MEMORANDUM

DATE: **SEPTEMBER 24, 2014**

TO: **SENATOR LARRY TIDEMANN, CHAIR**
GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

CC: **MEMBERS OF THE COMMITTEE**

FROM: **Senator Larry Lucas**

RE: **MANAGEMENT OF SOUTH DAKOTA'S EB-5 PROGRAM by Joop Bollen and the South Dakota International Business Institute**

Overview

As this committee knows, there has been intense public interest in the management of South Dakota's EB-5 program over the last 11 months. It is my intent in this report to the Committee to try to answer the following questions with the answers drawn almost exclusively from analysis of court documents in the Darley International, LLC vs. South Dakota International Business Institute:

> Who among State of South Dakota officials was aware that Joop Bollen, a state employee, signed a contract with a company he owned to operate and manage South Dakota's EB-5 program on January 15, 2008?
>
> When did each of these State of South Dakota officials become aware of this contract that Mr. Bollen had awarded to the company he owned?
>
> What is the magnitude of the liability Mr. Bollen has foisted upon South Dakota taxpayers in the Darley litigation that he has embroiled South Dakota in?
>
> How much in fees can be estimated that Mr. Bollen and his associates have harvested as a result of this contract awarded by Mr. Bollen to his own company?
>
> How much in taxpayer funds were paid to Joop Bollen and to cover the costs of running SDIBI after Mr. Bollen had outsourced management of South Dakota's EB-5 program to Mr. Bollen's own company SDRC, Inc. that was executed with the January 15, 2008 contract?

Executive Summary

The information in this report, along with the attached exhibits, will show that Governor Mike Rounds, Governor Dennis Daugaard, and other state leaders knew about Joop Bollen's contract with a company he owned to manage the EB5 program. Any competent public official briefed on the basic facts about the Darley litigation would have understood that the core controversy of the litigation is Joop Bollen's creation of SDRC, Inc.

State employee Joop Bollen set up SDRC, Inc. to deceive anyone following his work, willfully concealed the Darley litigation from the state, and repeatedly violated South Dakota law in the process. Yet Governor Mike Rounds and the Board of Regents protected Bollen in court instead of firing him for his unethical and potentially illegal behavior.

The state is liable for $4 million in potential liability claimed – not including attorney fees and pre-judgment interest – from the Darley litigation. This is 4 times more than reported by the Auditor General's report in 2010 and 2011, and this ongoing liability hasn't been reported since, even though South Dakota taxpayers have already spent over $500,000 defending the state in the Darley arbitration. In fact, this liability was not disclosed in the 2009 Auditor General's report and was no longer disclosed after the 2011 Auditor General's report – even though the Darley litigation remains open today.

In addition, this report estimates that South Dakota taxpayers spent nearly $500,000 for Joop Bollen's office over the nearly two years that he had already privatized the EB5 program on January 15, 2008. Since the privatization of the program, Joop Bollen and his associates have harvested over $100 million in EB5 franchise fees.

The conclusions of this report reinforce a few simple unanswered questions:

1. Who authorized Rounds employee Joop Bollen to sign a contract with himself to administer the EB5 program?
2. If Bollen didn't have authority, why isn't anyone pursuing legal action against Joop Bollen to recover the EB5 franchise fees he and his associates have harvested
3. Why didn't Governor Mike Rounds and the Board of Regents fire Joop Bollen after he dragged South Dakota into this lawsuit?
4. Why did the Board of Regents continue to protect Joop Bollen from depositions and the production of documents in an August 2013 legal brief long after his unethical and illegal behavior was well known?

Chapter 1. The Heart of the Litigation between Darley International and South Dakota Board of Regents

is the January 10, 2008 formation of SDRC, Inc. and the contract dated January 15, 2008 between Joop Bollen (who signed as Director of the South Dakota International Business Institute) and James Park (a partner in Hanul Law Corporation, who signed the January 15, 2008 contract as Director of SDRC, Inc. – even though Joop Bollen was the owner and incorporator)

Important Quotes from legal and official filings

From Darley Brief in support of petition for order compelling arbitration on SDIBI (in federal court in California) Exhibit A, Page 5, lines 26-28 and page 6, lines 1-11:

> In late December 2007, SDIBI informed Darley that it was withdrawing the SDIBI Tilapia project. **At this same time, SDIBI also established a separate entity to manage relationships with overseas immigration agencies and recruit investors exclusively for SDIBI's EB-5 projects. This agency has become Hanul and SDIBI's exclusive agent/partner for recruiting investors to SDIBI's designated regional center.**
>
> Hanul and SDIBI's failures caused Darley to lose credibility with its Chinese sub-agents, interfered with its business relationships, and drastically affected its ability to successfully recruit the interested investors. Indeed, Hanul's lack of diligence in providing Darley with the requested and required information and SDIBI's sudden withdrawal of the Tilapia project and **creation of its own recruitment agency** directly resulted in the loss of investors and substantial fees to Darley.

From Joop Bollen's brief (even though he could not legally represent SDIBI according to Attorney General Long and Attorney General Jackley) Exhibit B Page 9, lines 15-22:

> **The recruiting impasses in China coupled with the needs to screen, qualify, and select all future projects in order to protect the integrity of the regional center led SDIBI to establish SDRC, Inc.** This entity performs the required screening process to select projects and enters into agreements with overseas recruiters to ensure robust recruiting efforts of the EB-5 projects.

From the Articles of Incorporation of SDRC, Inc. Exhibit C:

> **Signed by Joop Bollen as President of SDRC, Inc. Bollen is the incorporator and the registered agent with an Aberdeen, SD address on January 3, 2008**

Filed at the request of Attorneys Corporation Service, Burbank, California
Certified by SD Secretary of State Chris Nelson on January 10, 2008

From the Contract dated January 15, 2008 between newly formed SDRC, Inc. and SDIBI Exhibit D,

Page 2, First paragraph
Whereas, SDIBI is in a collaboration with Hanul Professional Law Corporation...

Page 3, Item 6
SDRC, Inc. will act in an independent capacity and not as officers or employees of SDIBI/DEDR or the State of South Dakota. **SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC** [Bollen had cleverly applied to the United States Customs and Immigration Service to change the name of South Dakota's regional center from SDIBI/DEDR to South Dakota Regional Center – confusing the initials for the South Dakota held entity with his new company SDRC, Inc.], **the State of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement.**

Page 3, Item 7
This agreement shall be governed by the laws of the State of South Dakota.

Page 5
Agreement is signed by Joop Bollen on behalf of the SD International Business Institute with a company that he owns. James Park, his co-defendant in the Darley litigation signs on the line for SDRC, Inc.

We find from the court documents that SDIBI is merely an entity under the South Dakota Board of Regents and that Joop Bollen had never been given any authority from the Board of Regents to sign any contract.

Chapter 1 Conclusions

1) Once South Dakota officials became aware of the Darley Litigation, they would have become aware of the January 15, 2008 contract in which Joop Bollen granted a valuable, exclusive, no-bid contract to his own company to take over management of South Dakota's EB-5 program. It simply was at the heart of the litigation with Darley International.
2) Joop Bollen worked with his co-defendant (James Park from Hanul) in the Darley litigation to set up SDRC, Inc. in such a way to deceive anyone following their work
3) Joop Bollen and James Park have not indemnified or held harmless the State of South Dakota as was pledged in the January 15, 2008 contract.

Chapter 2. The Timeline of the Darley Litigation and when various State of South Dakota officials became aware of the Darley Litigation and the January 15, 2008 contract

Timeline

2007

July	Joop Bollen tells Darley to talk to Hanul regarding Chinese investor recruitment. {Exhibit A: page 4, lines 8-10}
Oct.	Darley and Hanul sign exclusive contract. {Exhibit F} California court later determines in June 2010 that BOR had ratified contract because of Joop's and Hanul's actions. {Exhibit H}
Nov 8	SDIBI submits request for Amendment III {Exhibit I}. This document lays out the first mention of SDRC, Inc. before it even exists. Among 4 other requests, it asks the US Citizenship and Immigration Services to review and recognize a Memorandum of Understanding between SDIBI and SDRC, Inc. {Exhibit D} At this point in time, SDRC, Inc. does not exist. Also, this amendment request includes: **"A copy of the Governor's letter certifying that the new proposed counties meet the definition of rural under the Immigration Act of 1990 is included in Appendix A"**

2008

Jan 3	Joop Bollen signs Articles of Incorporation for SDRC, Inc. {Exhibit C} and the first 3 loan pools (each loan pool has an LLP and and LLC entity, SDRC, Inc. is general partner) Bollen goes on to create 11 total loan pools, 7 of them while he is a state employee. Of these, 10 are created during the second term of the Rounds-Daugaard Administration and 1 is formed during the Daugaard-Michels Adminstration {Exhibit J}
Jan 10	Secretary of State Chris Nelson certifies the 3 loan pools and SDRC, Inc. {Exhibit C, Exhibit J}
Jan 15	Joop Bollen, as Director of SDIBI, signs contract assigning management of EB 5 program over to SDRC, Inc. James Park from Hanul signs as director for SDRC, Inc. {Exhibit D}
	THIS CONTRACT HAD BEEN SUBMITTED TO USCIS on NOVEMBER 8, 2007 BEFORE SDRC, INC. EVEN EXISTED {Exhibit I}

James Park is not listed on any SDRC, Inc. documents until April, 2009 and is quickly removed in early June, 2009.

NOTE: AT THIS POINT IN TIME, THE FOLLOWING PEOPLE KNOW ABOUT THE JANUARY 15, 2008 CONTRACT AT THE HEART OF THE DARLEY LITIGATION:

JOOP BOLLEN – he signed it as Director of SDIBI
JAMES PARK FROM HANUL (JOOP BOLLEN'S PARTNER) – he signed it as Director of SDRC, Inc. even though he did not incorporate it and the 5 day old document does not list him as a Director {Exhibit C}

Mar 17	Darley demands arbitration from SDIBI (South Dakota) {Exhibit B, page 10, lines 2-5}
June 25	USCIS approves the amendment III. {Exhibit K} that recognizes the contract between SDIBI and SDRC, Inc. {Exhibit D} first mentioned on Nov 8, 2007
July 31	Darley files petition in federal court to compel arbitration by SDIBI. The core controversy alleged by Darley is that Joop Bollen and James Park conspire to cheat Darley out of fees by forming SDRC, Inc. in January, 2008. {Exhibit A, Exhibit B}
Aug 5	SDIBI served with Darley petition. Mr. James Park and/or Mr. Peter Lee of Hanul assure Joop that Hanul would take care of the matter and that it would be easily resolved. {Exhibit L, item 6 from Joop Bollen's sworn under penalty of perjury declaration}
Aug 22	Joop Bollen files opposition to petition – he is no lawyer and cannot hire a lawyer. {Exhibits M,N,O,P – sworn declarations from larry Long, Marty Jackley, Tad Perry, and Jack Warner} In the brief, Joop Bollen alleges that SDRC, Inc. was formed in late 2007/early 2008 and was formed in response to the impasse between Darley and Hanul. {Exhibit B: page 9, lines 2-22}
Aug 22	Joop Bollen files his declaration along with opposition. Joop's declaration verifies that SDRC, Inc. has already by this time entered into agreements with overseas agencies. {Exhibit B: item 22}
Sept (late)	Joop Bollen "retains" Hanul to represent SDIBI (South Dakota) – Documents by Attorney General Long and Attorney General Jackley assert that he cannot legally do this. {Exhibits M, N}
Sept 30	Joop Bollen actually signs a document substituting Su Ki Kim from Hanul to represent SDIBI as the present attorney – Documents by

	Attorney General Long and Attorney General Jackley assert that he cannot do this legally. {Exhibits M, N}
Oct 6	Federal court hearing
Oct 7	Fed court issues order compelling South Dakota into arbitration {Exhibit Q}
Nov 6	Deadline to appeal federal court order runs out
Dec 1	Joop Bollen receives an email from Mr Peter Lee of Hanul informing Bollen that a mediation matter was scheduled for Dec 12, 2008. . {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}
Dec 12	Mediation in California on order to compel arbitration – Joop Bollen does not attend as he continued to believe that Hanul would resolve the matter – even though the federal court had issued an order to compel arbitration. {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}

2009

Jan 23	Joop Bollen starts to come clean as Mr Kim from Hanul informs Bollen that a financial liability for SDIBI could exist. . {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009} Bollen contacts John Meyer (Northern State University campus-based attorney)
Jan 27	John Meyer (campus-based attorney at Northern State University) contacts James Shekleton (SD Board of Regents General Counsel – for last 23 years) to inform him that he had learned of the SDIBI/Darley International/Hanul federal court order compelling SDIBI into arbitration. {Exhibit R: John Meyers sworn declaration}
Jan 29	James Shekleton first speaks to James Lynch, a former attorney for the California State University system to retain Lynch as California counsel in the case. {Exhibit S: James Shekleton's sworn declaration}
Feb 5	South Dakota Attorney General Larry Long appoints James Lynch as a Special Assistant Attorney General to represent the SD Board of Regents in the Darley-Hanul matter and South Dakota agrees to spend first $20,000 with Attorney James Lynch to represent the SD Board of Regents in the Darley litigation. {Exhibit M: Attorney General Larry Long's sworn declaration}

NOTE: AT THIS POINT IN TIME, THE FOLLOWING PEOPLE KNOW OF THE DARLEY LITIGATION AND THE JANUARY 15, 2008 CONTRACT AT THE HEART OF THE LITIGATION {Exhibit E: SD's brief in federal court and the attached sworn declarations}

SOUTH DAKOTA ATTORNEY GENERAL LARRY LONG
BOARD OF REGENTS EXECUTIVE DIRECTOR ROBERT "TAD" PERRY
BOARD OF REGENTS GENERAL COUNSEL JAMES SHEKLETON
NORTHERN STATE UNIVERSITY ATTORNEY JOHN MEYER
CALIFORNIA COUNSEL FOR BOARD OF REGENTS JAMES LYNCH

State Employee Joop Bollen and his co-defendant James Park, who of course already knew on January 15, 2008 – or before.

Mar 20 South Dakota Board of Regents files motion to vacate the October 2008 federal court order compelling arbitration – argues that the SDIBI is a fully integrated office and function of the Board of Regents of South Dakota and as such is an alter ego or arm of the State of South Dakota and is entitled to the State's immunity from suit in federal court

Further, the brief supporting the motion states that SD law requires that both the Governor and Attorney General must be served to commence action against the SDIBI or the Board of Regents – AND that there is no evidence on record that either Governor Rounds or Attorney General Long had ever been served. **{Exhibit E: page 3, lines 15-19} "In order to commence an action against the SDIBI or the Board of Regents, Petitioner Darley International, LLC (Darley) was required by South Dakota law to serve both South Dakota's Governor and Attorney General. There is <u>no evidence on record that either has ever been served with process</u> in this action; in fact, the South Dakota Attorney General has no record of such service.}**

NOTE: THEY HAD CHECKED WITH THE GOVERNOR'S OFFICE FOR A RECORD OF **<u>Governor Rounds</u>** HAVING BEEN SERVED THE DARLEY PETITION AND FOUND NONE – **MEANING THAT GOVERNOR ROUNDS WAS AWARE OF THE DARLEY LITIGATION SOMETIME BETWEEN FEB 5, 2009 AND MARCH 20, 2009 – when Exhibit E was filed in federal court.**

ALSO NOTE: AT THIS DATE (MARCH 20, 2009) TAD PERRY IS BOARD OF REGENTS EXECUTIVE DIRECTOR AND HARVEY JEWETT IS PRESIDENT OF THE BOARD OF REGENTS

May 28	Joop Bollen signs amended Articles of Incorporation for SDRC, Inc. that named himself (again) as the sole Director
June 1	Joop Bollen's amended Articles of Incorporation are filed by Chris Nelson – at the request of Jeff Sveen at Siegel Barnett Shulz (at which Harvey Jewett, former President of the SD Board of Regents, is a partner)
	NOTE THIS IS AFTER JOOP HAS CLEARLY BROUGHT SOUTH DAKOTA INTO LEGAL LIABILITY IN THE $MILLIONS – AS A BOARD OF REGENTS EMPLOYEE
July 2	Darley refiles petition to compel arbitration in the Superior Court for the State of California, County of Los Angeles. {Exhibit U} This time, they serve both Governor Rounds and Attorney General Long
July 14	Darley serves petition on Governor Rounds and Attorney General Long. {Exhibit U: page 4, lines 17-18} "Darley filed and served the Petition in the instant case on July 2 and 14, 2009, respectively"
	NOTE: GOVERNOR ROUNDS AND ATTORNEY GENERAL LONG ARE (AGAIN) AWARE OF THE DARLEY LITIGATION AS BOTH OF THEM ARE SERVED LEGAL PAPERS
Aug 11	Joop Bollen signs declaration under penalty of perjury in Darley-Hanul matter – in response to filing by Darley in the California Court {Exhibit L: Joop Bollen's sworn under penalty of perjury declaration dated August 11, 2009}
Aug 13	South Dakota files a motion to quash the petition by Darley {Exhibit T: SD's brief in support of motion to quash}
Sept 4	Attorney General Jackley takes office
Sept 4	Jackley appoints James Lynch as Special Assistant Attorney General to represent Board of Regents in Darley matter – first day in office as any Special Assistant Attorney General appointments only last for the term of the Attorney General.
	NOTE: ATTORNEY GENERALJACKLEY KNOWS FROM DAY 1 OF HIS TENURE AS SOUTH DAKOTA'S ATTORNEY GENERAL ABOUT THE MESS JOOP HAS PUT SOUTH DAKOTA IN
Sept 14	South Dakota files another document in the California Court. {Exhibit W}

NOTE: THIS IS THE FIRST FILING IN THE DARLEY LITIGATION DURING THE TENURE OF SOUTH DAKOTA ATTORNEY GENERAL MARTY JACKLEY

Oct 14 South Dakota loses motion to quash via order from California Court {Exhibit X}

2010

May 21 South Dakota files brief opposing arbitration after having had no success in quashing Darley's petition to compel arbitration. {Exhibit V}

June 2 California Court rules that SDIBI and Board of Regents had ratified the Darley/Hanul contract and that the Court was compelling that SDIBI/BOR arbitrate the dispute with Darley and Hanul.

{Exhibit Y} "Joop Bollen – in his position as director – was authorized to act on behalf of respondent. By arranging and facilitating the Darley-Hanul agreement, Bollen did not act ultra vires [beyond his powers], but acted within the scope of his role as director.

It was reasonable for petitioner to believe that an agency relationship existed between respondent and Hanul. **The facts support that Hanul had ostensible authority to bind respondent and that the Board of Regents ratified the agreement."**

In short, Joop Bollen drug the State of South Dakota into a legal mess. And South Dakota has yet to win a single round in the litigation with Darley. South Dakota Board of Regents has been locked into this arbitration for now more than 4 years, spending money on California lawyers at $300/hour.

2011

June 30 Governor Daugaard must have been aware of the Darley litigation and January 15, 2008 contract that Joop Bollen granted to SDRC, Inc., the company that Joop Bollen owned. This is the end of the 2011 fiscal year and the ending date for the South Dakota Single Audit Report for the Fiscal Year ended June 30, 2011.

In an Argus Leader story by John Hult published September 17, 2014, Hult reported that the state did disclose the Darley Arbitration in the 2010 and 2011 Single Audit Report for the Fiscal Years ending June 30, 2010 and June 30, 2011. {Exhibit Z: Argus Leader story by John Hult}

In that same Argus Leader story by John Hult published September 17, 2014, Tony Venhuizen, spokesman for Gov. Dennis Daugaard, said the governor was aware of the arbitration and made no effort to conceal it. Each year, the audit report lists a handful of cases involving lawsuits against the state.

The risk that the arbitration would damage the state financially was deemed so low that it wasn't included in the audit reports from 2012 and 2013, Venhuizen said.

"The governor's always been up front with the public about what our potential liabilities are," Venhuizen said. "The idea that it's been hidden is patently false."

Venhuizen said lawyers for the Board of Regents are confident that the state will prevail when the arbitration does take place.

2013

Aug 27 **South Dakota Board of Regents files a brief in Darley case that OPPOSES THE DEPOSITION OF JOOP BOLLEN AND PRODUCTION OF DOCUMENTS FROM SDRC, INC.**

{EXHIBIT HH}

WHY?

Chapter 2 Conclusions

Dates at which South Dakota Leaders knew of the Darley litigation and therefore knew of the Jnauary 15, 2008 contract that State Employee Joop Bollen granted to SDRC, Inc., a company that he founded and owned, along with the 11 loan pools that he utilized to harvest tens of millions of dollars in fees from South Dakota's EB-5 program.

SD Official	Date they knew
SDIBI Director Joop Bollen	January 15, 2008
Northern State Univ. Attorney John Meyer	Janaury 23, 2009
SD Board of Regents Gen Counsel James Shekleton	January 27, 2009
California Attorney James Lynch (hired by SD)	January 29, 2009
SD Board of Regents Exec. Dir. Tad Perry	February 4, 2009

SD Attorney General Larry Long	**February 5, 2009**
Governor Mike Rounds	**March 20, 2009**
SD Board of Regents Exec. Dir. Jack Warner	**August 12, 2009**
SD Attorney General Marty Jackley	**September 4, 2009**
Commissioner Jason Dilges	**June 30, 2010**
Auditor General Martin Guindon	**June 30, 2010**
Governor Dennis Daugaard	**June 30, 2011**

Other conclusions from Chapter 2, Timeline

In short, Joop Bollen dragged the State of South Dakota into a legal mess. And South Dakota **has yet to win a single round in the litigation with Darley**. South Dakota Board of Regents has been locked into this arbitration for now more than 4 years, spending money on California lawyers at $300/hour.

South Dakota's lack of a single legal victory in this litigation once it went into California State Court does make Tony Venhuizen, Governor Daugaard's spokesman seem Pollyannaish when he stated "**The risk that the arbitration would damage the state financially was deemed so low that it wasn't included in the audit reports from 2012 and 2103, Venhuizen said." {Exhibit Z}**

Chapter 3. Joop Bollen's Deception

Important quotes from South Dakota's Motion to Quash Service of Process filed in the Superior Court for the State of California, County of Los Angeles. This document was filed on August 13, 2009.

At this date of the filing of this legal brief (August 13, 2009) {Exhibit T}

- South Dakota Governor is Mike Rounds
- Board of Regents employee (Director of the South Dakota International Business Institute at Northern State University) is Joop Bollen
- South Dakota Attorney General is Larry Long
- Board of Regents General Counsel is James Shekleton
- Harvey Jewett is a member of the Board of Regents
- Board of Regents Executive Director is Jack Warner
- Northern State University President is Dr. James Smith
- Northern State University Attorney is John Meyer

Background

This legal pleading is filed as a response to the re-filing of the arbitration demand of Darley International in California State Court. South Dakota loses this motion when the California Court rules against South Dakota on October 14, 2009. This brief, by South Dakota's own attorneys, outlines Joop Bollen's deceit in running South Dakota's EB-5 program

Important Quotes from this brief:

From the Introduction on page 1 of the Memorandum of Points (lines 7-14):

> The most important omission is that the individual whose actions are cited as creating Respondent's minimum contacts in California to invoke this Court's jurisdiction, SDIBI Director Joop Bollen, acted without permission or the knowledge of the Board and, more importantly, without authority to act on the Board's behalf. Mr. Bollen went far beyond simply acting outside of his authority, however. **With the aid of Hanul Professional Law Corporation ("Hanul"), a California law firm that Mr. Bollen had no authority to retain, and Darley, Mr. Bollen concealed his activities from the Board, Northern State University (where the SDIBI is located), and legal counsel for the Board of Regents and the Attorney General of the State of South Dakota.**

From the Introduction on page 1 (lines 21-25) and page 2 (lines 1-17) of the Memorandum of Points (lines 7-14):

In the course of the federal action, Mr. Bollen, who is not an attorney, appeared in pro per for the SDIBI, even filing opposition to the federal petition; he substituted Hanul in as counsel days before the hearing on Darley's petition (Ex. 7). ***Then, Mr. Bollen and Hanul, having exposed the Board of Regents to Darley's claims of $4 million in liability,*** participated in mediation and scheduled an arbitration in which Hanul was going to represent the SDIBI despite the glaring conflict of interest that existed between the SDIBI and Hanul as co-defendants alleged to have collaborated on a breach of contract.

When Mr. Bollen finally realized that he could no longer conceal this matter and liability from the Board of Regents, in January 2009 he advised legal counsel for the Board of Regents of what had happened. The Board of Regents promptly retained California counsel and filed a motion in federal court to reconsider its order compelling arbitration. Faced with the federal court's clear statement in a tentative ruling that it would rescind its October 2008 order unless Darley could prove that the SDIBI was not an arm of the State of South Dakota, Darley withdrew its federal court petition in order to file in the California courts. Darley still presents the defunct order of the federal court, however, as though the federal court had considered Mr. Bollen's authority to act on behalf of or bind the Board of Regents, or even the SDIBI's status as a state entity – when in fact the federal court was unaware of these issues in October 2008.

In effect, Darley asks this Court to take jurisdiction and order the Board to arbitrate a contract to which it was not a party, **based solely on the acts of an individual who had no greater authority to commit the Board to contacts in California than a custodian at Northern State University.** A sister state cannot be committed to California jurisdiction on the acts of an employee acting beyond his authority, however.

From the Statement of Facts (page 3, lines 8-15):

The SDIBI is funded by the Board of Regents and the South Dakota Governor's Office of Economic Development, another State agency (from the sworn declarations of Board of Regents Executive Director Jack Warner and from Joop Bollen).

Any money judgment or arbitration award against the SDIBI, for this or any other matter, would be paid out of the funds of the State of South Dakota (from the sworn declaration of Jack Warner)

Employees of both the SDIBI and NSU receive their paychecks on the account of the State of South Dakota (from the sworn declarations of NSU Attorney John Meyer and from Joop Bollen)

From the Statement of Facts (page 3, lines 22-24):

Mr. Bollen did not have authority to retain attorneys to perform legal services for the SDIBI, nor did he seek such authority. (From the sworn declaration of South Dakota Attorney General Larry Long, from Board of Regents Executive Director Jack Warner, and from Board of Regents General Counsel James Shekleton).

From the Statement of Facts (page 4, lines 22-28 and page 5, lines 1-10):

Throughout the foregoing events, Mr. Bollen purposefully avoided informing attorneys for NSU, the Board of Regents, or the State of South Dakota of his dealings with Darley or Hanul, or that these litigation events were taking place, and he continued to withhold this information from them until January 23, 2009, when he realized that he could not make the matter go away with just the assistance of Hanul. On that date, he contacted John Meyer, the University attorney for NSU, about the problem and forwarded some documents relating to the arbitration, but did not mention a lawsuit. On January 27, 2009, Mr. Meyer, having reviewed the documents and become suspicious that a lawsuit might be involved, instructed Mr. Bollen to bring him more documents related to the dispute, which revealed to Mr. Meyer the instant action but not the federal court order. (From sworn declaration of Northern State University Attorney John Meyer and from Joop Bollen).

Neither the South Dakota Attorney General's office nor the Board of Regents had any knowledge of the existence of the federal action until January 27, 2009, and then only after Mr. Bollen spoke to Mr. Meyer. Having spoken to Mr. Bollen and seen some of the court documents, Mr. Meyer immediately notified James Shekleton, the General Counsel for the Board of Regents, of what Mr. Bollen had told him. (from sworn declarations from Joop Bollen, Board of Regents General Counsel James Shekleton, Northern State University Attorney John Meyer, and Board of Regents Executive Director Jack Warner). The federal court order was discovered shortly thereafter (from sworn declaration of Northern State University Attorney John Meyer).

From Section II, D Exercising Jurisdiction would not comport with fair play and substantial justice (page 10, lines 11-13):

This case presents a highly unusual set of facts because the purported jurisdiction over a sister State's university system is premised entirely on the **unauthorized, willfully concealed actions of a low-level campus manager.**

From Section II, D Exercising Jurisdiction would not comport with fair play and substantial justice (page 11, lines 6-8 and lines 14-17):

Mr. Park laid it right out there for Mr. Stratmore to see: Hanul had no agreement with the SDIBI, SDIBI was a functionary of South Dakota, **and**

they [Hanul and Bollen] were knowingly end-running the appropriate governmental procedures and approvals.

This Court should not take lighly the proposed exercise of jurisdiction over a sister State at the behest of a California attorney-plaintiff who entered into a contract with **persons [Hanul and Bollen] whom he knew had no authority to bind the sister State and whom he knew had attempted to conceal the contract from proper authorities in the sister State.**

From Section III, page 13, lines 19-21, lines 10-14, and lines 17-20:

Personal jurisdiction cannot be established through apparent or ostensible authority principles, estoppel, or waiver.

Perhaps more importantly, Darley knew that **Mr. Bollen and Hanul were making highly questionable assertions of their own authority to act**, and was required to further investigate, as a matter of law.

Translated into plain English, and in light of the October 4 correspondence just two weeks earlier, Mr. Stratmore knew that this clause meant 'The State of South Dakota is really in charge and cannot and will not legally grant exclusive rights of this nature, so SDIBI is unofficially (read: without authority) giving us exclusive rights that we hereby pass on to you for as long as we are all able to maintain this artifice by keeping the State out of the loop'

Any prudent person in Mr. Stratmore's position, let alone a prudent attorney, would have questioned whether Mr. Bollen or Hanul had authority to do any of the things that had taken place during negotiations. **Indeed, a reasonable person would have wondered if Mr. Bollen and Hanul were actually breaking the laws of South Dakota.**

Chapter 3 Conclusions

1. Joop Bollen deceived South Dakota.

2. The Darley claim is **at least $4 million** (plus attorney fees and pre-judgment interest) – **4 times the amount reported** in the 2010 and 2011 South Dakota Audit report.

Chapter 4 How much money did Joop Bollen and his associates make from the granting of the January 15, 2008 contract to SDRC, Inc., the company that Joop Bollen owned.

According to Argus Leader reporter David Montgomery, there were 800 immigrant investors in the EB-5 program after the formation of SDRC, Inc. {Exhibit CC}

The recruitment fee from recruiting investors is $50,000 per investor according to the Darley-Hanul-SDIBI confidential contract {Exhibit DD}

Hence: 800 * $50,000 equals $40 million

Each loan pool was harvested for fees in the following manner {Exhibit CC}:

$30,000 one time administration fee
$5,000 1% origination fee

Hence: 800 * $35,000 equals $28 million

Each loan pool was harvested annually for $10,000 per investor {Exhibit CC}

Hence: 800 * $10,000 per year times 5 years equals $40 million

Total take (conservatively as this analysis does not take into account the return on capital nor the equity kicker that Mr. Bollen received)

$108 million

Chapter 5. A discussion of the Board of Regents Fraud Policy

Joop Bollen committed fraud under the South Dakota Board of Regents Fraud Policy {Exhibit BB}.

1. Definitions

   A. Fraud shall be defined to include the following for purposes of this policy

      1. Conduct within the scope of employment [CLEARLY JOOP BOLLEN WAS A BOARD OF REGENTS EMPLOYEE]

         a. Intentional or deliberate act to deprive the State of South Dakota, the Board, any of the institutions governed by it or any affiliated organizations or students of something of value (property, money, services, or opportunities). [CLEARLY JOOP BOLLEN INTENTIONALLY SIGNED THE JANUARY 15, 2008 CONTRACT WITH THE COMPANY HE OWNED SDRC, INC.]

JOOP CLEARLY VIOLATED BOR FRAUD POLICY – HE SHOULD HAVE BEEN TERMINATED BY MARCH 20, 2009 WHEN THE BOR HAD TO FILE THE FIRST DARLEY BRIEF.

Chapter 6. How much did South Dakota spend so far in defending against the lawsuit that Joop Bollen drug South Dakota into?

Greater than $500,000 – {See Exhibit EE}

Chapter 7. How much in taxpayer funds were paid to Joop Bollen and to cover the costs of running SDIBI after Mr. Bollen had outsourced management of South Dakota's EB-5 program to Mr. Bollen's own company SDRC, Inc. that was executed with the January 15, 2008 contract?

Joop Bollen outsourced the duties of the SDIBI to SDRC, Inc. on January 15, 2008. However, South Dakota taxpayers continued to pay all costs of the SDIBI, including Mr. Bollen's salary, secretary, foreign travel, and overhead through December 21, 2009. {Exhibits FF (covers Jan 1, 2008 through June 30, 2008 and GG (covers July 1, 2008 through June 30, 2009)}

For the purposes of this analysis, I assume that the July 1, 2009 through December 21, 2009 period is roughly half of the full year rate shown in Exhibit GG.

Period	**Cost to SD Taxpayers**
January 1, 2008 to June 30, 2008	$112,662
July 31, 2008 to June 30, 2009	$233,542
July 1, 2009 to December 21, 2009	$116,771
Total	**$462,975**

Hence: Even though Joop Bollen's company SDRC, Inc. took over all management duties of the EB-5 program on January 15, 2008, South Dakota taxpayers kept paying Mr. Bollen and covering all his costs to the tune of nearly **$500,000**.

Here is a table of contents to help you navigating through the report:

Exhibit A: Darley Motion to Compel Arbitration 31 July 2008
Exhibit B: Bollen opposition to Darley Arbitration Demand 11 Aug 2008
Exhibit C: SDRC, Inc. Articles of Incorporation
Exhibit D: MOU between SDIBI & SDRC, Inc.
Exhibit E: SD Brief to Vacate Federal Order
Exhibit F: Darley Hanul Confidential Contract
Exhibit G: California Court Rules against SD on Motion to Quash
Exhibit H: CA Court rules SD must arbitrate
Exhibit I: SD request USCIS for Amendment
Exhibit J: Loan Pools formed by Joop Bollen
Exhibit K: USCIS memo
Exhibit L: Joop Bollen Declaration CA 11 August 2009
Exhibit M: Larry Long Declaration
Exhibit N: Marty Jackley Declaration CA 23 April 2010
Exhibit O: Perry Declaration
Exhibit P: Jack Warner Declaration 23 April 2010
Exhibit Q: Fed Court Order to Arbitrate
Exhibit R: John Meyer Declaration CA 23 April 2010
Exhibit S: Shekleton Declaration CA 23 April 2010
Exhibit T: SD Motion to Quash 12 August 2009
Exhibit U: Darley refiles arbitration petition in CA Court
Exhibit V: Board of Regents Brief in CA Court 21 May 2010
Exhibit W: SD Memo of points in response to Darley 14 Sept 2009
Exhibit X: CA Court on Motion to Quash 14 Oct 2009
Exhibit Y: CA Court Orders South Dakota to Arbitration 2 June 2010
Exhibit Z: Millions in EB5 liability hidden 17 Sept 2014
Exhibit AA: EB5 investment recruiter took cut of EB5
Exhibit BB: SD BOR Fraud Policy
Exhibit CC: EB5 investment recruiter took cut of EB5
Exhibit DD: Darley Confidential overseas recruitment contract
Exhibit EE: Lynch Legal Contracts
Exhibit FF: SDIBI 6 contract 1 Jan 2008 - 30 June 2008
Exhibit GG: SDIBI 7 contract 1 July 2008 - 30 June 2009
Exhibit HH: SDIBI motion to oppose deposition of Joop

Larry Lucas
District 26 Senate
Brule, Buffalo, Jones, Lyman, Mellette, & Todd

Exhibit A

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CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CV08-05034 DDP PLA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, a non-Profit organization Respondent.	CASE NO. PETITIONER DARLEY INTERNATIONAL, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT [9 U.S.C. § 4]

Hearing Date: September 8, 2008
Time: N/A
Courtroom: N/A

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. ARGUMENT 6

A. Legal Standard 6

B. SDIBI Can Be Compelled to Arbitrate 8

C. SDIBI Is Required to Arbitrate Because It Was a Third-Party Beneficiary of the October 18, 2007 Agreement 8

D. SDIBI Is Required to Arbitrate Under Principles of Equitable Estoppel 10

E. Darley Should Receive Attorney Fees and Costs in Connection with This Petition to Compel Arbitration 12

IV. CONCLUSION 12

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ATTORNEYS AT LAW

TABLE OF AUTHORITIES

CASES

Page(s)

Acosta v. Kerrigan,
150 Cal. App. 4th 1124 (2007) 12

American Bureau of Shipping v. Tencara Shipyard S.P.A.,
170 F.3d 349 (2d Cir. 1999) 11

Amkor Tech., Inc. v. Alcatel Bus. Sys.,
278 F. Supp. 2d 519 (E.D. Pa. 2003) 11

Comer v. Micor, Inc.,
436 F.3d 1098 (9th Cir. 2006) 8

County of Contra Costa v. Kaiser Found. Health Plan, Inc.,
47 Cal. App. 4th 237 (1996) 8, 9

Crowley Maritime Corp. v. Boston Old Colony Ins. Co.,
158 Cal. App. 4th 1061 (2008) 8

E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.,
269 F.3d 187 (3d Cir. 2001) 8, 9

First Options of Chicago, Inc. v. Kaplan,
514 U.S. 938, 115 S. Ct. 1920 (1995) 6

Fisser v. International Bank,
282 F.2d 231 (2d Cir. 1960) 8

Harris v. Superior Court,
188 Cal. App. 3d 475 (1986) 10

Howsam v. Dean Witter Reynolds, Inc.,
537 U.S. 79, 123 S. Ct. 588 (2002) 6

InterGen N.V. v. Grina,
344 F.3d 134 (1st Cir. 2003) 9

International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH,
206 F.3d 411 (4th Cir. 2000) 7, 11

MAG Portfolio Consult. GMBH v. Merlin Biomed Group, LLC,
268 F.3d 58 (2d Cir. 2001) 11

Matthau v. Superior Court,
151 Cal. App. 4th 593 (2007) 7, 8, 9

Medical Staff of Doctors Med. Center in Modesto v. Kamil,
132 Cal. App. 4th 679 (2005) 9

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Metalclad Corp. v. Ventana Envtl. Organizational P'ship, 109 Cal. App. 4th 1705 (2003) 7

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 105 S. Ct. 3346 (1985) 7

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 103 S. Ct. 927 (1983) 7

Thomson-CSF, S.A. v. American Arbitration Ass'n, 64 F.3d 773 (2d Cir. 1995) 7, 8

Trans-Tec Asia v. M/V Harmony Container, 435 F. Supp. 2d 1015 (C.D. Cal. 2005), *aff'd in part, rev'd in part on other grounds,* 518 F.3d 1120 (9th Cir. 2008) 8

STATUTES

9 U.S.C. §§ 1-14 7

9 U.S.C. § 4 12

MISCELLANEOUS

1 B. E. Witkin, Summary of California Law Contracts § 655 (9th ed. 1987) 9

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Petition asks the Court to decide a single issue: whether Respondent the South Dakota International Business Institute ("SDIBI" or "Respondent") must be compelled to participate in the existing arbitration between Petitioner Darley International, Inc. ("Darley") and Hanul Professional Law Corporation ("Hanul") currently pending in San Francisco, California. The answer is clearly "yes."

