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8 MOSES CHOI and SOUTHEAST REGIONAL CENTER,
9 LLC and Counterdefendants SRC AJIN FUND I, LLC, SRC
10 AJIN FUND II, LLC, SRC AJIN FUND III, LLC, SRC AJIN-
11 WOOSHIN FUND IV, LLC and SRC AJIN-WOOSHIN
12 FUND V, LLC

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15 MOSES CHOI, an individual; and
16 SOUTHEAST REGIONAL CENTER,
17 LLC, a Georgia limited liability
18 company,

19 Plaintiffs,

20 v.

21 8TH BRIDGE CAPITAL, INC., a
22 California corporation; YOUNG HUN
23 KIM, an individual; 8TH BRIDGE
24 CAPITAL, LLC, a California limited
25 liability company; MANHATTAN REAL
26 ESTATE FUND GP, LLC, a Delaware
27 limited liability company;
28 MANHATTAN REAL ESTATE FUND,
LP, a Delaware limited partnership;
MANHATTAN REAL ESTATE FUND
II, LP, a Delaware limited partnership;
MANHATTAN REAL ESTATE
EQUITY FUND, LP, a Delaware limited
partnership; and PATRICK JONGWON
CHANG, an individual.

Defendants.

Case No. 2:17-cv-8958-CAS(AFMx)
Hon. Christina A. Snyder

**NOTICE OF MOTION AND
MOTION TO STRIKE PORTIONS
OF COUNTERCLAIMS AND
AFFIRMATIVE DEFENSES;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 16, 2018
Time: 10:00 a.m.
Ctm: 8D

AND RELATED COUNTER-CLAIMS

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 16, 2018 at 10:00 a.m. in Courtroom 8D of the above-entitled court, located at 350 W. 1st Street, Los Angeles, CA 90012, Counterdefendants MOSES CHOI and SOUTHEAST REGIONAL CENTER, LLC, (“Counterdefendants”) will and hereby do move to strike the following portions the Counterclaims filed by Defendants and Counterclaimants 8TH BRIDGE CAPITAL, INC., YOUNG HUN KIM, 8TH BRIDGE CAPITAL, LLC, and PATRICK JONGWON CHANG (collectively, “Counterclaimants”):

- **Counterclaim paragraphs 1, 3 (in part), and 50.**

PLEASE TAKE FURTHER NOTICE that, at said place and time, Plaintiffs MOSES CHOI and SOUTHEAST REGIONAL CENTER, LLC (“Plaintiffs”) will and hereby do move to strike the following portions of the First Amended Answers to First Amended Complaint, Affirmative Defenses, and Counterclaims (the “Responsive Pleadings”), filed by all Defendants:

- **The First Affirmative Defense (Statute of Limitations); and**
- **The Sixth Affirmative Defense (Fraud).**

This Motion is made pursuant to Federal Rule of Civil Procedure 12(f), on grounds that the foregoing portions of the Responsive Pleadings constitute an insufficient defense or immaterial, impertinent, or scandalous matter.

This Motion is based upon this Notice, attached Memorandum of Points and Authorities, the papers on file with the Court in this action, and such further evidence and argument has may be considered by the Court at or prior to the time the Motion is heard.

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Local Rule 7-3 Certification

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on April 11, 2018

Dated: April 25, 2018

GREGG A. RAPOPORT, APLC

s/ Gregg A. Rapoport

Gregg A. Rapoport

Attorney for Plaintiffs and Counterdefendants
MOSES CHOI and SOUTHEAST REGIONAL
CENTER, LLC and Counterdefendants SRC AJIN
FUND I, LLC, SRC AJIN FUND II, LLC, SRC
AJIN FUND III, LLC, SRC AJIN-WOOSHIN
FUND IV, LLC and SRC AJIN-WOOSHIN
FUND V, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this motion, Plaintiffs seek to have stricken from the counterclaims several irrelevant and derogatory assertions about Moses Choi. The ad hominem descriptions of Choi as “a habitual fraudster” with “egregious personality flaws” and “a reputation for targeting and duping successful businessmen,” etc., are entirely gratuitous. They are nonetheless prejudicial to Choi, who cannot otherwise vindicate the harm to his reputation from these allegations because of the umbrella of the litigation privilege.

