ceased. Indeed, on January 8, 2018, Litowitz filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. Annexed hereto as Exhibit B is a copy of the Voluntary Petition for Bankruptcy.

32. At about the same time, upon information and belief, Zoe Ma was in "financial ruin" owing *first* to the failure of the business that she was actually engaged in -- apparently when not holding herself out as a "Chief Investigator" for Litowitz -- which was the operation of two assisted living facilities in Wisconsin, and *second* due to the ongoing sanctions that presently are being imposed upon her by the Wisconsin Department of Health Services ("DHS") for violations in connection with those two assisted living facilities, which DHS collects from Zoe Ma by directly "debiting [her] bank account" to the point where she claims it "has cost her all of her life savings." Annexed hereto as Exhibit C is a copy of the Decision and Order by the United

States District Court Eastern District of Wisconsin, dated August 2, 2018, dismissing Zoe Ma's action against the Secretary of DHS, and annexed hereto as Exhibit D is a copy of the "Reply Motion for Relief from Judgment of Dismissal" filed on September 3, 2018 by "Counsel for Plaintiff," Litowitz.

33. Unemployed, bankrupt, in financial ruin and in desperation, upon information and belief Litowitz and Zoe Ma together decided upon a different path. By virtue of relationships they each had in Hong Kong, they together came up with a plan to make money by nefarious means.

34. Upon information and belief, Litowitz and Zoe Ma, individually and in collusion with one another, and with knowledge and malice, devised a scheme to portray themselves as experts in the EB-5 Program and set about inducing the Chinese Members in the 701 Project to seek a return of their investments from Plaintiffs by engaging the Members with lies and defamatory statements about Plaintiffs, their affiliates and the project, without any regard to the truth or the damage they would cause to Plaintiffs or to the Members.

35. As part of their plan, upon information and belief, they unveiled a sham organization in Hong Kong for purposes of the fraud. Indeed, on January 30, 2018 (shortly after Litowitz' bankruptcy filing earlier that month), they changed the name of an existing Hong Kong entity they had rights to, known as "Catrini Jewelry Co., Ltd." – which no doubt up until then was in the jewelry business – and renamed it "Reviv-East Legal Service Consultants (HK) Co., Limited." Attached hereto as Exhibit E is a copy of the online corporate database demonstrating the name-change.

36. Defendants then portrayed themselves on a website for the new entity as experts in the field – he as a securities lawyer and "professor" from Illinois, and she as his "Chief

Investigator" and the person "responsible for due diligence and handling complaints from Chinese investors." Litowitz also included on the website a section entitled "My Blog" under which was an article he wrote entitled: "The EB-5 program is legally flawed and has become a scam." A copy of a Google-translated (from Chinese) print-out of the website (located at https://eb5rights.com/) is annexed hereto as Exhibit F.

37. Despite the apparent fact that in 2017 the entity was still in the jewelry business, the website stated:

> [Consultants] helps investors defend their rights. **From 2017**, we will help EB-5 investors and US professional lawyers to cooperate to recover investment funds. In **December 2017**, Investor Z recovered $500,000 in investment from the EB-5 project promoted by the Chinese intermediary company "Overseas Immigrants" in just seven days. (Emphasis Added).

38. Upon information and belief, this statement was not true. Despite touting the success story achieved for "Investor Z" in 2017, Litowitz disclosed no interest in Consultants in his bankruptcy petition dated January 8, 2018. (Exhibit B). Moreover, logic dictates that if the Investor Z story were true, income received from the alleged "big win" would have saved Litowitz from bankruptcy.

39. To the contrary, however, upon information and belief Litowitz did not even have enough money to pay off a sum of $4,300 to his creditor First National Bank of Omaha (the "Bank"), which by March 29, 2018 had sued Litowitz in the bankruptcy court seeking an exception to discharge of that debt, which the Bank complained was incurred in November and December of 2017 when Litowitz suddenly changed his spending habits and maxed out his credit card with cash advances and charges to car services, airline tickets and hotel charges. Annexed hereto as Exhibit G is a copy of the Complaint Seeking Exception to Discharge filed on March 29, 2018.