The genesis of this dispute arises out of an October 18, 2007 written Overseas Recruitment and Service Agreement ("Agreement") executed by Robert D. Stratmore ("Stratmore") as President of Darley and Si Il Jang, Esq. on behalf of Hanul. Respondent SDIBI, a non-profit organization, is responsible for recruiting and attracting foreign investment to South Dakota. SDIBI utilizes the U.S. EB-5 investor visa as a means to attract foreign investment to South Dakota's dairy and meat packing industries. The EB-5 investor visa grants United States residency rights to foreign nationals in exchange for a $500,000 investment in an commercial enterprise located in areas designated by the federal government as a "regional center." In June 2004, SDIBI received regional center status for a contiguous 45-county area of South Dakota.

The subject Agreement appoints Petitioner Darley to act as an exclusive independent contractor for the purpose of recruiting foreign nationals seeking permanent resident status, i.e. an EB-5 investor visa, to invest in the approved projects/commercial enterprises located within SDIBI's designated regional center. Darley fully performed under the Agreement and recruited 30 investors with definite and concrete interest in investing in SDIBI's EB-5 projects. Hanul and SDIBI, however, failed to provide Darley with critical information and materials necessary to

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successfully recruit investors for SDIBI's projects. This failure directly resulted in the loss of investors and, in turn, the loss of substantial service fees to Darley.

Pursuant to the express provisions of the Agreement, Darley initiated mandatory arbitration proceedings against Hanul and Respondent SDIBI seeking damages for, among other things, breach of contract. Hanul has properly submitted to the arbitration proceedings. Respondent SDIBI has refused, and continues to refuse, to participate in the arbitration on the alleged grounds that it is not a signatory to the Agreement.

As set forth below, Respondent SDIBI's position is simply without merit. SDIBI is clearly a direct and intended third-party beneficiary under the Agreement. Indeed, the entire purpose of the Agreement was to benefit SDIBI by recruiting foreign investors to invest in the approved EB-5 projects located within its designated regional center. For the reasons herein, SDIBI should be ordered to participate in the arbitration proceedings between Darley and Hanul.

II. STATEMENT OF FACTS

This dispute arises out of an agreement between a law firm Hanul and an international consulting company Darley. Darley provides a variety of international business services that include representing, advising and consulting commercial and governmental clients worldwide. (Declaration of Robert D. Stratmore ("Stratmore Decl."), filed concurrently herewith, ¶ 2.) Robert D. Stratmore, Esq. ("Stratmore") is the President and founder of Darley. (Stratmore Decl. ¶ 2.)

Respondent South Dakota International Business Institute ("SDIBI") is a non-profit organization located in Aberdeen, South Dakota. (Declaration of Maxwell M. Blecher ("Blecher Decl."), filed concurrently herewith, Exh. 6.) Respondent SDIBI offers a variety of programs

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designed to facilitate and promote international trade by and amongst South Dakota companies. Respondent SDIBI is also responsible for attracting and recruiting foreign investment to South Dakota. (Id.) SDIBI utilizes the employment-based EB-5 investor visa to attract foreign investment to South Dakota. (Id. Exh. 7 at 31.) The EB-5 investor visa grants legal permanent residence (green cards) to foreign nationals who will, indirectly or directly, create or save (generally) 10 full-time jobs by investing at least $500,000 in a U.S. business in a designated "regional center." (Id. at 3-6) Regional centers, which must be approved by the federal government, are typically located in rural or high unemployment areas. (Id.) Entities applying for regional center status must demonstrate that investor funds will be used to support a specific area of industry or economic activity within the designated region center and that the investment will create permanent jobs for U.S. citizens. (Id.)

In June 2004, SDIBI became an approved regional center for a contiguous 45-county area in eastern South Dakota. (Id. Exh. 8.) SDIBI's regional center is focused on attracting investments that support its approved investment opportunities/projects within its regional center. (Id. Exh. 7 at 31.) The approved EB-5 commercial enterprises located within SDIBI's regional center are related to South Dakota's dairy and meat packing industries. (Id.) As such, foreign entrepreneurs seeking permanent resident status may apply for an EB-5 visa by making a minimum $500,000 investment in one of the 13 commercial enterprises located within SDIBI's designated regional center.

Hanul Professional Law Corporation ("Hanul"), with offices in Seoul and Los Angeles, works closely with SDIBI to recruit foreign investors to South Dakota. (Id. Exh. 9.) Hanul has "unofficial" exclusive rights to

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market SDIBI's 13 EB-5 projects as well as provide the foreign investors with legal services relating to their visa applications. (Petition, Exh. 1 at 1.)

In or around July 2007, Stratmore, on behalf of Darley, contacted SDIBI about obtaining exclusive rights to recruit investors for its EB-5 approved projects. (Stratmore Decl. ¶ 3.) Joop Bollen ("Bollen"), SDIBI's director, explained that Hanul had authority to appoint companies to recruit investor's for SDIBI's EB-5 projects on both an exclusive and non-exclusive basis vis-a vis certain geographic territories. (Id. ¶ 4.) Bollen directed Darley to contact James J. Park, Esq. ("Park"), a partner in Hanul's Los Angeles office. (Id.) By late August 2007, Darley and Hanul began negotiating the terms of an agreement that supported both parties' mutual efforts to promote and recruit investors solely for SDIBI's EB-5 projects. (Id.¶ 6.) Although SDIBI did not sign the agreement, it played an active role in negotiating the terms of the contract between Hanul and Darley. (Id.) In fact, SDIBI was copied on virtually all correspondence between Darley and Hanul and specifically negotiated the terms of the Agreement relating to Darley's exclusivity rights with respect to particular territories designated in the Agreement. (Id.)

On October 18, 2007, Stratmore as President of Darley and Si Ill Jang, Esq., a Partner Attorney with Hanul, entered into an Overseas Recruitment and Service Agreement for U.S. EB-5 Permanent Residence Visa ("Agreement"), of which SDIBI was a direct third-party beneficiary. (*See* Petition, Exh. 1.) The Agreement contained an arbitration provision relating to claims arising under the Agreement. (Id.) Under the Agreement, Darley (and its international sub-agents) was appointed as an exclusive independent contractor to recruit foreign nationals from specified territories solely for SDIBI's approved EB-5 projects within its designated regional center. (Id. Exh. 1 at 1.) Darley was precluded from recruiting investors

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for any other EB-5 program in the United States. (Stratmore Decl. ¶ 8.) Under the Agreement, Hanul was obligated to support Darley's marketing and recruitment efforts by, *inter alia*, providing Darley with information and materials, translating documents into Mandarin and English and processing visa applications for investors recruited by Darley. (*See* Petition, Exh. 1)

In accordance with the terms of the Agreement, Darley employed its best efforts to recruit qualified foreign nationals to invest in SDIBI's EB-5 projects, namely SDIBI's "Tilapia" project. (Stratmore Decl. ¶ 9.) In December 2007, less than two months after the parties entered into the Agreement, Darley and its Chinese sub-agents conducted seminars in Beijing and Shanghai to recruit investors solely for SDIBI's Tilapia project. (Id.) Prior to the seminars, both Hanul and SDIBI promised that Hanul would provide Darley with the information necessary to conduct the seminars by November 2007 - one month prior to the Chinese seminars. (Id.) Hanul failed to do so. (Id.)

Despite the lack of project materials and information, Darley received a definite and concrete interest from 30 potential investors that attended its seminars. (Id. ¶ 10.) Darley, however, could not continue its recruitment process or help interested foreign nationals initiate the EB-5 visa application with the information from Hanul. (Id.)

Upon returning from China, Darley continued to request that Hanul and/or SDIBI provide the requisite documents so that its sub-agents could continue the recruitment process with respect to the 30 interested investors. (Id. ¶ 11.) Hanul and SDIBI again failed to provide the requested and required information. (Id.) In late December 2007, SDIBI informed Darley that it was withdrawing the SDIBI Tilapia project. (Id.) At this same time, SDIBI also established a separate entity to manage

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relationships with overseas immigration agencies and recruit investors exclusively for SDIBI's EB-5 projects. (Id. ¶ 12.) This agency has become Hanul and SDIBI's exclusive agent/partner for recruiting investors to SDIBI's designated regional center. (Id.)

Hanul and SDIBI's failures caused Darley to lose credibility with its Chinese sub-agents, interfered with its business relationships, and drastically affected its ability to successfully recruit the interested investors. (Id. ¶ 13.) Indeed, Hanul's lack of diligence in providing Darley with the requested and required information and SDIBI's sudden withdrawal of the Tilapia project and creation of its own recruitment agency directly resulted in the loss of investors and substantial fees to Darley. (Id.)

Pursuant to the terms of the Agreement, Petitioner initiated arbitration against Hanul and SDIBI for breach of the Agreement. (Id. ¶ 15.) Although Hanul agreed to submit to arbitration, Respondent SDIBI has refused to submit arguing that it is not bound by the Agreement. (Id.) Petitioner now requests that the Court compel Respondent SDIBi to submit to the ongoing arbitration between Petitioner and Hanul.

III. ARGUMENT

A. Legal Standard

A court determines questions of arbitrability such as who is bound by an agreement's arbitration clause and the scope of that provision. Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 84, 123 S. Ct. 588, 592 (2002); First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943-46, 115 S. Ct. 1920, 1924-25 (1995) (holding that a court should decide whether arbitration contract bound parties who did not sign it). The instant case is subject to the Federal Arbitration Act ("FAA"), which applies to written arbitration provisions in contracts *involving interstate or foreign*

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commerce. 9 U.S.C. §§ 1-14. Here, the Agreement at issue involves international commerce and is subject to the FAA.

Under the FAA, the determination of whether Respondent Darley is bound by the Agreement's arbitration clause is governed by federal law. *See* International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 417 n.4 (4th Cir. 2000) (because the determination of whether a nonsignatory is bound by a contract presents no state law question of formation or validity, courts look to the "'federal substantive law of arbitrability'" to resolve this question (citation omitted)); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626, 105 S. Ct. 3346, 3353-54 (1985); Metalclad Corp. v. Ventana Envtl. Organizational P'ship, 109 Cal. App. 4th 1705, 1712-13 (2003). The FAA and concomitant federal law establish a strong federal policy favoring arbitration agreements wherein any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25, 103 S. Ct. 927, 941 (1983). The FAA's presumption in favor of arbitration "applies with special force in the field of international commerce." *See* Mitsubishi Motors, 473 U.S. at 631, 105 S. Ct. at 3356.

Respondent SDIBI contends that even if the Agreement at issue contains an arbitration clause, it cannot be enforced against it because it is not a party to the Agreement. As discussed below, nonsignatories have routinely been bound to arbitration clauses under a variety of circumstances. Matthau v. Superior Court, 151 Cal. App. 4th 593, 599 (2007); Thomson-CSF, S.A. v. American Arbitration Ass'n, 64 F.3d 773, 776 (2d Cir. 1995). For example, a nonsignatory can be bound by an agreement to arbitrate under ordinary contract and agency principles. Thomson-CSF, 64 F.3d at 776.

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B. **SDIBI Can Be Compelled to Arbitrate**

The decisional law interpreting the FAA provides that a nonsignatory can be bound by an arbitration agreement pursuant to ordinary principles of contract and agency law. "Among these principles are: '1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel.'" Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006) (quoting Thomson-CSF, 64 F.3d at 776); *see* Fisser v. International Bank, 282 F.2d 231, 233 n.6 (2d Cir. 1960). Arbitration agreements can also be enforced against nonsignatory third-party beneficiaries. Trans-Tec Asia v. MV Harmony Container, 435 F. Supp. 2d 1015, 1030 (C.D. Cal. 2005); E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S. 269 F.3d 187, 195 (3d Cir. 2001).[1]

As discussed below, Respondent SDIBI must be compelled to arbitrate because it was an intended third-party beneficiary of the Agreement between Darley and Hanul.

C. **SDIBI Is Required to Arbitrate Because It Was a Third-Party Beneficiary of the October 18, 2007 Agreement**

SDIBI is bound to the provisions of the Agreement because it was an intended third-party beneficiary of Darley and Hanul's October 18, 2008 Agreement. The law is well settled that third-party beneficiaries are treated

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[1] Because the question of who is bound by an arbitration agreement involves the general law of contracts, courts applying the FAA, will look to state law for guidance as long as long as it is does not conflict with the federal law favoring arbitration. Crowley Maritime Corp. v. Boston Old Colony Ins. Co., 158 Cal. App. 4th 1061, 1069-70 (2008). For example, under California law, a nonsignatory can be compelled to arbitrate: 1) where the nonsignatory is a third-party beneficiary of the contract containing the arbitration agreement; or 2) where a preexisting agency relationship existed between the nonsignatory and one of the signatory parties to the arbitration agreement, making it equitable to compel the nonsignatory to arbitration. County of Contra Costa v. Kaiser Foundation Health Plan, Inc., 47 Cal. App. 4th 237, 242 (1996); *see* Matthau, 151 Cal App. 4th at 599-600. California law is plainly in accord with federal law.

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as parties to the contract and are thus bound by its arbitration provisions. *See* E.I. Dupont de Nemours, 269 F.3d at 195; InterGen N.V. v. Grina, 344 F.3d 134, 146 (1st Cir. 2003). California law is in accord. County of Contra Costa, 47 Cal. App. 4th at 242; Matthau, 151 Cal. App. 4th at 599-600. A third-party beneficiary is a beneficiary to a contract when the promisee intends to give the beneficiary the benefit of the promised performance. *See* Medical Staff of Doctors Med. Center in Modesto v. Kamil, 132 Cal. App. 4th 679, 685-86 (2005) (citing 1 B. E. Witkin, Summary of California Law Contracts § 655, at 594-95 (9th ed. 1987)). The language of the Agreement itself clearly establishes that SDIBI was the intended recipient and third-party beneficiary of Petitioner Darley's performance.

First, the object and purpose of the Agreement was to recruit foreign nationals to invest solely in SDIBI's EB-5 projects. (Petition, Exh. 1.) Paragraph 1(B) of the Agreement appoints Darley to recruit investors for the purpose of investing in SDIBI's approved EB-5 projects located within SDIBI's designated regional center. (Id.) The appointment of Darley and its sub-agents satisfied both the object and purpose of the Agreement.

Second, the language of the Agreement itself evinces the requisite intent to make SDIBI a third-party beneficiary. Specifically, the Agreement provides that Darley was obligated to market and recruit investors for SDIBI's projects. (Id. Exh. 1 at 1, 4-5.) Darley was also required to explain all relevant aspects and benefits of SDIBI's investment opportunities to qualified foreign national seeking permanent resident status in the United States. (Id.) SDIBI via Hanul was obligated to provide Darley with information and documentation necessary to support Darley's marketing and recruitment efforts. (Id. at 1-3.) The Agreement makes no mention of any other EB-5 projects or programs other than those associated solely

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with SDIBI and located within its designated regional center. Accordingly, it is clear that the Agreement was made for SDIBI's benefit.

Third, the circumstances surrounding the Agreement also indicate the parties' (Darley and Hanul) intentions to give SDIBI the benefit of their performance. At the time the parties entered into the Agreement, Darley was interested in forming a partnership or joint venture with an EB-5 regional center for the purpose of obtaining exclusive rights to recruit foreign investors for its approved EB-5 projects. (Stratmore Decl. ¶ 9.) SDIBI immediately directed Darley to contact Hanul about obtaining recruitment rights for the EB-5 projects located within its regional center. (Id.) Darley entered into an Agreement with Hanul based on the close relationship and inextricable link between Hanul and SDIBI. In fact, Hanul is listed on SDIBI's website as its partner entity with respect to the SB-5 program.

Further, the activities that formed the basis for the Agreement, i.e. recruiting investors solely for SDIBI, not Hanul, also demonstrates the parties intent to make intent to make SDIBI a third-party beneficiary. Finally, SDIBI's voluntary acceptance of Darley's efforts under the Agreement constitutes consent to all the obligations arising from it. *See* Harris v. Superior Court, 188 Cal. App. 3d 475, 479 (1986). Accordingly, SDIBI should be compelled to arbitrate because of its status as a third-party beneficiary of the October 18, 2007 Agreement.

D. SDIBI Is Required to Arbitrate Under Principles of Equitable Estoppel

Similarly, equitable estoppel also requires that SDIBI also be compelled to arbitrate. SDIBI cannot receive the benefits of the Agreement and subsequently reject its arbitration clause. Nonsignatories, such as SDIBI, are bound by a contract's arbitration clause when they obtain a

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"direct" benefit flowing from the underlying contract. MAG Portfolio Consult, GMBH v. Merlin Biomed Group, LLC, 268 F.3d 58, 61 (2d Cir. 2001); *see also* International Paper, 206 F.3d at 418 ("A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a "direct benefit" from a contract containing an arbitration clause.'" (citation omitted)); Amkor Tech., Inc. v. Alcatel Bus. Sys., 278 F. Supp. 2d 519, 521-23 (E.D. Pa. 2003). Under this theory, courts prevent a nonsignatory from embracing a contract, and then turning its back on the portions of the contract, such as an arbitration clause, that it finds distasteful. American Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999); International Paper, 206 F.3d at 418 (allowing a nonsignatory "'to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the [FAA]'" (citation omitted)).

SDIBI clearly received "direct benefits" flowing from the underlying Agreement. For example, the Agreement provided that, in return for Hanul's promise to provide Darley with the requisite materials and documents to support its obligations under the Agreement, Darley had exclusive rights to market and recruit investors for SDIBI's EB-5 projects in specific territories designated in the Agreement. During the term of the Agreement, Darley conducted two seminars in China (Beijing and Shanghai) specifically to market, promote and recruit investors for SDIBI's Tilapia project. (Stratmore Decl. ¶ 9.) Darley regularly communicated with and consulted SDIBI about its efforts to recruit investors on its behalf. (Id.) SDIBI received and accepted direct benefits from the Agreement and, consequently should be equitably estopped from refusing to arbitrate Petitioner's claims against it.

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E. Darley Should Receive Attorney Fees and Costs in Connection with This Petition to Compel Arbitration

A court may award attorney fees pursuant to an arbitration provision that imposes fees against a party who unsuccessfully resists efforts to compel arbitration. *See* Acosta v. Kerrigan, 150 Cal. App. 4th 1124, 1132 (2007). Paragraph 13(B) of the Agreement provides, in pertinent part, that

> This [arbitration] clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Moreover, the court may make the fee award *before* the arbitrator determines the merits of the claim. Id.

IV. CONCLUSION

Pursuant to 9 U.S.C. § 4 of the FAA, Petitioner respectfully requests that the Court compel Respondent SDIBI to submit the current controversy to arbitration consistent with the October 18, 2007 Overseas Recruitment Agreement.

Dated: July 30, 2008

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
JENNIFER S. ELKAYAM

By _____
Maxwell M. Blecher
Attorneys for Petitioner DARLEY INTERNATIONAL, LLC

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Exhibit B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, a non-profit organization; Respondent.	CASE NO.: CV08-05034 DDP PLAx RESPONDENT'S OPPOSITION TO NOTICE OF HEARING RE DARLEY INTERNATIONAL, LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT; DECLARATION OF JOOP BOLLEN IN SUPPORT; [PROPOSED] ORDER DENYING PETITION Hearing Date: September 8, 2008 Time: 10:00 a.m. Court Room:

EX. 11 —

CONTENTS

I. INTRODUCTION 4

II. STATEMENT OF FACTS 6

III. ARGUMENTS 10

A. This court does not have personal jurisdiction over the Respondent 10

1. The US District Court Central Division of California is not the proper venue for the present action 11

B. The Standard for Compelling a Third Party Non-Signatory to the Arbitration clause of a Contract 12

1. The Respondent is not a Third Party Beneficiary to the Agreement signed between the petitioner and Hanul 13

a. Incidental benefits cannot bind a nonsignatory to an Arbitration Agreement 13

2. Respondent is not required to arbitrate under principles of equitable estoppel 16

3. An agency relationship does not exist between Hanul and SDIBI, and SDIBI is not bound by the arbitration clause of the Agreement under an agency theory 17

IV. CONCLUSION 18

TABLE OF AUTHORITIES

Cases

County of Contra Costa v. Kaiser, 47 Cal.App.4th 237 12

Crowley Maritime Corp. v. Boston Old Colony Insurance, 158 Cal.App.4th 1061 13

Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060, 1064 (2d Cir.1993) 16

E.I. Dupont v. Rhone Poulenc Fiber and Resin Intermediates, 269 F.3d 187 ..... 14, 17

International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed 95 11

MAG Portfolio v. Merlin Biomed, 268 F.3d 58 16

Medical Staff of Doctors Med. Center in Modesto v. Kamil, 132 Cal. App. 4th 679, 685-86 15

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, (1985) 12

Thomson-CSF, S.A. v. American Arbitration Ass'n. 64 F.3d 773 ..... 13, 15, 17

United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, (1960) 12

Rules

4 Am. Jur. 2d Alternative Dispute Resolution § 60 14

Restatement Second of Contracts, §302(1)(b)(1932) 13

Restatement Second of Agency § 1 (1958) 17

28 U.S.C. § 1391 11-12

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

II. STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Agreement between Hanul and Darley explicitly states: "Hanul's right to grant exclusive marketing rights is based on the **unofficial** right to exclusive markets promised by SDIBI." Hanul

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

IV. CONCLUSION

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

DATED: August 22, 2008

Respectfully Submitted

JOOP BOLLEN, DIRECTOR
South Dakota International Business Institute

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SOUTH DAKOTA INTERNATIONAL
BUSINESS INSTITUTE
In Pro Per

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, a non-profit organization; Respondent.	CASE NO.: CV08-05034 DDP PLAx [PROPOSED] ORDER DENYING THE PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT Hearing Date: September 8, 2008 Time: 10:00 a.m. Court Room:

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

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

DATED:_____

_____
HONORABLE DEAN D. PREGERSON

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SOUTH DAKOTA INTERNATIONAL
BUSINESS INSTITUTE
In Pro Per

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, a non-profit organization; Respondent.	CASE NO.: CV08-05034 DDP PLAx DECLARATION OF JOOP BOLLEN IN RESPONSE TO PETITION FOR ORDER COMPELLING ARBITRATION Hearing Date: September 8, 2008 Time: 10:00 a.m. Court Room:

DECLARATION OF JOOP BOLLEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

center. (Exhibit "1", ¶ 6)

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

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

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

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

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

recruit these potential investors.

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

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

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

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

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

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

Joop Bollen

Exhibit C

355 5703 1/11/2008

Receipt Number: 1750596

File Number DB053166

DB053166

ARTICLES OF INCORPORATION

ARTICLES_OF_INCORPORATION

For

SDRC INC.

Filed at the request of:

ATTORNEYS CORPORATION SERVICE
3021 WEST MAGNOLIA BLVD
BURBANK CA 91505

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, January 10, 2008**

Chris Nelson

Secretary of State

Fee Received: $125

355 5704 01/11/2008

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Incorporation
Business Corporation

ORGANIZATIONAL ID #: DB053166

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of **SDRC INC.** duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation and attach hereto a duplicate of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this January 10, 2008.

Chris Nelson

Chris Nelson
Secretary of State

IncorpCertBusiness Merge.doc

Litho. in U.S.A.

355 5705—1/11/2008

RECEIVED
JAN 10 2008
S.D. SEC. OF STATE

Secretary of State
State Capitol
500 E. Capitol Ave.
Pierre SD 57501
Phone 605-773-4845
Fax 605-773-4550

Articles of Incorporation

Filed this 10th day of Jan 2008
Chr. Nelson
SECRETARY OF STATE

FILING FEE: $125

Required Articles:

Article I

The name of the corporation is SDRC INC.

Article II

The number of shares the corporation is authorized to issue 1,000,000

Article III

The complete address, or a statement that there is no street address, of its principal office
405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

Article IV

The complete address, or a statement that there is no street address, of the corporation's initial registered office, and the name of its initial registered agent at that office Joop Bollen,
405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

Article V

The name and address of each incorporator (one or more persons - persons includes an individual and an entity)

NAME	ADDRESS
Joop Bollen,	405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

Optional Articles: (These may be attached followed by the final page with the signature and agent authorization.)

(1) The names and addresses of the individuals who are to serve as the initial directors;
(2) Provisions not inconsistent with law regarding:
- (a) The purpose or purposes for which the corporation is organized;
- (b) Managing the business and regulating the affairs of the corporation;
- (c) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
- (d) A par value for authorized shares or classes of shares; and
- (e) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that under this Act is required or permitted to be set forth in the bylaws;
(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for the amount of a financial benefit received by a director to which the director is not entitled; an intentional infliction of harm on the corporation or the shareholders; a violation of section 162 of this Act; or an intentional violation of criminal law;
(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision (5) of section 171 of this Act, to any person for any action taken, or any failure to take any action, as a director, except liability for receipt of a financial benefit to which the director is not entitled; an intentional infliction of harm on the corporation or its shareholders; a violation of section 163 of this Act; or an intentional violation of criminal law; and
(6) Any provision limiting or denying preemptive rights to acquire additional or treasury shares of the corporation.

D B053166

355 5706 01/11/2008

This document must be executed by the chair of the board of directors, by its president, or by another of its officers. If directors have not been selected or the corporation has not been formed, an incorporator may execute this document. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary may execute this document.

1/3/08
Date

Signature

President
Title /Official Capacity

Filing Instructions:

Filing Fee: $125

The proper filing fee must accompany the application. Make checks payable to the Secretary of State.

One originally signed and one photocopy of the articles of incorporation must be submitted.

The Consent of Appointment below must be signed by the registered agent.

Consent of Appointment by the Registered Agent

I, Joop Bollen, hereby give my consent to serve as the
Name of Registered Agent

registered agent for SDRC INC.
Corporate Name

Dated 1/3/08

Signature of Registered Agent

Exhibit D

MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE

AND

SOUTH DAKOTA REGIONAL CENTER, INC.

This Memorandum of Understanding (the "Agreement") made and entered into as of the 15th day of January, 2008 by and between:

South Dakota International Business Institute/ Dairy Economic Development Region, a South Dakota state agency, and its successors and assigns ("**SDIBI/DEDR**"); and,

South Dakota Regional Center, Inc., an incorporated company organized under the laws of the State of South Dakota, and its successors and assigns ("**SDRC INC**").

WHEREAS, SDIBI is a state agency offering assistance to South Dakota exporters through a variety of programs designed to increase international commerce, and is charged with enhancing the South Dakota business climate, marketing South Dakota to businesses and investors, facilitating, promoting and creating commercial and business opportunities within South Dakota to contribute to the economic viability of and benefit the growth of the state;

WHEREAS, SDIBI is an approved and designated Regional Center recognized by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Service ("USCIS") in accordance with the Immigrant Investor Pilot Program pursuant to section 203(b) (5) of the Immigration and Nationality Act, as amended, and the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, section 610 as amended, and all applicable regulations promulgated there under, including 8 CFR section 204.6 (collectively referred to as the "Pilot Program Law"). Initial designation as a Regional Center was made in a letter dated April 8, 2004 and amendments thereof, to Joop Bollen, the director of SDIBI, from the legacy U.S. Immigration and Naturalization Service and USCIS, informing him of the SDIBI/DEDR appointment as a Regional Center the name which is later amended to SDRC;

EXHIBIT
6

WHEREAS, SDIBI is in collaboration with Hanul Professional Law Corporation, for legal processing regarding compliance with U.S. immigration and nationality law as it relates to EB-5, Alien Entrepreneur investment project and to Regional Center Pilot Programs, and for the purpose of advising upon all transactional matters in connection with such a project;

WHEREAS, SDRC INC is organized for the purposes of creating an EB-5, Alien Entrepreneur investment project within SDIBI/DEDR and managing and operating it in connection with the Immigrant Investor Pilot Program Law; and,

WHEREAS, SDIBI's director will have amongst his/her principal duties and responsibilities the ongoing coordination, oversight and liaison with respect to those activities of the SDIBI/DEDR commercial enterprise in the recruitment, assistance, and involvement of immigrant investors through the EB-5 program. Pursuant to its responsibilities and obligations as a USCIS approved and designated Regional Center within the Immigrant Investor Pilot Program, SDIBI/DEDR desires to obtain assistance in the planning and management of the SDRC EB-5, Alien Entrepreneur investment project within SDIBI/DEDR and to assure the project's compliance with U.S. immigration law and regulations concerning investments within a regional center in the EB-5 visa preference category and, thereby, to have greater assurance of its compliance with regional center requirements.

NOW THEREFORE, in consideration of the mutual agreements, representations, and covenants contained herein, the parties agree as follows:

1. SDIBI/DEDR will promptly request that USCIS acknowledge SDIBI/DEDR designation of SDRC INC to assist in management, administration and overall compliance of the Alien Entrepreneur project organized by SDRC INC within SDIBI/DEDR with U.S. immigration laws and regulations controlling the investment process and participation in a regional center, and to report upon the activities of the project to SDIBI/DEDR and respond to SDIBI/DEDR inquiries about the project and assist SDIBI/DEDR to comply with its obligations as a regional center with respect to this project.

2. SDRC INC will provide support to SDIBI/DEDR including, but not limited to, providing investment-related and supporting documentation to prospective investors, supplying economic analysis and modeling reports on direct and indirect job creation (including the RIMS II multiplier tables that apply to the territory of the SDIBI/SDRC), defining investment opportunities within the SDIBI/DEDR projects, and assisting SDIBI/DEDR to comply with relevant regulatory or administrative requirements in support of individual petitions filed with USCIS by immigrant investors affiliated with the SDIBI/DEDR projects, such as providing area maps, valid unemployment data,

general economic data and demographics concerning the geographic area covered by the SDIBI/DEDR projects.

3. SDRC INC will further support SDIBI/DEDR compliance with regional center requirements by providing on a quarterly basis formal written progress reports on its activities, overseas meetings and other relevant efforts within and outside the United States to promote investment in the SDIBI/DEDR projects through the EB-5 Alien Entrepreneur Regional Center Pilot Program. The Quarterly reports will set forth for the preceding quarter and year-to-date the number of investors, the status of alien investor capital (in escrow, transfers from escrow to the company) and activity of the company in furtherance of the project. The reports will also contain information distinguishing Investor Petitions "in preparation", "filed with USCIS", "approved by USCIS", "denied by USCIS", or "field with USCIS office of Administrative Appeals".

4. SDRC INC will support the purpose and goals of SDIBI/DEDR by encouraging investment and employment creation within the Regional Center through marketing at emigration fairs and conferences with individual investors inside and outside the United States; maintaining a homepage to promote and describe the project; preparing a desirable business plan to encourage individual investments in the project within the Regional Center; establishing escrow accounts to assist orderly investment in the project; facilitating, on a fee basis, the preparation and submission of the I-526, Alien Entrepreneur petition and petitions for other immigration benefits to USCIS or the Department of State for individual investors; providing the primary entity and related entities to carry out the activities of the project; structuring the enterprise so that it creates requisite employment prior to the investors seeking removal of conditions; seeing to the timely completion and opening of the project; providing operating expertise and personnel to operate the project efficiently; and, if requested by individual investors, making referrals to advisors who may assist with issues arising from relocation by the investor and the investor's spouse and children to the United States.

5. SDRC INC agrees to promote investment in SDIBI/DEDR projects and to perform its obligations under this Agreement honestly, consistently and fairly in furtherance of its efforts to assist SDIBI/DEDR with the oversight and management of the Regional Center in connection with the SDIBI/DEDR projects.

6. SDRC INC will act in an independent capacity and not as officers or employees of SDIBI/DEDR or the State of South Dakota. SDRC INC shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC, the State of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC INC acts and/or omissions performed under this Agreement.

7. This Agreement shall be governed by the laws of State of South Dakota.

8. The parties agree that this Agreement shall remain in full force and effect for a term of five (5) years.

9. This Agreement may be modified by written consent of the parties. This Agreement may not be cancelled except upon a material breach of its terms or material misrepresentation by a party which remains uncured for more than Fourteen (14) days after receipt of a Notice of Intent to Cancel that provides specific information justifying the cancellation.

10. SDIBI/DEDR will notify USCIS in writing within Thirty (30) days of any change in the designation of the principal representative of SDIBI/DEDR or the principal administrator to SDIBI or any significant change in or the termination of this Agreement with SDRC INC.

11. In the event of cancellation of this Agreement, SDIBI will provide USCIS a clear explanation as to how services and responsibilities of SDRC INC hereunder will be performed, and by whom, without interruption to the functioning of the Regional Center in connection with the SDIBI/DEDR projects or any affected alien investor in the SDIBI/DEDR projects.

12. Any Notice to be given by any party to the others shall be in writing and personally delivered or sent by U.S. registered mail, certified or overnight, as follows (or in such manner and to such address as designated in writing by any party):

For SDIBI:
South Dakota International Business Institute
Joop Bollen
Director
1200 S Jay St.
Aberdeen, SD 57401-7198 USA

For SDRC INC:
South Dakota Regional Center, Inc.
James Park
Director
405 8th AVE., NW, Suite 330
Aberdeen, SD 57401
Phone#: 605-228-7043

13. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the date first written.

(Signature)

Signed by Authorized Signatory
on behalf of

SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE:

Name: Joop Bollen
Title: Director

Signature

Signed by Authorized Signatory
on behalf of

SOUTH DAKOTA REGIONAL CENTER, INC:

Name: James J. Park
Title: Director

Signature

Exhibit E

James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
Los Angeles, California 90071
Tel: (213) 347-0210
Fax: (213) 347-0216

Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE ORDER [FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 1

ARGUMENT 5

I. 28 U.S.C. SECTION 1332(a) CONFERS NO JURISDICTION OVER CONTRACT OR TORT CLAIMS BROUGHT AGAINST THE SOUTH DAKOTA BOARD OF REGENTS, THE INSTITUTIONS THAT IT CONTROLS, OR THE ORGANIZATIONAL SUBUNITS OF THE INSTITUTION 5

II. THIS COURT HAS NO JURISDICTION OVER AN ENTITY WHICH IS AN ALTER EGO OR ARM OF A STATE AND SHARES ITS ELEVENTH AMENDMENT IMMUNITY 7

III. BECAUSE THE SOUTH DAKOTA INTERNATION BUSINESS INSTITUTE IS PART OF THE SOUTH DAKOTA BOARD OF REGENTS, THIS COURT'S JURISDICTION IS PRECLUDED AND THE COURT'S ARBITRATION ORDER WAS VOID 8

IV. THE ACTIONS OF JOOP BOLLEN AND AUSTIN KIM COULD NOT WAIVE THE ELEVENTH AMENDMENT IMMUNITY OF THE STATE OF SOUTH DAKOTA OR THE SOUTH DAKOTA BOARD OF REGENTS 9

V. THE ACTIONS TAKEN IN THIS CASE IN 2008 FALL WITHIN THE PROVISIONS OF SUBDIVISIONS (1), (3), (4), AND (6) OF SUBDIVISION (b) OF RULE 60 11

A. The Order Was Obtained Through The Mistake Of All Involved, Which Did Not Include The Board Of Regents 11

B. The Board of Regents Was Justifiably Surprised By The Order 11

C. To The Extent It Can Even Be Argued That The Board Of Regents Was Negligent, Such Neglect Was Excusable 12

D. Darley's Misrepresentation To The Court About The SDIBI's Form Of Existence Led Directly To The Issuance Of The Order 13

E. The Order Is Void Because This Court Lacked Jurisdiction 13

F. If No Other Cause For Relief Is Found To Exist, This Order Should Be Dismissed For Equitable Reasons 13

VI. THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE DARLEY HAS NOT SERVED THE RESPONDING PARTY WITH PROCESS IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE 14

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Case ..... **Page**

Arbaugh v. Y & H Corp.
546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed. 2d 1097 (2006) 6, 10

Bateman v. U.S. Postal Service
231 F.3d 1220, 1223-1224 (9th Cir. 2000) 12

Befitel v. Global Horizons, Incorporated
(461 F.Supp.2d 1218, 1221 (D.Haw. 2006) 5

Cook v. AVI Casino Enterprises, Inc.
548 F.3d 718, 723 (9th Cir. 2008) 5

Fifty Associates v. Prudential Insurance Company of America
446 F.2d 1187, 1192 (9th Cir. 1970) 5, 7, 11

Healy v. Ratta
292 U.S. 263, 270, 54 S.Ct. 700, 78 L.Ed. 1248 (1034) 5, 10

Hill v. Blind Industries and Services of Maryland
179 F.3d 754, 757 (9th Cir. 1999) 10

In re American West Airlines
40 F.3d 1058, 1059 (9th Cir. 1994) 10

Jackson v. Hayakawa
682 F.2d 1344, 1347 (9th Cir. 1982) 15

Kanter v. Warner-Lambert Co.
265 F. 3d 853, 857-58 (9th Cir. 2001) 5

Owen Equipment & Erection Co. v. Kroger
437 U.S. 365, 377, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978) 5

Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership
507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) 12

McDonal v. Abbott Laboratories
408 F.3d 177, 182 (5th Cir. 2005) 5, 10

Moor v. County of Alameda
411 U.S. 693, 717, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973) 6, 8

Prostrollo v. Univ. of South Dakota
507 F.2d 775 (8th Cir. 1974), *cert denied*, 421 U.S. 952 (1975) 6

Rowland v. California Men's Colony
506 U.S. 194, 201-202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993) 10

Ruhrgas AG v. Marathon Oil Co.
526 U.S. 574 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999) 6, 10

Seminole Tribe v. Florida
517 U.S. 44, 69-70, 116 S.Ct. 114, 134 L.Ed.2d 252 (1996) 7

South Dakota Board of Regents v. Hoops
624 F.Supp 1179 (D.SD 1986) 6, 8, 10

Thompson v. Gaskill
315 U.S. 442, 446, 62 S.Ct. 673, 86 L.Ed. 951 (1942) 5

Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, et. al.
614 F.2d 1247, 1255-1256 (9th Cir. 1980) 13

United States v. Alpine Land & Reservoir Co.
984 F.3d 1047, 1049 (9th Cir. 1993) 14

United States v. Cotton
535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002) 6

United States v. Washington
394 F.3d 1152, 1157 (9th Cir. 2005) 14

Veeck v. Commodity Enterprises, Inc.
487 F.2d 423, 426 (9th Cir. 1973) 15

Watts v. Pinckney
752 F.2d 406, 409 (9th Cir. 1985) 8, 13

STATUTES

Statute ..... **Page**

9 U.S.C. § 4 ..... 14, 15

28 U.S.C. § 1332 ..... 7, 8, 15

28 U.S.C. § 1332(a) 5

28 U.S.C. § 1332(a)(1) 5, 6

28 U.S.C. § 1343 6

43 U.S.C. § 1983 6

Federal Rules of Civil Procedure 4 ..... 4, 15

Federal Rules of Appellate Procedure 4(a)(1)(A) 11

Federal Rules of Appellate Procedure 4(c)(1) 15

Federal Rules of Appellate Procedure 4(j)(2) 15

Federal Rules of Civil Procedure 17(b)(3) 2

Federal Rule of Civil Procedure 60 ..... 12, 13

Federal Rule of Civil Procedure 60(b) 13

Federal Rule of Civil Procedure 60(b)(1) 11, 12

Federal Rule of Civil Procedure 60(b)(3) 13

Federal Rule of Civil Procedure 60(b)(4) 13, 15

Federal Rule of Civil Procedure 60(b)(6) 13, 14

S.D. Const., Art 41 § 3 1

South Dakota Codified Law § 1-11-5 ..... 2, 10

South Dakota Codified Law § 1-11-15 2

South Dakota Codified Law § 3-21-10 9

South Dakota Codified Law § 13-49-11 ..... 1. 2

South Dakota Codified Law § 13-59-1 2

South Dakota Codified Law § 15-6-4(d)(5) 3

South Dakota Law. Fed. R. Civ. P. 17(b)(3) 2

U.S. Const. Amend XI 7

INTRODUCTION

By this motion, the South Dakota Board of Regents seeks to be relieved from the effects of this Court's October 7, 2008, order compelling the South Dakota International Business Institute ("SDIBI") to participate in an arbitration in which it faces millions of dollars of potential liability.