The references to allegations made about Choi by third-parties in outside litigation are similarly gratuitous and disparaging, yet shielded by privilege.

Additionally, Plaintiffs seek to have stricken improper and insufficient affirmative defenses of Statute of Limitations and Fraud not meeting federal pleading standards, under Rules 8(a) and 9(b).

The Court should strike these allegations and defenses pursuant to Rule 12(f).

II. STATEMENT OF RELEVANT ALLEGATIONS

In their First Amended Complaint (the “FAC”), Plaintiffs Moses Choi (“Choi”) and Southeast Regional Center, LLC (“SRC”) allege that in 2015, together they formed a joint venture partnership with Defendants Young Kim (“Kim”) and 8th Bridge Capital, Inc. (“8th Bridge Inc.”) to cooperatively market EB-5 projects to targeted investors in China, South Korea, Vietnam, and elsewhere. Choi invested more than \$500,000 of his personal funds, devoted more than 18 months of his and SRC’s time and effort, and contributed SRC’s proprietary and confidential information to the venture. (FAC ¶¶ 4 and 35-62.) Defendants Kim and 8th Bridge Inc. requested and accepted these contributions from Plaintiffs in order to secure the funding for a successful EB-5 project, which

1 then yielded to these Defendants substantial ongoing management and other fees.
2 (FAC ¶ 5 and 63-70.) In early 2017, after the funding was secured, these
3 Defendants froze Plaintiffs out, transferred the venture’s assets to third parties, and
4 refused to recognize Plaintiffs’ partnership interest. (FAC ¶ 6 and 71-79.)
5 Plaintiffs brought suit in December 2017, seeking damages, declaratory relief,
6 imposition of a constructive trust on revenues obtained from the joint venture, an
7 injunction, appointment of a receiver, restitution, and an accounting, in claims
8 against Defendants Kim, 8th Bridge Inc., and six other affiliated defendants
9 (collectively, “Defendants”).

10 In their Answers and Counterclaims (Docket Nos. 31-38), the eight
11 Defendants have alleged identical affirmative defenses, and four of the Defendants
12 (the “Counterclaimants”) have filed Amended Counterclaims (the
13 “Counterclaims”). Counterclaimants Kim and 8th Bridge Capital, LLC seek
14 damages against Choi for intentional interference with their alleged contractual
15 relations with a business in Vietnam called IMM Group PTE LTD (“IMM”) and its
16 representative or principal, Tony Tinh (“Tinh”). (Counterclaims at pp. 29, 51, and
17 52-66.) Counterclaimants Kim and 8th Bridge Inc. seek declaratory relief to
18 establish that no joint venture was formed or if it was formed, that these
19 Counterclaimant either are entitled to a share in the profits of other projects
20 controlled by SRC and the project LLCs, or are entitled to rescind the venture
21 based on alleged fraud. (*Id.* at ¶¶ 67-76.) Finally, Counterclaimant Patrick Chang
22 seeks to enforce an alleged oral contract requiring Choi to fund his graduate school
23 education. (*Id.* at ¶¶ 77-81.)

24 As relevant to this motion to strike, Counterclaimants have made the
25 following specific allegations:

26
27 “Choi is a habitual fraudster who has developed a reputation
28 for targeting and duping successful businessmen to ingratiate himself

1 into their companies and lives, all for the purpose of subsequently
 2 claiming unfounded ownership of their companies, unearned
 3 responsibility for their achievements and undeserved entitlement to
 4 their profits.” (Counterclaims at p. 22 ¶ 1.)

5 “Fortunately for Kim and 8BC, they at least recognized some
 6 of Choi’s less egregious personality flaws early on and avoided
 7 entering into any partnership agreement with Choi and SRC.
 8 (Emphasis added.) (Counterclaims at p. 23 ¶ 3 [emphasis added].)

9 “On information and belief, this is not the first time that Choi
 10 has tried to improperly claim an undeserved and never agreed to
 11 interest in someone else’s EB-5 business. On information and belief,
 12 Choi also tried to usurp the business assets and accomplishments of
 13 an EB-5 business owned by Young Koh, which has led to a lawsuit
 14 against Choi currently pending in Gwinnett County in the State of
 15 Georgia. On further information and belief, Choi previously
 16 improperly and self-servingly attempted to impute never agreed to
 17 terms and ignore clearly agreed to terms with a previous co-owner of
 18 SRC. In short, on information and belief, Choi has an established
 19 pattern of practice of unilaterally attempting to create and modify
 20 business relationships that were not agreed to by the other party.”
 21 (Counterclaims at p. 38 ¶ 50.)