40. Litowitz's failure to repay the Bank that small amount resulted in an agreed upon Judgment entered by the court against Litowitz "ordering the sum of $4,300 to be nondischargeable pursuant to 11 U.S.C Section 523(a)(2)." Attached hereto as Exhibit A is a copy of the Agreed Judgment of Nondischargeabilty by the court dated May, 4, 2018. Importantly, the statute (Section 523(a)(2)) by which Litowitz was adjudicated bars dischargeable debts that are "obtained by ... false pretenses, a false representation, or actual fraud..." It is hard to imagine an expert EB-5 lawyer that just had such a big win for "Investor Z" not having enough money from his fee to pay such a small sum and escape from being adjudicated a fraud -- yet that is what the United States Bankruptcy Court Judgment established.

41. Further, if at any time before Litowitz filed his bankruptcy petition on January 8, 2018, he held an interest in the Consultants entity, either before or after it left the jewelry business, then the fact that he failed to disclose that in his petition was a fraud upon the bankruptcy court.

42. As part of the scheme, Zoe Ma was able to infiltrate the WeChat group chat and started the campaign to spread lies and defamation, which is more fully described below. Upon further information and belief, Defendants' campaign included having the Members engage Defendants with a purported contract entitled "Agreement to Provide Legal Services" (the "Agreement"). A copy of this Agreement is annexed hereto as Exhibit H. As described therein, the Agreement is dated 2018, and sets forth the "Contingency-Based Legal Fees" as follows, in pertinent part:

> 3. 50% of fees recovered from your immigration attorney and a portion of management fee recovered from the Fund will be retained by the Attorney along with legal fees awarded by Court as compensation for legal services provided by Attorney. 50% of fees recovered from your immigration attorney of management fee recovered from the Fund will be retained as compensation for service provided by by (sic) Reviv-East Legal Service Consultants (Reviv-East). You will agree to pay a set up fee of $1500

refundable if capital contribution not returned in 60 days. Unless otherwise specified, no other fees will be charged to you. All prior payment is not refundable.

* **

6. Term of Agreement. This Agreement is valid for six months or until the end of legal proceedings. The attorney and Reviv-East are entitled to legal fee and consulting fee for services performed in case of recovery received if you terminate this agreement with mutual consent. Service is charged at $400 per hour and $200 per hour by attorney and Reviv-East respectively.

43. Upon information and belief, in 2018 none of the Defendants were licensed to practice law in Hong Kong and, accordingly, Defendants practice of law in Hong Kong violates the laws of Hong Kong. Moreover, Litowitz, is a member of the Illinois Bar, which specifically prohibits fee-splitting with non-lawyers, the formation of partnerships with non-lawyers, assisting in the unauthorized practice of law, and improper solicitation. Upon information and belief, Defendants' conduct herein violates numerous provisions of the Illinois Code of Professional Responsibility, including Rules 1.5, 5.4(a), 5.4(b), 5.5(a), 7.2 and 7.3.

44. Upon further information and belief, neither Zoe Ma nor Consultants are licensed as investment advisers, yet they have been routinely acting as investment advisers with Members concerning the 701 Project and the 702 Project. As such, they are in violation of the securities laws of Illinois, New York and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.*

Defendants' Malicious Interference

45. By June of 2018 Plaintiffs first started to hear from Litowitz, seeking investment withdrawals on behalf of their clients. However, far from a normal course one would expect in dealing with a lawyer, Litowitz's calls to representatives of USIF were more often than not laced with profanity, often included extortionate threats to run up attorneys' fees and to disclose negative information, and constantly asserted what can only be termed as "screams" into the phone to be paid immediately.

46. Upon information and belief, the enormous financial pressure, the bankruptcy, the fraud adjudication and the financial ruin combined into Defendants' fraud scheme as a distinct malice against Plaintiffs, as demonstrated by the invective, which only increased the longer the process played out.