The highly unusual circumstances through which this Court's Order was procured included:

1) The SDIBI is an entity of the Board of Regents and, therefore, an arm or alter ego of the State of South Dakota, meaning that it is not a "citizen" for purposes of creating diversity jurisdiction and is immune from suit under the Eleventh Amendment, yet the SDIBI was falsely portrayed to this Court as a private entity;
2) Service of process was never made on the only persons authorized to accept such service for allegations against the SDIBI;
3) The persons claiming to represent the SDIBI had no legal authority to do so and willfully kept the existence of this action from the persons with such legal authority until the end of January 2009;
4) Service of process was not made upon anyone in accordance with the Federal Rules of Civil Procedure;
5) A non-attorney filed a "pro per" opposition to the Petition for the SDIBI, even though such act may only be performed by a licensed attorney.

These circumstances require that the Court vacate its Order because it had no jurisdiction over the SDIBI and, consequently, no authority to issue the Order.

STATEMENT OF FACTS

The South Dakota Board of Regents ("Board of Regents") manages and controls the State university system for the State of South Dakota. *S.D. Const.*, Art. 14, § 3; Perry Dec., pg. 1, ¶ 3. The Board of Regents, while a State agency, also exists as a corporation, with the delegated power to sue and be sued and to hold, lease, and manage its properties. *SDCL* § 13-49-11.

Northern State University ("NSU") is one of the public institutions of higher education

under the Board of Regents' jurisdiction. *SDCL* § 13-59-1. The Board of Regents operates and determines the mission of NSU. Perry Dec., pg. 1, ¶ 5; Ex. 2.

The SDIBI was created by official act of the Board of Regents in 1994, to replace the existing International Business Center at NSU. Perry Dec., pg. 1, ¶ 4; Ex. 1. The SDIBI is funded by the Board of Regents but also receives substantial funding from the South Dakota Governor's Office of Economic Development, another State agency. Perry Dec., pp. 2-3, lines 21-1, ¶ 9; Bollen Dec., pg. 1, ¶ 2. Any money judgment or arbitration award against the SDIBI, for this or any other matter, would be paid out of the general fund of the State of South Dakota. Perry Dec., pg. 3, ¶ 10. Conversely, any funds earned by the SDIBI are placed in an account controlled by NSU. Perry Dec., pg 3, lines 1-4, ¶ 9. Employees of both the SDIBI and NSU receive their paychecks on the account of the State of South Dakota. Brick Dec., pg. 1, ¶ 5; Meyer Dec., pg. 2, ¶ 7; Bollen Dec., pg. 3, ¶ 11.

The SDIBI's Director at all times relevant to this action has been Joop Bollen. Mr. Bollen, who is not an attorney, is an employee of NSU and is listed in the staff directory for NSU. Meyer Dec., pg. 1, ¶ 3; Ex. 5; Bollen Dec., pg. 1, ¶¶ 2-3. The SDIBI is a constituent part of NSU and the Board of Regents and has no independent legal capacity to sue or be sued. Perry Dec., pg. 2, lines 5-6, ¶ 7; Long Dec., pg. 1, ¶ 4; Shekleton Dec., pg. 1, ¶ 4.[1] Mr. Bollen did not have authority to retain attorneys to perform legal services for the SDIBI or to provide representation in the instant case, nor has he ever been authorized to accept service of process on behalf of the State of South Dakota or the Board of Regents. Similarly, Mr. Bollen's assistant, Cherri Brick was not authorized to accept service of process. Long Dec., pg. 2, ¶ 6; Perry Dec., pg. 2, lines 6-11, ¶ 7; Shekleton Dec., pg. 1, lines 26-27, ¶ 6; Brick Dec., pg. 1, lines 16-19, ¶ 4.

The State of South Dakota prohibits the performance of legal services for the State except where performed by assistant or deputy attorneys general employed by the State, pursuant to a contract with a State agency that has been filed with the South Dakota Attorney General, or by special written appointment from the State Attorney General. *SDCL* §§ 1-11-15, 1-11-5. Long

[1] The SDIBI's and the Board of Regents' capacity to be sued is determined by South Dakota law. Fed. R. Civ. P. 17(b)(3); *SDCL* § 13-49-11.

Dec., pg. 1, ¶ 5.

Austin Su Ki Kim, an attorney with Hanul, briefly appeared as an attorney for SDIBI in this action in October 2008. However, neither Mr. Kim, Hanul, nor any attorney working for Hanul had authorization or appointment from the Board of Regents or the South Dakota State Attorney General's office to represent SDIBI or the Board of Regents. Mr. Bollen did not have such authorization or appointment, either. No contract authorizing Mr. Kim to represent the State of South Dakota or any of its agencies is on file with the South Dakota Attorney General. Neither Hanul nor any of its attorneys were authorized to accept service of process on behalf of the Board of Regents or the State of South Dakota. Long Dec., pg. 2, ¶ 6, lines 5-9, ¶ 7; Perry Dec., pg. 2, ¶ 8.

In contrast, James Lynch, who now represents the Board of Regents and its constituent part, the SDIBI, has entered into a legal services contract with the Board of Regents and has received a special appointment from the State Attorney General's office for this purpose. Long Dec., pg. 2, ¶ 8; Ex. 4.

In order to commence an action against the SDIBI or the Board of Regents, Petitioner Darley International, LLC ("Darley") was required by South Dakota law to serve both South Dakota's Governor and Attorney General.[2] There is no evidence on record that either has ever been served with process in this action; in fact, the South Dakota Attorney General has no record of such service. Long Dec., pg. 1, ¶ 3; Perry Dec., pg. 2, ¶ 6; Shekleton Dec., pp. 1-2, ¶¶ 6-7.

In July 2008, Darley petitioned this Court to compel the SDIBI to participate in binding arbitration pursuant to a contract arbitration clause between Darley and Hanul. Darley incorrectly pleaded that the SDIBI was a non-profit organization "affiliated" with NSU. As the undisputable evidence supporting this motion makes clear, the SDIBI is actually part of the State of South Dakota. Further, Darley has not filed any documents with this Court indicating that a Summons was served on any person or that service was effected in compliance with the

[2] "If the action is against the state or any of its institutions, departments, or agencies, by service upon such officer or employee as may be designated by the statute authorizing such action, and upon the attorney general. ... In all matters other than those involving title to such lands, if no officer or employee is designated, then upon the Governor and the attorney general." *SDCL* § 15-6-4(d)(5). There is no State statute designating another person to accept service of process for the Board of Regents.

requirements of Rule 4 of the Federal Rules of Civil Procedure.

Through its own inquiries, the Board of Regents has learned that a deputy sheriff in Brown County (South Dakota) delivered a copy of some documents to Ms. Brick in August 2008, but without a Summons. Brick Dec., pg. 1, lines 13-16, ¶ 4; Bollen Dec., pp. 2-3, ¶¶ 7, 10. In August 2008, Hanul, which was not then a counsel of record, filed a "pro per" opposition to the Petition by the SDIBI bearing Mr. Bollen's signature. In September 2008, Mr. Kim filed a request to substitute into the action as the SDIBI's attorney, which this Court approved. Mr. Kim subsequently "represented" the SDIBI before this Court at the hearing on Darley's Petition on October 6, 2008.

On October 7, 2008, this Court ordered the SDIBI to participate in the arbitration between Darley and Hanul (the "Order"), thereby exposing the SDIBI and, unbeknownst to the Court, the Board of Regents to liability under Hanul's contract with Darley. The SDIBI, again "represented" by Mr. Kim, subsequently participated in an unsuccessful mediation in December 2008. Bollen Dec., pg. 2, ¶ 6; Ex. 3.

Throughout the time of the foregoing events, Mr. Bollen purposefully avoided informing attorneys for NSU, the Board of Regents, or the State of South Dakota that these events were taking place, and he continued to withhold this information from them until January 23, 2009, when he concluded that he could not make the matter go away with just the assistance of Hanul. On that date, he contacted John Meyer, the University attorney for NSU, about the problem and, while he forwarded some documents relating to the arbitration, did not mention a lawsuit. On January 27, 2009, Mr. Meyer, having reviewed the documents and become suspicious that a lawsuit might be involved, instructed Mr. Bollen to bring him more documents related to the dispute, which revealed to Mr. Meyer the instant action but not this Court's Order. Notably absent from Mr. Bollen's documents was a Summons. Meyer Dec., pp. 1-2, ¶¶ 4-5; Bollen Dec., pp. 1-3, ¶¶ 4-10; Brick Dec., pg. 1, lines 13-16, ¶ 4.

Neither the South Dakota Attorney General's office nor the Board of Regents had any knowledge of the existence of this action until January 27, 2009, and then only after Mr. Bollen spoke to Mr. Meyer. Having spoken to Mr. Bollen and seen some of the court documents, Mr.

Meyer immediately notified James Shekleton, the General Counsel for the Board of Regents, of what Mr. Bollen had told him. Bollen Dec., pg. 2, ¶ 8; Shekleton Dec., pg. 1, lines 18-23, ¶ 5; Meyer Dec., pg. 2, ¶ 6; Perry Dec., pg. 2, ¶ 6. This Court's Order was discovered shortly thereafter. Meyer Dec., pg. 2, lines 1-3, ¶ 5.

Mr. Shekleton thereafter searched for and retained California counsel to defend this matter, leading to the filing of this Motion. Shekleton Dec., pg. 1, lines 21-25, ¶ 5.

ARGUMENT

I.

28 U.S.C. SECTION 1332(a) CONFERS NO JURISDICTION OVER CONTRACT OR TORT CLAIMS BROUGHT AGAINST THE SOUTH DAKOTA BOARD OF REGENTS, THE INSTITUTIONS THAT IT CONTROLS, OR THE ORGANIZATIONAL SUBUNITS OF THE INSTITUTION.

This Court's jurisdiction over the Plaintiff's underlying contract and tort claims exists only pursuant to 28 U.S.C. § 1332(a)(1), which authorizes federal jurisdiction over matters involving "citizens of different States."

The burden of proving all jurisdictional facts rests on the party seeking jurisdiction. *Kanter v. Warner-Lambert Co.,* 265 F.3d 853, 857-58 (9th Cir. 2001); *Befitel v. Global Horizons, Incorporated*, 461 F.Supp.2d 1218, 1221 (D.Haw. 2006). Diversity jurisdiction is to be strictly construed. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 377, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978) ("The policy of the statute conferring diversity jurisdiction upon the district courts calls for its strict construction.") *Thomson v. Gaskill*, 315 U.S. 442, 446, 62 S.Ct. 673, 86 L.Ed. 951 (1942); *Healy v. Ratta*, 292 U.S. 263, 270, 54 S.Ct. 700, 78 L.Ed. 1248 (1934); *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 723 (9th Cir. 2008).

Although a state, or its alter ego, may waive its Eleventh Amendment privilege, neither state nor alter ego can create diversity jurisdiction. *Fifty Associates v. Prudential Insurance Company of America,* 446 F.2d 1187, 1192 (9th Cir. 1970). "It matters not that the propriety of the diversity of citizenship was raised for the first time on appeal, because subject matter jurisdiction is 'non-waivable and delimits the power of federal courts.'" *McDonal v. Abbott*

Laboratories, 408 F.3d 177, 182 (5th Cir. 2005), quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999); *see, also, Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006) ("subject-matter jurisdiction, because it involves the court's power to hear a case, can never be forfeited or waived") (quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)). When a federal court concludes that it lacks subject matter jurisdiction, the court must dismiss the complaint in its entirety. *Arbaugh*, 546 U.S. at 514.

States are not citizen for purpose of 28 U.S.C. § 1332(a)(1). *Moor v. County of Alameda*, 411 U.S. 693, 717, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973) ("There is no question that a State is not a 'citizen' for purposes of the diversity jurisdiction."). In *South Dakota Board of Regents v. Hoops*, 624 F.Supp 1179 (D.SD 1986), the District Court of the District of South Dakota remanded a declaratory judgment action back to state court concluding it lacked diversity jurisdiction since the Board of Regents was an arm or alter ego of the State of South Dakota. The analysis by the district court in reaching its conclusion that the Board of Regents is an arm or alter ego of the State is compelling.

In *Hoops*, the district court found that the Board of Regents' corporate form did not preclude the finding the Board of Regents to be an arm or alter ego of the State because, ultimately, the Board of Regents lacked financial autonomy from the State. The district court <u>also</u> found that the Board of Regents' capacity to sue and be sued in its own name did not constitute a waiver of its Eleventh Amendment immunity. *Id*, at 1181-1183. Respondent respectfully requests that the Court follow the holding in *Hoops* in reviewing the merits of its motion.

In like guise, in *Prostrollo v. Univ. of South Dakota,* 507 F.2d 775 (8th Cir. 1974), *cert. denied,* 421 U.S. 952 (1975), *sua sponte,* the Eighth Circuit Court of Appeals found that the district court erred in accepting jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1343 because the University of South Dakota and the corporate body constituting the Board of Regents were both political subdivisions of the state. *Prostrollo,* 507 F.2d at 777.

It follows from *Prostrollo* that NSU and the Board of Regents should be treated in the

same fashion when a federal court is determining whether it may take jurisdiction over a dispute. Since the SDIBI is merely an administrative unit created by the Board of Regents and operating within NSU under Board of Regents control, Perry Dec., ¶ 4, it follows, further, that the SDIBI should be treated for purposes of determining jurisdiction in the same fashion as the university and its governing board.

Based upon the foregoing authorities, this Court may not accept jurisdiction over the SDIBI, NSU or the Board of Regents, since none is a citizen for purposes of 28 U.S.C. § 1332. Moreover, under *Fifty Associates* no action by Mr. Bollen or by Hanul, even assuming *arguendo* authority that they patently lacked, could have created jurisdiction in this case. *Fifty Associates,* 446 F.2d at 1192.

II.

THIS COURT HAS NO JURISDICTION OVER AN ENTITY WHICH IS AN ALTER EGO OR ARM OF A STATE AND SHARES ITS ELEVENTH AMENDMENT IMMUNITY.

This Court lacks jurisdiction over the SDIBI as it shares the State of South Dakota's Eleventh Amendment immunity.

The Eleventh Amendment to the U.S. Constitution states:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI.

The Eleventh Amendment deprives the federal courts of jurisdiction over suits against a State that are based on diversity of citizenship. Indeed, precluding federal court jurisdiction over non-consenting states was the purpose of the adoption of the Amendment. *Seminole Tribe v. Florida*, 517 U.S. 44, 69-70, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) (("The text [of the Eleventh Amendment] dealt in terms only with the problem presented by the decision in *Chisholm*; in light of the fact that the federal courts did not have federal question jurisdiction at the time the Amendment was passed (and would not have it until 1875), it seems unlikely that

much thought was given to the prospect of federal-question jurisdiction over the States.").

Thus, if the SDIBI is an alter ego or arm of the State of South Dakota, the state is the real party in interest. Consequently, the SDIBI is neither a "citizen" for purposes of this Court's diversity jurisdiction nor is it subject to this Court's jurisdiction for the claims raised by Darley, per the Eleventh Amendment. This Court, having no jurisdiction in either event, was compelled to dismiss Darley's Petition for lack of jurisdiction instead of ruling on its merits.

III.

BECAUSE THE SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE IS PART OF THE SOUTH DAKOTA BOARD OF REGENTS, THIS COURT'S JURISDICTION IS PRECLUDED AND THE COURT'S ARBITRATION ORDER WAS VOID.

The sole basis for jurisdiction in this case is diversity of citizenship; indeed, no federal law-based claims have been pleaded. Consequently, because this Court lacks jurisdiction over an arm of the State of South Dakota it had no jurisdiction and no authority to issue its Order to the SDIBI if the SDIBI, as the Board of Regents, is an alter ego or arm of the state.

The SDIBI is an alter ego or arm of the State of South Dakota because it exists purely as a component of the Board of Regents. NSU is part of the South Dakota public system of higher education, over which the Board of Regents presides. The SDIBI has no greater legal capacity to distinguish itself from or the Board of Regents than the NSU Department of Political Science, the NSU College of Business, or NSU itself. Lastly, the SDIBI's funds ultimately belong to NSU, the Board of Regents, and, therefore, the State of South Dakota, and a judgment against the SDIBI would be paid from State funds. Consequently, the SDIBI is not a "citizen" within the meaning of 28 U.S.C. § 1332 and this Court has no diversity jurisdiction over the matter or the SDIBI. *Moor, supra; Hoops, supra*, 624 F. Supp at 1181, 1184-1185.

An order issued by a federal court in excess of its subject matter jurisdiction is void. *Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985).

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IV.

THE ACTIONS OF JOOP BOLLEN AND AUSTIN KIM COULD NOT WAIVE THE ELEVENTH AMENDMENT IMMUNITY OF THE STATE OF SOUTH DAKOTA OR THE SOUTH DAKOTA BOARD OF REGENTS.

Since the SDIBI is in fact the South Dakota Board of Regents and it is indisputable that this Court lacks jurisdiction over the Board of Regents, Darley's only remaining argument is that the Board of Regents or the State of South Dakota waived their Eleventh Amendment immunity by consenting to this Court's issuance of the Order. Of course, no such consent is evident on these facts. Indeed, it is impossible for there to have been a waiver.

Section 3-21-10 of the *South Dakota Codified Law* explicitly prohibits any officer or agent of the State from waiving the State's immunities in federal court:

> "Immunity from lawsuits in courts of other jurisdictions. No waiver of state immunity by statute or, where permitted, by any officer or agent of the state may constitute or be interpreted as a waiver of the state's immunity from lawsuits in federal court or the courts of any jurisdiction other than the South Dakota Unified Judicial System." *SDCL* § 3-21-10.

This explicit prohibition of a waiver aside, neither the South Dakota Attorney General nor any executive or attorney for the Board of Regents has consented to this Court's jurisdiction or otherwise waived sovereign immunity; indeed, the record in this case shows that they have never been served and were not involved in the proceedings until now. Thus, any consent or waiver argument by Darley necessarily has to be that Mr. Bollen or Mr. Kim, the only two persons who ever "appeared" in this action in 2008, consented to jurisdiction, thereby waiving the immunity.

Mr. Kim was never authorized to represent the Board of Regents or South Dakota and so he could not have consented to or waived anything on their behalf. Under South Dakota law, an attorney must be a deputy or assistant attorney general, or have contracted in writing with a State entity to represent the entity, filed the contract with the State Attorney General, and received an appointment as a special assistant attorney general in order to act on behalf of any South Dakota

State entity. SDCL §§ 1-11-15, 1-11-5. Mr. Kim was never so employed, appointed, or retained by contract with the Board of Regents or the State of South Dakota. There is no contract on file with the State Attorney General. James Lynch, on the other hand, has received such an appointment, hence his authority to make this motion—but he has not consented to this Court's jurisdiction or waived immunity. Ex. 4. There is no evidence that the Board of Regents or the South Dakota Attorney General's Office were even aware that Mr. Kim was purporting to serve as their representative in September/October 2008, let alone retaining him.

Mr. Bollen, while delegated certain authority to perform the duties of Director of the SDIBI, had no authority to act on behalf of the Board of Regents or South Dakota, appear in this action on their behalf, or take any action that would affect their legal interests. Like Mr. Kim, Mr. Bollen has never received an appointment as a special assistant attorney general. As with Mr. Kim's actions, Mr. Bollen's actions were unknown to the Board of Regents or the South Dakota Attorney General's office prior to 2009. These facts compel the conclusion that Mr. Bollen did not and could not consent to this Court's jurisdiction or waive the State's or the Board of Regents' immunity.[3]

Even if Eleventh Amendment immunity could be waived by Mr. Kim or Mr. Bollen, however, this Court's subject matter jurisdiction cannot be established through waiver or consent. The Court's subject matter jurisdiction is constitutionally limited; diversity is a form of subject matter jurisdiction. *Hill v. Blind Industries and Services of Maryland*, 179 F.3d 754, 757 (9th Cir. 1999); *Hoops, supra*, 624 F. Supp. at 1184-1185; *Healy, supra, McDonal, supra, Ruhrgas, supra*. Parties cannot confer subject matter jurisdiction upon a federal court in excess of the court's constitutional reach. *Hill, supra; Arbaugh, supra*. Thus, this Court cannot acquire diversity jurisdiction over Darley's state law claims by a purported "consent" to jurisdiction by

[3] Indeed, Mr. Bollen is not an attorney and he is not admitted to the bar of this Court. Bollen Dec., pg. 1, ¶ 3. Corporations and unincorporated associations must appear in court through licensed attorneys, however. They may not be represented by a non-attorney. *In re America West Airlines*, 40 F.3d 1058, 1059 (9th Cir. 1994) (citing *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993)). Mr. Bollen was not sued in his personal capacity and he could never have lawfully have represented the SDIBI before this Court, so there was no authority for him to properly file an opposition brief for the SDIBI or make a request to appear on the SDIBI's behalf telephonically. Mr. Kim did not purport to substitute into the case until the end of September 2008, only about a week before the Court issued its Order.

Mr. Bollen or Mr. Kim, or even by the Board of Regents itself, where in fact diversity does not exist. While a state or its arm/alter ego may waive its Eleventh immunity, it cannot create diversity jurisdiction. *Fifty Associates, supra*, 446 F.2d at 1192.

As previously noted, the Board of Regents, acting as the SDIBI, is not a "citizen," as matter of law. It cannot consent to become a citizen so as to create subject matter jurisdiction that does not exist in this Court.

V.

THE ACTIONS TAKEN IN THIS CASE IN 2008 FALL WITHIN THE PROVISIONS OF SUBDIVISIONS (1), (3), (4), AND (6) OF SUBDIVISION (b) OF RULE 60.

A. The Order Was Obtained Through The Mistake Of All Involved, Which Did Not Include The Board Of Regents.

The circumstances under which this Court's Order to the SDIBI was procured constituted mistake. Fed. R. Civ. P. 60(b)(1). Mr. Bollen was clearly mistaken in his belief that he could retain legal counsel in violation of South Dakota law, Darley was mistaken in its belief that it could sue the SDIBI in its own name and in federal court, and Hanul mistakenly believed it could appear on behalf of the SDIBI. Under South Dakota law, neither Mr. Bollen nor Hanul were legally authorized to accept service of process or appear on behalf of the SDIBI or the Board of Regents in this action; the direct consequence was total failure to raise defenses that would have commanded the dismissal of this action.

Had any one of these parties understood it was mistaken, the Court would have immediately known it lacked jurisdiction and would not have issued the Order.

B. The Board Of Regents Was Justifiably Surprised By The Order.

The issuance of the Order understandably came as a surprise to the Board of Regents (Fed. R. Civ. P. 60(b)(1)), which did not become aware of this action until well after the Order was issued and the time to appeal had expired.[4] Darley's failure to properly ascertain the nature

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[4] The time to appeal expired on November 6, 2008, 30 days after the entry of this Court's Order. Fed. R. App. P. 4(a)(1)(A).

of the entity it was suing and Hanul's unauthorized, unknown "representation" of the SDIBI directly caused this surprise.

C. To The Extent It Can Even Be Argued That The Board Of Regents Was Negligent, Such Neglect Was Excusable.

The Board of Regents' failure to raise the appropriate jurisdictional defenses was clearly excusable in light of its ignorance of the existence of this action. Fed. R. Civ. P. 60(b)(1).

"[T]he determination of whether neglect is excusable depends on at least four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1223-1224 (9th Cir. 2000) (citing *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993)). Ultimately, whether neglect is excusable is an equitable determination. *Id.*

Applying the factors to the instant case, first, there is no danger of prejudice to Darley. Darley never had a right to receive the Order, as this Court never had jurisdiction. Darley would be no worse off by the grant of relief under Rule 60 than it was at the outset of the case: heading to an arbitration involving only Darley and Hanul.

Second, the length of the delay and its potential impact on these proceedings is irrelevant, as the Petition ought to have been dismissed in October and the case should have ended on that note. As to the impact on the arbitration, Darley had no right to include the Board of Regents or the SDIBI in that proceeding and it may still proceed against Hanul, so it is no worse off than it should have been in the first instance.

Third, the reason for the delay ought to favor the Board of Regents. They never had the opportunity to join this action and raise proper defenses, due in large part to Darley's own failure to properly describe the relationship of the SDIBI to the Board of Regents.

Lastly, the Board of Regents is acting in good faith for the reasons already stated; it certainly could not have previously acted in bad faith, never having been advised of the instant action before all of the deadlines expired.

The equities and the highly unusual circumstances favor granting relief to the Board of Regents.

D. Darley's Misrepresentation To The Court About The SDIBI's Form Of Existence Led Directly To The Issuance Of The Order.

The circumstances under which the Order was procured also demonstrate misrepresentation by Darley to this Court. Fed. R. Civ. P. 60(b)(3). Whether intentionally or negligently, Darley misrepresented the nature of the SDIBI by portraying it as an independent, private actor when in fact it is the Board of Regents. That misrepresentation was material, in that this Court would have to have dismissed the case had Darley properly stated the SDIBI's nature. Moreover, Hanul, whose potential interest in shifting liability to the SDIBI was in direct conflict with the Board of Regents' interest in avoiding liability, misrepresented its authority to represent the SDIBI to this Court, resulting in an Order detrimental to the Board of Regents' and the SDIBI's interests.

E. The Order Is Void Because This Court Lacked Jurisdiction.

As has been previously discussed, this Court's judgment is void for lack of jurisdiction. A motion under Rule 60 is the appropriate means for vacating a void judgment. *Watts, supra,* 752 F.2d at 409; Fed. R. Civ. P. 60(b)(4). Further for reasons stated previously, the SDIBI's lack of citizenship and the resulting lack of diversity jurisdiction is an additional basis for vacating the Order.

While the Court has discretion whether to rule favorably on a Rule 60(b) motion as to most of the grounds stated therein, it has no such discretion if its Order is void for lack of jurisdiction. In that circumstance, it is required to grant relief from the Order. *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, et al.*, 614 F.2d 1247, 1255-1256 (9th Cir. 1980) (ruling on a default judgment taken without personal jurisdiction over defendant).

F. If No Other Cause For Relief Is Found To Exist, The Order Should Be Dismissed For Equitable Reasons.

If for no reason other than fairness, this Court must grant relief. Fed. R. Civ. P. 60(b)(6). Although courts rarely issue relief under the 'savings clause' of (b)(6), it is "used sparingly as an

equitable remedy to prevent manifest injustice" and "is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.3d 1047, 1049 (9th Cir. 1993)).

The circumstances in the instant action are extraordinary, such that they meet the narrow standard of Rule 60(b)(6). Darley sued an entity that lacks the capacity to be sued, without notice or service of a Summons to the actual entities possessing such capacity and which would be financially responsible for any arbitration award against the SDIBI; neither the Board of Regents nor the State of South Dakota were represented by counsel retained in accordance with South Dakota law, which means they were in fact unrepresented; as a direct result, this Court issued an Order against a party which was not served, not aware of Darley's Petition, and not even aware of the instant action or the Order until late January 2009.

The unfairness of this situation was compounded by the fact that Hanul, the SDIBI's purported representative, disregarded a glaring conflict of interest and provided incompetent representation. Competent counsel representing a State entity would have at least raised the Eleventh Amendment and diversity jurisdictional issues.

The adverse, prejudicial impact of the foregoing actions is patent: the time for appeal expired months before the Board of Regents even knew it had been sued. This Court simply cannot allow Darley (and Hanul) to be rewarded under these circumstances, when the Court never had jurisdiction. Surely the circumstances surrounding this action constitute equitable grounds for relief from the Court's Order, which was procured under false premises.

VI.

THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE DARLEY HAS NOT SERVED THE RESPONDING PARTY WITH PROCESS IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE.

Section 4 of title 9 of the U.S. Code provides that this Court may consider and rule upon a petition to compel arbitration if the Court would, but for the arbitration agreement, have jurisdiction under title 28 of the U.S. Code. 9 U.S.C. § 4. Darley's Petition relied upon this

statute and the diversity jurisdiction provisions of section 1332 of title 28 to invoke this Court's jurisdiction over SDIBI.

Section 4 of title 9 requires a petitioner to serve the petition in the manner provided in the Federal Rules of Civil Procedure. 9 U.S.C. § 4. Rule 4(c)(1) and 4(j)(2) of the Federal Rules of Civil Procedure require that a Summons and complaint (in this case, a Summons and the Petition) be served together on a State entity by either serving the Chief Executive Officer of the entity or in compliance with the rules of that State. Fed. R. Civ. P. 4(c)(1), (j)(2). The Chief Executive Officer of the State of South Dakota at all relevant times has been Governor M. Michael Rounds. The Chief Executive Officer of the Board of Regents at all relevant times has been Robert T. Perry, Ph.D. As previously noted, South Dakota's laws concerning service of process against State entities require service upon its Governor and Attorney General in this matter.

The Court's record in this case is devoid of proof of service of a Summons upon *anyone*, let alone Governor Rounds, Dr. Perry, or Attorney General Long. Even if service upon the SDIBI through Ms. Brick or Mr. Bollen may be implied, it would not show compliance with Rule 4 because they are not Governor Rounds, Dr. Perry, or Attorney General Long; moreover, no Summons was served upon Mr. Bollen or Ms. Brick.

The failure of a plaintiff to properly serve a responding party in accordance with Rule 4 deprives a District Court of personal jurisdiction over the responding party. *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982). It does not matter whether the party had actual notice of the proceedings. The failure to comply with Rule 4 is fatal to jurisdiction. *Id.*

Since this Court lacked jurisdiction because there was no lawful service of process upon the State of South Dakota or the Board of Regents and no service whatsoever of the Summons in compliance with Rule 4, its Order is void. *Veeck v. Commodity Enterprises, Inc.*, 487 F.2d 423, 426 (9th Cir. 1973) (default judgment void for lack of personal jurisdiction over defendant; Fed. R. Civ. P. 60(b)(4) motion to set aside judgment for failure to comply with Rule 4 ordered granted). The void status of the Order is therefore a basis for vacating the Order under Rule 60(b)(4).

CONCLUSION

For the foregoing reasons, Respondent South Dakota Board of Regents, doing business as the South Dakota International Business Institute, requests that this Court vacate its October 7, 2008, Order compelling the SDIBI to participate in the arbitration between Darley International, LLC, and Hanul Professional Law Corporation.

Dated: March 20, 2009

GARCIA CALDERÓN RUÍZ, LLP

By:_____
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Fax: (213) 347-0216

Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF LAWRENCE E. LONG IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER; EXHIBIT [FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, LAWRENCE E.LONG, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am the Attorney General for the State of South Dakota. I was first elected to this position in 2002 and was reelected in 2006. Prior to that, I served as Chief Deputy Attorney General for South Dakota from 1991 to 2002.

3. In order to sue the State of South Dakota or any agency there of, a plaintiff must serve the summons and complaint/petition in the matter upon the Attorney General as required by SDCL 15-6-4(d) and SDCL 21-32-9. The South Dakota Attorney General's Office has maintained a separate log of all such services of process since January of 2005; prior to that a log of such services of process was maintained with the incoming mail log.. Employees of the Attorney General's office regularly record entries in the log upon being served personally or upon signing an admission of service of process, in the ordinary course of performing their official duties. I am the custodian of records for the Attorney General's office and the aforementioned log. There is no record therein of service of any document upon the Attorney General's Office in the above-captioned action.

4. The Attorney General's Office has received information that South Dakota International Business Institute, located at Northern State University in Aberdeen, South Dakota, was established by the South Dakota Board of Regents and, under South Dakota law, the Institute has no independent legal capacity to sue or be sued.

5. The attorney general has the duty under SDCL 1-11-1(1) to represent the state in legal proceedings. As such, in order for a person to represent the State of South Dakota in litigation generally requires a legal services contract with the State under SDCL 1-11-15 and an appointment from the attorney general under SDCL 1-11-4 and SDCL 1-11-5. The Attorney General's Office maintains records of legal services contracts the State enters into with privately retained counsel as provided by SDCL 1-11-15. I am the custodian of these records. The Attorney General's Office also maintains records of assistant attorney general and special

assistant attorney general appoints made during my tenure as attorney general. An appointment can last no longer than the term of the attorney general. I am the custodian of these records.

6. Joop Bollen has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Joop Bollen to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Bollen has never been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Mr. Bollen has never been authorized by me or an authorized representative of my office to accept service of process, defend, or to appear in litigation for, the State of South Dakota.

7. Austin Su Ki Kim has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Mr. Kim to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Kim has never been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Mr. Kim has never been authorized by me or an authorized representative of my office to accept service of process, defend, or to appear in litigation for, the State of South Dakota. The foregoing statements about Mr. Kim are also true as to the Hanul Professional Law Corporation and any attorney working for Hanul.

8. Attached hereto as Exhibit 4 are true and correct copies of a contract between James R. Lynch and the South Dakota Board of Regents to perform legal services in the above-captioned action, and the appointment of Mr. Lynch as a special assistant attorney general.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February 2009, at Pierre, South Dakota.

Lawrence E. Long

AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

Section I. **Scope of Work:**

James R. Lynch agrees to provide legal services and represent BOARD OF REGENTS to defend the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development in court or arbitration proceedings brought by Darley International, LLC, against the South Dakota International Business Institute and the Hanul Professional Law Corporation.

Section II. **Payment Provisions:**

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars ($300.00). The total amount expended under this contract shall not exceed ($20,000.00).

Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. **Independent Contractor:**

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.

EXHIBIT
4 (3)

Section IV. **Hold Harmless and Indemnification:**

James R. Lynch agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. **Insurance:**

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. **Limitations Upon Legal Representation:**

It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. **Term of the Agreement:**

The term of this Agreement shall commence on January 30, 2009 and shall remain in effect through June 30, 2009.

Section VIII. **Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

EXHIBIT
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Section IX. **Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. **Agreement Not Assignable:**

This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII **Payments Include All Taxes:**

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

EXHIBIT
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Section XIV Conflict of Interest:

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

FOR SOUTH DAKOTA BOARD OF REGENTS:

Robert T. Perry

Dated: 2/4/09

JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP

James R. Lynch

Dated: 2/3/09

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 2/4/09

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

Jeffrey P. Hallem

Dated: 2/5/09

The foregoing Agreement is hereby approved as to form.

Post-it® Fax Note 7671	Date	# of pages ▶
To Jim Shekleton	From John Meyer	
Co./Dept. BOR	Co.	
Phone #	Phone # 626-2521	
Fax # 773-2422	Fax #	

EXHIBIT 4 (6)

Approved as to Form
Larry Long

by JPKAAG

Larry Long
Attorney General

Dated: 2/5/09

EXHIBIT
4 (7)

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

EXHIBIT
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B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.

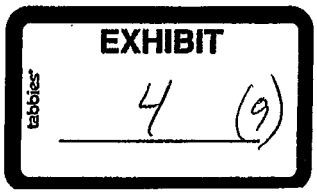
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to



information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of $50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of $50,000.