22 And, as relevant here, all Defendants allege affirmative defenses of Statute
 23 of Limitations (at p. 19) and Fraud (at p. 20).

24 **III. THE COUNTERCLAIM ALLEGATIONS ABOUT CHOI’S**
 25 **REPUTATION SHOULD BE STRICKEN AS IMPERTINENT**
 26 **AND SCANDALOUS**

27 Rule 12(f) authorizes the Court to “strike from a pleading ... any redundant,
 28 immaterial, impertinent, or scandalous matter.” “Impertinent” matters are
 “statements that do not pertain, and are not necessary, to the issues in question.”
 (Wright, Miller, et al., 5C Fed. Prac. & Proc. Civ. § 1382 (3d ed.)) “Scandalous”
 matters are those “which improperly cast[] a derogatory light on someone, most
 typically on a party to the action, ... in order to purge the court’s files and protect

1 the person who is the subject of the allegations.” (*Id.*; *Cortina v. Goya Foods, Inc.*,
2 94 F.Supp.3d 1174, 1182 (S.D. Cal. 2015).)

3 Counterclaimants refer to Plaintiff Choi as “a habitual fraudster,” and assert
4 that he has “a reputation for targeting and duping successful businessmen to
5 ingratiate himself into their companies and lives, all for the purpose of
6 subsequently claiming unfounded ownership of their companies, unearned
7 responsibility for their achievements and undeserved entitlement to their profits.”
8 (Counterclaims at p. 22 ¶ 1.) More specifically, they allege that Choi had
9 previously “tried to usurp the business assets and accomplishments of an EB-5
10 business owned by Young Koh, which has led to a lawsuit against Choi currently
11 pending in Gwinnett County in the State of Georgia.” (*Id.* at p. 38 ¶ 50.) Further,
12 Counterclaimants allege that “Choi previously improperly and self-servingly
13 attempted to impute never agreed to terms and ignore clearly agreed to terms with
14 a previous co-owner of SRC,” and that he “has an established pattern of practice of
15 unilaterally attempting to create and modify business relationships that were not
16 agreed to by the other party.” (*Id.*) Additionally, they allege that Choi has
17 “egregious personality flaws.” (*Id.* at p. 23 ¶ 3.)

18 Evidence of third party allegations made in another lawsuit “do not pertain,
19 and are not necessary, to the issues in question,” and thus constitute impertinent
20 material. There is no counterclaim in this action that raises an issue for which any
21 such alleged “pattern and practice” by Choi would be relevant. The Interference
22 counterclaims do not relate to such alleged conduct, but are instead based on
23 Choi’s alleged efforts to damage the business relationship with IMM and Tinh.
24 The declaratory relief counterclaim does not involve any “pattern and practice” by
25 Choi. The rescission counterclaim does not seek damages for fraud, let alone
26 punitive damages. (*Compare, e.g., Lopez v. Watchtower Bible and Tract Society of*
27 *New York, Inc.* (2016) 246 Cal.App.4th 566, 592 [“Although punitive damages
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1 may not be used to punish a defendant for injury inflicted on third parties, a jury
2 may consider evidence of harm to others in determining the reprehensibility of a
3 defendant's conduct toward the plaintiff.”].) Finally, Patrick Chang’s counterclaim
4 involves an alleged oral contract not related to Choi’s other alleged conduct.

5 The ad hominem epithets that Choi is “a habitual fraudster” with a bad
6 reputation thus amount to “scandalous” matters casting a derogatory light on Choi,
7 without any relevance to the issues at hand. They are potentially prejudicial to
8 Choi, however, because they are part of the public record and, while defamatory,
9 will be published by Kim, et al., to potential investors under the claim that the
10 litigation privilege shields them from liability. These attacks have no legitimate
11 place in the Counterclaims and should be stricken.