47. In addition, upon learning of the commencement of the NY Action, which had been brought by the competing law firm Reid & Wise LLP ("R&W"), Litowitz tried to jump on the band wagon. Indeed, notwithstanding that he is not licensed to practice law in this State, and did not represent any named party to that action, Litowitz sent a letter to the New York State Court Judge presiding over the NY Action, Hon. Saliann Scarpulla, requesting the Court allow him to intervene in the NY Action, and attaching a draft motion to intervene. A copy of the letter, dated August 27, 2018, is attached hereto as Exhibit I. While the court, upon information and belief, instructed the attorneys in the NY Action to communicate with Litowitz, no motion to intervene was ever filed nor litigated in the NY Action, nor was any such order ever granted. Despite this, upon information and belief both Litowitz and Zoe Ma proceeded to claim to represent their clients' interests in the NY Action, going so far as to claim, in writing, that the "female judge" (presumably Justice Scarpulla) had effectively prejudged the case and was predisposed to rule in favor of Defendants' clients, even though none of them were ever parties to the case. As such, upon information and belief, Litowitz and Zoe Ma violated New York's statutes and the Code of Professional Responsibility prohibiting the unauthorized practice of law.

48. In its dealings with Defendants, notwithstanding the malicious conduct from Defendants, USIF stood by the terms of the agreements with the Members and upon proper documentation and proceeding it processed the return of withdrawals to some of the Members that engaged Defendants. In doing so, each such Member signed documents that included a

release and a confidentiality agreement that was binding upon the Member and their "legal representatives." As more fully described below, Defendants intentionally breached this provision in furtherance of their fraud.

Defendants Employ Lies and Slander to Further the Fraud

49. Upon information and belief, in addition to the utter falsehood set forth on the Consultants' website, as described above, by mid-2018 the plan to have Zoe Ma infiltrate the WeChat group to spread lies and defame Plaintiffs went into high gear. Moreover, the goal was not just to gain clients at the expense of Plaintiffs, but also upon information and belief, at the expense of other law firms and lawyers competing for EB-5 business. The following are statements that are all false, defamatory and were intentionally misrepresented by Zoe Ma with the knowledge and collusion of all Defendants in furtherance of the fraud, which were translated from Chinese from the WeChat group chat, and were stated by Zoe Ma on the dates indicated:

- On August 23, 2018:
    - "702 project's result will be the same with Las Vegas SLS project, the project will fail and investors can't get their money and green card. 702 project needs 200 investors investment as preferred equity and 900 investors investment as mezzanine loan."
    - "The investors we represented will not invest into 702. If 702 fail like SLS, investors will lose everything. Those 2 options are not safe."
    - "For USIF, investors are the least important. So investors who chose option 1 should hire lawyers now.'
    - "USIF mainly earn the rebate of construction fees. Those construction fee are over high."

- "We only represented 701 investors who want the money back. We did our best to help our investors who got rejected by USCIS to get their money back. Those R law firm [a competing law firm] really can't compete with us."
- "We didn't make too much efforts on, but we got refund timely. We only represent 701 refund investors, so we focus on seeking loopholes, thus we can get refund back for the clients who got rejected. And let those lawyers in so-called high-end legal firms, like R&W [the lawyer firm for plaintiffs' in the NY Action] and R firm, feel powerless."
- "701 has made enough money and there is no more profits. It is also lack of ability."
- "The starting was to misunderstand EB-5's operation, mislead investors into municipal bonds and cheat clients."
- "702 is the New York version of the SLS project, and the final result is 'bloodbath' investors."
- "R&W and USIF join forces to push 701 to 702."
- "702 is an abyss, very horrible."
- "The 702 project is junk bonds and no collateral."
- "702 is a shitty project."
- "An anti-climax lawsuit which earned 300,000 USD legal fees led to hundred-twenty-four 701 Green Card guaranteed investors became cannon fodder, and seventeen 701 refund investors gained profit."
- "R&W who had begun playing a good hand. However they flinched when the judge signaled sympathy for investors' demands and almost agreed to vote

again. They could have revised the unequal operating agreement, given the Green Card guaranteed investors and refund investors reasonable choice and procedures. But R&W has given all these advantages to the fund company."

- "I helped 702 investors get their refunds back last year."
- "That lawsuit was almost for nothing. The investors who want to continue the application spend 300 thousand lawyer fee for nothing, refunded investors are the beneficiary."
- "Participate in settlement negotiations. If you don't do this, you will lose. Redeploy can choose the project with collateral. You must ask for collaterals."
- "There is no virtual high assessment for 701. 702 have not start the construction yet, the valuation changed from 200 million to 400 million."