EXHIBIT
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E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

EXHIBIT

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Office of Attorney General
State of South Dakota

I, Larry Long, Attorney General of the State of South Dakota, do hereby appoint **JAMES R. LYNCH** of Los Angeles, California, to represent the Board of Regents in legal matters involving the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development concerning Darley International, LLC; to serve at the will of the Attorney General.

Dated this 5th day of February, 2009.

Larry Long
Attorney General

State of California)
: ss
County of Los Angeles)

I, James R. Lynch, having been appointed as a Special Assistant Attorney General for the State of South Dakota, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and that I will faithfully and impartially discharge the duties of such office, and render a true account of all money, accounts, credits and property of any kind that shall come into my hands as such office and pay over and deliver the same according to law.

James R. Lynch

Subscribed and sworn to before me, a notary public, this 6th day of February, 2009.

Notary public/California

My commission expires:

(Seal)

CAROLYN DOMINGUEZ
COMM. # 1775068
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires Oct. 22, 2011

EXHIBIT
4 (12)

James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
GARCIA CALDERON RUIZ, LLP
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Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF JAMES F. SHEKLETON IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER** **[FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, JAMES F. SHEKLETON, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have been the General Counsel for the South Dakota Board of Regents. I have served in this capacity for nineteen years.

3. As the General Counsel, I am advised of and become involved in the handling of all litigation and legal disputes that involve the Board of Regents, the State universities of South Dakota, and their constituent colleges, schools, departments, institutes, and other bodies. I am also intimately familiar with the laws of South Dakota concerning the capacity of the Board of Regents and other State agencies to sue or be sued. I am also familiar with who is authorized to accept service of legal process on behalf of the Board of Regents.

4. The South Dakota International Business Institute (SDIBI) is a component of Northern State University (NSU), one of the universities over which the Board of Regents presides. The SDIBI was created by the Board of Regents in 1994. Although the Board of Regents has the legal capacity to sue and be sued, by virtue of section 13-49-11 of the South Dakota Codified Laws, neither NSU nor the SDIBI have been granted such authority by the State of South Dakota or by the Board of Regents.

5. I first learned that the SDIBI had become involved in litigation and an arbitration with Darley International, LLC, on January 27, 2009, when John Meyer, the campus-based attorney at NSU, contacted me to inform me that he had just learned of this from Joop Bollen, the SDIBI's Director. The first time that I saw any document in connection with the above-captioned matter was on January 27, 2009, when I first saw this Court's Order compelling the SDIBI to participate in an arbitration with Darley. I immediately began to find California counsel and first spoke to James Lynch, a former attorney for the California State University system, on January 29, 2009.

6. Mr. Bollen is not authorized to accept service of process on behalf of the Board of Regents. Indeed, South Dakota law makes no provision for service of process on any person acting for the Board of Regents other than the Governor and the Attorney General. SDCL § 15-

6-4(5). Insofar as anyone would be characterized as a Chief Executive Officer within the Board of Regents, Mr. Bollen would not be so characterized, not even as to the SDIBI. Dr. Robert T. Perry, the Board of Regents' Executive Director, would be characterized as the Board of Regents' chief executive officer; Dr. Laurie S. Nichols, Interim President of Northern State University, could be characterized as the chief executive officer of that institution. In the past, I have generally been advised within two days of any attempt at service of process upon these persons.

7. As of my execution of this declaration, I have not been advised that any Summons or other document in the above-captioned matter has been served upon Dr. Perry or Dr. Nichols.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February 2009, at Pierre, South Dakota.

James F. Shekleton

James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
Los Angeles, California 90071
Tel: (213) 347-0210
Fax: (213) 347-0216

Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF ROBERT T. PERRY, Ph.D., IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER; EXHIBITS [FRCP Rule 60(b)** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, ROBERT T. PERRY, Ph.D., declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am, and at all material times have been, employed by the South Dakota Board of Regents on a regular basis, full-time, as its Executive Director.

3. My official responsibilities include various aspects of supervision of the six state universities governed by the South Dakota Board of Regents pursuant to the provisions of article XIV, § 3, of the South Dakota Constitution and section 13-49-1 of the South Dakota Codified Laws. Northern State University (NSU) numbers among these institutions. SDCL § 13-59-1 and § 2, of chapter 114 of the 1901 Session Laws.

4. I also serve as custodian of all the official minutes of the South Dakota Board of Regents. Among the matters set forth in the Board minutes is an official action taken by the Board of Regents at its May 4-5, 1994 meeting, to establish the Northern State University International Business Institute, also known as the South Dakota International Business Institute (SDIBI). Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Minutes of the South Dakota Board of Regents, May 4-5, 1994, pp. 558, 999 through 1004.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Board minutes reflecting an official action taken by the Board of Regents at its December 9 - 10, 2003 meeting (pp. 3002, 3632, 3649-3650), to amend its official mission statements to remove references to all centers and institutes at all universities under its control from such official mission statements. This action did not repeal the 1994 authorization to operate the SDIBI as an administrative unit within NSU. It merely eliminated from Board policy statements enumerations of academic centers and public service programs that, in the case of some institutions, had grown to inordinate length. The revisions to Board Policy No. 1:10:6 (D) shown on page 3650 of the Minutes of the South Dakota Board of Regents, December 9 - 10, 2003 meeting, document the revision and confirm that the institute approved in 1994 had come to be known as the South Dakota International Business Institute.

6. I had no knowledge of the existence of the above-captioned action, or the dispute leading to it, or any Order or action resulting therefrom, until January 27, 2009, when James F. Shekleton informed me of it. I have never been served with a Summons or any other document in the above-captioned action.

7. The SDIBI does not have any capacity to sue or be sued that is independent of the Board of Regents. The Board of Regents has never authorized Joop Bollen or any SDIBI staff (including Cherri Brick) to accept service of process on behalf of the Board of Regents, NSU, or the SDIBI. Mr. Bollen has never served as an attorney for the Board of Regents, NSU, or the SDIBI. The Board of Regents has never authorized Mr. Bollen to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

8. The Board of Regents has never authorized the Hanul Professional Law Corporation, or any of its attorneys, to accept service of process on behalf of the Board of Regents. The Board of Regents has never authorized Austin Su Ki Kim, the Hanul Professional Law Corporation, or any attorney working for Hanul to accept service of process on behalf of the Board of Regents, NSU, or the SDIBI. Neither Mr. Kim nor any other attorney working for Hanul has served as an attorney for the Board of Regents, NSU, or the SDIBI. The Board of Regents has never authorized Mr. Kim, Hanul, or any of Hanul's attorneys to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

9. The Governor's Office of Economic Development is a state agency operating within the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. The Governor's Office of Economic Development operates with the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector

to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. Pursuant to that charge, the Governor's Office of Economic Development entered into a Letter of Agreement with NSU to provide funding to support the SDIBI. The SDIBI receives primary support from state funds paid to it through its contract with GOED or from some $100,000 allocated to it annually by NSU. Incidental income from seminars is deposited into accounts held by Northern Plains International Inc., a nonprofit corporation controlled by NSU, and such funds are disbursed to cover expenses that may not be compensable from state fund sources. In addition to its educational activities within the state, the SDIBI promotes export activities through providing trade leads, consulting and maintaining a directory of South Dakota exporters. The SDIBI also pursues foreign direct investment activities in South Dakota.

10. Were a court to permit a suit against the SDIBI in its own name and a money judgment were to be entered against the SDIBI, such judgment would be paid out of funds of the State of South Dakota.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February, 2009, at Pierre, South Dakota.

Robert T. Perry, Ph.D.

Management Information Systems on Inactive Status. He said the four actively enrolled students in the program are expected to graduate by August 1994, and no new students would be admitted to the program while it is on inactive status. Dr. Hillman said that USD plans to review the program in September of 1994 to determine if it should be reactivated.

IT WAS MOVED by Regent Wegner, seconded by Regent Lebrun to approve the USD request to place the Master of Science in Management Information Systems on inactive status effective March 5, 1994. All members voting AYE. The MOTION CARRIED. A copy of the request can be found on pages 995 to 998 of the official minutes.

NSU SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE

Dr. Hillman said that Northern State University has submitted a proposal for the South Dakota International Business Institute which replaces the existing International Business Center. He said that the Academic Affairs Council has discussed the proposal, and noted that they feel there is a need to develop more subjective criteria for the designation of "Institute" or "Center". Dr. Hillman stated that funding for the Institute is derived from some GOED sponsorship funds, and some student tuition.

Dr. Hutchinson stated that several years ago the campuses received a sum of money for the program through a grant from the Governor's Office of Economic Development. He added that it has been operating from those moneys, and they also receive some funds from offering workshops, seminars and conferences.

IT WAS MOVED by Regent Olsen, seconded by Regent Ritter to approve the NSU International Business Institute, which is also reflected in BOR Policy 1:10:6. All members voting AYE. The MOTION CARRIED. A copy of the proposal can be found on pages 999 to 1004 of the official minutes.

CHANGES OR MODIFICATIONS IN PROGRAMS

Dr. Hillman said the Academic Affairs Council and the Council of Presidents and Superintendents have reviewed and support the recommended changes or modifications to existing programs which includes the deletion of 20 majors, minors or options.

IT WAS MOVED by Regent Gienapp, seconded by Regent Olsen to approve the changes or modifications in programs as submitted by BHSU, DSU, NSU, SDSU, and USD. All members voting AYE. The MOTION CARRIED. A copy of background information can be found on pages 1005 to 1057 of the official minutes.

VTE MASTER'S PROGRAM

Dr. Hillman stated that the Board approved the curriculum and degree requirements of the cooperative MSEd in Vocational Technical Education requested by SDSU and DSU in October,

EXHIBIT
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SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: R - 3

DATE: May 5-6, 1994

****

SUBJECT: NSU South Dakota International Business Institute

Attached is a proposed charter for the South Dakota International Business Institute that has been submitted by Northern State University. This is a revision of the existing International Business Center. The Academic Affairs Council and the Council of Presidents and Superintendents have reviewed this request and support it.

Also attached is a copy of BOR Policy 1:10:6, Northern State University Mission Statement, which reflects this change.

****

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the NSU International Business Institute.

EXHIBIT
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Northern State University Proposal for Authorization of the South Dakota International Business Institute

Introduction:

Northern State University has a long-standing relationship with the Governor's Office of Economic Development (GOED), the South Dakota Department of Agriculture, and other state and federal agencies that further economic development and promote international business for South Dakota. Though these associations have existed informally, a need exists to more clearly define these relationships in order to better serve the needs of South Dakota.

As the global society becomes more of a reality in the business world, the institutions of South Dakota must evolve to meet the competition of tomorrow without exceeding the budgets of today. Accordingly, the South Dakota International Business Institute seeks to formalize these relationships and to embody the service assistance needed.

Mission:

The South Dakota International Business Institute will support state agencies and other organizations in their efforts to improve the economic climate in South Dakota by increasing international business activity leading ultimately to opportunities for quality jobs and economic prosperity for our citizens.

Objectives:

The objectives of the South Dakota International Business Institute include the following:

- Provide continuing education opportunities in international business through workshops, seminars, and conferences.
- Provide confidential consultation to South Dakota businesses planning or conducting business internationally.

EXHIBIT
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- Provide consultation and support to GOED in creating an international trade zone in South Dakota.
- Provide South Dakota businesses with indepth knowledge of the international business climate and procedures.
- Provide a 24 hour per day state-wide bulletin board service via modem, and potentially internet, to disseminate information at no cost to businesses throughout South Dakota.
- Provide South Dakota businesses with alternatives and recommendations regarding specific international projects.
- Provide students with practical experience by giving them an opportunity to solve, in team format, real life international business problems.
- Provide students with the opportunity to serve internships in organizations that are involved in international business, such as GOED, regional businesses, etc.
- Provide faculty with the opportunity to work closely with South Dakota businesses interested in international trade and to provide educational support required by these businesses.
- Provide the faculty an opportunity to work with international business students and to conduct teaching related research.
- Provide a means to improve and expand international business programs at all South Dakota educational institutes including K - 12, vocational, private, and regental institutions.
- Provide for the development of international business relationship among all regental institutions and foreign educational institutions.

Operations:

The Director of International Business operates the Institute under the guidance of the Dean of the School of Business. The director has a responsibility to achieve the objectives of the Institute and fulfill its mission. To assist the director, a secretary provides administrative support 20 hours per week.

EXHIBIT
tabbies
1 (7)

Facilities:

The International Business Institute occupies offices in Lincoln Hall on the Northern State University campus with access to the facilities and personnel of the university.

Cost Estimates:

Salary	$38,000
Travel	2,500
Student Labor	6,000
O&M	7,500
Total	$54,000

It is expected that international business workshops, seminars, and conferences will be revenue generating activities.

EXHIBIT
tabbies
1 (8)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Northern State University Mission Statement

NUMBER: 1:10:6

The role of Northern State University is that of a liberal arts university providing programs in the arts and sciences, education, business, and the fine arts with special emphasis on the preparation of students for careers in business and education. Complementing these programs are pre-professional, one and two-year terminal, and junior college programs in fulfillment of its responsibility for college transfer programs in northeastern South Dakota. Degrees are authorized at the associate, baccalaureate, and masters level.

The following curriculum is approved for the University:

A. Baccalaureate programs in the arts and sciences, fine arts, business, technology, and education; associate degree programs in business, commercial art, criminal justice studies, general studies, industrial technology, office administration, and social services and pre-professional programs (one- and two-year) in pre-architecture, pre-chiropractic, pre-engineering, pre-journalism, and pre-mortuary.

B. Masters programs in education.

C. Research, creative activity, and scholarship, as activities incumbent to the university community, are an integral part of the task of the faculty. Since the role of the university is primarily teaching, the central focus of research is in support of teaching, including primary research in areas related to professional preparation, and the fulfillment of the institution's service function.

D. With other campuses in the Regental System, Northern State University shares responsibility for continuing education and public service consistent with its programmatic authorizations in A and B above by acting as a resource to a diverse group of agencies, businesses and educational institutions within its region.

EXHIBIT
1 (9)

E. Services through the following approved centers and organizational units:

~~International Business Center~~
Small Business Institute
Environmental Education Center
Reading Center
Writing Center
Mathematics Center
Elementary and Secondary Science Teaching Center
~~South Dakota International Business Institute~~

SOURCE: BOR, March 21-22, 1991

EXHIBIT
1 (1a)

Exhibit II

CONSENT CALENDAR

IT WAS MOVED by Regent Morris, seconded by Regent Nef to adopt the items on the consent calendar with the exception of item #X-7 Higher Education Facilities Fund. All members voting AYE. The MOTION CARRIED.

The following items were adopted:

The University Mission Statement Policy Revisions

A copy of the Mission Statements can be found on pages 3632 to 3650 of the official minutes.

BOR Policy 2:4 Registration

A copy of the Registration policy can be found on pages 3651 to 3652 of the official minutes.

BOR Policy 2:5 Transfer of Credit

The Transfer of Credit policy can be found on pages 3653 to 3664 of the official minutes.

BOR Policy 2:6 Academic Calendar

The Academic Calendar policy can be found on pages 3665 to 3669 of the official minutes.

BOR Policy 2:10 Grades and Use of Grade Point Averages

A copy of Policy 2:10 can be found on pages 3670 to 3676 of the official minutes.

BOR Policy 2:23 Certificate Programs and Certificates of Recognition

A copy of Policy 2:23 can be found on pages 3677 to 3678 of the official minutes.

BOR Policy 6:3 Higher Education Facilities Fund

Regent Jewett said that in the past years, the Board has tried to maintain an unobligated cash balance in the HEFF account of at least $1.0M In discussions about the next ten-year capital plan and in looking at the HEFF cash flows, the question arose about a reserve requirement. Several Regents have indicated an interest in raising the cash balance to $2.0M

IT WAS MOVED by Regent Nef, seconded by Regent Venhuizen to approve the policy as written, leaving the unobligated cash balance at $1.0M.

Mr. Kramer indicated that the Board has the prerogative if there were to be a cash drop or if we were to lose a building, to take money out of the M&R allocation. The statute only states

EXHIBIT
tabbies
2 (11)

SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: X-1

DATE: December 9-10, 2003

****

SUBJECT: University Mission Statement Policy Revisions

In May 2002, the Board approved a revised mission statement format that focused on mission and removed the listing of programs, centers, and public services. As part of this revision, an institutional profile statement is to be developed that includes a more detailed explanation of university purpose as well as sections on scholarship, public service, continuing education, and off-campus delivery. The institutional profile statement is to be posted on the university web site by the end of May 2004.

The revised mission statements for each University are included in the attached files:

- Attachment I – BOR Policy 1:10:1 University of South Dakota
- Attachment II – BOR Policy 1:10:2 South Dakota State University
- Attachment III – BOR Policy 1:10:3 South Dakota School of Mines and Technology
- Attachment IV – BOR Policy 1:10:4 Black Hills State University
- Attachment V – BOR Policy 1:10:5 Dakota State University
- Attachment VI – BOR Policy 1:10:6 Northern State University

****

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the revisions to BOR policies, 1:10:1 USD Mission Statement, 1:10:2 Mission Statement, 1:10:3 South Dakota School of Mines and Technology Mission Statement, 1:10:4 Black Hills State University Mission Statement, 1:10:5 Dakota State University Mission Statement, and 1:10:6 Northern State University Mission Statement.

EXHIBIT

2 (12)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Northern State University Mission Statement

NUMBER: 1:10:6

The legislature established Northern State University to meet the needs of the State, the region, and nation by providing undergraduate and graduate programs in education and other courses or programs as the Board of Regents may determine. (SDCL 13-59-1)

The Board implemented SDCL 13-59-1 by authorizing graduate and undergraduate programs in education to promote excellence in teaching and learning, to support research, scholarly and creative activities, and to provide service to the State of South Dakota, the region, and the nation. The Board approved a special emphasis on E-learning in the university curriculum and service.

Northern State University is a multi-purpose, regional institution of higher education, authorized for the people of South Dakota by the South Dakota Legislature. Founded as a normal and industrial school to serve the northern part of the state, The University has diversified its offerings to address the emerging needs of the students, community, and region. Teacher preparation remains an important feature of the institutional mission, as do programs in the arts and sciences, business, and fine arts. Through undergraduate and graduate programs, the university provides quality teaching and learning. Distance delivery technology is a core mission in all degree programs, especially all levels of teacher preparation. Offering students a breadth and depth in the liberal arts and in professional studies, the university develops effective and productive professionals and citizens. Further, the university creates and nurtures a community of students, faculty, and staff, supporting communication, student and faculty research, and professional growth. Northern State University has designed programs to meet academic, social, cultural, and economic needs of the community and area, providing lifelong learning opportunities, a center for the arts and recreation, and support for regional development.

The following curriculum is approved for Northern State University:

Curriculum

Degrees are authorized at the associate, baccalaureate, and masters levels.

The following curriculum is approved for the university.

A. **Undergraduate Programs**

Pre-professional one- and two-year terminal and junior college degree programs in the arts and sciences, fine arts, business, technology, and education.

EXHIBIT
tabbies
2 (13)

Associate degree programs in arts and sciences, business, education and fine arts.

Baccalaureate degree programs in arts and sciences, business, education, ~~technology, and~~ fine arts. ~~Northern State University enjoys unique authorization to offer a bachelor's degree in international business.~~

B. Graduate Programs

Masters degrees in education and E-learning.

~~Master of Science in Education degrees in E-learning Design and Instruction; Guidance and Counseling; Leadership and Administration; and Teaching and Learning.~~

~~Master of Science degree in E-learning Technology and Administration.~~

~~**C. Scholarship**~~

~~Scholarly and creative activities are conducted in all authorized disciplines consistent with the academic purposes of the institution.~~

~~**D. Public Service**~~

~~Services are offered through the following approved centers and organizational units: South Dakota International Business Center; Small Business Institute; Professional Development School; Environmental Education Center; Reading, Writing, and Mathematics Center; Elementary and Secondary Science Teaching Center; University Speech and Hearing Center; Northern State University Press; University Art Galleries; Center for Statewide E-learning.~~

~~**E. Continuing Education**~~

~~Continuing education opportunities, outreach, and public service to the state, regionally and internationally in concert with the approved programmatic authorization listed above.~~

~~**F. Off-Campus Delivery**~~

~~Off-campus delivery is provided throughout the state in designated mission areas, particularly through the Capital University Center in Pierre. An emphasis in electronic computer delivery has enhanced the sites and numbers of students served through off-campus delivery.~~

SOURCE: BOR, March 1991; BOR, May 1994; Access to Quality, May 1996; BOR, [illegible] 2001; BOR, December 2003.

EXHIBIT
2 (14)

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Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF JOHN MEYER IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER; EXHIBIT [FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, JOHN MEYER, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served as a Professor of Business Law at Northern State University (NSU) in Aberdeen, South Dakota. During the same time, I have also served part-time as a campus-based attorney for NSU. In my role as an NSU attorney, I normally would be aware of, and expect to promptly be notified of, any impending arbitrations or ongoing lawsuits naming NSU or SDIBI as a party.

3. The South Dakota International Business Institute (SDIBI) is physically housed at NSU. It and its Director, Joop Bollen, are listed in the NSU directory. True and correct copies of portions of the NSU web site directory listing Mr. Bollen and the SDIBI are attached hereto as Exhibit 5.

4. On January 22 or 23, 2009, Mr. Bollen called me on the telephone and asked me questions about whether someone who was not party to a contract could nevertheless be compelled to arbitrate the contract. On January 23, 2009, he sent me some documents by e-mail that I understood to relate to an arbitration between Hanual Professional Law Corporation and Darley International, LLC, which now also included the SDIBI. He had not previously advised me of any dispute involving these businesses and the SDIBI, or of any arbitration or litigation involving these parties.

5. By January 27, 2009, I had reviewed the documents that Mr. Bollen sent to me on the 23rd. I became concerned that this likely had involved litigation and instructed Mr. Bollen to provide me with additional documents. He suggested that I contact Hanul directly, but I insisted that he provide me with whatever he had. Later that day, he brought to me voluminous papers and documents relating to the impending arbitration. Mr. Bollen told me that he had deliberately not brought this dispute to my attention because he had been led to believe by attorneys from Hanul that this was a minor dispute that would be quickly resolved as to the SDIBI's participation. Although a Summons was not included in the documents Mr. Bollen provided to me on the 27th, it was nonetheless clear to me, in viewing those documents, that the SDIBI had

been sued. Additionally, this Court's October 7, 2008, Order was not among the documents; I did not see the Order until several days later, after attorneys for the Board of Regents obtained a fuller set of documents relating to the above-captioned matter.

6. On January 27, 2009, I informed James Shekleton, the Board of Regents' General Counsel, of what Mr. Bollen told me that day and of the apparent fact that the SDIBI had been involved in a lawsuit.

7. Although I work for NSU, my paychecks are issued on the account of the State of South Dakota.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 20th day of March, 2009, at Aberdeen, South Dakota.

John Meyer

John Meyer

DIRECTORY - OFFICES

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Office (Web site link) ✉ Email	Location	
Academic Advisement	Dacotah Hall, Room 202	2633
Academic Affairs	Spafford Hall, Room 203	7786
Admissions ✉	Dacotah Hall, Room 101	2544
Alumni Services ✉	Beckman Building, 620 15th Ave SE	2550
Aramark	Graham Hall, Room 2/2A	2928
Art Department ✉	Spafford Hall, Room 206	2514
Athletics/HPE	Barnett Center, Room 42	2488
Athletic Development	Beckman Building, Room 3	7744
Band Room	Johnson Fine Arts Center, Room 115	2501
Barnett Center Information		7734
Biology Prep Room	MeWaldt-Jensen, Room 202	2478
Biology Prep Room	MeWaldt-Jensen, Room 207	2380
Bookstore ✉	Student Center, Room 108	2655
Briscoe Hall – Hall Director Briscoe Hall – Desk Phone		2677 2680
Campus Activities Board	Student Center, Room 202	7806
Campus Police/Security	(Sunday – Thursday 6pm-2am) 24 Answering Machine - Student Center	Cell: 380-8925 626-2474
Career Development and Placement	Student Center, Room 217	2371
Center for Excellence in International Business ✉	Lincoln Hall, Room 123A	7721
Center for Statewide E-learning	MeWaldt-Jensen, Room 122	3382
Chemistry Lab	MeWaldt-Jensen, Room 302	2598
Chemistry Lab	MeWaldt-Jensen, Room 309	2472
Children's Center ✉	Lindberg Hall	2221
College of Arts and Sciences ✉	Technology Center, Room 358	2601
Computer Center	Technology Center, Lower Level	2283
Correspondence Studies	Spafford Hall, Room 106	2568
Counselor Education	H.P. Gerber, Room 115	2417
Counseling Center	Student Center, Room 217	2371
Custodial Services	Facilities Management, Physical Plant	2560
Den	Student Center, Lower Level	2650
Development	Beckman Building, 620 15th Ave SE	2550
Dining Hall - Student Center		2928
Disability Services	Student Center, Room 217	2371
Discovery Program	Student Center, Room 217	2371

EXHIBIT 5 (3)

Regional Aging Council of Northeast SD	Technology Center, Room 353	3402
Registrar ✉	Dacotah Hall, Room 103	2012
Research	MeWaldt-Jensen, Room 224	2456
Residence Life Director ✉	Student Center, Room 201	2531
Resident Artist	Lincoln Hall Basement	3240
Room Reservations		
Barnett Center		7738
Johnson Fine Arts Center		2497
Student Center		3007
School of Business ✉	Lincoln Hall, Room 101	2400
School of Education	H.P. Gerber, Room 112	2415
School of Fine Arts	Spafford Hall, Room 315	2497
South Dakota Department of Agriculture	Physical Plant, Room 215	3335
South Dakota International Business Institute ✉	Graham Hall, Room 110	3149
South Dakota School for the Deaf (SDSD) Outreach Consultant	Graham Hall, Room 114	3166
Social Science	Technology Center, Room 358	2601
Special Education	H.P. Gerber, Room 115	2417
Speech Communications	Technology Center, Room 261	2404
Sports Information	Barnett Center, Room 47A	7748
Steele Hall - Hall Director		3047
Steele Hall - Lobby Phone		3020
Student Activities	Student Center, Room 203	3007
Student Affairs ✉	Student Center, Room 201	2530
Student Association	Student Center, Room 204	2528
Student Center Information Desk	Student Center, Lower Level	2651
Student Development Center	Student Center, Room 201	3007
Student Publications / Exponent	Krikac Administration, Room 101	2534
Student Senate Office	Student Center, Room 204	2528
Student Support Services (SSS)	Dacotah Hall, Room 201	2633
Student Teaching	H.P. Gerber, Room 115	2415
Study Abroad Office	Lincoln Hall Room 223A	7721
Theatre Department ✉	Johnson Fine Arts Center, Room 124A	2563
Title III	Spafford Hall, Room 205B	7789
United Campus Ministry	Graham Hall, Room 202	3012
University College	Dacotah Hall, Room 201	2633
University Relations	Graham Hall, Room 124	2552
Upward Bound	Graham Hall, Room 203	3229
Veterans Affairs	Dacotah Hall, Room 111	7692
Vice President for Academic Affairs	Spafford Hall, Room 203	2524
Vice President for Finance and Administration	Krikac Administration, Room 205	2537
Vice President for Student Affairs	Student Center, Room 201	2530

EXHIBIT
tabbies
5 (4)

SEARCH

Search Options

Site Index

Site Map

DIRECTORY

Offices

People

Fax Numbers

DIRECTORY - PEOPLE

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Name (Web site link)	Position (Office location) [Abbreviations]	
Addison, Carla	Director, NSU Children's Center (LH-118)	2221
Allbee, Neal	Carpenter, Facilities Mgmt (PP)	2560
Allbee, Scott	Programmer Analyst, NET Services (TC-269)	2285
Alraqad, Dr. Tariq	Faculty, Mathematics (MJ-232)	2458
Arnold, Dr. Clyde	Provost and Vice Pres. of Academic Affairs (SP-203)	2524
Aroutiunian, Margarita	Faculty, Modern Language and Communications (TC-253)	3224
Arunasalam, Chelvan	Senior Computer Support Specialist, NET Services (TC-161)	2283
Backman, Ron	Grounds Crew Supervisor, Facilities Mgmt (PP)	2560
Bader, Janna	Director, CICS, ELCA Lutheran Campus Ministry (SC-207)	216-3925
Barondeau, Nancy	Director of Field Services (GB-110)	2415
Bartusis, Dr Mark	Coordinator and Faculty, History (TC-362)	7799
Baruth, Randy	Asst. Men's BB/Head Men's Golf Coach/Inst. (BC-35)	2230
Bass, Dr. William (Bill)	Faculty, Marketing/Management (LN- 319)	3002
Bauer, Jennifer	Reference Assistant, Library (LB-146)	3018
Beckler, Dr. Terry	Asst Professor of Music (JC-118)	3436
Benkert, Dr. Lysbeth	Faculty, English (TC- 373)	7698
Bentz, Jacob	Custodian - HP Gerber Building, Facilities Mgmt (PP)	2560
Bergstrom, Robert	Web Producer, University Relations (GH-116)	3552
Birgen, Mike	Director of Alumni Services, Foundation (BB-4)	2681
Bitterman, Stephanie	Senior Secretary, Records/Registrar (DH-103)	2012
Bjerke, Kevin	Faculty/Head Cross Country Coach/Assistant Track Coach (BC-206)	3984
Black, Dr. Casey	Faculty, Modern Lang & Speech (TC-250)	7697
Blanchard, Carolyn	Acquisitions & Gov't Documents Mgr, Library (LB-128)	7772
Blanchard, Dr. Kenneth	Faculty, Political Science and Sociology (TC-357)	7796
Blide, Jackie	Secretary, Education/Psychology/Special Education (GB-115)	2417
Blondo, Ann	Secretary, School of Education (GB-112)	2415
Bockorny, Michael	Director of Development, Foundation/Alumni/Development (BB-11)	2612
Boden, Chris	Head Football Coach/Dir of Barnett Center (BC-27)	2007
Bollen, Joop	Director of SD Int'l Bus Institute (SDIBI) (GH-102)	3098
Bortnem, Dr. Gayle	Faculty, Elem. & Sec. Education (GB-139)	2570
Boschee, Kathy	Secretary, Admissions (DH-101)	2544
Bostian, Susan	Director, Human Resources/Affirmative Action (AB-213)	2520
Braun, Richelle	Information Specialist, University Relations (GH-122)	

EXHIBIT 5 (5)

Bretsch, Gary	Custodian - Jerde Hall, Facilities Mgmt (PP)	2560
Brick, Cherri	Senior Secretary, SDIBI (GH-110)	3149
Broucek, Dr. Willard (Bill)	Faculty, Marketing/Management (LN-321)	2639
Brunmaier, Larry	Custodial Services Supervisor, Facilities Mgmt (PP)	2560
Bruns, Gabe	Network Communications Specialist (MJ-115)	2283
Bryant, Amber Rae	Head Athletic Trainer (BC-79)	7733
Buchanan, Gale	Custodian - Library, Facilities Mgmt (PP)	2560
Buchanan, Mercedes	Custodian - Lindberg Hall, Facilities Mgmt (PP)	2560
Budig, Derik	Head Strength and Conditioning Coach (BC-207A)	3987
Bullert, Wanita	Payroll Accountant, Human Resources (AB-213)	2523
Bultema, Darci	Asst Professor of Music (SP-320)	7759
Bumpous, Debbi	Chief Information Officer, NET Services (TC-158)	3394
Burgard, Judy	Secretary, College of Arts & Sciences & History (TC-358)	2601
Burkett, Rocky	Interim Assistant Coordinator for Upward Bound (GH-203)	3299
Burrell, Dennis	Communications Network Analyst, NET Services (MJ-116)	2283
Casanova, Jodi	Network Support Specialist, NET Services (TC-271)	2283
Case, Anthony "Tony"	Assistant Football Coach (BC 29)	7734
Case-Goetz, Joanna	Master Teacher of Spanish, E-learning (MJ-133)	3390
Chown, Dr. David	Dean, School of Business (LN-101)	2402
Chown, Peg	Interim Director, Extended Studies (SP-204B)	3290
Christensen Blair, Sara	Faculty, Art (SP-209D)	2515
Clipperton, Alan	ESL (English as a Second Language) Coordinator for Univ. College (LN-124)	7693
Coughlin, Kathleen	Discovery/Insight Program Coordinator (SC-217)	2371
Courtney, Bob	Director of Student Development/Residence Life (SC-201)	3007
Courtney, Dr. Kathie	Coordinator, Health and Physical Education (BC-41)	7684
Crawford, Randy	Electrician, Facilities Mgmt (PP)	2560
Cummings, Heather	Coord of Volunteer Service Clearinghouse (SC-205)	3354
Cundy, Mary	E-learning Principal (MJ-122)	3387
Cunningham, Laurie	Senior Claims Clerk, Finance and Administration (AB-202)	2567
Curran, Carrie	Food Service (GH-2/2A)	2928
Daw, Dr. Jessica	Faculty, HPE/Head Tennis Coach (BC-34)	3321
Deckert, Florence	Senior Secretary, Grants/OIS Office (SP-205A)	2616
Dekoski, Jeff	Assistant Athletic Trainer (BC-77)	7733
DeLaney, Kim	Secretary , School of Business (LN-306)	2637
Denman, Dr. Dwight	Asst Professor of Accounting, (LN-313)	3003
Dias, Dr. Ric	Faculty, History (TC-370)	7795
Dick, Mike	Grounds Crew Leader, Facilities Mgmt (PP)	2560
Ding, Dr. Guangwei	Faculty, Chemistry (MJ-315)	3167
Dolejsi, Dr. Duane	Coordinator & Faculty, Physics (MJ-112)	2467
Donelan, Dr. Brenda	Coordinator & Faculty, Sociology (TC-349)	2355
Dreyer, Brenda	Director, University Relations (GH-123) Assistant to the President	7747

EXHIBIT
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5 (6)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF JOOP BOLLEN IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER [FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, JOOP BOLLEN, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served in the capacity of Director of the South Dakota International Business Institute (SDIBI). The SDIBI is part of Northern State University (NSU) and the South Dakota Board of Regents system and has no independent status of its own. SDIBI's purpose is to promote international exports, trade, and investments on behalf of the State of South Dakota. SDIBI's funding comes entirely from the State, primarily from NSU and contracts from the Governor's Office of Economic Development and the South Dakota Department of Tourism and Development.

3. I am not and never have been an attorney. I am not admitted to practice law in any state in the United States, nor am I a member of the bar of the U.S. District Court for the Central District of California.

4. In the early part of 2008, Darley International, LLC (Darley), made an arbitration demand upon the SDIBI on the basis of an arbitration clause in a contract between Darley and Hanul Professional Law Corporation (Hanul). I regarded that the demand was simply an effort by Darley to involve the SDIBI in a dispute arising under a contract between Darley and Hanul. The SDIBI was not a party to that contract, so, based upon my general familiarity with international business practices, I could see no basis for believing that Darley had any ability to bring the SDIBI into a dispute involving a contract between unrelated parties. I thought that Darley was trying to get the SDIBI to become voluntarily involved in an arbitration dispute that did not concern it, and I sought to avoid that gambit by refusing to cooperate.

5. I recall that in August 2008, the dispute escalated to the point that Darley initiated a court proceeding in California. James Park and/or Peter Lee of Hanul assured me that Hanul would take care of the matter and expressed the opinion that it would be easily resolved. I confess to not paying close attention to the details and timing with respect to this matter; I generally forwarded e-mails on this matter to my assistant, Cherri Brick, without reading them or their attachments. I relied exclusively upon attorneys from Hanul to deal with this. I do not

recall experiencing any change in my thinking about this matter even after this Court issued its Order in October 2008 because I assumed that Hanul would dispose of the matter insofar as the SDIBI's involvement was concerned.

6. On December 1, 2008, Mr. Lee sent me an e-mail informing me that a mediation matter was scheduled with "JAMS" on December 12, 2008, to which he attached a copy of a letter from JAMS relating to the same. A true and correct copy of the JAMS letter is attached hereto as Exhibit 3. I did not attend the mediation, as I continued to believe that Hanul would resolve this matter short of any real participation by the SDIBI.

7. At no time was I personally served with a Summons or any other document in the above-captioned action by a process server or someone claiming to be acting on behalf of Darley.

8. Throughout 2008 and until January 23, 2009, I did not inform John Meyer, the NSU attorney, of the dispute involving Darley. I believed and was reassured that no liability beyond participating as a witness would exist for the SDIBI in the worst case scenario. I thought that I could resolve this matter through Hanul, without having to bring Mr. Meyer or other South Dakota attorneys into it. For the same reasons, I did not inform anyone else in authority at NSU or at the Board of Regent's offices about the situation. Around January 22 or 23, 2009, Mr. Kim, upon questioning by myself, stated that a financial liability for the SDIBI could exist, after which I immediately contacted Mr. Meyer.

9. On January 22 or 23, 2009, I spoke to Mr. Meyer by telephone and on January 23 sent some documents to him by e-mail, inquiring about whether someone who was not party to a contract could be compelled to participate in arbitration under that contract. I told him of the situation in which the SDIBI had been brought into the arbitration between Darley and Hanul. However, I did not inform him at that time and didn't realize there had been a lawsuit, nor did I send him any captioned documents from the Darley lawsuit. On January 27, 2009, in response to a request from Mr. Meyers for additional documents relating to the arbitration, I suggested that he contact Hanul directly, but he instructed me to send him any documents that I had. I subsequently provided Mr. Meyer with some documents from the lawsuit that I had printed out

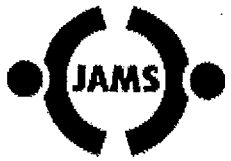
from e-mails from Hanul and met with him in person on January 27, 2009. These documents did not include this Court's October 7, 2008, Order.

10. In the course of discussing the contents of this declaration with Mr. Meyer, I recently learned that a Brown County Deputy Sheriff may have delivered documents relating to this case to Ms. Brick, on August 5, 2008. However, having now gone through the documents in my possession, which include those received by Ms. Brick, I note that they do not include any document entitled "Summons." I do not recall any person coming to the SDIBI offices to hand-deliver any of the documents that I possess in relation to the dispute with Darley.