12
13 **IV. THE AFFIRMATIVE DEFENSES OF STATUTE OF**
14 **LIMITATIONS AND FRAUD SHOULD BE STRICKEN AS**
15 **INSUFFICIENT**

16 Rule 12(f) provides: “The court may strike from a pleading an insufficient
17 defense” “The function of a 12(f) motion to strike is to avoid the expenditure of
18 time and money that must arise from litigating spurious issues by dispensing with
19 those issues prior to trial....” (*Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970,
20 973 (9th Cir. 2010) [citation omitted].)

21 “A motion to strike under Federal Rule 12(f) ... is the primary procedure for
22 objecting to an insufficient defense.” (Wright, Miller, et al., 5C Fed. Prac. & Proc.
23 Civ. § 1380 (3d ed.) [citing Rule 12(f) Adv. Comm. Notes to 1946 Amendment].)

24 The court may strike defenses which are “so unrelated to the plaintiff’s
25 claims as to be unworthy of any consideration as a defense and that their presence
26 in the pleading throughout the proceeding will be prejudicial to the moving party,”
27 and where defenses are “pleaded with so little detail that they fail to provide
28 sufficient notice to the opposing party.” (*Id.* § 1380.) “What constitutes an
insufficient defense within the meaning of the rule depends, of course, upon the

1 nature of the affirmative pleader's claim for relief and the particular defense that is
2 in question.” (*Id.* § 1381.)

3 The “vast majority of district courts” in this circuit have applied the
4 heightened pleading standard for complaints, articulated in *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007), and *Ashcroft v. Iqbal*, 556
6 U.S. 662, 678, 129 S.Ct. 1937 (2009), to a defendant’s affirmative defenses.
7 (*AirWair International Ltd. v. Schultz* 84 F.Supp.3d 943, 950 (N.D. Cal. 2015);
8 *Perez v. Gordon & Wong Law Group, P.C.*, 2012 WL 1029425, at *8 (N.D. Cal.
9 2012) (collecting cases) [“This standard ‘serve[s] to weed out the boilerplate listing
10 of affirmative defenses which is commonplace in most defendants' pleadings
11 where many of the defenses alleged are irrelevant to the claims asserted.’ ”
12 (citation omitted)].) Under this standard, the defendant must plead enough facts to
13 state a defense “that is plausible on its face,” meaning the court may “draw the
14 reasonable inference” that the defense applies. (*Iqbal*, 556 U.S. at 678.) “Factual
15 allegations must be enough to raise a right to relief above the speculative level.”
16 (*Twombly*, 550 U.S. at 555.). A defendant’s “bare statements reciting mere legal
17 conclusions may not be sufficient,” and the pleading “must put a plaintiff on notice
18 of the underlying factual bases of the defense.” (*Perez* at *7-8 [given *Twombly* and
19 *Iqbal*, “the Court ‘can see no reason why the same principles applied to pleading
20 claims should not apply to the pleading of affirmative defenses which are also
21 governed by Rule 8.’” (citation omitted)]; accord, *Rahman v. San Diego Accounts*
22 *Service*, 2017 WL 1387206, at *2 (S.D. Cal. 2017) [“the Court reviews for
23 plausibility Defendant's pleaded affirmative defenses,” including statute of
24 limitations]; and *Gibson Brands, Inc. v. John Hornby Skewes & Co. Ltd.*, 2014 WL
25 4187979, at *4 and *6 (C.D. Cal. 2014).)
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1 Defendants' First and Sixth Affirmative Defenses do not meet this standard
2 for pleading, and are thus insufficient and subject to being stricken, as discussed
3 below.

4 **A. The Statute of Limitations Defense**

5 Defendants allege: "Plaintiff's 2nd and 11th causes of action in the First
6 Amended Complaint [*i.e.*, the claims for Breach of Joint Venture Partnership
7 Agreement and Breach of Contract to Form Joint Venture] are barred by such
8 statutes of limitation as may be applicable. The Complaint was filed in December
9 2017. On information and belief, Plaintiff knew, or should have known, that the
10 oral contracts allegedly breached had been breached more than two years prior so
11 pursuant to C.C.P. 339." (Answers, pp. 19-20.)