- August 24, 2018:
  - "The owner of USIF said in the newspaper that the investor could refund, and did not say that the refund must have additional conditions. Our refusal to sign a refund is in line with the process."
- August 31, 2018:
  - "Our attorney is communicating with the court, we officially will revote for the investors who already chose option 1. You can refund or you can have other options. USIF's attorney will call Doug tmr and ask for our clients' choices. In the afternoon, the judge will meet with all lawyers. we currently have 6 investors refunded, and 5 investors want to secure their green cards."

- September 1, 2018:
  - "Investors were fooled. We suggest investors we represent to choose other project options which has nearly competed as mezz loan. 702 is a shitty project."
  - "Today, the judge agreed us to join the negotiation between USIF and Reid & Wise, the investors who want the refund can collect your fund. For those investors who chose option 1 and now want refund can ask through us for a direct refund. All option 1 investors will sign the refund contract by next Friday. For 701 investors who want to change your vote on Jul.5th, the judge has authorized us to assist those investors. Today, the judge had a meeting with three lawyers, discussed the investors who chose option 1 represented by attorney Douglas, the judge is on our side."
  - "We are now setting up the 701 group who refuse to redeploy and want to keep the green cards, this is the 2nd option that investors who want to keep their green card but refuse to invest into 702. We are now [challenging] the settlement between R&W and USIF. Last night, USIF sent us the confidentiality agreement, wouldn't allow us show our investors the detailed settlement, it is 'attorney eye only.' We answered that we can keep the confidentiality. However, R&W has to provide the due diligence report from the US registered investor advisor. Otherwise, investors can get the investment option material, and require 3rd party consultant to do a feasibility analysis. We are SEC lawyers, we don't do

any investment advises. The lawyers are forcing clients to make investment choices, it violate the attorney's duty."

- "We are now setting up the 701 group who refuse to redeploy and want to keep the green cards, this is the 2nd option that investors who want to keep their green card but refuse to invest into 702. USCIS didn't require investors to make risky investment before they got their green cards. The investors has the risk that the regional center can be closed, the best way to keep your green card safe is to put your fund in the company account. After you have land in the US before I-829 application, then you do the risky investment, that satisfy USCIS' requirement."
- "All of our refund, and keep green card however refuse redeployment is under the supervisor of the judge. This is the proof that our clients received the refund. All of our refund, and keep green card however refuse redeployment is under the supervisor of the judge. Now the judge is on our side, the female judge doesn't want to deal with two law suits, feel our investors has the rights to choose."

- September 2, 2018:
  - "R&W has not basic knowledge of real estate development, but force investor to choose 701 mezz and file the lawsuit without thinking is actually doing harm to investors."
  - "R&W force investors to choose 702 mezz through the working group (organized by investors). There are investors who have ended the contact with them."

- "Lawyer Ye is promoting 702,which means he is sacrificing the investors' who want green card benefits to protect the investors' benefits who want refunds."

50. As discussed in one of Zoe Ma's statements, *supra*, on September 1, 2018, Defendants were given access to settlement documents in the NY Action under the proviso "Attorneys Eyes Only." Notwithstanding this, upon information and belief, Litowitz disclosed the terms and conditions and copies of the settlement with Zoe Ma – who is not an attorney -- in violation of that provision. Upon further information and belief, Zoe Ma disclosed the terms and conditions and copies of the settlement with others in violation of that provision

Defendants Breach the Confidentiality Agreement to Further the Fraud

51. As mentioned above, in the instances where Defendants' clients properly requested and appropriately documented the request for withdrawal, the funds were returned upon that Member executing the agreement containing a release and a confidentiality provision that was binding upon the Member and "legal representatives." A copy of one these agreements (the "Withdrawal Agreements") with one such Member, named Song Qimin, is in the same form as all other such agreements, and is attached hereto with its accompanying email from Zoe Ma dated August 6, 2018, as Exhibit J.