11. Although I work for the SDIBI, my paychecks are issued on the account of the State of South Dakota.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of March, 2009, at Aberdeen, South Dakota.

Joop Bollen



THE RESOLUTION EXPERTS®

NOTICE TO ALL COUNSEL
(Please see Service List)

November 25, 2008

RE: **Darley International, LLC vs. Hanul Professional Law Corporation**
Reference #: 1100054680

Dear Counsel:

Thank you for choosing JAMS as your dispute resolution provider. This letter will confirm that your mediation has been scheduled as follows:

DATE: December 12, 2008 at 9:30 AM for 4 hours

PLACE: JAMS
160 West Santa Clara Street
Suite 1150
San Jose, CA 95113

NEUTRAL: Hon. Robert A. Baines (Ret.)

In preparation for your mediation it is recommended that you submit memoranda, briefs or other documents to the neutral at 160 W. Santa Clara St., San Jose, CA 95113 by December 5, 2008 It is also essential to have in attendance the appropriate representatives who have complete settlement authority.

For your reference, attached please find an invoice for your share of the fees. To reserve your mediation please mail your payment to JAMS at the PO Box number located on the bottom of the invoice. If additional research or future session time is requested for the matter, another invoice will be sent to you at the conclusion of the session.

Please note that JAMS reserves the right to cancel your mediation if fees are not paid by November 28, 2008. However, cancellation will occur only following written notice from JAMS.

If time is reserved but goes unused or is canceled by one of the parties within 14 days of the scheduled date, JAMS will make every attempt to reschedule the neutral's time with another matter. However, if JAMS cannot reschedule and the time then goes unused, the party canceling the mediation is responsible for all fees associated with the reserved time.

As *The Resolution Experts* we take pride in helping you to resolve your dispute. If you have any questions about our procedures or the settlement process, please feel free to contact me directly at 408-346-0734.

Sincerely,

Elizabeth S Medina
Case Manager
emedina@jamsadr.com
Fax# 408-295-5267

EXHIBIT
tabbies
3 (4)

Exhibit F

T52 (2)

OVERSEAS RECRUITMENT AND SERVICE AGREEMENT FOR US EB-5 PERMANENT RESIDENCY VISA

THIS OVERSEAS RECRUITMENT AND SERVICE AGREEMENT ("Agreement") is made between the following parties:

--HANUL PROFESSIONAL LAW CORPORATION, Los Angeles, CA USA and Seoul, Korea, hereinafter referred to as "Hanul"; and
--DARLEY INTERNATIONAL, LLC, Orinda, CA USA, a Delaware limited liability corporation, hereinafter referred to as "Darley."

Hanul and Darley agree to the following terms and conditions:

DEFINITIONS OF TERMS USED HEREIN:

SDIBI EB-5 Projects: Various for-profit projects reviewed and approved by South Dakota International Business Institute that are candidate for US EB-5 projects under the auspices of USCIS designated Regional Center that SDIBI obtained in June of 2004 and amended thereon that Hanul holds unofficial exclusive rights to promote and process from SDIBI.

Investor(s): Alien beneficiary who has been recruited by DARLEY for SDIBI EB-5 Projects including I-526,/I-829 petition and IV processing.

1. APPOINTMENT:

A. Because State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects, Hanul's right to grant exclusive marketing rights specified herein is based on the unofficial rights to exclusively market SDIBI EB-5 Projects promised by SDIBI to Hanul and therefore shall be valid only while Hanul's rights are honored by SDIBI and all rights, powers and authorities granted to DARLEY herein shall terminate when Hanul's rights are rescinded by SDIBI.

B. HANUL hereby appoints DARLEY as an **EXCLUSIVE INDEPENDENT CONTRACTOR (AND NOT AN EMPLOYEE OR AGENT OF HANUL.) TO RECRUIT INVESTORS FROM TERRITORIES SPECIFIED IN APPENDIX A & C AND SHALL BE NON-EXCLUSIVE INDEPENDENT CONTRACTOR FOR OTHER TERRITORIES SPECFIED IN APPENDIX B** for a US EB-5 Entrepreneur Program that grants US Permanent Residency ("Green Card") to qualified investors that makes qualified investment

TSZ

with the South Dakota International Business Institute ("SDIBI") approved EB-5 projects In the SDIBI Regional Center as referred to as SD EB-5..

C. The Exclusivity granted herein shall be subject to performance review of DARLEY (i) producing minimum of fifty (50) SDIBI EB-5 Investors from China/Taiwan/Hong Kong within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. (ii) A minimum of twenty-five (25) EB-5 Investors must be produced from provinces and cities of China that are outside of the exclusive territories in APPENDIX A by end of month five (5) in order that the rest of China (less Beijing and Guangdong Province) be added to Appendix A as exclusive for Darley. Not producing the minimum number of Investors as specified herein in (i) shall result in Appendix A territories no longer remaining exclusive. Not producing the minimum number of investors in (ii) as outlined above shall result in those territories remaining non-exclusive. Upon reaching the goal of twenty-five Investors by end of month five (5) as per (ii) above and a total of fifty (50) Investors by end of month nine (9) (from a total of fifty (50) investors (from a combination of (i) and (ii),) all of the cities and Provinces of China will be added to APPENDIX A as Exclusive, with the exception of the city of Beijing and Guangdong Province.

D. DARLEY's exclusivity for all of China less Beijing and Guangdong, as gained, through its performance above shall be subject to the minimum performance quota of DARLEY producing 100 Investors from its exclusive territories of APPENDIX A, to be produced by annual anniversary of DARLEY obtaining such exclusivity above. Not meeting the minimum performance requirement shall constitute a breach giving rights to immediately terminate this Agreement at the sole discretion of HANUL.

E. Former Soviet Union Countries. HANUL further grants exclusivity to DARLEY for former Soviet Union Countries as listed in APPENDIX C, subject to performance review of DARLEY producing minimum of thirty (30) SDIBI EB-5 Investors from these countries within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. Not producing the minimum number of Investors as specified herein shall result in APPENDIX C territories no longer remaining exclusive.

F. Even if for some reason the relationship ends between HANUL and DARLEY at some point in time, any Investors in writing to HANUL before termination takes full effect, shall be 'grandfathered,' such that DARLEY is compensated in full for said fees of any nature payable by HANUL to DARLEY.

G. During the period of time when exclusivity for all of China (less Beijing and Guangdong above) is in effect, DARLEY shall market only for SDIBI in regards to EB-5 projects.

JS 2

H. Said Appendix A & C above may be amended from time to time by written approval of all parties and made a part of this Agreement.

I. Said Appendix B may be amended by HANUL, at HANUL's sole discretion, as HANUL business necessitates. If however, DARLEY is engaged in meaningful activities in the territories in APPENDIX B, HANUL and DARLEY shall come to reasonable agreement as to protect the marketing and business activities of DARLEY.

J. DARLEY agree to use diligent efforts to recruit Investors for SDIBI EB-5 Project and assist Investor to obtain EB-5 Visa ("Green Card") and cooperate with the HANUL, and assist Hanul to obtain payments from Investors for services provided herein.

K. DARLEY has the exclusive rights in those territories designated in Appendix A & C attached hereto and the non-exclusive rights in those territories designated in Appendix B attached hereto to designate sub-agents to assist in the marketing in connection with the efforts of DARLEY. All contacts and business relationships between any sub-agents including all business resulting from all its sub-agents and DARLEY shall be honored as such by Hanul for the term of this Agreement. HANUL agree to never circumvent the business relationship of DARLEY and its sub-agents even after termination of this Agreement between HANUL and DARLEY.

2. HANUL RESPONSIBILITIES:

A. For Investors, make best attempt to match SDIBI EB-5 Project for Investors whereby, DARLEY will engage in marketing and recruiting qualified Investors. HANUL will provide placement in a SDIBI EB-5 Projects for DARLEY recruited Investors and coordinate with SDIBI to place DARLEY's Investors without undue delay in such projects.

B. HANUL will provide Information on SDIBI EB-5 Project that DARLEY is recruiting at the time and support the marketing and recruitment efforts with all reasonably necessary documentation for such recruitments.

C. Process Investors application for the I-526 Alien Entrepreneur Petition; manage and oversee all NVC form and processes and assist with the immigrant visa approval from overseas US consular office, and subsequent I-829 condition removal process thereof.

D. HANUL shall promptly answer any questions asked by DARLEY regarding the immigration and consular processing and upon request of DARLEY, explain and inform DARLEY of any potential problems or problems encountered.

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E. HANUL shall engage the SDIBI EB-5 Project general partners throughout the duration of the project such that a fair rate of return of Investor's funds from their Investment is returned to Investors in accordance with the mandates of the SDIBI EB-5 Project and all applicable laws and regulations of the United States.

F. HANUL and DARLEY shall communicate together about the details of its monitoring progress on the SDIBI EB-5 Projects such that HANUL and DARLEY can inform Investors from time to time of such updates.

G. HANUL shall provide Chinese speaking employee to be the liaison between DARLEY's Chinese recruiters, Investors and HANUL.

3. DARLEY RESPONSIBILITES:

A. Establish or use an existing office with designated person(s) to be the contact and liaison with HANUL.

B. Provide HANUL with the ability to identify and screen qualified Investors.

C. Pre-screen Investors for the following qualifications:
Investors shall have a qualification generally required by US EB-5 program and in particular the following:

1. Educational background, employment and general personal history to ensure that the Investor has solid personal history for US EB-5 visa;
2. Pre-screen and review Investor's current passport. If prior visa denials, immigration or passport problems, DARLEY must communicate and coordinate with HANUL for further processing of such application of Investor;
3. Pre-screen Investors for financial ability required for EB-5 immigrant visa issuance;
4. Pre-screen Investor for any health or medical related conditions on Investor and family members that may hinder obtaining US EB-5 visa by US consular post;
5. Pre-screen Investor for any criminal records on Investor or family members that may hinder obtaining US EB-5 visa by US consular post; and,
6. Any known conditions or situations which otherwise may pose difficulties for US EB-5 visa issuance.

D. Explain to Investor relevant aspects of immigration through SDIBI EB-5 Projects and assist Investor to complete HANUL Application Forms and to provide HANUL a personal qualification package on Investor based on HANUL's standard formats as provided by HANUL.

E. Explain to the Investor the actions and activities that may jeopardize the Permanent Resident Status and may lead to possible removal from the U.S.

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G. Assist Investors to complete Application for Visa and prepare for interview with Overseas US Consular Officers.

H. Cause Investors to deposit investment amount (USD $500,000) and Legal and Service and Processing Fees as specified below.

4. ESCROW/TRUST BANK ACCOUNT:

Investment Amount: At minimum, $500,000 investment in US dollar currency is to be paid by the Investor in to the designated escrow or attorney-client trust account (hereinafter "escrow/Trust Account"), that HANUL will provide from time to time, for the purposes of fulfilling investment in accordance with Escrow Agreement that investors will sign with the SDIBI and escrow/Trust Account bank. The escrow/Trust Account shall be established under the name of the investor in a bank of international reputation as practical and safe and will have conditions that are described in the Escrow Agreement specified above. The investment in the escrow/Trust Account bank account will be released to the SDIBI EB-5 Project's limited partnership account AFTER the Investor's I-526 petition is approved by USCIS per escrow instructions of the Escrow Agreement.

5. FEES AND COSTS:

A. The Legal Fees for EB-5 Visa Applicants shall be USD$20,000.00 plus out of pocket filing fees and costs payable to USCIS (currently, the EB-5 filing fee is $1,435.00; National Visa Center fees of $338 per person; or I-485 fee of up to $1,200.00 per person as appropriate; and, subsequent Removal of Conditions Fee to obtain a Green card at about USD$3,000.00. In addition, out-of-pocket fees may include any accounting work needed for the visa process and any out-of-pocket fees for translation work). The Legal Fees include services for the following:

(1) preparation and submission of I-526 Alien Entrepreneur Petition with the USCIS and all necessary acts and service thereof;
(2) preparation and subsequent processing of US Consular processing through US consular post of interest OR I-485 adjustment of status for USCIS processing whichever may apply;
(3) preparation and subsequent processing of I-829 Condition Removal when due in 21 months from the date of Investor's conditional green card obtainment; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

B. The Service Fees for SDIBI EB-5 Projects shall be USD$30,000.00 and shall include the following services:

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(1) Organizing, coordinating and syndicating with SDIBI EB-5 Project general partners for establishing a SDIBI EB-5 Project for Investor;
(2) monitoring and communicating on behalf of Investors to ensure successful operation of the SDIBI EB-5 Project;
(3) negotiating and representing Investors interest through exit by Investor from their SDIBI EB-5 Project; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

C. DARLEY shall have Investor directly submit payment of USD$50,000.00 (the Legal and Service Fees) PLUS the filing fees specified above, to HANUL's Trust Account in Los Angeles, California. HANUL shall draw fees from the Trust Account according to the following schedule:

STAGE 1: USD$20,000.00. at any time of HANUL's choosing prior to submission of I-526 petition to USCIS whereby Legal Fees and Service Fees shall constitute USD$10,000.00 each:

STAGE 2: USD$30,000.00. AFTER successful approval of I-526 petition and within fifteen (15) days of HANUL's notice of such approval to DARLEY and Investors whereby USD$10,000.00 shall be for Legal Fees and USD$20,000.00 shall be for remaining Service Fees; and,

Filing Fee: As necessary at the time of submission of respective filings.

D. Success Fee at Divestment. Should an agreement be made with Investor for success fee at the time of divestment from SDIBI EB-5 Project, HANUL shall retain 50% and DARLEY the 50% of such success fee.

6. DARLEY AGENT FEES:

A. DARLEY shall be entitled to following fees, to be paid out of HANUL Trust Account, for the services DARLEY provides HANUL for SDIBI EB-5 Projects as specified in Section 3 above and shall be paid in following manner:

(1) All payments from HANUL shall be made on a valid invoice or statement from DARLEY that includes bank account information and international wire-transfer instruction ("Invoice");

(2) In respect to Project 12 (NBP—Northern Beef Packers LP), of the above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees;
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees; and,
(iii) USD$5,000.00 to ROBERT D. STRATMORE from the STAGE 2 Legal Fees.

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(3) In respect to new SDIBI EB-5 Projects (project 13 and beyond), of above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees; and,
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees.

(4) The payment to DARLEY shall be further distributed between DARLEY and STRATMORE as necessary.

7. REFUNDS TO INVESTOR, HANUL AND DARLEY:

A. In accordance with Fee Schedule above, refunds will be administered as follows:

(1) In any case of Investor not receiving his/her US immigrant visa or Green Card, Investor's $500,000 investment shall be returned to Investor from Limited Partnership within a reasonable time for Limited Partnership to refund the investment not to exceed more than three (3) months from date of denial of such approval;

(2) If the Investor terminates the Agreement at any specific Stage of the process as outlined above, HANUL and the DARLEY will NOT refund any Fees deposited and received from the Investor up to that Stage, but shall return all remaining fees in the Trust Account;

(3) However, in case the I-526 petition is not approved for reasons other than the Investor's fault (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), then the Investor shall be refunded all the Fees in the Trust Account, including the $10,000 legal fee paid for submitting I-526 but shall not be refunded any government fees or costs paid up to that stage;

(4) If the INS does not approve the I-485 adjustment application or the overseas US Consulate does not issue the EB-5 visa for reasons other than the Investor's misrepresentations about material facts of the Investor's case (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), HANUL and DARLEY will refund all Fees deposited including the USD$10,000.00 Legal Fees but not any government fees or costs already paid up to that stage.

(5) In any case, of any legal fees being retained [e.g. of $10,000], HANUL shall pay half ($5,000) to DARLEY for services rendered.

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8. COVENANTS, WARRANTIES AND CONDITIONS:

A. DARLEY agrees to use only HANUL approved forms, and agrees to make no inaccurate representations to the Investor other than the information provided by HANUL in writing.

B. DARLEY may advertise referring to the name of HANUL or in any marketing materials. (DARLEY or Robert D. Stratmore, Esq. may advertise in their own name.)

C. DARLEY agrees not to incur any charges, costs or other liabilities on behalf of HANUL without the express written consent and authorization from HANUL. Hanul agrees similarly as to Darley.

D. DARLEY and HANUL agree, to the best of their knowledge, to maintain compliance with all laws of the US government, including but not limited to: Citizenship and Immigration Services and the Department of State, and all other applicable government agencies.

F. HANUL covenants and warrants that it will comply with all California State Bar Rules in respect to its laws, rules and regulations governing segregation of funds for clients and the proper maintenance of records and balances in Attorney-Client Trust Fund matters.

9. CONFIDENTIALITY AND NON COMPETE:

A. DARLEY agree to hold all disclosed confidential and proprietary information and trade secrets in confidence and agrees to use this information only for the contemplated purposes and not for use, adaptation or copy for any company or commercial purpose unrelated to the SDIBI EB-5 Projects, including competition or disclosure to any third parties (except Darley's sub-agents as necessary in the sole view of Darley). HANUL shall, however, indicate when certain information or material is on confidential basis in writing to DARLEY.

B. DARLEY does expressly covenant and agree that during the term of this Agreement and for a period of two years immediately following termination of this Agreement with HANUL, regardless of the reasons for said termination, the DARLEY will not, without prior written consent of HANUL, directly or indirectly, for itself, or through or on behalf of others, as an individual, or as an employee, agent, or sales representative for any person, partnership, firm, corporation, or other entity either contact or do business with SDIBI EB-5 Project principals (i.e. general partners of each project, etc...).

C. HANUL shall not conduct business with DARLEY's sub-agents and Investors for two (2) years following termination of this Agreement, PROVIDED that

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DARLEY specify such sub-agents to HANUL by giving list of name, contact information, business credentials and identification of affiliation with DARLEY of such sub-agents within two (2) months of this Agreement or two months after signing any new sub-agents while this Agreement is in effect. Any sub-agents of DARLEY not identified consistent with the above shall not be considered DARLEY's sub-agents for the purposes of non-compete UNLESS HANUL and DARLEY agree otherwise.

D. HANUL agrees to keep personal information of Investors as provided by DARLEY, its sub-agents, and Investors confidential and shall treat such information as proprietary information.

10. TERM:

A. This Agreement will be effective upon execution by and between HANUL and DARLEY.

B. This Agreement to be in effect for two (2) years from the date of full execution and thereafter this Agreement will automatically be renewed for additional terms of twelve (12) month periods unless terminated by sixty (60) days written notice prior to renewal period by either party.

11. DISCLAIMERS AND WARRANTY:

A. HANUL cannot and will not promise or guarantee that any Investor will receive the EB-5 Visa or I-485 adjustment of status approval, as such approval is subject to the sole discretion of the US government agencies, including Citizenship and Immigration Service (CIS), and Department of State (DOS).

B. HANUL cannot and will not promise or guarantee the performance or conduct, of the SDIBI EB-5 Project participating general partners or partnerships and HANUL further cannot and will not promise any profit on the investment from SDIBI EB-5 Projects.

C. DARLEY will not be responsible for the Investor's misrepresentation or actions either prior to or after the Investor obtains immigrant visa. However, DARLEY on behalf of HANUL will explain the U.S. immigration laws to the Investor.

12. BREACH AND DAMAGES:

That, in the event of a breach of this Agreement, this Agreement shall be cancelled and terminated subject to any ruling or determination by JAMS either by mediation or arbitration (See Par. 13 hereinbelow). All parties are liable to each other for actual

352

damages, and other injunctive and equitable relief that is allowed by law pursuant to the determination by JAMS. Refund to the Investor that is provided in Section 7 shall survive any cancellation or termination.

13. MISCELLANEOUS:

A. All parties will communicate with each other on a regular basis in English (Chinese may also added) as to the status of projects being released, recruitment, visa approvals, time schedules, and other matters necessary for the administration of this Agreement. The primary method of communication will be by e-mail, however, express mailings, fax and telephone will be used as necessary and English shall be the only official language used for any correspondence or communication between HANUL and DARLEY.

B. This Agreement will be binding upon the parties, their successors and assigns. Time is of the essence in respect to this Agreement. This Agreement will be enforced under the laws of the State of California, United States of America and the laws of the State of California will have exclusive authority, exclusive jurisdiction, and exclusive venue and be binding upon the parties.
Any dispute arising out of this Agreement shall be compulsory mediated followed, if necessary, by Arbitration under the auspices of JAMS ADR (Arbitration and Dispute Resolution) in San Francisco, California.
Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
Prior to the appointment of the arbitrator, and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and I promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that

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is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrator. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as the arbitrator in the case. The pendency of the mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

C. This is the entire Agreement and no oral provisions or other agreements unless referred to herein or as written executed amendments will be binding between the parties. In the event any section of this is unlawful or illegal, the balance of the Agreement will continue and be binding.

D. COUNTERPARTS. This Agreement and any addendums may be executed in counterpart and transmitted via facsimile as if originally-executed documents.

IN WITNESS WHEREOF, the DARLEY and HANUL hereto have signed this Agreement as of the dates indicated below.

Signatures

HANUL

HANUL PROFESSIONAL LAW CORP.
DAEGAK BLDG., 14TH FLOOR 1319-5
SEOCHO-2DONG, SEOCHO-GU, SEOUL
137-857, SEOUL KOREA

SIGNED for and on behalf of **HANUL Professional Law Corporation** by its authorized signatory:

Si Il Jang, Esq.
Name

Partner Attorney
Title

Authorized Signatory

DARLEY

DARLEY INTERNATIONAL, LLC
277 LA ESPIRAL ROAD
ORINDA, CALIFORNIA 94563 USA

SIGNED for and on behalf of **Darley International LLC.** by its authorized signatory:

Robert D. Stratmore
Name

President
Title

Authorized Signatory

JSL

APPENDIX A

EXCLUSIVE TERRITORIES AND CITIES AS PER THE HANUL, DARLEY AGREEMENT

CHINA
Provinces:

Anhui
Jiangsu
Zhejiang

Cities or Municipalities:

Shanghai
Nanjing

TAIWAN

HONG KONG

TSZ

APPENDIX B

NON-EXCLUSIVE TERRITORIES AND CITIES AS PER THE HANUL, DARLEY AGREEMENT

CHINA (Except as Per Appendix A)., except for Guangdong Province, where business may be conducted & visa applicants accepted, but without advertising by Darley in Guangdong Province unless amended in writing at a later date.

ALL OTHER COUNTRIES IN ASIA, EUROPE, SOUTH AMERICA AND MIDDLE EAST EXCEPT FOR KOREA.

752

APPENDIX C

COMMONWEALTH OF INDEPENDENT STATES
Aka FORMER SOVIET UNION (15 Republics)

RUSSIAN FEDERATION
UKRAINE
KAZAKHSTAN
LITHUANIA
LATVIA
ESTONIA
AZERBAIJAN
ARMENIA
TURKMENISTAN
MOLDOVA
TAJIKISTAN
BELARUS
KYRGYZSTAN
GEORGIA

Exhibit G

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

D. 10/14/09			DEPT. 38
HONORABLE ROBERT H. O'BRIEN	JUDGE	E. VERNER	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI; CA	Deputy Sheriff	G. VIRAY, CSR 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel Defendant Counsel	JENNIFER S. ELKAYAM (X) via Court Call JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

HEARING RE DARLEY INTERNATIONAL, LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT

Matter comes on calendar for Motion to Quash Service of Process filed August 13, 2009. Opposition filed September 9, 2009. Reply filed September 14, 2009.

Motion to Quash Service of Process is argued and stands submitted.

Later, the Court rules, as follows:

Motion to Quash is denied. The Court overrles the objections. The Court accepts the Request for Judicial Notice.

Counsel for the moving party shall have until noon, 12:00 p.m. on October 23, 2009 to personally serve and file (with a copy to Department 38) Opposition to the pending Motion to Compel Arbitration. Any Reply to be personally served and filed (with a copy to Department 38) by noon, 12:00 p.m. on October 27, 2009.

MOTION TO COMPEL ARBITRATION is continued to October 30, 2009 at 8:30 a.m. in Department 38, set concurrent with the Case Management Conference set that date.

CLERK'S CERTIFICATE OF MAILING/

MINUTES ENTERED
10/14/09
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/14/09		DEPT. 38	
HONORABLE ROBERT H. O'BRIEN	JUDGE	E. VERNER	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI, CA	Deputy Sheriff	G. VIRAY, CSR 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel Defendant Counsel	JENNIFER S. ELKAYAM (X) via Court Call JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 10/14/2009 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 10/14/2009

John A. Clarke, Executive Officer/Clerk

By: _____
E. VERNER

JAMES R. LYNCH, ESQ.
GARCIA CALDERSON RUIZ LLP
500 S. GRAND AVENUE, SUITE 1100
LOS ANGELES, CA 90071

JENNIFER S. ELKAYAM, ESQ.
BLECHER & COLLINS, PC
515 S. FIGUEROA STREET, SUITE 1750
LOS ANGELES, CA 90071-3334

MINUTES ENTERED
10/14/09
COUNTY CLERK

Exhibit H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10		DEPT. 38	
HONORABLE MAUREEN DUFFY-LEWIS	JUDGE	R. ALVA	DEPUTY CLERK
HONORABLE 008.	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI, CA	Deputy Sheriff	GERI VIRAY, CSR # 7267	Reporter

9:30 am	BS121441	Plaintiff Counsel	MAXWELL M. BLECHER (X) JENNIFER S. ELKAYAM (X)
	DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Defendant Counsel	JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

PETITION FOR ORDER COMPELLING ARBITRATION

Matter is called for hearing.

Petition is argued and submitted.

LATER:

In the matter heretofore submitted earlier this date, the court announces its ruling as follows:

This court has already determined that respondent is an appropriate legal entity in that it has ruled on a motion to quash.

Judge Pregerson of the United States District Court concluded it would be inequitable to allow respondent to avoid arbitration.

This court finds that arbitration is proper under simple principles of contract and agency.

Joop Bollen - in his position as director - was authorized to act on behalf of respondent. By arranging and facilitating the Darley-Hanul agreement, Bollen did not act ultra vires, but acted within the scope of his role as director.

It was reasonable for petitioner to believe that an agency relationship existed between respondent and

MINUTES ENTERED
06/02/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10			DEPT. 38
HONORABLE MAUREEN DUFFY-LEWIS	JUDGE	R. ALVA	DEPUTY CLERK
HONORABLE 008.	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI, CA	Deputy Sheriff	GERI VIRAY, CSR # 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel	MAXWELL M. BLECHER (X) JENNIFER S. ELKAYAM (X)
		Defendant Counsel	JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

Hanul. The facts support that Hanul had ostensible authority to bind respondent and that the Board of Regents ratified the agreement. A pre-existing agency relationship can bind a nonsignatory. County of Contra Costa v. Kaiser Foundation Health Plan, Inc. (1995) 47 Cal. App. 4th 237, 242.

There is insufficient showing for estoppel. There is no showing that the acts were outside authority. Under Federal law, petitioner claims direct benefits estoppel, preventing a nonsignatory from avoiding arbitration when it has already received a benefit from that contract. American Bureau of Shipping v. Tencara Shipyard (2nd Cir 1999) 170 F3d 349, 353. The evidence shows that respondent has received a benefit from the contract. Respondent's actions show an affirmation of the agreement.

Petition to compel arbitration GRANTED.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 06/02/10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope

MINUTES ENTERED
06/02/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10			DEPT. 38
HONORABLE MAUREEN DUFFY-LEWIS	JUDGE	R. ALVA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
008. R. LOMELI, CA	Deputy Sheriff	GERI VIRAY, CSR # 7267	Reporter

9:30 am	BS121441	Plaintiff Counsel	MAXWELL M. BLECHER (X) JENNIFER S. ELKAYAM (X)
	DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Defendant Counsel	JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

for each, addressed as shown below with the postage thereon fully prepaid.

Date: 06/02/10

John A. Clarke, Executive Officer/Clerk

By: _____
ROBERT R. ALVA

Maxwell M. Blecher
Jennifer S. Elkayam
BLECHER COLLINS
515 S. Figueroa Street
Suite 1750
Los Angeles, CA 90071
FAX (213) 622-1656

James R. Lynch
GCR, LLP
520 S. Grand Avenue
Suite 695
Los Angeles, CA 90071
FAX (213) 347-0216

MINUTES ENTERED
06/02/10
COUNTY CLERK

Exhibit I

Request for Amendment to the Dairy Economic Development Region

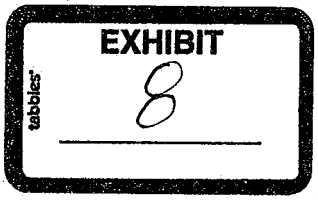
This petition to the United States Citizenship and Immigration Services (USCIS) requests an amendment to the Dairy Economic Development Region (DEDR) which was granted to the South Dakota International Business Institute (SDIBI) by the USCIS on April 8, 2004 (Appendix E). Earlier requests for amendments were approved on June 13, 2005, and December 12, 2006 (Appendix E). This current request for an amendment entails the following:

I) An expansion of the DEDR geographical area to include the remaining 18 counties of Western South Dakota, except for the metropolitan statistical area of Rapid City (Pennington County & Meade County), to the current geographical area of the DEDR

II) An expansion to the currently allowed activities of the DEDR to include the following industries and services: Utilities (RIMS Code 6); Machine Manufacturing (RIMS Code 12); Food, Beverage, and Tobacco Manufacturing (RIMS Code 19); Petroleum and Coal Products Manufacturing (RIMS Code 24); Chemical Manufacturing (RIMS Code 25); Professional, Scientific, and Technical Services (RIMS Code 47); Amusement, Gambling, and Recreation (RIMS Code 56).

III) Allow the DEDR to utilize the RIMS II Final Demand Employment Multipliers for the industries listed above to proof that the job creation requirements are met as required by the 1990 Immigration Act.

IV) Change the name from the current Dairy Economic Development Region (DEDR) to South Dakota Regional Center (SDRC).



These amendments to the DEDR will allow SDIBI to continue to grow and built on its successful track record. The amendment request was prepared by the South Dakota International Business Institute (SDIBI). Support from the South Dakota Department of Tourism and Trade Development (SDDT&TD), South Dakota Department of Agriculture (SDDOA) and the South Dakota Department of Labor (SDDOL) is gratefully acknowledged.

Reason for Amendment Request

The DEDR to date produced over $100,000,000 in new dairy projects and $52,000,000 in a new beef packing plant that is currently being constructed. Applying the RIMS II economic multipliers to this dollar amount, it is evident that South Dakota's economy is already benefitting to the tune of a half a billion dollars with over 1000 new jobs created. This success resulted in requests and political pressures to expand the regional center activities to include additional industries and to expand the economic opportunities to Western South Dakota.

More intense competition from other new regional centers also force SDIBI to offer more competitive, attractive investment projects to entice the foreign investor who now has many more EB-5 options through to chose from as a result of other regional centers coming online.

Explanation of the Amendment Requests

This petition to the U.S. Bureau of Citizenship and Immigration Services (USCIS) requests four amendments to the existing geographical area and the allowed activities of the DEDR. A discussion of each of the four amendment requests follows:

Amendment 1

An expansion of the DEDR to include the remaining 18 counties of Western South Dakota, except for the metropolitan statistical areas of Rapid City (Pennington County & Meade County), to the current established geographical area of the DEDR

Regional Center status under the Investor Pilot Program is currently granted to the counties east of the Missouri River excluding Minnehaha County where the City of Sioux Falls is located and excluding the cities of Aberdeen and Watertown, but including the counties of Tripp and Gregory west of the Missouri River (Appendix C). Because of the reasons already outlined in the prior section titled "Reasons for the Amendment Request", SDIBI believes that the regional center and the economy of South Dakota would greatly benefit if the geographical area is to include the remaining 18 counties of Western South Dakota, except for the metropolitan statistical areas of Rapid City (Pennington County & Meade County). A listing of these counties follows: Bennett, Butte, Corson, Custer, Dewey, Falls River, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Mellette, Perkins, Shannon, Stanley, Todd and Ziebach.

Maps of the current regional center's geographical area and new proposed geographical areas are included in Appendix C. A copy of the Governor's letter certifying that the new proposed counties meet the definition of rural under the Immigration Act of 1990 is included in Appendix A. Finally economic data for the 18 new counties is included in Appendix D. It is evident that for these 18 selected counties in South Dakota, 13 of them have poverty rates greater than the national rate of 12.7 percent. Eight of these counties actually have rates that are more than double the national rate, with poverty rates greater than 25 percent. Six of these counties lie within American Indian Reservation areas, which traditionally have higher rates of poverty than other areas in South Dakota.

Amendment 2

An expansion to the currently allowed activities of the DEDR to include the following industries and services: Utilities (RIMS Code 6); Machine Manufacturing (RIMS Code 12); Food, Beverage, and Tobacco Manufacturing (RIMS Code 19); Petroleum and Coal Products Manufacturing (RIMS Code 24); Chemical Manufacturing (RIMS Code 25); Professional, Scientific, and Technical Services (RIMS Code 47); Amusement, Gambling, and Recreation (RIMS Code 56).

A complete listing of the RIMS Industry titles is included in Appendix B. RIMS Code 6 includes electric power generation such as windmill energy generation which currently is expanding rapidly in South Dakota. RIMS Code 12 includes general manufacturing of machinery and equipment. RIMS Code 24 includes oil refinery as South Dakota is courting the first oil refinery project to be built in the USA during the last 30 years. RIMS Code 25 includes pharmaceutical, medicine, ethanol, bio-diesel and biomass manufacturing. RIMS Code 47 includes computer related services and research and development in biotechnology and RIMS Code 56 includes casinos which are expanding in Western South Dakota and on the Native American reservations where high unemployment still lingers. The new proposed industries have tremendous opportunities for South Dakota if EB-5 capital can be made available.

Amendment 3

Allow the DEDR to utilize the RIMS II Final Demand Employment Multipliers for the industries listed under Amendment 2 as proof that the job creation requirements are met as required by the 1990 Immigration Act.

A complete listing the RIMS Industry titles and final demand employment multipliers is included in Appendix B. A summarization of the RIMS Code and Final Demand Employment Multipliers per Million dollars invested follows:

Utilities	RIMS 6	5.4309
Machinery Manufacturing	RIMS 12	11.7661
Food, Beverage, and Tobacco Manufacturing	RIMS 19	15.3910
Petroleum and Coal Products Manufacturing	RIMS 24	8.0073
Chemical Manufacturing	RIMS 25	9.4151
Professional, Scientific, and Technical Services	RIMS 47	12.8610
Amusement, Gambling, and Recreation	RIMS 56	29.7830

Total aggregate capital invested by the EB-5 aliens and non-EB-5 domestic investor (s) would determine total jobs created to proof that the job creation requirements are met as required by the 1990 Immigration Act. This method would be applied only to the 6 newly requested RIMS Industry Titles and not replace the direct and indirect job creation method currently in use by the DEDR for the dairy and meat packing operations. SDIBI will provide an example for each of the six additional target industry clusters that: A) clearly describe the type of commercial activity; B) provide a representative illustration of the total aggregate capital for an individual example enterprise within each industry cluster; C) provide a clear description of what mix of EB-5 aliens' capital with Non-EB-5 domestic capital will be targeted to generate the requisite ten indirect jobs per EB-5 alien based on the appropriate RIMS II Final Demand Job Creation Multiplier and an estimation over what time the capital and jobs are likely to be accrued or realized.

Utilities (RIMS Code 6)

SDIBI has been in contact with FPL Energy (www.FPLEnergy.com), the largest generator of wind energy in the nation, to explore duplicating its current operation in Highmore, South Dakota, where 27, 1.5 megawatt wind turbines produce 40 megawatts of electricity. South Dakota, ranking fourth in the nation for its wind resources and

recently making growth in this industry sector a priority, is set to duplicate the Highmore project throughout the state. A 1.5 megawatt wind turbine, standing 213 feet with each of the three blades over 110 feet long, costs approximately 1.5 million dollars a piece and 6 month to construct. SDIBI will attempt to duplicate projects consisting of 50 windmills and costing approximately 75 million dollars throughout the state. Lease payments to owners who still will utilize the land for crop production makes this venture an attractive one for producers.

A $75,000,000 windmill project consisting of 50 large turbine wind mills would generate 407 jobs (5.4309 per million X 75) allowing 40 EB-5 aliens (40 aliens X 10 indirect jobs per EB-5 alien) to contribute $20,000,000 ($500,000 per investor X 40 investors). FPL Energy would need to source $55,000,000 to arrive at a total project cost of $75,000,000. It is typical for the capital to be committed 6 months after the start of the construction at which time the jobs, as per definition of the RIMS-II Final Demand Multiplier, are created.

Machinery Manufacturing (RIMS Code 12)

Molded Fiber Glass Companies (www.moldedfiberglass.com) has announced (Appendix F) it is building a wind turbine manufacturing plant close to Aberdeen, South Dakota, to manufacture blades for GE's 1.5MW wind mill. The facility represents an investment of 40 million including a 20 million dollar real estate facility. Molded Fiber Glass estimates 600 new jobs for the Aberdeen region which exceed the estimates of the RIMS-II Final Demand Multiplier. Construction is estimated to start in April 2008 with a completion date of March 2009 at which time production starts and all capital has been invested. SDIBI has approached Molded Fiber Glass with the scenario that follows:

A $40,000,000 wind blade manufacturer would generate 470 jobs (11.7661 per million X 40 million) allowing 47 EB-5 aliens (47 aliens X 10 indirect jobs per EB-5 alien) to contribute $23,500,000 ($500,000 per investor X 47 investors). Molded Fiber Glass would need to source $16,500,000 to arrive at a total project cost of $40,000,000. It is expected for the capital to be committed 12 months after the start of the construction at which time the jobs, per definition of the RIMS-II Final Demand Multiplier, are created.