12 Plaintiffs' claims arise from Defendants' alleged breaches of contractual and
13 fiduciary duties in 2017. (FAC ¶ 71 – "In or about early 2017, Kim began to take
14 steps to carry out a plan to disavow and deny, or rescind without cause, the joint
15 venture with Choi and SRC so that he would not be required to share the profits
16 from the Ace Hotel Project and other EB-5 projects developed using Choi's money
17 and his and SRC's time and resources.") There are no allegations in the FAC that
18 Defendants breached any contractual duties more than two years before December
19 2015, and Defendants have offered none.

20 Thus, there are no possible statute of limitations defenses, and Defendants
21 have alleged no facts suggesting otherwise, offering only "bare statements reciting
22 mere legal conclusions," which are not sufficient under Rule 8, and do not put
23 Plaintiffs on "notice of the underlying factual bases of the defense." (*Perez* at *7-
24 8.) Accordingly, the defense should be stricken as insufficient.

25 **B. The Fraud Defense**

26 "In alleging fraud or mistake, a party must state with particularity the
27 circumstances constituting fraud or mistake." (Rule 9(b), Fed. R. Civ. P.) Fraud
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1 defenses are governed by the same rule. (*Chiron Corp. v. Abbott Laboratories*,
2 156 F.R.D. 219, 220 (N.D. Cal. 1994).)

3 “Averments of fraud must be accompanied by ‘the who, what, when, where,
4 and how’” of the misconduct charged. (*Vess v. Ciba-Geigy Corp. USA* 317 F.3d
5 1097, 1106 (9th Cir. 2003) [citation omitted].)

6 Here, Defendants allege in conclusory fashion as follows:

7
8 The First Amended Complaint, and each cause of action set
9 forth therein, is barred by Plaintiffs’ or their predecessors’ or agents’
10 or a third party’s fraud. Specifically, to the extent that any partnership
11 or joint venture agreement was entered into (which Defendants
12 deny), any such agreement on Defendants’ part was induced by
13 Plaintiff’s or its agents’ or a third party’s fraud. From April 2015
14 through October 2015, Moses Choi, on behalf of himself and SRC,
15 repeatedly made fraudulent statements to Defendant Young Kim in
16 person, by telephone and by email including (1) Choi and SRC were
17 established and well-versed in the Chinese market; (2) Choi and SRC
18 had a robust network of foreign agents that were experienced and
19 successful in procuring investors for EB-5 projects; and (3) Morrie
20 Berez, Choi’s partner, was a well-regarded EB-5 specialist and
21 previously served as a Director/Chief Immigration Official at the
22 USCIS. Choi and SRC knew these statements were false when made.
23 Kim and the other Defendants, to the contrary, did not know the
24 falsity of these statements and, if any joint venture or partnership was
25 formed, the only reason why was in reliance of these fraudulent
26 statements.

19 (Answers, p. 20 [emphasis added].)

20 Defendants do not allege: (1) on what specific date(s), where, and in what
21 manner Choi made any of the three alleged fraudulent statements; and (2) what
22 Choi actually said to Kim, as opposed to what seem to be summaries or at best
23 paraphrasing. Nor do Defendants explain what they mean by alleging that any
24 agreement by them “was induced by Plaintiff’s or its agents’ or a third party’s
25 fraud.”

26 These conclusory averments fall short under Rule 9(b), and the defense
27 should thus be stricken.

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V. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request the Court to issue an order in the form lodged herewith, striking the portions of the Responsive Pleadings set forth in the Notice of this motion.

Dated: April 25, 2018

GREGG A. RAPOPORT, APLC

s/ Gregg A. Rapoport

Gregg A. Rapoport

Attorney for Plaintiffs and Counterdefendants
MOSES CHOI and SOUTHEAST REGIONAL
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CERTIFICATE OF SERVICE

I, Gregg A. Rapoport, am over the age of 18 years and am not a party to this action. Upon my oath, I hereby state that on the date set forth below, I caused the foregoing document to be filed electronically, and notice hereof will automatically be sent to all counsel of record that participate in electronic filing, by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system. In addition, if any attorneys are not participating in electronic filing, they are identified below and have been mailed, via first-class postage, notice hereof on the date this document is being electronically filed.

Dated: April 25, 2018

By: s/ Gregg A. Rapoport
Gregg A. Rapoport