52. The clause in the Withdrawal Agreements entitled Entire Agreement provides on page 2: "This Agreement shall be binding upon . . . the Parties hereto, and their respective . . . legal representatives...." The clause entitled Confidentiality; Non-disparagement provides:

> The terms and conditions of this agreement are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. Any disclosure in violation of this section shall be deemed a material breach of this agreement. The investor further agrees he/she will not disparage the Releasees or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the

> Releasees. Please be advised that the information contained in the documents previously provided to you is confidential and such documents should be destroyed immediately or returned to the Company. Effective as of the date of the Company's countersignature, the Investor shall cease to be a member of the Company.

53. Upon information and belief, Members represented by Defendants breached the terms of the Withdrawal Agreements, to the detriment of Plaintiffs, by making statements on the WeChat group chat that disclosed terms and conditions of the agreement and disparaged Plaintiffs. Upon further information and belief, such members did so at the behest and with the assistance of Defendants. Moreover, Zoe Ma also upon information and belief, disclosed terms and conditions of the Withdrawal Agreements and disparaged Plaintiffs.

54. The following are statements that upon information and belief violate these confidentiality and non-disparagement provisions, are defamatory and were intentionally stated at the behest and with the assistance of Zoe Ma or by Zoe Ma individually, with the knowledge and collusion of all Defendants in furtherance of the fraud, which were translated from Chinese from the WeChat group chat, and were stated on the dates indicated:

- <u>August 18, 2018:</u>
  - [From an investor Member]: "All the investors who didn't choose option 1, and option 2: I have a great news to announce. Under the help of "wechat ID: 笑口常开 (Zoe Ma)", I have received the refund from USIF without choosing option 2. Here, I have to say special thanks to everyone who didn't choose option 1 or option 2, its our power that making our component cannot fool us anymore. Also, because of this, the investor who wanted refund got the money back. I sincerely thank everyone. We still have a lot of investors who want their green cards in this group

(wechat group), even though it will not be an easy task, however, I'm sure the justice will serve the evil. Lets work together and keep on fighting. I'm sure we will have a good result. All the best."

- August 18, 2018:
  - [From Zoe Ma]: "Zoe Ma @ everyone, I'm so happy for Lynn. $500,000 in the account released the anxiety we have had in the past few months. During this refund process, every day is a struggle, agent and regional center is forcing the investors, investors are fighting with each other, lawyers working together to betray on investors. It's a like a Hollywood movie, without involved in, you will not feel 701 investors' suffer. Although, we only represented few investors, however, those are the strongest investors, they are not fear of the agent or the regional center, never compromised, also didn't choose a faster path in order to get their refund. They found that SEC attorney is working together with the regional center in the back, stopped working with the lawyers, fight until the end. The success of those few investors proved that the investors can hold the justice. Even though we are fragile, however, the US legal system supported us. Those few investors didn't support me, but supported the US legal system. Facing the law, regional center has to surrender and refund and give the investor his justice.

- August 23, 2018:
    - [From Zoe Ma]: "The dilemma of 701 voting and law suit is because both parties didn't evaluate each other correctly. Therefore, they missed so much time in rational negotiation and have to use lots of legal tools to solve unnecessary dispute. Currently, the situation does nothing good to the investors who want to keep their green cards, also hurt this other 701 refund investors. Our attorney helped investors who refused to vote and get the 500,000 refund, and proved that it is a win-win situation."
- August 24th, 2018:
    - [From Zoe Ma]: "There is a traitor for USIF in this group, who sent my comments to USIF. USIF sent me a gag order. Im not scared, I will expose Qiaowai and USIF threating investors with their fake promotion and horrible behavior. If they really got something, sue me in the court. The boss of USIF said that the investors can get refund, didn't say there is condition to get refund in the newspaper. We refuse to refund is completely legal on the procedure."
- August 26th, 2018:
    - [From Zoe Ma]: "Big news, big news. A few days ago, I have received the gag order from USIF lawyer, prohibiting me promoting my successful case of helping 701 denied investors to get the $500,000 back. I am very touched after received this notice

> from USIF, and feel I'm famous now. I'm recognized by the famous Qiaowai and USIF, wasting their time to send me the legal letter, its already not any no name from Qiaowai any more. Im here to send this notice to celebrate."

- September 1st, 2018
  - [From Zoe Ma]: "Our first group of investors who refused to vote, but got their refund. There are 3 in total, each of them got their refund on Aug.3rd, Aug.17th and Aug.20th."