Food, Beverage and Tobacco Manufacturing (RIMS Code 19)

SDIBI is currently considering a proposal from Valiant Vineyards, South Dakota's first winery established in 1996 which produces over twenty different wines. Valiant vineyard (www.buffalorunwinery.com) is proposing to build a new winery in south east South Dakota near the intersection of I-90 and I-29. The new winery would consist of a modern building including a small convention center, gift shop, tasting room and 30 acres of vineyards for which land will be purchased. Wine initially, until the new vineyards becomes productive, will be sourced from Valiant's existing winery which's wine often is blended with imported varieties from California and other states. Valiant would be hiring educated winemakers and marketers to produce a South Dakota wine in a professional package that will be distributed nationally. Valiant estimates new job creation to exceed 155 jobs which is in line with the RIMS II Multiplier numbers. Twenty percent of the jobs will consist of skilled labor and 80 percent of unskilled labor. This $10,000,000 winery would generate 153 jobs (15.3910 per million X 10 million) allowing 15 EB-5 aliens (15 aliens X 10 indirect jobs per EB-5 alien) to contribute $7,500,000 ($500,000 per investor X 11 investors). Valiant is committed to provide $2,500,000 to arrive at a total project cost of $10,000,000. The entire project will be

constructed in 18 months when the entire $10,000,000 is invested and at which time the jobs, as per definition of the RIMS-II Final Demand Multiplier, are created.

Petroleum Refinery (RIMS CODE 24)

Hyperion Resources, a Dallas investment firm, currently has an option to purchase 10,000 acres in South Dakota (Appendix F) for a refinery with a production capacity of 400,000 barrels per day. This project would constitute the first newly build refinery in the USA in 30 years and would cost 10 billion dollars. Permitting processes are expected to take 2-3 years with construction to take an additional 4 years at an estimate of 2.5 billion per year. SDIBI hopes to offer packages of 50 million dollars each, or 100 investors, which would easily be consumed within the first couple of months of construction. EB-5 funds would be replaced with permanent capitalization when the foreign investors are divested. SDIBI hopes use the proposed EB-5 capital to have Hyperion select South Dakota for its final site as 2 other states also are under consideration. At this stage it is not known how many packages of 50 million dollars each SDIBI would be able to source.

A $10,000,000,000 oil refinery plant would generate 80,073 jobs (8.0073 per million X 10,000 million) allowing approximately 8,000 EB-5 aliens (8,000 aliens X 10 indirect jobs per EB-5 alien) to contribute $4,000,000,000 ($500,000 per investor X 8,000 investors). Hyperion would need to source $6,000,000,000 to arrive at a total project cost of $10,000,000,000. It is expected that the EB-5 capital would be invested within the first 2 months of construction at which time the jobs, as per definition of the RIMS-II Final Demand Multiplier, are created. SDIBI does not expect to recruit more than 1000 investors for 500 million dollars indicating that Hyperion will need to fund 9.5 billion.

Chemical Manufacturing (RIMS Code 25)

SDIBI is considering a proposal submitted by Beef Tech LLC (a subsidiary of IKOR: www.ikorlife.com) which will manufacture a bovine medical product called thrombin made from cow blood for a global wound healing market. Thrombin, a FDA approved surgical sealant, is a bovine medical product made from bovine blood and bovine plasma which is utilized to seal wounds and is used as a coagulant that is sponged onto patients to slow bleeding. Beef Tech will source its blood from Northern Beef Packers processing plant which is currently being constructed with EB-5 funds in the Aberdeen area. Beef Tech will develop and market the following products: Trombin-Vials, Thrombin-Spray Kits, Trombin Syringe Spray Kits and Trombin-Large OEM Supply.

Beef Tech already has identified a building site and has obtained permits near the Northern Beef Packers processing facility to construct a 20,000 square foot production facility requiring a financial investment of $25,000,000 and expected to be completed within 12 months

A $25,000,000 pharmaceutical production plant like the one Beef Tech is proposing would generate 235 jobs (9.4151 per million X 25 million) allowing 23 EB-5 aliens (23 aliens X 10 indirect jobs per EB-5 alien) to contribute $11,500,000 ($500,000 per investor X 23 investors). Beef Tech's non-EB-5 investors would need to source $13,500,000 to arrive at a total project cost of $25,000,000. It is typical for the capital to be committed 12 months after the start of the construction at which time the jobs, as per definition of the RIMS-II Final Demand Multiplier, are created.

Casinos (RIMS 56)

SDIBI is communicating with an investment group, Shiba Investments Inc., from Rapid City that is interested in purchasing 3 outdated casinos, with licenses in place, in

Deadwood that would be converted into a state-of-the-art $20,000,000 casino with restaurant, meeting and sleeping rooms. The new renovated casino would feature 120 Sodak Gaming slot machines, poker and black jack tables. The purchase of the real estate requires an investment of 8 million with the remaining funds needed for renovation, decoration and purchase of updated modern gaming machines.

A $20,000,000 casino would generate 595 jobs (29.7830 per million X 20 million) allowing 59 EB-5 aliens (59 aliens X 10 indirect jobs per EB-5 alien) to contribute $24,500,000 ($500,000 per investor X 29 investors). Domestic non-EB-5 investors would theoretically not need to contribute any capital but reality it is required that the domestic non EB-5 investors will contribute at least 20 percent or $5,000,000. It therefore is evident that only 30 EB-5 investors would contribute $15,000,000. It is typical for the capital to be committed 12 months after the start of the major renovation at which time the jobs, as per definition of the RIMS-II Final Demand Multiplier, are created.

The examples outlined are based on inquiries received by SDIBI to date and are for illustration purposes only. It is not yet known which projects SDIBI will select and how many EB-5 investors SDIBI is capable of recruiting. It is clear, however, that the newly proposed industry clusters would greatly enhance the attractiveness of the projects that the regional center is able to offer to the foreign investors. .

Amendment 4

Change the name from the current Dairy Economic Development Region (DEDR) to South Dakota Regional Center (SDRC.).

The DEDR regional center has accumulated a successful track record and has experienced growth beyond the dairy industry. As a result, the DEDR currently includes

activities that are unrelated to the dairy industry and therefore a request to change the name from DEDR to South Dakota Regional Center (SDRC) appears appropriate.

The business structure (Flow chart: Appendix G) for the implementation of the new EB-5 projects utilizing the RIMS II Final Demand Multipliers are limited partnerships each consisting of a general partner and multiple limited partners, the foreign investors. The foreign investors will provide capital funding to the Limited partnership which in turn will make the funds available to EB-5 projects sourced and recommended by SDIBI and forwarded to SDRC Inc, a separate corporation, that is currently being created to screen SDIBI recommended projects for final selection before investors are sourced and to monitor funded projects for compliance purposes. SDRC Inc will also function as the general partner in each of the project specific limited partnerships for which it receives a token ownership of 1 percent. SDRC Inc will be controlled by Hanul Professional Law Corporation, a law firm, which has been directly involved in all DEDR projects to date. A Memorandum of Understanding between SDIBI and SDRC Inc is included in Appendix H. A model very similar to this one already has been approved by the USCIS and is currently being implemented by other regional centers such as PIDC.

SDIBI hopes to have provided the USCIS with sufficient information to approve the amendment request. Approval of this amendment request will greatly benefit the economy of South Dakota.

Exhibit J

Loan Pool	Date filed	File at request of	# of investors	$ volume	
First 3 loan pools are formed by Joop Bollen even before he signs the January 15, 2008 contract					
SDIF LP 1			99	$49.5 million	Turkey
SDIF LP 2	Jan. 10, 2008	Kelly Ferris, CA	65	$32.5 million	Deadwood
SDIF LP 3	Jan. 10, 2008	Kelly Ferris, CA	200	$100 million	Basin Electric
SDIF LLC3	Jan. 10, 2008	Kelly Ferris, CA			
The following are after South Dakota officials knew that Joop Bollen had been deceiving them. Darley re-files their arbitration demand on July 2, 2009.					
SDIF LP 4	Aug. 11, 2009	SDRC, Inc.	11	$5.5 million	Turkey
SDIF LLC4	Aug. 11, 2009	SDRC, Inc.			

Loan pool 4 went to the Turkey plant in Huron. Jeff Sveen is the Chairman of the Board and is Joop Bollen's attorney and partner of Harvey Jewett, a current Board of Regents member.

The following are filed after South Dakota loses first motion in California State Court on October 14, 2009 – Joop Bollen is still a state employee, earning a near 6 figure paycheck					
SDIF LP 5	Oct. 28, 2009	SDRC, Inc.	100	$50 million	Florida Power
SDIF LLC5	Oct. 28, 2009	SDRC, Inc.			
SDIF LP 6	Oct. 28, 2009	SDRC, Inc.	68	$34 million	Northern Beef
SDIF LLC6	Oct. 28, 2009	SDRC, Inc.			

Loan pool 6 is the focus of the Chinese investor lawsuit against Joop Bollen and SDRC, Inc. that was dropped and likely settled

SDIF LP 7	Oct. 28, 2009	SDRC, Inc.		
SDIF LLC7	Oct. 28, 2009	SDRC, Inc.		
Totals while Joop Bollen is a state employee			**543 investors**	**$271.5 million in loan pools**

Loan pools created after Joop Bollen resigned from SDIBI, but during the Rounds-Daugaard Administration second term.

Loan Pool	Date filed	File at request of
SDIF LP 8	May 3, 2010	SDRC, Inc.

SDIF LLC 8	May 3, 2010	SDRC, Inc.
SDIF LP 9	Sept. 30, 2010	SDRC, Inc.
SDIF LLC 9	Sept. 30, 2010	SDRC, Inc.
SDIF LP 10	Sept. 30, 2010	SDRC, Inc.
SDIF LLC 10	Sept. 30, 2010	SDRC, Inc.

The following loan pool was set up during the Daugaard-Michels Adminstration

SDIF LP 20	June 24, 2011	SDRC, Inc.
SDIF LLC 20	June 24, 2011	SDRC, Inc.

It is important to note that every loan pool entity (11 loan pools, each with a limited partnership and an limited liability corporation – 22 separate legal entities) was organized and wholly owned and controlled by Joop Bollen

355 570 1/11/2008

Receipt Number: 1750595

File Number DL015521

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC1

Filed at the request of:

ATTORNEYS CORPORATION SERVICE
KELY FARRIS
3021 WEST MAGNOLIA BLVD
BURBANK CA 91505

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, January 10, 2008**

Chris Nelson

Secretary of State

Fee Received: $125

355 5708 01/11/2008

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL015521

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC1** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this January 10, 2008.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge.doc

Litho in U.S.A.

355 570 01/11/2008

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

ARTICLES OF ORGANIZATION OF A DOMESTIC LIMITED LIABILITY COMPANY

RECEIVED
JAN 10 2008
S.D. SEC. OF STATE

1. The name of the Limited Liability Company is: SD Investment Fund LLC1

2. The duration of the company if other than perpetual is: _____

3. The address of the initial designated office is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

4. The name and street address of the initial agent for service of process is: Joop Bollen
405 8th Ave. NW, Suite 330
Aberdeen, SD 57401

5. The name and address of each organizer:
Joop Bollen, 405 8th Ave. NW, Suite 330 Aberdeen, SD 57401

Filed this 10th day of Jan, 2008
Chris Nelson
SECRETARY OF STATE

6. If the company is to be a manager-managed company rather than a member-managed company, the name and address of each initial manager is:

7. Whether one or more of the members of the company are to be liable for its debts and obligations under SDCL 47-34A-303 (c).
No

8. Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be signed by the organizers and must state adjacent to the signature the name and capacity of the signer.

Date 1/3/08

President
(Signature and Title)

(Signature and Title)

(Signature and Title)

The Consent of Appointment below must be signed by the registered agent.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, (name of registered agent), hereby give my consent to serve as the registered agent for SD Investment Fund LLC1 (limited liability company name)

Dated 1/3/08

(signature)

D L01552 1

FILING INSTRUCTIONS:
One or more persons may organize a Limited Liability Company
One original and one exact or conformed copy must be submitted
FILING FEE $125

domesticllcarticlesoforganization july 2006

355 5716 01/11/2008

Receipt Number: 1750583

File Number DP001856

DP001856

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 1

Filed at the request of:

ATTORNEYS CORPORATION SERVICE
KELLY FARRIS
3021 WEST MAGNOLIA BLVD
BURBANK CA 91505

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, January 10, 2008**

Chris Nelson

Secretary of State

Fee Received: $100

355 571 1/11/2008

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

DOMESTIC CERTIFICATE OF LIMITED PARTNERSHIP

RECEIVED
JAN 1 2 3
S.D. SEC. OF STATE

FILING FEE: $100

1. The name of the limited partnership which shall contain without abbreviation the words "limited partnership"
SDIF Limited Partnership 1

2. The street address of the office in South Dakota is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

3. The name and address of the agent for service is: Joop Bollen, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

4. The name and address of each general partner is:
, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401
SD Investment Fund LLC1

Filed this 10th day of Jan, 2008
Chris Nelson
SECRETARY OF STATE

5. The latest date upon which the limited partnership is to dissolve is: December 31, 2038

6. Any other matters the general partners determine to include:

The certificate of limited partnership must be signed by each of the general partners.
Submit one original and one exact or conformed copy.

Dated 1/3/08

/President of
SD Investment Fund LLC1

****

The Consent of Appointment below must be signed by the registered agent listed in number three.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, (name of registered agent), hereby give my consent to serve as the registered agent for SDIF Limited Partnership 1 (limited partnership name)

Dated 1/3/08 20

(signature of registered agent)

domesticlpcertificate july 2006

355 5716 01/11/2008

Receipt Number: 1750583

File Number DP001856

DP001856

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 1

Filed at the request of:

ATTORNEYS CORPORATION SERVICE
KELLY FARRIS
3021 WEST MAGNOLIA BLVD
BURBANK CA 91505

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, January 10, 2008**

Chris Nelson

Secretary of State

Fee Received: $100

355 5717 01/11/2008

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

RECEIVED
JAN 1 2 3
S.D. SEC. OF STATE

DOMESTIC CERTIFICATE OF LIMITED PARTNERSHIP

FILING FEE: $100

1. The name of the limited partnership which shall contain without abbreviation the words "limited partnership"

SDIF Limited Partnership 1

2. The street address of the office in South Dakota is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

3. The name and address of the agent for service is: Joop Bollen, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

Filed this 10th day of Jan, 2008

Chris Nelson
SECRETARY OF STATE

4. The name and address of each general partner is:

, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

SD Investment Fund LLC1

5. The latest date upon which the limited partnership is to dissolve is: December 31, 2038

6. Any other matters the general partners determine to include:

The certificate of limited partnership must be signed by each of the general partners.

Submit one original and one exact or conformed copy.

Dated 1/3/08

/President of
SD Investment Fund LLC1

****

The Consent of Appointment below must be signed by the registered agent listed in number three.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, (name of registered agent), hereby give my consent to serve as the registered agent for SDIF Limited Partnership 1 (limited partnership name)

Dated 1/3/08 20____

(signature of registered agent)

domesticlpcertificate july 2006

355 5698 01/11/2008

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

RECEIVED
JAN 10 2008
S.D. SEC. OF STATE

DOMESTIC CERTIFICATE OF LIMITED PARTNERSHIP

FILING FEE: $100

1. The name of the limited partnership which shall contain without abbreviation the words "limited partnership"

SDIF Limited Partnership 3

2. The street address of the office in South Dakota is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

3. The name and address of the agent for service is: Joop Bollen, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

4. The name and address of each general partner is:

, 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

SD Investment Fund LLC3

Filed this 10th day of Jan 2008

Chris Nelson
SECRETARY OF STATE

5. The latest date upon which the limited partnership is to dissolve is: December 31, 2038

6. Any other matters the general partners determine to include:

The certificate of limited partnership must be signed by each of the general partners.
Submit one original and one exact or conformed copy.

Dated 1/3/08

/President of
SD Investment Fund LLC3

****

The Consent of Appointment below must be signed by the registered agent listed in number three.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, hereby give my consent to serve as the
(name of registered agent)

registered agent for SDIF Limited Partnership 3
(limited partnership name)

Dated 1/3/08 20

(signature of registered agent)

domesticlpcertificate july 2006

DP001858

355 5713 /11/2008

Receipt Number: 1750592

File Number DL015523

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC3

Filed at the request of:

ATTORNEYS CORPORATION SERVICE
KELLY FARRIS
3021 WEST MAGNOLIA BLVD
BURBANK CA 91505

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, January 10, 2008**

Chris Nelson

Secretary of State

Fee Received: $125

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL015523

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC3** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this January 10, 2008.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge.doc

355 5714 01/11/2008

Litho in U.S.A.

355 571 1/11/2008

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

ARTICLES OF ORGANIZATION OF A DOMESTIC LIMITED LIABILITY COMPANY

RECEIVED
JAN 10 2008
S.D. SEC. OF STATE

1. The name of the Limited Liability Company is: SD Investment Fund LLC3

2. The duration of the company if other than perpetual is:

3. The address of the initial designated office is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

4. The name and street address of the initial agent for service of process is: Joop Bollen
405 8th Ave. NW, Suite 330
Aberdeen, SD 57401

5. The name and address of each organizer:
Joop Bollen, 405 8th Ave. NW, Suite 330 Aberdeen, SD 57401

Filed this 10th day of Jan 2008
Chris Nelson
SECRETARY OF STATE

6. If the company is to be a manager-managed company rather than a member-managed company, the name and address of each initial manager is:

7. Whether one or more of the members of the company are to be liable for its debts and obligations under SDCL 47-34A-303 (c).
No

8. Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be signed by the organizers and must state adjacent to the signature the name and capacity of the signer.

Date 1/3/2008

/President
(Signature and Title)

(Signature and Title)

(Signature and Title)

The Consent of Appointment below must be signed by the registered agent.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, (name of registered agent), hereby give my consent to serve as the registered agent for SD Investment Fund LLC3 (limited liability company name)

Dated 1/3/08

(signature)

D L015523

FILING INSTRUCTIONS:
One or more persons may organize a Limited Liability Company
One original and one exact or conformed copy must be submitted
FILING FEE $125

domesticllcarticlesoforganization july 2006

369 3560 08/11/2009

Receipt Number: 1938175

File Number DP002032

DP002032

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 4

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Tuesday, August 11, 2009**

Chris Nelson

Secretary of State

Fee Received: $125.00

369 356 08/11/2009

RECEIVED
AUG 11 2009
S.D. SEC. OF STATE

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: ~~$125~~ 125 payable to SECRETARY OF STATE

Filed this 11th day of August 2009

Chris Nelson
SECRETARY OF STATE

RECEIVED
AUG 04 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 4 DP 2032

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 4	405 8th St., NW, Suite 330	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

369 3562 08/11/2009

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated August 3, 2009

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

369 3608 11/2009

Receipt Number: 1938056

File Number DL019529

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 4

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Tuesday, August 11, 2009**

Chris Nelson
Secretary of State

Fee Received: $150.00

369_3602_08/11/2009

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL019529

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 4** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this August 11, 2009.

Chris Nelson

Chris Nelson
Secretary of State

Litho. in U.S.A.

369 3616 8/11/2009

SECRETARY OF STATE
STATE CAPITOL
500 E. CAPITOL AVE.
PIERRE, S.D. 57501
605-773-4845

Filed this 11th day of Aug., 2009
Chr. Nelson
SECRETARY OF STATE

ARTICLES OF ORGANIZATION OF A DOMESTIC LIMITED LIABILITY COMPANY

RECEIVED
AUG 04 2009
S.D. SEC. OF STATE

RECEIVED
AUG 11 2009
S.D. SEC. OF STATE

1. The name of the Limited Liability Company is: SD Investment Fund LLC 4

2. The duration of the company if other than perpetual is:

3. The address of the initial designated office is: 405 8th Ave. NW, Suite 330, Aberdeen, SD 57401

4. The name and street address of the initial agent for service of process is: Joop Bollen, 19529
_405 8th Ave. NW, Suite 330
_Aberdeen, SD 57401

5. The name and address of each organizer:
Joop Bollen, 405 8th Ave., NW, Suite 330, Aberdeen, SD 57401

6. If the company is to be a manager-managed company rather than a member-managed company, the name and address of each initial manager is:

7. Whether one or more of the members of the company are to be liable for its debts and obligations under SDCL 47-34A-303 (c).
No

8. Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be signed by the organizers and must state adjacent to the signature the name and capacity of the signer.

Date August 3, 2009

PRESIDENT
(Signature and Title)

(Signature and Title)

(Signature and Title)

The Consent of Appointment below must be signed by the registered agent.

CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Joop Bollen, hereby give my consent to serve as the
(name of registered agent)

registered agent for SD Investment Fund LLC 4
(limited liability company name)

Dated August 3, 2009

(signature)

FILING INSTRUCTIONS:
One or more persons may organize a Limited Liability Company
One original and one exact or conformed copy must be submitted
FILING FEE $~~125~~ 150

domesticllcarticlesoforganization july 2006

370 5629 10/28/2009

Receipt Number: 1961677

File Number DP002054

DP002054

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 5

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

Chris Nelson

Secretary of State

Fee Received: $125.00

370 5630 10/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 28th day of Oct, 2009
Chris Nelson
SECRETARY OF STATE

RECEIVED
OCT 2 8 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 5 DP 2054

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 5	405 8th St., NW, Suite 330	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

370 5631 10/28/2009

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated October 27, 2009

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

370 563 10/28/2009

Receipt Number: 1961677

File Number DL020050

DL020050

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 5

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

Chris Nelson

Secretary of State

Fee Received: $150.00

370 5639 10/28/2009

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL020050

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 5** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this October 28, 2009.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

Made in U.S.A.

370 564(0/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly In Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

RECEIVED
OCT 2 8 2009
S.D. SEC. OF STATE

Filed this 28th day of Oct 2009
Chi Nelson
SECRETARY OF STATE

Telephone # _____
FAX # _____

Article I

The name of the company is SD Investment Fund LLC 5 DL 20050

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

370 5641 10/28/2009

Article V

The name and address of each organizer

Joop Bollen	405 8th Ave. NW, Suite 330	Aberdeen	SD	57401
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Joop Bollen,	405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

370 564 0/28/2009

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated October 27, 2009

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

370 5632 10/28/2009

Receipt Number: 1961677

File Number DP002055

DP002055

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 6

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

Chris Nelson

Secretary of State

Fee Received: $125.00

370 5630 10/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly In Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 28th day of Oct 2009

Chris Nelson
SECRETARY OF STATE

RECEIVED
OCT 28 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

DP 002055

1. The name of the limited partnership is SDIF Limited Partnership 6

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 6	405 8th St., NW, Suite 330	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

370 5634 10/28/2009

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated October 27, 2009

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

370 5647 10/28/2009

Receipt Number: 1961677

File Number DL020051

DL020051

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 6

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

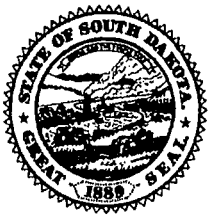
Chris Nelson

Secretary of State

Fee Received: $150.00

370 5644 10/28/2009

State of South Dakota



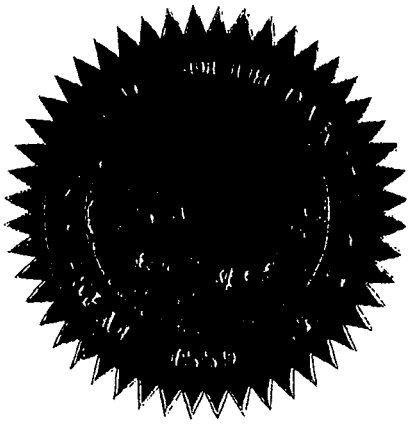
OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL020051

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 6** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this October 28, 2009.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

Litho in U.S.A.

370 5645 10/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

RECEIVED
OCT 2 8 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

Filed this 28th day of Oct. 2009
Chris Nelson
SECRETARY OF STATE

Article I

The name of the company is SD Investment Fund LLC 6 DL 20051

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

370 5646 10/28/2009

Article V

The name and address of each organizer

Joop Bollen	405 8th Ave. NW, Suite 330	Aberdeen	SD	57401
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Joop Bollen,	405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

370 564 10/28/2009

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated October 27, 2009

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

370 5635 10/28/2009

Receipt Number: 1961677

File Number DP002056

DP002056

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 7

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

Chris Nelson

Secretary of State

Fee Received: $125.00

370 5636 10/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 28th day of October 2009

Chris Nelson
SECRETARY OF STATE

RECEIVED
OCT 2 8 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 7

DP 2056

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 7	405 8th St., NW, Suite 330	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

370 5637 10/28/2009

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated October 27, 2009

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

370 564 0/28/2009

Receipt Number: 1961677

File Number DL020052

DL020052

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 7

Filed at the request of:

SDRC INC
405 8TH AVE NW STE 330
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Wednesday, October 28, 2009**

Chris Nelson

Secretary of State

Fee Received: $150.00

370 5649 10/28/2009

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL020052

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 7** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this October 28, 2009.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

Litho. in U.S.A.

370 565 10/28/2009

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

Filed this 28th day of Oct 2009

Chris Nelson
SECRETARY OF STATE

RECEIVED
OCT 28 2009
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

Article I

The name of the company is SD Investment Fund LLC 7 DL 20052

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

370 5651 10/28/2009

Article V

The name and address of each organizer

Joop Bollen	405 8th Ave. NW, Suite 330	Aberdeen	SD	57401
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4
Name	Street Address	City	State	ZIP+4

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Joop Bollen,	405 8th Ave., NW, Suite 330	Aberdeen	SD	57401
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

370 565 10/28/2009

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated October 27 2009

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

374 1388 05/04/2010

Receipt Number: 2024258

File Number DP002095

DP002095

LIMITED PARTNERSHIP

LIMITED PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 8

Filed at the request of:

SDRC INC
416 PRODUCTIONS STREET NORTH
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Monday, May 03, 2010**

Chris Nelson

Secretary of State

Fee Received: $125.00

374 1385 05/04/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 3rd day of May, 2010

Chris Nelson
SECRETARY OF STATE

RECEIVED
MAY 03 2010
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 8

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 8	416 Production Street N.	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

374 1390 05/04/2010

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated April 28, 2010

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

374 138 05/04/2010

Receipt Number: 2024260

File Number DL021401

DL021401

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 8

Filed at the request of:

SDRC INC
416 PRODUCTION STREET NORTH
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Monday, May 03, 2010**

Chris Nelson

Secretary of State

Fee Received: $150.00

374 1384 05/04/2010

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL021401

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 8** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this May 3, 2010.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

Litho. in U.S.A.

374 138 5/04/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

Filed this 3rd day of May, 2010

Chris Nelson
SECRETARY OF STATE

RECEIVED
MAY 03 2010
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

Article I

The name of the company is SD Investment Fund LLC 8

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

374 1386 05/04/2010

Article V

The name and address of each organizer

Name	Street Address	City	State	ZIP+4
Joop Bollen	416 Production Street N.	Aberdeen	SD	57401

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Manager	Street Address	City	State	ZIP+4
			SD	

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

374 138 5/04/2010

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated April 28, 2010

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President of SDRC, Inc.
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

377 5759 10/01/2010

Receipt Number: 2070791

File Number DP002130

DP002130

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 9

Filed at the request of:

SDRC INC
416 PRODUCTION ST N
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, September 30, 2010**

Chris Nelson

Secretary of State

Fee Received: $125.00

377 576 10/01/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

RECEIVED
SEP 30 2010
S.D. SEC. OF STATE

Filed this 30th day of Sep, 2010
Chris Nelson
SECRETARY OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 9

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 9	416 Production Street N.	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

377 5761 10/01/2010

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated September 29, 2010

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

377 576E 3/01/2010

Receipt Number: 2070787

File Number DL022525

DL022525

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 9

Filed at the request of:

SDRC INC
416 PRODUCTION ST N
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, September 30, 2010**

Chris Nelson

Secretary of State

Fee Received: $150.00

377 5766 10/01/2010

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL022525

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 9** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this September 30, 2010.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

377 576 0/01/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

RECEIVED
SEP 30 2010
S.D. SEC. OF STATE

Filed this 30th day of Sep, 2010
Chris Nelson
SECRETARY OF STATE

Telephone # _____
FAX # _____

Article I

The name of the company is SD Investment Fund LLC 9

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

377 5768 10/01/2010

Article V

The name and address of each organizer

Name	Street Address	City	State	ZIP+4
Joop Bollen	416 Production Street N.	Aberdeen	SD	57401

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Manager	Street Address	City	State	ZIP+4
			SD	

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

377 5769 10/01/2010

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated September 29, 2010

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President of SDRC, Inc.
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

377 5762 10/01/2010

Receipt Number: 2070788

File Number DP002131

DP002131

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 10

Filed at the request of:

SDRC INC
416 PRODUCTION ST N
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, September 30, 2010**

Chris Nelson

Secretary of State

Fee Received: $125.00

377 5765 3/01/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 30th day of Sept, 2010

Chris Nelson
SECRETARY OF STATE

RECEIVED
SEP 30 2010
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 10

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Abrtdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 10	416 Production Street N.	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

377 5764 10/01/2010

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated September 29, 2010

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

377 577 10/01/2010

Receipt Number: 2070785

File Number DL022526

DL022526

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 10

Filed at the request of:

SDRC INC
416 PRODUCTION ST N
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Thursday, September 30, 2010**

Chris Nelson

Secretary of State

Fee Received: $150.00

377 5771 10/01/2010

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL022526

I, Chris Nelson, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 10** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this September 30, 2010.

Chris Nelson

Chris Nelson
Secretary of State

Cert of Organization LLC Merge

377 5772 10/01/2010

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

RECEIVED
SEP 30 2010
S.D. SEC. OF STATE

Filed this 30th day of Sept. 2010
Chris Nelson
SECRETARY OF STATE

Telephone # _____
FAX # _____

Article I

The name of the company is SD Investment Fund LLC 10

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address (Required to be a South Dakota Address)	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional – Required to be a South Dakota Address)	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

377 5773 10/01/2010

Article V

The name and address of each organizer

Name	Street Address	City	State	ZIP+4
Joop Bollen	416 Production Street N.	Aberdeen	SD	57401

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Manager	Street Address	City	State	ZIP+4
			SD	

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

377 577 10/01/2010

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated September 24, 2010

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President of SDRC, Inc.
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

383 1336 06/29/2011

Receipt Number: 2160811

File Number DP002229

DP002229

LIMITED PARTNERSHIP

LIMITED_PARTNERSHIP

For

SDIF LIMITED PARTNERSHIP 20

Filed at the request of:

SDRC INC
416 PRODUCTION STREET N
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Friday, June 24, 2011**

Jason Gant
Secretary of State

Fee Received: $125.00

383 133 06/29/2011

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

CERTIFICATE OF LIMITED PARTNERSHIP

DOMESTIC LIMITED PARTNERSHIP

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $125 payable to SECRETARY OF STATE

Filed this 24th day of June, 2011

SECRETARY OF STATE

RECEIVED
JUN 24 2011
S.D. SEC. OF STATE

Telephone # _____

FAX # _____

1. The name of the limited partnership is SDIF Limited Partnership 20

The name shall contain without abbreviation the words "limited partnership".

2. The address of the office required to be maintained in the State of South Dakota.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberseen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

3. The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address or Rural Route Box Number in This State and	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address in This State, if Different from Street Address	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	

4. The name and business address of each general partner is

SD Investment Fund LLC 20	416 Production Street N.	Aberdeen	SD	57401
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4
General Partner	Street Address	City	State	ZIP+4

383 1338 06/29/2011

5. The latest date upon which the limited partnership is to dissolve is December 31, 2038

6. Any other matters the general partners determine to include

The certificate of limited partnership must be signed by each of the general partners.

Dated 6/23/11

(Signature of a general partner)

Joop Bollen,
(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

Dated _____

(Signature of a general partner)

(Printed Name)

383 1331 6/29/2011

Receipt Number: 2160811

File Number DL025029

DL025029

ARTICLES OF ORGANIZATION

ARTICLES_OF_ORGANIZATION

For

SD INVESTMENT FUND LLC 20

Filed at the request of:

SDRC INC
416 PRODUCTION STREET NORTH
ABERDEEN SD 57401

State of South Dakota
Office of the Secretary of State

Filed in the office of the Secretary of State on: **Friday, June 24, 2011**

Jason Gant
Secretary of State

Fee Received: $150.00

383 1332 06/29/2011

State of South Dakota

OFFICE OF THE SECRETARY OF STATE

Certificate of Organization
Limited Liability Company

ORGANIZATIONAL ID #: DL025029

I, Jason M. Gant, Secretary of State of the State of South Dakota, hereby certify that the Articles of Organization of **SD INVESTMENT FUND LLC 20** duly signed and verified, pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the Articles of Organization.

IN IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, *this June 24, 2011.*

Jason M. Gant
Secretary of State

Made in U.S.A.

383 133 06/29/2011

Secretary of State Office
500 E Capitol Ave
Pierre, SD 57501
(605)773-4845

ARTICLES OF ORGANIZATION
DOMESTIC LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: $150 payable to SECRETARY OF STATE

RECEIVED
JUN 24 2011
S.D. SEC. OF STATE

Telephone # _____
FAX # _____

Filed this 24th day of June 2011

SECRETARY OF STATE

Article I

The name of the company is SD Investment Fund LLC 20

The name must contain limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

Article II

The duration of the company if other than perpetual is _____

Article III

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business.

416 Production Street N.	Aberdeen	SD	57401
Street Address	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address (Optional)	City	State	ZIP+4

Article IV

The South Dakota Registered Agent name Joop Bollen,

416 Production Street N.	Aberdeen	SD	57401
Street Address or Rural Route Number in This State and	City	State	ZIP+4
416 Production Street N.	Aberdeen	SD	57401
Mailing Address in This State, if Different from Street Address	City	State	ZIP+4

When listing a Commercial Registered Agent, please state their CRA #.
This number can be obtained from the Commercial Registered Agent. _____

383 1334 06/29/2011

Article V

The name and address of each organizer

Name	Street Address	City	State	ZIP+4
SDRC Inc.	416 Production Street N.	Aberdeen	SD	57401

Article VI

Check one:

- [x] The company will be member managed.
- [ ] The company will be manager managed.

If this company is to be manager managed, please state the name and address of each initial manager.

Manager	Street Address	City	State	ZIP+4

Article VII

Whether one or more of the members of the company are to be liable for its debts and obligations as set forth under SDCL 47-34A-303 (c).

383 1335 /29/2011

Article VIII

Any other provisions not inconsistent with law, which the members elect to set out in the articles of organization.

The Articles of Organization must be executed by the organizers.

Dated 6/23/11

(Signature of an organizer)

Joop Bollen,
(Printed Name)

President of SDRC
(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Dated _____

(Signature of an organizer)

(Printed Name)

(Title)

Exhibit K

U.S. Department of Homeland Security
Office of Service Center Operations
20 Massachusetts Ave, NW (Rm. 2123)
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQSCOPS 70/6.1.2-C

Joop Bollen
Director
South Dakota International Business Institute
711 East Wells Ave
Pierre, South Dakota 57501-3369

Dear Mr. Bollen:

Re: South Dakota Regional Center, Amendment-III-*revised*:

BACKGROUND:

Pursuant to Section 610 of the Appropriations Act of 1993, on April 8, 2004, the South Dakota International Business Institute Dairy Economic Development Region (SDIBI/DEDR) was approved and designated as a regional center by U.S. Citizenship and Immigration Services (USCIS) for the purpose of attracting immigrant investor capital into 12 counties in eastern South Dakota, for animal dairy farm and animal heifer ranch operations. On December 24, 2004 the SDIBI/DEDR Regional Center requested approval of an amendment (Amendment-I) to expand its geographic area of coverage by an additional 33 counties across eastern South Dakota and to revise its business plan to allow for pooled investments through limited partnerships into large dairy and heifer operations, and to eliminate its self-imposed minimum of 51 % alien investor ownership in a newly established commercial dairy or heifer operation. On June 13, 2005, USCIS approved the SDIBI/DEDR Regional Center Amendment-I.

On December 12, 2006, USCIS approved the South Dakota SDIBI/DEDR Regional Center's proposal for a second amendment (Amendment-II) to its business plan to enable the following commercial activity additions, and to augment its approved job creation multipliers as follows:

1. To amend the SDIBI/DEDR business plan to include meat processing and packing operations.[1]
2. To amend the SDIBI/DEDR business plan to include dairy processing, beef cattle, and other animal feedlots.[2]

---

[1] These operations would utilize a weighted average RIMS-II indirect job creation multiplier of3.49 for the areas within the geographic boundaries of the SDIBI DEDR Regional Center.

3. To amend the SDIBVDEDR business plan by eliminating the SDIBVDEDR Regional Center's self-imposed numeric thresholds of 300 dairy cows and/or 3000 heifers per foreign investor, and setting no numerical herd size minimum or maximum for dairy cows, heifers, and/or animal feedlot operations.

On November 8, 2007 the SDIBIfDEDR Regional Center submitted a proposal for a third amendment (Amendment-III) seeking:

1. To expand its geographic area of coverage by adding an additional eighteen (18) contiguous counties within South Dakota.
2. To add eleven (11) additional target industry economic clusters.
3. To apply a RIMS-II final demand multiplier for indirect job creation applicable to the added target industry clusters by combining EB-5 and domestic investment capital.
4. To change the name ofthe Regional Center to "South Dakota Regional Center" (SDRC).
5. That USCIS review and recognize a Memorandum ofUnderstanding between the South Dakota International Business Institute (SOIBI) and SDRC, Incorporated.

On December 4, 2007, USCIS issued a Request for Evidence (RFE) seeking clarification and additional data relating to the proposed additional target industry economic clusters and the operational structure for an amended South Dakota Regional Center.