55. These statements, upon information and belief, breached the confidentiality and non-disparagement provisions of the Withdrawal Agreements, defamed Plaintiffs and furthered the fraud to the detriment and damage of Plaintiffs.

Demonstrable Malice

56. On August 23, 2018, the Company sent Consultants and Zoe Ma a cease and desist letter, attaching some of the statements from the WeChat group chat set forth above, and demanding the cessation of this improper conduct. A copy of this letter, dated August 23, 2018, is attached hereto as Exhibit K.

57. After receiving this letter, upon information and belief Zoe Ma forwarded it to Litowitz. Litowitz in response directed Zoe Ma as follows:

> Write him back and say: I don't know how I can hurt USIF's reputation because it is lower than whale shit… You should worry about ripping off Chinese investors instead of your firm's reputation, which is about the same as a whore in church. Good luck suing me for defamation… I'm in Chicago. Come sue me here if you have the balls. Otherwise shut up.

58. Upon information and belief, this together with the intolerable invective and conduct describe *supra*, demonstrates the malice Litowitz, and by extension Zoe Ma and Consultants have employed in the misconduct set forth herein.

59. In short, Defendants' have undertaken fraudulent and otherwise wrongful conduct by among other things, misrepresenting facts, defaming the reputation of Plaintiffs, breaching the Withdrawal Agreements and otherwise without just cause or excuse willfully and intentionally causing injury to Plaintiffs, thereby entitling the Plaintiffs to relief.

AS AND FOR A FIRST CAUSE OF ACTION
(Fraud)

60. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if fully set forth herein.

61. Defendants, individually and in collusion with one another, and with knowledge of their fraudulent scheme by engaging in the conduct described above, directly or indirectly, in connection with the EB-5 investments made by Members, by the use of the means or instruments of communication on the internet: (a) with scienter, employed devises, schemes or artifices to defraud, (b) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the statements made, in the light of the circumstances under which they were made, not misleading, or (c) engaged in transactions, practices or course of business which would operate as a fraud or deceit upon the entities associated with the EB-5 investments, including Plaintiffs.

62. Defendants individually and in collusion with one another, and with knowledge of their fraudulent scheme created, or caused to be created, Consultant for their own purposes and to perpetrate a fraud upon the Plaintiffs. Litowitz and Ma set forth false statements on the

website for Consultant that were materially false. Each of these representations was materially false when made.

63. Defendants individually and in collusion with one another, and with knowledge of their fraudulent scheme set about making material misrepresentations on the internet with the purpose of inducing Members in the Company to seek withdrawal from Plaintiffs' substantial investments, to Plaintiffs detriment, for Defendants' own unlawful purposes.

64. Defendants individually and in collusion with one another, and with knowledge of their fraudulent scheme breached the terms of the aforementioned Withdrawal Agreements with certain Members they represented by disclosing confidential information, disparaging Defendants and by causing and or assisting those other certain Members to disclose confidential information and disparage Defendants.

65. Upon information and belief, the Individual Defendants knew that the representations were materially false when made.

66. To deter the Individual Defendants from engaging in the future in such wonton fraudulent conduct as described herein, the Plaintiffs should be awarded punitive damages.

67. By reason of the foregoing, Defendants are individually or collectively liable to the Plaintiffs, directly and derivatively, in an amount to be determined at trial, but in no event less than $6 million, together with punitive damages to be determined at trial, but in no event less than $10 million.

AS AND FOR A SECOND CAUSE OF ACTION
(Defamation)

68. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if fully set forth herein.

69. Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, published false statements to a third party.

70. Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, published the aforesaid false statements without authorization or privilege.

71. Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, published the aforesaid false statements negligently, recklessly, and intentionally with malice.

72. Defendants aforesaid conduct, which included false statements that impugned the basic integrity, creditworthiness and competence in Plaintiffs' business, caused significant harm to Plaintiffs' reputation in its trade, occupation and business.

73. To deter the Individual Defendants from engaging in the future in such wonton fraudulent conduct as described herein, the Plaintiffs should be awarded punitive damages.

74. By reason of the foregoing, Defendants are individually or collectively liable to the Plaintiffs, directly and derivatively, in an amount to be determined at trial, but in no event less than $6 million, together with punitive damages to be determined at trial, but in no event less than $10 million.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

75. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if fully set forth herein.