DECISION:

Based on its review and analysis of the initial Amendment-III proposal, and the DEDR's supplemental response to the RFE, which modified its initial request from 11 down to 7 additional target industries, uscrs approves Amendment-III, updating the designation of the renamed South Dakota Regional Center (SDRC) as follows:

1. The geographic area of the SDRe encompasses all 63 contiguous counties within the State of South Dakota, excluding the cities of Rapid City (located within Pennington and Meade counties), Aberdeen (located within Brown County), and Watertown (located within Codington County).
2. To add the following seven (7) new target industry economic clusters to the scope of SDRC business investment:

   a. Utilities (Includes Electric Power Generation From Wind Mills);
   b. Machinery Manufacturing (Includes General Manufacturing of Machinery and Equipment);
   c. Food, Beverage and Tobacco Manufacturing (Includes Wineries);

---

[2] Such operation would utilize a weighted average RIMS-II indirect job creation multiplier of 2.66 for the areas within the geographic boundaries of the SDIBI/DEDR Regional Center.

d. Petroleum and Coal Products Manufacturing (Includes Oil Refineries);
e. Chemical Manufacturing (Includes Phannaceutical, Medicine, Ethanol, Bio-diesel and Biomass Manufacturing);
f. Professional, Scientific, and Technical Services (Includes Computer Services, Research and Development in Biotechnology and Life Sciences);
g. Amusement, Gambling, and Recreation.

3. Use of RIMS-II Final Demand Multipliers in determining indirect job creation relating to the seven (7) target industry economic clusters identified above in 2 a -f.

A summarization of the approved RIMS Code and Final Demand Employment Multipliers in connection with Amendment III per Million dollars inyested follows:

Utilities	RIMS6	5.4309
Machinery Manufacturing	RIMS 12	11.7661
Food, Beverage, and Tobacco Manufacturing	RIMS 19	15.3910
Petroleum and Coal Products Manufacturing	RIMS 24	8.0073
Chemical Manufacturing	RIMS 25	9.4151
Professional, Scientific, and Technical Services	RIMS 47	12.8610
Amusement, Gambling, and Recreation	RIMS 56	29.7830

FOCUS OF INVESTMENT ACTIVITY AND CAPITAL INVESTMENT THRESHOLD:

The updated and expanded USCIS-approved focus of the SDRC geographic area, business plan, economic analysis and job creation is to generate EB-5 inunigrant investor capital for the - following eleven (11) target industry activities:

1 Animal dairy farm operations--per *April* 8, *2004 initial approval and designation;*
2 Animal heifer ranch operations--per *April* 8, *2004 initial approval and designation;*
3 Animal feedlot *operations--added per December j* 2, *2006 Amendment-II approval;*
4 Meat processing and packing *operations--added per December* 12, *2006 Amendment-II approval;*
5 Utilities (Includes Electric Power Generation From Wind *Mi1ls)--added per June* 24, *2008 Amendment-III);*
6 Machinery Manufacturing (Includes General Manufacturing of Machinery and Equipment)- *added per June* 24, *2008 Amendment-III);*
7 *F*ood, Beverage and Tobacco Manufacturing (Includes Winerie*s)--added per June 24,2008 Amendment-Ill):*
8 Petroleum and Coal Products Manufacturing (Includes Oil Refineries)--*added per June 24, 2008 Amendment-lII);*
9 Chemical Manufacturing (Includes Phannaceutical, Medicine, Ethanol, Bio-diesel and Biomass *Manufacturing)--added per June* 24, *2008 Amendment-III);*
10 *P*rofessional, Scientific, and Technical Services (Includes Computer Services, Research and Development in Biotechnology and Life *Sciences)--added per June* 24, *2008 Amendmen tIll);*

II. Amusement, Gambling, and *Recreation--added per June 24, 2008 Amendment-III.*

As such, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for investments made into new commercial enterprises within the eleven (11) target industry clusters listed above which are located within the SDRC area comprised of all 63 contiguous counties within the State of South Dakota, excluding the cities of Rapid City (located within Pennington and Meade counties), Aberdeen (located within Brown County), and Watertown (located within Codington County), that have been determined to qualify as a "Rural Area" as set forth in 8 CFR 204.6(e). Therefore, the minimum capital investment threshold for any individual immigrant investment into a new commercial enterprise through the SORC shall be not less than $500,000.

EMPLOYMENT CREATION AND/OR PRESERVATION:

Alien entrepreneurs who file petitions for commercial enterprises located in the SDRC area must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprises created ten new jobs indirectly as a result of the alien entrepreneur's investment. This determination has been established by way of USCIS' acceptance of the final economic analysis that is contained as part of the approved SDRC Amendment-III and its indirect job creation model and multipliers contained within the final approved SDRC application and package, as amended.

In addition, wherever job creation or preservation of existing jobs is claimed based on a multiplier rooted in underlying new "direct jobs" (or preservation of existing direct jobs in a troubled business) in support of an immigrant investor's individual 1-526 petition affiliated with the SDRC, then:

To be credited with projected creation of new "direct" jobs for "qualifying employees" upon filing the 1-526 petition, the petition must be supported by a comprehensive detailed business plan and supporting financial, marketing and related data and analysis providing a reasonable basis for projecting creation of any new direct jobs for "qualifying employees" to be achieved/realized within two years pursuant to 8 CFR 204.6(j)(4)(B).

To be credited for preserving/maintaining pre-existing direct jobs for "qualified employees" within the SDRC for a "troubled business" as defined at 8 CFR 204.6(e), the individual 1-526 petition must be supported by probative evidence of the number of full time (35 hours per week) qualified employees whose positions shall be preserved/maintained throughout the alien's period of conditional residency. Such evidence may include copies of quarterly state employment tax reports, Forms W-2, Forms 1-9, and any other pertinent employment records sufficient to demonstrate the number of "direct" qualifying pre-existing full time jobs in the specified troubled business which have been preserved/maintained, and any other pertinent employment records sufficient to demonstrate the number of employees before the investment.

For purposes of an alien investor's filing of a subsequent 1-829 petition to remove the conditions wherein the investment through the SDRC in an enterprise for which the initial 1-526 petition approval involved the creation of new direct jobs or the creation of new indirect jobs based on a multiplier tied to underlying new direct jobs, then to support the full number ofdirect and indirect new jobs being claimed at that point, an alien's subsequent 1-829 petition will need to be supported by probative evidence of the

number of new direct full time (35 hours per week) jobs for qualified employees whose positions have been created as a result of the alien's investment. Such evidence may include copies of quarterly state employment tax reports, Forms W-2, Forms 1-9, and any other pertinent employment records sufficient to demonstrate the number ofqualified employees whose jobs were created directly.

Each individual petition, to demonstrate that it is associated with the SDRC, in conjunction with addressing all the requirements for an individual alien investor petition, shall also contain as supporting evidence relating to this regional center designation, the following:

1 A copy of this letter of the amended approval and designation.
2 A copy of the approved regional center narrative proposal and business plan, and the approved amendments.
3 A copy of the approved job creation methodology required in 8 CFR 204.6(j)(4)(iii), as contained in the SDRC amended regional center economic analysis which has been approved by USCIS, which reflects that investment by an individual alien investor of at least $500,000 will generate full-time employment positions, either directly or indirectly, for not fewer than ten (10) U.S. workers.
4 A signed legally executed and certified copy of the limited partnership agreement between the new commercial enterprise and the alien investor.
5 A signed legally executed copy of the Memorandum of Understanding between the South Dakota International Business Institute and SDRC, Incorporated.

The designation by the uscrs of the SDRC as a regional center does not reflect any determination on the merits of individual petitions filed by alien entrepreneurs under the Immigrant Investor Pilot Program. All petitions for alien investors who invest within the SDRC will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented.

From the date of this letter until September 30,2008, the individual investor petitions through the SDRC must be submitted to the Texas Service Center. Effective October I, 2008, the individual investor petitions through the SDRC must be submitted to the California Service Center.

DESIGNEE'S RESPONSIBILATIES INHERENT IN CONDUCT OF THE SOUTH DAKOTA REGIONAL CENTER (SDRC):

The law, as reflected in the regulations at 8 CFR 204.6(m)(6), requires that an approved regional center in order to maintain the validity of its approval and designation must continue to meet the statutory requirements of the Immigrant Investor Pilot Program by serving the purpose of promoting economic growth, including increased export sales (where applicable), improved regional productivity, job creation, and increased domestic capital investment. Therefore, in order for USCIS to determine whether your regional center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated regional center, your administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information on a quarterly basis in

order to report to USCIS upon request the following year to date information for each Federal Fiscal Year[3], commencing with the initial year as follows:

1. Provide the principal authorized official and point of contact of the regional center responsible for the normal operation, management and administration of the regional center.

2. Be prepared to explain how you are administering the regional center and how you will be actively engaged in supporting a due diligence screening of its alien investors' lawful source of capital and the alien investor's ability to fully invest the requisite amount of capital.

3. Be prepared to explain the following:

   a. How the regional center is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors.

   b. How the regional center is actively engaged in the ongoing monitoring, evaluation, oversight and follow up on any investor commercial activity affiliated through the regional center that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the regional center.

4. Be prepared to provide:

   a. the name, date of birth, petition receipt number, and alien registration number (if one has been assigned by USCIS) of each principal alien investor who has made an investment and has filed an EB-5/I-526 Petition with USCIS, specifying whether:
      i. the petition was filed,
      ii. was approved,
      iii. denied, or
      iv. withdrawn by the petitioner, together with the date(s) of such event.

   b. The total number of visas represented in each case for the principal alien investor identified in 4.a. above, plus his/her dependents (spouse and children) for whom immigrant status is sought or has been granted.

   c. The country of nationality of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS.

   d. The U.S. city and state of residence (or intended residence) of each alien investor who has made an investment and filed an EB-5/I-526 petition with USCIS..

   e. For each alien investor listed in item 4.a., above, identify the following:

      i. the date(s) of investment in the commercial enterprise;

[3] A Federal Fiscal Year runs for twelve consecutive months from October 1st to September 30th.

ii. the amount(s) of investment in the commercial enterprise; and

iii. the date(s), nature, and amount(s) of any payment/remuneration/profit/return on investment made to the alien investor by the commercial enterprise and/or regional center from when the investment was initiated to the present.

5. Be prepared to identify/list each of the target industry categories of business activity within the geographic boundaries of your regional center that have:

   a. received alien investors' capital, and in what aggregate amounts;

   b. received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital;

   c. of the total investor capital (alien and domestic) identified above in 5.a and 5.b, identify and list the following:
      i. The name and address of each "direct" job creating commercial enterprise.
      ii. The industry category for each indirect job creating investment activity.

6. Be prepared to provide:

   a. The total aggregate number of approved EB-5 alien investor I-526 petitions per each Federal Fiscal Year to date made through your regional center.

   b. The total aggregate number of approved EB-5 alien investor I-829 petitions per each Federal Fiscal Year to date through your regional center.

7. The total aggregate sum of EB-5 alien capital invested through your regional center for each Federal Fiscal Year to date since your approval and designation.

8. The combined total aggregate of "new" direct and/or indirect jobs created by EB-5 investors through your regional center for each Federal Fiscal Year to date since your approval and designation.

9. If applicable, the total aggregate of "preserved" or saved jobs by EB-5 alien investors into troubled businesses through your regional center for each Federal Fiscal Year to date since your approval and designation.

10. If for any given Federal Fiscal Year your regional center did or does not have investors to report, then provide:

    a. a detailed written explanation for the inactivity,

    b. a specific plan which specifies the budget, timelines, milestones and critical steps to:

       i. actively promote your regional center program,

       ii. identify and recruit legitimate and viable alien investors, and

iii. a strategy to invest into job creating enterprises and/or investment activities within the regional center.

11. Regarding your website, if any, please be prepared to provide a hard copy which represents fully what your regional center has posted on its website, as well as providing your web address. Additionally, please provide a packet containing all of your regional center's hard copy promotional materials such as brochures, flyers, press articles, advertisements, etc.

12. Finally, please be aware that it is incumbent on each USCIS approved and designated regional center, in order to remain in good standing, to notify the USCIS within 15 business days at USCIS.ImmigrantInvestorProgram@dhs.gov of any change of address or occurrence of any material change in:

- the name and contact information of the responsible official and/or Point of Contact (POC) for the RC
- the management and administration of the RC,
- the RC structure,
- the RC mailing address, web site address, email address, phone and fax number,
- the scope of the RC operations and focus,
- the RC business plan,
- any new, reduced or expanded delegation of authority , MOU, agreement, contract, etc. with another party to represent or act on behalf of the RC,
- the economic focus of the RC, or
- any material change relating to your regional center's basis for its most recent designation and/or reaffirmation by USCIS.

If you have any questions concerning the BRC approval and designation under the Immigrant Investor Pilot Program, please contact USCIS by Email at USCIS.ImmigrantInvestorProgram@dhs.gov.

Sincerely,

for Barbara Q. Velarde
Chief
Service Center Operations

cc: Official File

Exhibit L

DECLARATION OF JOOP BOLLEN

I, JOOP BOLLEN, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served in the capacity of Director of the South Dakota International Business Institute (SDIBI). The SDIBI is part of Northern State University (NSU) and the South Dakota Board of Regents system and has no independent status of its own. SDIBI's purpose is to promote international exports, trade, and investments on behalf of the State of South Dakota. SDIBI's funding comes entirely from the State, primarily from NSU and contracts from the Governor's Office of Economic Development and the South Dakota Department of Tourism and Development.

3. I am not and never have been an attorney. I am not admitted to practice law in any state in the United States, nor have I ever been a member of the bar of any court.

4. The SDIBI has no offices or employees in the State of California, nor does it maintain bank accounts, own or possess real or personal property, or carry on any operation in the State of California. In July 2007 through January 2008, I was involved in some written and telephone communications with James Park of Hanul Professional Law Corporation (Hanul) and Robert Stratmore of Darley International, LLC (Darley) relating to an agreement between Hanul and Darley to conduct investor recruitment activities in China for the benefit of the SDIBI's EB-5 Program, more particularly a Tilapia Fish Farm project. At the times of my communications with Mr. Park, he was in Hanul's Seoul, South Korea office.

5. In late 2007, with Mr. Park's and Mr. Stratmore's consent, I cancelled the Tilapia project. In the early part of 2008, Darley made an arbitration demand upon the SDIBI on the basis of an arbitration clause in the agreement between Darley and Hanul. Mr. Stratmore was claiming a breach of the agreement owing to not receiving proper documents related to the Tilapia project. I ignored the demand as the SDIBI was not a party to the contract between Hanul and Darley and that the demand was simply an effort by Darley to involve the SDIBI in the dispute between Darley and Hanul. Since the SDIBI was not a party to that contract, and

Joop

based upon my general familiarity with international business practices, I could see no basis for believing that Darley had any ability to bring the SDIBI into this dispute. I thought that Darley was trying to get the SDIBI to become voluntarily involved in an arbitration dispute that did not concern it, and I sought to avoid that gambit by refusing to cooperate.

6. I recall that in August 2008, the dispute escalated to the point that Darley initiated a federal court proceeding in California. Mr. Park and/or Peter Lee of Hanul assured me that Hanul would take care of the matter and expressed the opinion that it would be easily resolved. I confess to not paying close attention to the details and timing with respect to this matter; I generally forwarded e-mails on this matter to my assistant, Cherri Brick, without reading them or their attachments. I relied exclusively upon attorneys from Hanul to deal with this. I do not recall experiencing any change in my thinking about this matter even after a federal court issued an Order in October 2008 because I assumed that Hanul would dispose of the matter insofar as the SDIBI's involvement was concerned.

7. On December 1, 2008, Mr. Lee sent me an e-mail informing me that a mediation matter was scheduled with "JAMS" on December 12, 2008, to which he attached a copy of a letter from JAMS relating to the same. A true and correct copy of the JAMS letter is attached hereto as Exhibit 4. I did not attend the mediation, as I continued to believe that Hanul would resolve this matter short of any real participation by the SDIBI.

8. Throughout 2008 and until January 23, 2009, I did not inform John Meyer, the NSU attorney, of the agreement between Hanul and Darley or of the subsequent dispute over the agreement. I believed and was reassured that no liability beyond participating as a witness would exist for the SDIBI in the worst case scenario. I thought that I could resolve this matter through Hanul, without having to bring Mr. Meyer or other South Dakota attorneys into it. For the same reasons, I did not inform anyone else in authority at NSU or at the Board of Regent's offices about the situation. Around January 22 or 23, 2009, Mr. Kim, upon questioning by myself, stated that a financial liability for the SDIBI could exist, after which I immediately contacted Mr. Meyer.

9. On January 22 or 23, 2009, I spoke to Mr. Meyer by telephone and on January 23 sent some documents to him by e-mail, inquiring about whether someone who was not party to a contract could be compelled to participate in arbitration under that contract. I told him of the situation in which the SDIBI had been brought into the arbitration between Darley and Hanul. However, I did not inform him at that time there had been a lawsuit, as I was unaware there was one, nor did I send him any captioned documents from the Darley federal notification. On January 27, 2009, in response to a request from Mr. Meyers for additional documents relating to the arbitration, I suggested that he contact Hanul directly, but he instructed me to send him any documents that I had. I subsequently provided Mr. Meyer with all documents related to the Darley-Hanul dispute that I had printed out from e-mails from Hanul and met with him in person on January 27, 2009. These documents did not include the federal court's October 7, 2008, order.

10. Although I work for the SDIBI, my paychecks are issued on the account of the State of South Dakota.

11. The SDIBI does not have any offices in California, nor does it have any employees who work in California. The SDIBI does not maintain bank accounts in California, does not pay income taxes in California, and does not own any personal or real property in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2009, at Aberdeen, South Dakota.

Joop Bollen

Exhibit M

James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
Los Angeles, California 90071
Tel: (213) 347-0210
Fax: (213) 347-0216

Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF LAWRENCE E. LONG IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER; EXHIBIT [FRCP Rule 60(b)]** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, LAWRENCE E.LONG, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am the Attorney General for the State of South Dakota. I was first elected to this position in 2002 and was reelected in 2006. Prior to that, I served as Chief Deputy Attorney General for South Dakota from 1991 to 2002.

3. In order to sue the State of South Dakota or any agency there of, a plaintiff must serve the summons and complaint/petition in the matter upon the Attorney General as required by SDCL 15-6-4(d) and SDCL 21-32-9. The South Dakota Attorney General's Office has maintained a separate log of all such services of process since January of 2005; prior to that a log of such services of process was maintained with the incoming mail log.. Employees of the Attorney General's office regularly record entries in the log upon being served personally or upon signing an admission of service of process, in the ordinary course of performing their official duties. I am the custodian of records for the Attorney General's office and the aforementioned log. There is no record therein of service of any document upon the Attorney General's Office in the above-captioned action.

4. The Attorney General's Office has received information that South Dakota International Business Institute, located at Northern State University in Aberdeen, South Dakota, was established by the South Dakota Board of Regents and, under South Dakota law, the Institute has no independent legal capacity to sue or be sued.

5. The attorney general has the duty under SDCL 1-11-1(1) to represent the state in legal proceedings. As such, in order for a person to represent the State of South Dakota in litigation generally requires a legal services contract with the State under SDCL 1-11-15 and an appointment from the attorney general under SDCL 1-11-4 and SDCL 1-11-5. The Attorney General's Office maintains records of legal services contracts the State enters into with privately retained counsel as provided by SDCL 1-11-15. I am the custodian of these records. The Attorney General's Office also maintains records of assistant attorney general and special

assistant attorney general appoints made during my tenure as attorney general. An appointment can last no longer than the term of the attorney general. I am the custodian of these records.

6. Joop Bollen has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Joop Bollen to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Bollen has never been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Mr. Bollen has never been authorized by me or an authorized representative of my office to accept service of process, defend, or to appear in litigation for, the State of South Dakota.

7. Austin Su Ki Kim has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Mr. Kim to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Kim has never been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Mr. Kim has never been authorized by me or an authorized representative of my office to accept service of process, defend, or to appear in litigation for, the State of South Dakota. The foregoing statements about Mr. Kim are also true as to the Hanul Professional Law Corporation and any attorney working for Hanul.

8. Attached hereto as Exhibit 4 are true and correct copies of a contract between James R. Lynch and the South Dakota Board of Regents to perform legal services in the above-captioned action, and the appointment of Mr. Lynch as a special assistant attorney general.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February 2009, at Pierre, South Dakota.

Lawrence E. Long

AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

Section I. **Scope of Work:**

James R. Lynch agrees to provide legal services and represent BOARD OF REGENTS to defend the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development in court or arbitration proceedings brought by Darley International, LLC, against the South Dakota International Business Institute and the Hanul Professional Law Corporation.

Section II. **Payment Provisions:**

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars ($300.00). The total amount expended under this contract shall not exceed ($20,000.00).

Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. **Independent Contractor:**

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.

EXHIBIT
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Section IV. **Hold Harmless and Indemnification:**

James R. Lynch agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. **Insurance:**

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. **Limitations Upon Legal Representation:**

It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. **Term of the Agreement:**

The term of this Agreement shall commence on January 30, 2009 and shall remain in effect through June 30, 2009.

Section VIII. **Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

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Section IX. **Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. **Agreement Not Assignable:**

This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII **Payments Include All Taxes:**

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

EXHIBIT
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Section XIV Conflict of Interest:

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

FOR SOUTH DAKOTA BOARD OF REGENTS:

Robert T. Perry

Dated: 2/4/09

JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP

James R. Lynch

Dated: 2/3/09

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 2/4/09

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

Jeffrey P. Hallem

Dated: 2/5/09

The foregoing Agreement is hereby approved as to form.

Post-it® Fax Note 7671	Date	# of pages ▶
To Jim Shekleton	From John Meyer	
Co./Dept. BOR	Co.	
Phone #	Phone # 626-2521	
Fax # 773-2422	Fax #	

EXHIBIT 4 (6)

Approved as to Form
Larry Long

by JPKAAG

Larry Long
Attorney General

Dated: 2/5/09

EXHIBIT
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Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

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B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.

3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to

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information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of $50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of $50,000.

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E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

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Office of Attorney General
State of South Dakota

I, Larry Long, Attorney General of the State of South Dakota, do hereby appoint **JAMES R. LYNCH** of Los Angeles, California, to represent the Board of Regents in legal matters involving the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development concerning Darley International, LLC; to serve at the will of the Attorney General.

Dated this 5th day of February, 2009.

Larry Long
Attorney General

State of California)
: ss
County of Los Angeles)

I, James R. Lynch, having been appointed as a Special Assistant Attorney General for the State of South Dakota, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and that I will faithfully and impartially discharge the duties of such office, and render a true account of all money, accounts, credits and property of any kind that shall come into my hands as such office and pay over and deliver the same according to law.

James R. Lynch

Subscribed and sworn to before me, a notary public, this 6th day of February, 2009.

Notary public/California

My commission expires:

CAROLYN DOMINGUEZ
COMM. # 1775068
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires Oct. 22, 2011

EXHIBIT
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Exhibit N

DECLARATION OF MARTY J. JACKLEY

I, MARTY J. JACKLEY, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am the Attorney General for the State of South Dakota. I took office on September 4, 2009, succeeding Lawrence E. Long, who had served in the position since 2002 and resigned to accept an appointment to the state circuit court.

3. The Attorney General's Office has received information that South Dakota International Business Institute, located at Northern State University in Aberdeen, South Dakota, was established by the South Dakota Board of Regents and, under South Dakota law, the Institute has no independent legal capacity to sue or be sued.

4. The attorney general has the duty under SDCL 1-11-1(1) to represent the state in legal proceedings. As such, in order for a person to represent the State of South Dakota in litigation generally requires a legal services contract with the State under SDCL 1-11-15 and an appointment from the attorney general under SDCL 1-11-4 and SDCL 1-11-5. This would apply to representation of the Board of Regents of South Dakota, as well, because the Board is a State agency. The Attorney General's Office maintains records of legal services contracts the State enters into with privately retained counsel as provided by SDCL 1-11-15. I am the custodian of these records. The Attorney General's Office also maintains records of assistant attorney general and special assistant attorney general appointments made during my and former Attorney General Long's tenure as attorney general. An appointment can last no longer than the term of the attorney general. I am the custodian of these records.

5. Based upon a review of the records on file with the Attorney General's Office, and conversations with staff who were involved with appointments and legal services contracts under former Attorney General Long, Joop Bollen has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Joop Bollen to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Bollen has never been appointed as a special assistant attorney general for the State of South

Dakota during my or former Attorney General Long's term as attorney general. Mr. Bollen has never been authorized by me, former Attorney General Long, or an authorized representative of either office to accept service of process, defend, or to appear in litigation for, the State of South Dakota.

6. Based upon a review of the records on file with the Attorney General's Office, and conversations with staff who were involved with appointments and legal services contracts under former Attorney General Long, no attorney for the Hanul Professional Law Corporation, nor Hanul itself, has ever served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Hanul or its attorneys to represent the State of South Dakota in a litigation matter has been filed with my or former Attorney General Long's office. Neither Hanul nor any attorney working for Hanul has ever been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Neither Hanul nor any attorney working for Hanul has ever been authorized by me, former Attorney General Long, or an authorized representative of either office to accept service of process, defend, appear in litigation for, or otherwise represent the State of South Dakota.

7. Attached hereto as Exhibit 3 are true and correct copies of contracts between James R. Lynch and the South Dakota Board of Regents to perform legal services in litigation and/or arbitration against Darley International, LLC, and the appointment of Mr. Lynch as a special assistant attorney general to that end.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of April, 2010, at Pierre, South Dakota.

Marty J. Jackley

Exhibit O

James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
Los Angeles, California 90071
Tel: (213) 347-0210
Fax: (213) 347-0216

Attorneys for Respondent
South Dakota Board of Regents,
South Dakota International Business Institute

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT FOR CALIFORNIA

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota Board of Regents, dba South Dakota International Business Institute, Respondent.	CASE NO.: CV08-05034 DDP PLAx **DECLARATION OF ROBERT T. PERRY, Ph.D., IN SUPPORT OF RESPONDENT'S MOTION TO VACATE ORDER; EXHIBITS [FRCP Rule 60(b)** Date: April 13, 2009 Time: 10:00 a.m. Ctrm.: 3 Judge: Hon. Dean D. Pregerson

I, ROBERT T. PERRY, Ph.D., declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am, and at all material times have been, employed by the South Dakota Board of Regents on a regular basis, full-time, as its Executive Director.

3. My official responsibilities include various aspects of supervision of the six state universities governed by the South Dakota Board of Regents pursuant to the provisions of article XIV, § 3, of the South Dakota Constitution and section 13-49-1 of the South Dakota Codified Laws. Northern State University (NSU) numbers among these institutions. SDCL § 13-59-1 and § 2, of chapter 114 of the 1901 Session Laws.

4. I also serve as custodian of all the official minutes of the South Dakota Board of Regents. Among the matters set forth in the Board minutes is an official action taken by the Board of Regents at its May 4-5, 1994 meeting, to establish the Northern State University International Business Institute, also known as the South Dakota International Business Institute (SDIBI). Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Minutes of the South Dakota Board of Regents, May 4-5, 1994, pp. 558, 999 through 1004.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Board minutes reflecting an official action taken by the Board of Regents at its December 9 - 10, 2003 meeting (pp. 3002, 3632, 3649-3650), to amend its official mission statements to remove references to all centers and institutes at all universities under its control from such official mission statements. This action did not repeal the 1994 authorization to operate the SDIBI as an administrative unit within NSU. It merely eliminated from Board policy statements enumerations of academic centers and public service programs that, in the case of some institutions, had grown to inordinate length. The revisions to Board Policy No. 1:10:6 (D) shown on page 3650 of the Minutes of the South Dakota Board of Regents, December 9 - 10, 2003 meeting, document the revision and confirm that the institute approved in 1994 had come to be known as the South Dakota International Business Institute.

6. I had no knowledge of the existence of the above-captioned action, or the dispute leading to it, or any Order or action resulting therefrom, until January 27, 2009, when James F. Shekleton informed me of it. I have never been served with a Summons or any other document in the above-captioned action.

7. The SDIBI does not have any capacity to sue or be sued that is independent of the Board of Regents. The Board of Regents has never authorized Joop Bollen or any SDIBI staff (including Cherri Brick) to accept service of process on behalf of the Board of Regents, NSU, or the SDIBI. Mr. Bollen has never served as an attorney for the Board of Regents, NSU, or the SDIBI. The Board of Regents has never authorized Mr. Bollen to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

8. The Board of Regents has never authorized the Hanul Professional Law Corporation, or any of its attorneys, to accept service of process on behalf of the Board of Regents. The Board of Regents has never authorized Austin Su Ki Kim, the Hanul Professional Law Corporation, or any attorney working for Hanul to accept service of process on behalf of the Board of Regents, NSU, or the SDIBI. Neither Mr. Kim nor any other attorney working for Hanul has served as an attorney for the Board of Regents, NSU, or the SDIBI. The Board of Regents has never authorized Mr. Kim, Hanul, or any of Hanul's attorneys to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

9. The Governor's Office of Economic Development is a state agency operating within the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. The Governor's Office of Economic Development operates with the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector

to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. Pursuant to that charge, the Governor's Office of Economic Development entered into a Letter of Agreement with NSU to provide funding to support the SDIBI. The SDIBI receives primary support from state funds paid to it through its contract with GOED or from some $100,000 allocated to it annually by NSU. Incidental income from seminars is deposited into accounts held by Northern Plains International Inc., a nonprofit corporation controlled by NSU, and such funds are disbursed to cover expenses that may not be compensable from state fund sources. In addition to its educational activities within the state, the SDIBI promotes export activities through providing trade leads, consulting and maintaining a directory of South Dakota exporters. The SDIBI also pursues foreign direct investment activities in South Dakota.

10. Were a court to permit a suit against the SDIBI in its own name and a money judgment were to be entered against the SDIBI, such judgment would be paid out of funds of the State of South Dakota.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of February, 2009, at Pierre, South Dakota.

Robert T. Perry, Ph.D.

Management Information Systems on Inactive Status. He said the four actively enrolled students in the program are expected to graduate by August 1994, and no new students would be admitted to the program while it is on inactive status. Dr. Hillman said that USD plans to review the program in September of 1994 to determine if it should be reactivated.

IT WAS MOVED by Regent Wegner, seconded by Regent Lebrun to approve the USD request to place the Master of Science in Management Information Systems on inactive status effective March 5, 1994. All members voting AYE. The MOTION CARRIED. A copy of the request can be found on pages 995 to 998 of the official minutes.

NSU SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE

Dr. Hillman said that Northern State University has submitted a proposal for the South Dakota International Business Institute which replaces the existing International Business Center. He said that the Academic Affairs Council has discussed the proposal, and noted that they feel there is a need to develop more subjective criteria for the designation of "Institute" or "Center". Dr. Hillman stated that funding for the Institute is derived from some GOED sponsorship funds, and some student tuition.

Dr. Hutchinson stated that several years ago the campuses received a sum of money for the program through a grant from the Governor's Office of Economic Development. He added that it has been operating from those moneys, and they also receive some funds from offering workshops, seminars and conferences.

IT WAS MOVED by Regent Olsen, seconded by Regent Ritter to approve the NSU International Business Institute, which is also reflected in BOR Policy 1:10:6. All members voting AYE. The MOTION CARRIED. A copy of the proposal can be found on pages 999 to 1004 of the official minutes.

CHANGES OR MODIFICATIONS IN PROGRAMS

Dr. Hillman said the Academic Affairs Council and the Council of Presidents and Superintendents have reviewed and support the recommended changes or modifications to existing programs which includes the deletion of 20 majors, minors or options.

IT WAS MOVED by Regent Gienapp, seconded by Regent Olsen to approve the changes or modifications in programs as submitted by BHSU, DSU, NSU, SDSU, and USD. All members voting AYE. The MOTION CARRIED. A copy of background information can be found on pages 1005 to 1057 of the official minutes.

VTE MASTER'S PROGRAM

Dr. Hillman stated that the Board approved the curriculum and degree requirements of the cooperative MSEd in Vocational Technical Education requested by SDSU and DSU in October,

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SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: R - 3

DATE: May 5-6, 1994

****

SUBJECT: NSU South Dakota International Business Institute

Attached is a proposed charter for the South Dakota International Business Institute that has been submitted by Northern State University. This is a revision of the existing International Business Center. The Academic Affairs Council and the Council of Presidents and Superintendents have reviewed this request and support it.

Also attached is a copy of BOR Policy 1:10:6, Northern State University Mission Statement, which reflects this change.

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RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the NSU International Business Institute.

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Northern State University Proposal for Authorization of the South Dakota International Business Institute

Introduction:

Northern State University has a long-standing relationship with the Governor's Office of Economic Development (GOED), the South Dakota Department of Agriculture, and other state and federal agencies that further economic development and promote international business for South Dakota. Though these associations have existed informally, a need exists to more clearly define these relationships in order to better serve the needs of South Dakota.

As the global society becomes more of a reality in the business world, the institutions of South Dakota must evolve to meet the competition of tomorrow without exceeding the budgets of today. Accordingly, the South Dakota International Business Institute seeks to formalize these relationships and to embody the service assistance needed.

Mission:

The South Dakota International Business Institute will support state agencies and other organizations in their efforts to improve the economic climate in South Dakota by increasing international business activity leading ultimately to opportunities for quality jobs and economic prosperity for our citizens.

Objectives:

The objectives of the South Dakota International Business Institute include the following:

- Provide continuing education opportunities in international business through workshops, seminars, and conferences.
- Provide confidential consultation to South Dakota businesses planning or conducting business internationally.

EXHIBIT
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- Provide consultation and support to GOED in creating an international trade zone in South Dakota.
- Provide South Dakota businesses with indepth knowledge of the international business climate and procedures.
- Provide a 24 hour per day state-wide bulletin board service via modem, and potentially internet, to disseminate information at no cost to businesses throughout South Dakota.
- Provide South Dakota businesses with alternatives and recommendations regarding specific international projects.
- Provide students with practical experience by giving them an opportunity to solve, in team format, real life international business problems.
- Provide students with the opportunity to serve internships in organizations that are involved in international business, such as GOED, regional businesses, etc.
- Provide faculty with the opportunity to work closely with South Dakota businesses interested in international trade and to provide educational support required by these businesses.
- Provide the faculty an opportunity to work with international business students and to conduct teaching related research.
- Provide a means to improve and expand international business programs at all South Dakota educational institutes including K - 12, vocational, private, and regental institutions.
- Provide for the development of international business relationship among all regental institutions and foreign educational institutions.

Operations:

The Director of International Business operates the Institute under the guidance of the Dean of the School of Business. The director has a responsibility to achieve the objectives of the Institute and fulfill its mission. To assist the director, a secretary provides administrative support 20 hours per week.

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Facilities:

The International Business Institute occupies offices in Lincoln Hall on the Northern State University campus with access to the facilities and personnel of the university.

Cost Estimates:

Salary	$38,000
Travel	2,500
Student Labor	6,000
O&M	7,500
Total	$54,000

It is expected that international business workshops, seminars, and conferences will be revenue generating activities.

EXHIBIT
tabbies
1 (8)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Northern State University Mission Statement

NUMBER: 1:10:6

The role of Northern State University is that of a liberal arts university providing programs in the arts and sciences, education, business, and the fine arts with special emphasis on the preparation of students for careers in business and education. Complementing these programs are pre-professional, one and two-year terminal, and junior college programs in fulfillment of its responsibility for college transfer programs in northeastern South Dakota. Degrees are authorized at the associate, baccalaureate, and masters level.

The following curriculum is approved for the University:

A. Baccalaureate programs in the arts and sciences, fine arts, business, technology, and education; associate degree programs in business, commercial art, criminal justice studies, general studies, industrial technology, office administration, and social services and pre-professional programs (one- and two-year) in pre-architecture, pre-chiropractic, pre-engineering, pre-journalism, and pre-mortuary.

B. Masters programs in education.

C. Research, creative activity, and scholarship, as activities incumbent to the university community, are an integral part of the task of the faculty. Since the role of the university is primarily teaching, the central focus of research is in support of teaching, including primary research in areas related to professional preparation, and the fulfillment of the institution's service function.

D. With other campuses in the Regental System, Northern State University shall have responsibility for continuing education and public service consistent with its programmatic authorizations in A and B above by acting as a resource for a diverse group of agencies, businesses and educational institutions within its region.

EXHIBIT
1 (9)

E. Services through the following approved centers and organizational units:

~~International Business Center~~
Small Business Institute
Environmental Education Center
Reading Center
Writing Center
Mathematics Center
Elementary and Secondary Science Teaching Center
South Dakota International Business Institute

SOURCE: BOR, March 21-22, 1991

EXHIBIT
1 (1a)

Exhibit II

CONSENT CALENDAR

IT WAS MOVED by Regent Morris, seconded by Regent Nef to adopt the items on the consent calendar with the exception of item #X-7 Higher Education Facilities Fund. All members voting AYE. The MOTION CARRIED.

The following items were adopted:

The University Mission Statement Policy Revisions

A copy of the Mission Statements can be found on pages 3632 to 3650 of the official minutes.

BOR Policy 2:4 Registration

A copy of the Registration policy can be found on pages 3651 to 3652 of the official minutes.

BOR Policy 2:5 Transfer of Credit

The Transfer of Credit policy can be found on pages 3653 to 3664 of the official minutes.

BOR Policy 2:6 Academic Calendar

The Academic Calendar policy can be found on pages 3665 to 3669 of the official minutes.

BOR Policy 2:10 Grades and Use of Grade Point Averages

A copy of Policy 2:10 can be found on pages 3670 to 3676 of the official minutes.

BOR Policy 2:23 Certificate Programs and Certificates of Recognition

A copy of Policy 2:23 can be found on pages 3677 to 3678 of the official minutes.

BOR Policy 6:3 Higher Education Facilities Fund

Regent Jewett said that in the past years, the Board has tried to maintain an unobligated cash balance in the HEFF account of at least $1.0M In discussions about the next ten-year capital plan and in looking at the HEFF cash flows, the question arose about a reserve requirement. Several Regents have indicated an interest in raising the cash balance to $2.0M

IT WAS MOVED by Regent Nef, seconded by Regent Venhuizen to approve the policy as written, leaving the unobligated cash balance at $1.0M.