76. At all relevant times, Litowitz, Zoe Ma and Consultants, as the legal representatives of their client Members that withdrew from the Company and executed the

Withdrawal Agreements, have been bound by the terms of the Withdrawal Agreements, including the provision entitled Confidentiality/Non-disparagement.

77. In direct contravention of these provisions, Zoe Ma, with the collusion of Litowitz and Consultants, disclosed confidential information protected under the Confidentiality/Non-disparagement, disparaged Plaintiffs, and assisted or caused their client Members to disclose confidential information protected under the Confidentiality/Non-disparagement and disparaged Plaintiffs.

78. By reason of such conduct, Defendants have breached their obligations under the Withdrawal Agreements.

79. Defendants' multiple breaches of the Withdrawal Agreements are material and have resulted in Defendants losing the funds held by the Company for the EB-5 Projects.

80. By reason of Defendants' multiple, material breaches of the Withdrawal Agreements, Defendants are liable to Plaintiffs in an amount to be determined at trial, but in no event less than $1 million.

AS AND FOR A FOURTH CAUSE OF ACTION
(Tortious Interference with a Business Relationship)

81. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if fully set forth herein.

82. Plaintiffs had a business relationship with the Chinese Members.

83. Defendants knew of that relationship and Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, interfered with that relationship.

84. Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, acted solely out of malice and/or used improper means that amounted to a crime or independent tort.

85. Defendants' interference caused injury to the relationship with those Members

86. By reason of Defendants' misconduct Defendants are liable to Plaintiffs in an amount to be determined at trial, but in no event less than $1 million.

AS AND FOR A FIFTH CAUSE OF ACTION
(Prima Facie Tort)

87. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if fully set forth herein.

88. Defendants, individually and in collusion with one another, and with knowledge, by engaging in the conduct described above, directly or indirectly, acted solely out of malice in the intentional infliction of harm to Plaintiffs.

89. Defendants aforesaid conduct, which included false statements that impugned the basic integrity, creditworthiness and competence in Plaintiffs' business, caused significant harm to Plaintiffs' reputation in its trade, occupation and business.

90. Defendants aforesaid misconduct was undertaken without any excuse or justification.

91. Defendants aforesaid acts or series of acts of participating in the WeChat group chat, but for the wrong, would otherwise be lawful.

92. By reason of Defendants' misconduct Defendants are liable to Plaintiffs in an amount to be determined at trial, but in no event less than $1 million.

WHEREFORE, the Plaintiffs, individually and/or derivatively, as appropriate, seek the entry of judgment against the Individual Defendants, individually or collectively, as follows:

(A) on each of the First and Second Causes of Action, in favor of the Plaintiffs, individually and derivatively, compensatory damages in an amount to be determined at trial, but in no event less than $6 million, together with punitive damages to be determined at trial, but in no event less than $10 million;

(B) on each of the Third, Fourth and Fifth Causes of Action, in favor of Plaintiffs, compensatory damages in an amount to be determined at trial, but in no event less than $1 million; and

(C) awarding any such further relief as is just and proper.

Dated: October 4, 2018

OTTERBOURG P.C.

By: _____

Richard G. Haddad
William M. Moran
230 Park Avenue
New York, New York 10169
(212) 661-9100

Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Mark Giresi, being duly sworn, deposes and says:

I am Chief Operating Officer of U.S. Immigration Fund, LLC, U.S. Immigration Fund-NY LLC, 701 TSQ 1000 Funding, LLC and 701 TSQ 1000 Funding GP, LLC, the plaintiffs in the within action; I have read the foregoing Verified Complaint and the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

This verification is made by deponent because U.S. Immigration Fund, LLC, U.S. Immigration Fund-NY LLC, 701 TSQ 1000 Funding, LLC, 701 TSQ 1000 Funding GP, LLC are limited liability corporations, and deponent is an officer thereof, to wit, their Chief Operating Officer.

MARK GIRESI

Sworn to before me this
4th day of October, 2018

Notary Public

JOHN BOUGIAMAS
Notary Public, State Of New York
No. 02BO5044473
Qualified In Queens County
Commission Expires May 30, 2019

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