Mr. Kramer indicated that the Board has the prerogative if there were to be a cash drop or if we were to lose a building, to take money out of the M&R allocation. The statute only states

EXHIBIT
tabbies
2 (11)

SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: X-1

DATE: December 9-10, 2003

****

SUBJECT: University Mission Statement Policy Revisions

In May 2002, the Board approved a revised mission statement format that focused on mission and removed the listing of programs, centers, and public services. As part of this revision, an institutional profile statement is to be developed that includes a more detailed explanation of university purpose as well as sections on scholarship, public service, continuing education, and off-campus delivery. The institutional profile statement is to be posted on the university web site by the end of May 2004.

The revised mission statements for each University are included in the attached files.

- Attachment I – BOR Policy 1:10:1 University of South Dakota
- Attachment II – BOR Policy 1:10:2 South Dakota State University
- Attachment III – BOR Policy 1:10:3 South Dakota School of Mines and Technology
- Attachment IV – BOR Policy 1:10:4 Black Hills State University
- Attachment V – BOR Policy 1:10:5 Dakota State University
- Attachment VI – BOR Policy 1:10:6 Northern State University

****

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the revisions to BOR policies, 1:10:1 USD Mission Statement, 1:10:2 Mission Statement, 1:10:3 South Dakota School of Mines and Technology Mission Statement, 1:10:4 Black Hills State University Mission Statement, 1:10:5 Dakota State University Mission Statement, and 1:10:6 Northern State University Mission Statement.

EXHIBIT

2 (12)

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Northern State University Mission Statement

NUMBER: 1:10:6

The legislature established Northern State University to meet the needs of the State, the region, and nation by providing undergraduate and graduate programs in education and other courses or programs as the Board of Regents may determine. (SDCL 13-59-1)

The Board implemented SDCL 13-59-1 by authorizing graduate and undergraduate programs in education to promote excellence in teaching and learning, to support research, scholarly and creative activities, and to provide service to the State of South Dakota, the region, and the nation. The Board approved a special emphasis on E-learning in the university curriculum and service.

Northern State University is a multi-purpose, regional institution of higher education, authorized for the people of South Dakota by the South Dakota Legislature. Founded as a normal and industrial school to serve the northern part of the state, The University has diversified its offerings to address the emerging needs of the students, community, and region. Teacher preparation remains an important feature of the institutional mission, as do programs in the arts and sciences, business, and fine arts. Through undergraduate and graduate programs, the university provides quality teaching and learning. Distance delivery technology is a core mission in all degree programs, especially all levels of teacher preparation. Offering students a breadth and depth in the liberal arts and in professional studies, the university develops effective and productive professionals and citizens. Further, the university creates and nurtures a community of students, faculty, and staff, supporting communication, student and faculty research, and professional growth. Northern State University has designed programs to meet academic, social, cultural, and economic needs of the community and area, providing lifelong learning opportunities, a center for the arts and recreation, and support for regional development.

The following curriculum is approved for Northern State University:

Curriculum

Degrees are authorized at the associate, baccalaureate, and masters levels.

The following curriculum is approved for the university.

A. **Undergraduate Programs**

Pre-professional one- and two-year terminal and junior college degree programs in the arts and sciences, fine arts, business, technology, and education.

EXHIBIT
tabbies
2 (13)

Associate degree programs in arts and sciences, business, education and fine arts.

Baccalaureate degree programs in arts and sciences, business, education, ~~technology,~~ and fine arts. ~~Northern State University enjoys unique authorization to offer a bachelor's degree in international business.~~

B. Graduate Programs

Masters degrees in education and E-learning.

~~Master of Science in Education degrees in E-learning Design and Instruction; Guidance and Counseling; Leadership and Administration; and Teaching and Learning.~~

~~Master of Science degree in E-learning Technology and Administration.~~

~~C. Scholarship~~

~~Scholarly and creative activities are conducted in all authorized disciplines consistent with the academic purposes of the institution.~~

~~D. Public Service~~

~~Services are offered through the following approved centers and organizational units: South Dakota International Business Center; Small Business Institute; Professional Development School; Environmental Education Center; Reading, Writing, and Mathematics Center; Elementary and Secondary Science Teaching Center; University Speech and Hearing Clinic; Northern State University Press; University Art Galleries; Center for Statewide E-learning.~~

~~E. Continuing Education~~

~~Continuing education opportunities, outreach, and public service to the state, region and nation and internationally in concert with the approved programmatic authorization listed above.~~

~~F. Off-Campus Delivery~~

~~Off-campus delivery is provided throughout the state in designated mission areas, particularly through the Capital University Center in Pierre. An emphasis in electronic computer delivery has enhanced the sites and numbers of students served through off-campus delivery.~~

SOURCE: BOR, March 1991; BOR, May 1994; Access to Quality, May 1996; BOR, May 2001; BOR, December 2003.

EXHIBIT
2 (14)

Exhibit P

DECLARATION OF JACK R. WARNER

I, JACK R. WARNER, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. Since July 8, 2009, I have been employed by the South Dakota Board of Regents on a regular basis, full-time, as its Executive Director. I succeeded Dr. Robert T. Perry, who retired after 15 years of service as the Executive Director.

3. My official responsibilities include various aspects of supervision of the six state universities governed by the South Dakota Board of Regents pursuant to the provisions of article XIV, § 3, of the South Dakota Constitution and section 13-49-1 of the South Dakota Codified Laws. Northern State University (NSU) numbers among these institutions. SDCL § 13-59-1 and § 2, of chapter 114 of the 1901 Session Laws.

4. I also serve as custodian of all the official minutes of the South Dakota Board of Regents. The minutes are made and maintained by employees of the Board of Regents acting in the course and scope of their duties. The Board's secretary prepares the minutes of each meeting at and/or near the time of the meeting, from notes made during the course of the meeting. The draft minutes are then submitted to the Board of Regents for approval. Following approval, which may or may not include revisions to the draft minutes, the then-official minutes are maintained by employees of the Board of Regents. Among the matters set forth in the Board minutes is an official action taken by the Board of Regents at its May 4-5, 1994 meeting, to establish the Northern State University International Business Institute, also known as the South Dakota International Business Institute (SDIBI). Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Minutes of the South Dakota Board of Regents, May 4-5, 1994, pp. 558, 999 through 1004.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Board minutes reflecting an official action taken by the Board of Regents at its December 9-10, 2003 meeting (pp. 3002, 3632, 3649-3650), to amend its official mission statements to remove references to all centers and institutes at all universities under its control from such official mission statements.

This action did not repeal the 1994 authorization to operate the SDIBI as an administrative unit within NSU. It merely eliminated from Board policy statements enumerations of academic centers and public service programs that, in the case of some institutions, had grown to inordinate length. The revisions to Board Policy No. 1:10:6 (D) shown on page 3650 of the Minutes of the South Dakota Board of Regents, December 9-10, 2003 meeting, document the revision and confirm that the institute approved in 1994 had come to be known as the South Dakota International Business Institute.

6. The SDIBI does not have any capacity to sue or be sued that is independent of the Board of Regents. No university, institution, department, of the Board, or employee thereof, has the authority to conduct business or enter into contracts on behalf of the Board absent an express grant of authority by the Board or delegation by an official with such express grant of authority. There is no record of the Board of Regents ever authorizing Joop Bollen or the SDIBI to enter into or negotiate contracts generally, or with Darley International, LLC, or Hanul Professional Law Corporation specifically; there is no record of a delegation of authority to this effect, either. Indeed, there is no record of Mr. Bollen having ever requested that the Board of Regents approve agreements with Darley or Hanul.

7. Mr. Bollen has never served as an attorney for the Board of Regents, NSU, or the SDIBI; to my knowledge, Mr. Bollen is not licensed to practice law. The Board of Regents has never authorized Mr. Bollen to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

8. There is no record that the Board of Regents has never authorized the Hanul Professional Law Corporation ("Hanul"), or any of its attorneys, to represent the Board of Regents, NSU, or the SDIBI, in any action or in any capacity.

9. The Governor's Office of Economic Development is a state agency operating within the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the

state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. The Governor's Office of Economic Development operates with the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. Pursuant to that charge, the Governor's Office of Economic Development entered into a Letter of Agreement with NSU to provide funding to support the SDIBI. The SDIBI receives primary support from state funds paid to it through NSU's contract with GOED or from some $100,000 allocated to it annually by NSU. Incidental income from seminars is deposited into accounts held by Northern Plains International Inc., a nonprofit corporation controlled by NSU, and such funds are disbursed to cover expenses that may not be compensable from state fund sources. In addition to its educational activities within the state, the SDIBI promotes export activities through providing trade leads, consulting and maintaining a directory of South Dakota exporters. The SDIBI also pursues foreign direct investment activities in South Dakota.

10. Were a court to permit a suit against the SDIBI in its own name and a money judgment were to be entered against the SDIBI, such judgment would be paid out of funds of the State of South Dakota.

11. Subsequent to the initiation of these proceedings, Mr. Bollen resigned his position with Northern State University. His resignation became effective on December 21, 2009, and he ceased to be on the payroll on December 31, 2009.

12. SDIBI continues to exist as a constituent unit of NSU, and the clerical staff member formerly assigned to the SDIBI has been reassigned to other duties, but will occasionally update a website for GOED. GOED has agreed to reimburse NSU for these incidental expenses, but the contractual services agreement between NSU and GOED relating to the SDIBI will expire on June 30, 2010, and NSU does not presently intend to renew the agreement.

13. Based upon information and belief, Mr. Bollen presently works with SDRC, Inc. SDRC, Inc., is a for-profit corporation. According to records held by the South Dakota Secretary of State, Mr. Bollen first filed articles of incorporation for SDRC, Inc., on January 10, 2008. Mr. Bollen filed amended articles on June 1, 2009. True and correct copies of these documents are attached hereto as Exhibit 9. The addresses that Mr. Bollen listed for SDRC, Inc., were not associated with NSU or the SDIBI.

14. SDRC, Inc., has never been a constituent element in NSU or the Board of Regents; the Board of Regents has no contractual relationship with SDRC, Inc., and has never approved any contract between SDRC, Inc., and NSU or the SDIBI.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of April, 2010, at Pierre, South Dakota.

Jack R. Warner

Exhibit Q

O

JS - 6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DARLEY INTERNATIONAL, LLC, a Delaware corporation, Plaintiff, v. SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE, a non-profit organization, Defendant.	Case No. CV 08-05034 DDP (PLAx) **ORDER GRANTING DARLEY INTERNATIONAL'S MOTION TO COMPEL ARBITRATION** [Petition filed on July 31, 2008]

This matter comes before the Court on Petitioner Darley International, LLC's ("Darley") motion to compel arbitration against Respondent South Dakota International Business Institute ("SDIBI"). SDIBI is not a party to any contract with Darley that contains an arbitration agreement; indeed, Darley and SDIBI do not have a formal contractual relationship. Darley's motion rests instead on the theory that a nonsignatory can be bound to an arbitration agreement under certain circumstances. In particular, Darley asserts that SDIBI should be compelled to arbitrate because (1) SDIBI is a third party beneficiary, (2) equitable estoppel

EX. 14

requires it, and (3) agency principles bind SDIBI to the arbitration clause. For the reasons set forth below, the Court grants Darley's motion to compel.

I. BACKGROUND

Respondent SDIBI is a non-profit organization associated with the School of Business at Northern State University, a public university in South Dakota. Pet'n ¶ 4; Bollen Decl. ¶ 3. On a contract with the South Dakota Governor's Office for Economic Development, SDIBI conducts foreign investment activities. Bollen Decl. ¶ 2. Additionally, SDIBI runs the Regional Center Program, an investment visa program approved by the USCIS that grants legal permanent residency to foreign nationals who create ten direct or indirect full-time jobs for South Dakota residents by investing at least $500,000. Bollen Decl. ¶ 5. (The Regional Center's status is also known as EB-5 status.) SDIBI has a working relationship with the Hanul Law Firm ("Hanul"), which recruits investors for SDIBI's programs in South Korea and Asia. SDIBI cannot grant "exclusive rights" to private entities with regard to SDIBI EB-5 programs; however, SDIBI forwards all inquiries related to recruiting Asian investors to Hanul. SDIBI also advertises its relationship with Hanul on its website.

Petitioner Darley International, LLC is a corporation that "offers a variety of international business services." Pet'n ¶ 3. In or around July 2007, Darley President Robert Stratmore contacted SDIBI about obtaining rights to recruit investors for SDIBI's EB-5 program. Stratmore Decl. ¶ 3. SDIBI Director Joop Bollen referred Stratmore to Hanul. Id. ¶ 4; Bollen Decl. ¶ 14.

Darley and Hanul negotiated a contract essentially providing that Darley would recruit Asian investors for SDIBI's EB-5 project (specifically, its "Tilapia Project") and Hanul would deal with the legal issues regarding immigration status for these investors. See Pet'n Ex. 1. The Darley-Hanul contract ("the Agreement") set out the obligations of Darley and Hanul, including "agent fees" for each. The Agreement also contained an arbitration clause requiring arbitration in San Francisco, California. The Ageement was executed in October 2007.

SDIBI's role in the formation of the contract is disputed. SDIBI admits that it "answer[ed] questions related to the Tilapia project and any questions associated with the regional center when asked by either of the parties to the contract." Bollen Decl. ¶ 19. Darley maintains that "Bollen and SDIBI played an active role in negotiating the terms of the contract," including "specifically negotiat[ing] the terms of the agreement relating to Darley's exclusivity rights with respect to recruting investors for certain territories." Stratmore Decl. ¶ 6. SDIBI did not sign the Agreement. See Agreement ¶ 10(A) ("This Agreement will be effective upon execution by and between Hanul and Darley.").

In December 2007, Darley conducted two seminars in China for the purpose of recruiting investors. Around the same time, SDIBI decided to pull the Tilapia project. SDIBI also created an internal entity, SDRC, to manage its projects. Pet'n ¶ 12; Bollen Decl. ¶ 22.

As a result of the disintegration of the Tilapia project and the creation of SDRC, Darley initiated arbitration proceedings against Hanul in accordance with the Agreement. Darley also tried

to initiate arbitration against SDIBI. Because SDIBI had not signed the Agreement, SDIBI maintained that it could not be compelled to arbitrate in accordance with the Agreement. Darley filed this motion to compel SDIBI to arbitrate on the basis of 9 U.S.C. § 4.

II. DISCUSSION

A. Jurisdiction and Venue

1. Jurisdiction

a. Subject Matter Jurisdiction

Federal courts "have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party." Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006). Thus, although SDIBI does not contest the Court's subject matter jurisdiction,[1] the Court must determine that it properly has jurisdiction.

The Court does not have subject matter jurisdiction over a motion to compel arbitration solely because a party brings the motion pursuant to 9 U.S.C. § 4. The FAA does not provide a basis for jurisdiction under 28 U.S.C. § 1331. Rather, "there must be diversity of citizenship or some other independent basis for federal jurisdiction" before an order to compel arbitration can issue. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 25 n. 32; 9 U.S.C. § 4 (a party may petition "any United States district court which, save for the agreement, would have jurisdiction under Title 28").

Because the underlying claim in this case is in the nature of breach of contract, federal subject matter jurisdiction must lie,

[1]SDIBI appears to concede that the Court has subject matter based on the FAA. See Opp'n at 5.

if at all, in diversity jurisdiction. Under 28 U.S.C. § 1332, a court has diversity jurisdiction where the amount in controversy exceeds $ 75,000, and there is complete diversity of citizenship between all plaintiffs and all defendants.

Complete diversity exists here. Petitioner Darley is a citizen of Delaware and California. Pet'n ¶ 1. SDIBI, a part of the School of Business at the Northern State University in South Dakota, is a citizen of South Dakota. Opp'n at 6; Pet'n ¶ 4.

Petitioner does not explicitly state that the amount of controversy exceeds $75,000. Darley's petition, however, claims that Hanul and SDIBI's actions caused it lose investors and fees. Pet'n ¶ 14. Darley also claims that it "received a definite or concrete interest from 30 potential investors." Pet'n ¶ 10. Additionally, under the contract between Darley and Hanul, Darley was to receive roughly $30,000 from each client Darley and Hanul successfully retained. Pet'n Ex. 1 ¶ 6. Accordingly, the amount in controversy is satisfied if Darley's claims against SDIBI are for the full amount Darley would receive per client for three or more clients. Thus, the Court finds that diversity jurisdiction exists.

b. Personal Jurisdiction

SDIBI contests the Court's personal jurisdiction over it. In order to bind a party to a motion to compel arbitration, the Court must have personal jurisdiction over the party.

A federal court exercises the personal jurisdiction of the state in which it sits. Here, California's long-arm statute applies, and authorizes this Court to exercise jurisdiction consistent with federal constitutional standards. Cal. Civ. Proc. Code § 410.10. The constitution permits a court to exercise

personal jurisdiction where a plaintiff has minimum contacts with the forum state such that the exercise of personal jurisdiction is reasonable, i.e., comports with notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310, 316-17 (1945); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-76 (1985).

The exercise of personal jurisdiction is constitutionally permissible where a court has specific jurisdiction, which exists here if (1) SDIBI purposely availed itself of the benefits of the forum; (2) the controversy is related to SDIBI's contacts with the forum; and (3) the exercise of jurisdiction is reasonable. Burger King, 471 U.S. at 472-76; Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998).

The Court has specific personal jurisdiction over SDIBI here. Through its ongoing relationship with Hanul, a California resident, SDIBI deliberately directed activities at California and therefore purposefully availed itself of this forum. See Hirsch v. Blue Cross, Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th Cir. 1986). As described above, SDIBI continually referred all specific inquiries regarding Southeast Asia to Hanul, and advertised its relationship with Hanul on its website. Additionally, the current controversy is related to those contacts, as it arises out of SDIBI's business relationship with Hanul and the potential obligations flowing from that relationship.

Finally, personal jurisdiction over SDIBI is reasonable. In determining whether the exercise of jurisdiction is reasonable, a court looks to seven factors:

(1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Panavision Int'l, 141 F.3d at 1323. These factors weigh in favor of jurisdiction here because SDIBI's relationship with Hanul constitutes a significant "purposeful interjection" into California and Darley is a California corporation alleging that it was injured by SDIBI. SDIBI has not presented a "compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King, 471 U.S. at 477; Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1114 ("Once it has been decided that a defendant purposefully established minimum contacts with a forum," he has the burden to show the unreasonableness of jurisdiction.).

Accordingly, the Court finds that it has personal jurisdiction to decide this motion.

2. Venue

SDIBI also argues that venue in this Court is improper under the general federal venue statute. The federal venue statute, 28 U.S.C. § 1391, provides that, for a civil action where federal jurisdiction is "founded only on diversity of citizenship," the proper venue is:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district

> in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a). For the purposes of venue, a defendant that is a corporation is deemed to reside "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." § 1391(c).

In challenging venue, SDIBI contends that venue in the Central District of California is improper because it is not subject to personal jurisdiction in California, see § 1391(a)(1) & (c), and because it was not a party to the agreement, which was drafted and executed in California, see § 1391(a)(2). Because the Court finds that SDIBI is subject to personal jurisdiction in California, venue is proper in the Central District pursuant to § 1391(a)(1) and § 1391(c).

B. Can SDIBI Be Compelled to Arbitrate?

Although Darley concedes that SDIBI did not sign the Agreement containing the arbitration provision, Darley argues that SDIBI should nonetheless be compelled to arbitrate. A court properly determines whether an arbitration clause can be enforced by or against a non-signatory because "[a]rbitrability is ordinarily for courts ... to decide." Poweragent Inc. v. Electronic Data Sys. Corp., 358 F.3d 1187, 1191 (9th Cir. 2004); see Chastain v. Union Sec. Life Ins. Co., 502 F. Supp. 2d 1072, 1076 (C.D. Cal. 2007).

As the parties' briefs highlight, arbitration policy points in two directions in this case: although there is a strong federal policy favoring arbitration, "arbitration is a matter of contract and a party cannot be required to submit to arbitration on any dispute which he has not agreed to so submit." United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960). In other words, as a general rule, while we strongly enforce arbitration agreements, we require that the parties actually or equitably have consented to the clause.

This general rule against compelling non-parties to arbitrate is subject to some exceptions. "[N]onsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles," Letizia v. Prudential Bache Securities, Inc., 802 F.2d 1185, 1187-88 (9th Cir. 1986), including incorporation by reference, assumption, agency, veil-piercing/alter ego, and estoppel, Comer v. Micor, Inc., 436 F.3d 1098, 1101 (9th Cir. 2006) (citing Thomson-CSF, S.A. v. Am. Arbitration Ass'n, 64 F.3d 773, 776 (2d Cir. 1995)). Additionally, in some cases "nonsignatories can enforce arbitration agreements as third party beneficiaries." Comer, 436 F.3d 1098.

Darley argues that SDIBI should be compelled to arbitrate under three theories: (1) third party beneficiary status, (2) equitable estoppel, and (3) agency principles.

1. Third Party Beneficiary

Darley first argues that SDIBI should be bound because it was a third party beneficiary of the Agreement between Darley and Hanul. SDIBI does not contest Darley's legal analysis. Instead, SDIBI contests third party beneficiary status on the facts and

specifically argues that the Agreement does not mention any direct benefits flowing to SDIBI and that any benefits that do exist are incidental.

The Court need not decide whether SDIBI is a third party beneficiary because the Ninth Circuit rejected the premise of Darley's legal argument in Comer v. Micor. In Comer, the court considered whether an ERISA plan participant could be compelled to arbitrate an ERISA claim where the plan, but not the participant, had signed an arbitration agreement. 436 F.3d at 1099. The plaintiff, a participant in two ERISA plans, brought suit against Smith Barney, which had been providing investment advice to the plan's trustees, for breach of fiduciary duty. Id. at 1100. The relationship between the trustees and Smith Barney was governed by an arbitration agreement, but the plaintiff had not signed this agreement. Id.

Affirming the lower court's denial of the motion to compel, the Ninth Circuit held that the nonsignatory plaintiff could not be bound to the arbitration agreement. The court rejected Smith Barney's argument that Comer should be bound because he was a third party beneficiary. The court noted that Smith Barney had "not produced any evidence that the signatories ... intended to give every beneficiary of the plans ... the right to sue under the agreements." Id. at 1102. Accordingly, the plaintiff could not "be bound to the terms of a contract he is not even entitled to enforce." Id. Although the court recognized that "[a] third party beneficiary might in certain circumstances have the power to sue under a contract," it held that a third party "certainly cannot be

bound to a contract it did not sign or otherwise assent to." Id. (emphasis in original).

Moreover, the court considered and rejected the approach taken by the Third Circuit in E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber and Resin Intermediates, 269 F.3d 187 (3d Cir. 2001).[2] In DuPont, the Third Circuit left room for a third party beneficiary to be bound by contract terms to which he did not assent where the claim "arises out of the underlying contract to which it was an intended third party beneficary." 269 F.3d at 195. In Comer, the Ninth Circuit held that it could not follow this approach because the " 'arises out of' test is not grounded in any principle of contract or agency law of which we are aware" and the court was therefore "precluded by Letizia from adopting it." Comer, 436 F.3d at 1103.[3]

Here, like Smith Barney did in Comer, Darley seeks to bind SDIBI to an arbitration clause it did not sign. The Court notes that Darley does not provide facts suggesting that Hanul and Darley intended that SDIBI would have the right to sue under the contract. Cf. Comer, 436 F.3d at 1102. The facts of this case further counsel against binding SDIBI under a third party beneficiary theory: unlike the plaintiff in Comer, SDIBI has not sued Darley at all;

---

[2]Darley relies on DuPont for the proposition that third party beneficiaries can be compelled to arbitrate.

[3]See also Motorsport Eng'g, Inc. v. Maserati SPA, 316 F.3d 26, 29 (1st Cir. 2002) ("Obligations under [a contract with a third party beneficiary], including any obligations to third parties, are created by agreement between the *signatories*.... If the signatories so intend, a third party can enforce the contract against the signatory so obligated. But the third party beneficiary, who did not sign the contract, is not liable for either signatory's performance and has no contractual obligations to either." (emphasis in original)(internal citations omitted)).

rather, *Darley* both has instigated action against SDIBI and seeks to force SDIBI to litigate Darley's claim in arbitration.

Comer is binding on the Court. Because the Ninth Circuit has rejected the legal argument on which Darley's third party beneficiary theory rests, the Court need not consider whether SDIBI is a third party beneficiary. SDIBI cannot be compelled to arbitrate on a third party beneficiary theory.

2. Equitable Estoppel

Darley also argues that SDIBI should be compelled to arbitrate based on a theory of equitable estoppel. The parties do not dispute the law so much as its application here.

Although the Ninth Circuit has addressed equitable estoppel in this context only once, in Comer, the general principles that govern seem undisputed here. "Equitable estoppel 'precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.'" Comer, 436 F.3d at 1101 (quoting Wash. Mut. Fin. Group, LLC v. Bailey, 364 F.3d 260, 267 (5th Cir. 2004)). In the arbitration context, two lines of cases have followed from this principle, those where signatories to an arbitration agreement have argued that nonsignatories are bound by equitable estoppel, and those where nonsignatories have sought to compel signatories to arbitrate. Id.; see also DuPont, 269 F.3d at 202 (rejecting contention that signatory cases and nonsignatory cases are the same).[4]

[4]The Ninth Circuit rejected the portion of DuPont concerning third party beneficiaries, but embraced the portion of DuPont that concerned equitable estoppel. Comer, 436 F.3d at 1101-02.

The former is relevant here, and applies to bind nonsignatories to an arbitration clause "where the nonsignatory 'knowingly exploits the agreement containing the arbitration clause despite having never signed the agreement.'" Comer, 436 F.3d at 1001 (quoting DuPont, 269 F.3d at 199). A nonsignatory "exploits the agreement" when the nonsignatory embraces a contract during its life by either seeking to enforce the contract through litigation or by receiving a direct benefit flowing from the contract itself. See DuPont, 269 F.3d at 200; Thomson-CSF, 64 F.3d at 778-79; MAG Portfolio Consultant, GMBH v. Merlin Biomed Group LLC, 268 F.3d 58, 61 (2d Cir. 2001). While under third party beneficiary theory a court looks to the intent of the parties, when analyzing equitable estoppel a court looks to the parties' conduct *after* the contract was executed. See DuPont, 269 F.3d at 200 n.7.

a. Direct Benefit

Although there are limited published opinions on the topic, the case law gives some life to the "direct benefit" requirement. For example, a nonsignatory received a direct benefit when the contract expressly provided that it would receive monetary fees. See Legacy Wireless Services, Inc. v. Human Capital, LLC, 314 F. Supp. 2d 1045, 1056 (D. Or. 2004). Additionally, a party that, pursuant to the agreement, received lower insurance rates and the ability to sail under the French flag received direct benefits. See American Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999).

On the other hand, a nonsignatory received only indirect benefits from an agreement where the benefit derived from the third party's acquisition of a signatory to the agreement, not from the

agreement itself. Thomson-CSF, 64 F.3d at 779; see also Capitol Indemnities Corp. v. Dayton Board of Education, 492 F. Supp. 2d 829 (S.D. Ohio 2006).

Because SDIBI has not sought to enforce the terms of the contract, the question is whether SDIBI otherwise exploited the benefits of the contract between Darley and Hanul by receiving the direct benefits of it. Although the agreement provided SDIBI no monetary benefit, a direct benefit need not be monetary. Cf. Tencara Shipyard, 170 F.3d at 353. Darley argues instead that the "direct benefit" flowing from the Agreement was that Darley and Hanul were recruiting investors for SDIBI's projects (specifically, SDIBI's Tilapia project). Agreement ¶¶ C, G. SDIBI's mission is to support the efforts of the State of South Dakota in encouraging economic development and job creation in the state. Because the purpose of the contract directly supports SDIBI's mission (indeed, the contract mentions SDIBI), to the extent SDIBI actually received any investors as a result of the contract, it would have received direct benefits.[5] See Agreement ¶ G ("During the period of time when exclusivity for all of China is in effect (less Beijing and Guandong above), Darley shall market only for SDIBI in regards to EB-5 projects."). Additionally, the Court finds it plausible that there could be a direct benefit from the publicity about SDIBI's investment programs that Darley provided during its seminars in China.

b. Receiving the Benefit

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[5]SDIBI appears to argue that any benefits it would receive were for the people of South Dakota, not for it. This argument does not hold up to scrutiny.

Of course, that the contract provides for a direct benefit is not enough to bind a party to equitable estoppel. If it were, there would be no difference between the analysis under a third party beneficiary theory and an equitable estoppel theory, even though the Ninth Circuit has rejected one and embraced the other. See Comer, 463 F.3d at 1101-02. Rather, equitable estoppel appears to require that SDIBI have actively received these direct benefits, or otherwise actively exploited or encouraged Darley's performance of the contract. Cf. id. (finding that plaintiff had not exploited the arbitration contract because he was simply a "passive participant" in the ERISA plan and he never sought to enforce the terms of the agreement).

It does not appear that Darley was able to actually recruit any investors, and Darley cannot argue that SDIBI is subject to equitable estoppel based on that potential benefit, i.e., what SDIBI *would have* received as a result of the contract. Were actual investors to materialize, SDIBI would accept the benefits of the contract by facilitating their cases or otherwise dealing with the investment process in South Dakota.

Darley's argument that SDIBI received direct benefits in the form of publicity from the seminars it actually conducted in China, however, does concern benefits that SDIBI had the chance to actually receive and accept under the facts in this case. The Court would be hesitant to find that SDIBI received direct benefits and should be subject to equitable estoppel simply because Darley conducted a seminar without the involvement of SDIBI. SDIBI could not be bound to arbitrate simply because Darley publicized for it, something that SDIBI may have no control over. Rather, it must have

done something that indicated its exploitation or encouragement of that publicity.

Here, SDIBI actively affirmed the existence of the contract. SDIBI embraced Darley's performance of the contract, and has indicated specific awareness and involvement in these seminars. In fact, SDIBI's actions regarding the Tilapia project were in part a response to the seminars: it was "during the seminar" that it "became very clear that the Tilapia project was very risky." Bollen Decl. ¶ 21. Thus, while the parties argue over the details of SDIBI's involvement during the course of this contract, the record at the very least reflects that SDIBI encouraged Darley's efforts on behalf of the contract. See id.; Stratmore Decl. ¶ 9. Through the seminars, SDIBI received the benefits of the Agreement.

The Court finds that SDIBI's actions represent an affirmation of the benefits of the contract. Although the life of the contract prior to the Tilapia project's dissipation was perhaps short, the record reflects involvement from SDIBI in Darley's efforts to perform its obligations. Darley has shown that SDIBI knew about the contract and that SDIBI encouraged its formation; additionally, it appears that, after formation, SDIBI affirmed the contract by accepting the direct benefits of it. Accordingly, the Court finds it equitable to compel SDIBI to arbitrate on the basis of estoppel.

3. Agency Theory

Additionally, the Court finds that agency theory provides a basis on which to compel SDIBI to arbitrate. Darley also argues that SDIBI should be bound under agency principles, specifically

apparent authority.[6] "Traditional principles of agency law may bind a nonsignatory to an arbitration agreement." Thomson-CSF, 64 F.3d at 777; see also Letizia, 802 F.2d at 1187-88. Whether an agency relationship exists is an issue of fact.

Under principles of agency law, authority can be actual or apparent. Apparent authority is created when there is "a manifestation that another has authority to act with legal consequences for the person who makes the manifestation" and a third party "reasonably believes" that the actor is authorized based on that manifestation. Restatement (3d) of Agency § 3.03; cf. Cal. Civ. Code § 2300 (defining "ostensible agency" as that resulting "when the principally intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him").

Although SDIBI may not have had a written agreement with Hanul expressing an agency relationship, the record establishes that the SDIBI held Hanul out as an entity who worked on its behalf, and that reliance on these manifestations to support an agency relationship was reasonable. There are outward manifestations from SDIBI of an agency relationship between SDIBI and Hanul: SDIBI's website links to Hanul Law Firm, SDIBI admittedly refers all inquiries about Southeast Asian investment in SDIBI projects to Hanul, and SDIBI specifically referred Darley's inquiry to Hanul in this case. See Bollen Decl. ¶ 14; Blecher Decl., Ex. 9. Indeed, as Darley's opposition explains, Hanul had the authority to market

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[6] Darley did not discuss agency theory in its opening brief, but SDIBI addressed agency theory in its Opposition and Darley addressed it in the Reply.

SDIBI's programs with South Asian investors and to provide legal services in connection with them. See Opp. at 7.

Additionally, reliance on these outward manifestations was reasonable. While the record shows that Darley was aware of the technically "unofficial" nature of Hanul and SDIBI's relationship, see, e.g., Agreement ¶¶ 1(A), 11(B), mere technicalities do not undermine apparent agency here. In particular, it appears that SDIBI and Hanul gave the impression that, for all intents and purposes, SDIBI and Hanul worked in conjunction on the EB-5 projects, and that Hanul had the authority to grant exclusive promotion rights for SDIBI's Southeast Asian projects. Stratmore Decl. ¶ 4; Agreement ¶ 1(A). SDIBI's characterization of its relationship with Hanul, its actions in referring all inquiries -- including Stratmore's -- to Hanul, and its involvement in the formation of the agreement between Darley and Hanul, all suggest that reliance on outward manifestations of an agency relationship between SDIBI and Hanul was reasonable.

Accordingly, the Court finds it appropriate and equitable to compel SDIBI to arbitrate.

III. CONCLUSION

For the foregoing reasons, the Court grants Darley's motion to compel arbitration in accordance with the Agreement. To allow SDIBI to avoid arbitration here would create an inequitable result: SDIBI would avoid arbitration despite its central role in facilitating the Hanul-Darley relationship, its affirmation of the contract and Darley's performance of it, and its manifestations that Hanul had the authority to grant exclusive rights to act for the benefit of SDIBI's projects.

The Court declines to award costs in connection with the motion to compel arbitration.

IT IS SO ORDERED.

Dated: October 7, 2008

DEAN D. PREGERSON
United States District Judge

Exhibit R

DECLARATION OF JOHN MEYER

I, JOHN MEYER, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served as a Professor of Business Law at Northern State University (NSU) in Aberdeen, South Dakota. During the same time, I have also served part-time as a campus-based attorney for NSU. In my role as an NSU attorney, I normally would be aware of, and expect to promptly be notified of, any impending arbitrations or ongoing lawsuits naming NSU or SDIBI as a party.

3. The South Dakota International Business Institute (SDIBI) is physically housed at NSU. It and its former Director, Joop Bollen, at all times relevant herein were listed in the NSU directory. True and correct copies of portions of the NSU web site directory listing Mr. Bollen and the SDIBI are attached hereto as Exhibit 5. Mr. Bollen resigned as Director of the SDIBI effective December 21, 2009.

4. On January 22 or 23, 2009, Mr. Bollen called me on the telephone and asked me questions about whether someone who was not party to a contract could nevertheless be compelled to arbitrate the contract. On January 23, 2009, he sent me some documents by e-mail that I understood to relate to an arbitration between Hanul Professional Law Corporation and Darley International, LLC, which now also included the SDIBI. He had not previously advised me of any dispute involving these businesses and the SDIBI, or of any arbitration or litigation involving these parties.

5. By January 27, 2009, I had reviewed the documents that Mr. Bollen sent to me on the 23rd. I became concerned that this likely had involved litigation and instructed Mr. Bollen to provide me with additional documents. He suggested that I contact Hanul directly, but I insisted that he provide me with whatever he had. Later that day, he brought to me voluminous papers and documents relating to the impending arbitration. Mr. Bollen told me that he had deliberately not brought this dispute to my attention because he had been led to believe by attorneys from Hanul that this was a minor dispute that would be quickly resolved as to the SDIBI's

participation. Upon examining these papers and documents, I immediately discovered that SDIBI had been sued in the U.S. District Court for the Central District of California, having observed a captioned document with a "Filed" stamp on it. It was also apparent that the SDIBI had made an attempt to deny jurisdiction in the matter via a letter sent to Maxwell M. Blecher from Mr. Bollen dated May 7, 2008. An October 7, 2008, order from the federal court was not among the documents that Mr. Bollen provided to me. I did not see that document until several days later, after attorneys for the Board of Regents obtained a fuller set of documents relating to federal case.

6. On January 27, 2009, I informed James Shekleton, the Board of Regents' General Counsel, of what Mr. Bollen told me that day and of the apparent fact that the SDIBI had been involved in a lawsuit. Up until that time, I had never heard of Hanul or Darley, or the matters that were part of the federal suit.

7. Although I work for NSU, my paychecks are issued on the account of the State of South Dakota.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of April, 2010, at Aberdeen, South Dakota.

John Meyer

John Meyer

Post-it® Fax Note 7671	Date 4/23/10 # of pages ▶ 1
To James R. Lynch	From John H. Meyer
Co./Dept. (SBN 144494) GCR	Co. NSU
Phone # (213) 347-0210	Phone # 605-626-2521
Fax # (213) 347-0216	Fax # 605-626-3970

Exhibit S

DECLARATION OF JAMES F. SHEKLETON

I, JAMES F. SHEKLETON, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have been the General Counsel for the South Dakota Board of Regents. I have served in this capacity for nineteen years.

3. As the General Counsel, I am advised of and become involved in the handling of all litigation and legal disputes that involve the Board of Regents, the State universities of South Dakota, and their constituent colleges, schools, departments, institutes, and other bodies. I am also intimately familiar with the laws of South Dakota concerning the capacity of the Board of Regents and other State agencies to sue or be sued. I am also familiar with who is authorized to accept service of legal process on behalf of the Board of Regents.

4. The South Dakota International Business Institute (SDIBI) is a component of Northern State University (NSU), one of the universities over which the Board of Regents presides. The SDIBI was created by the Board of Regents in 1994. Although the Board of Regents has the legal capacity to sue and be sued, by virtue of section 13-49-11 of the South Dakota Codified Laws, neither NSU nor the SDIBI have been granted such authority by the State of South Dakota or by the Board of Regents.

5. At no point did NSU approach me to request that the Board of Regents authorize it to retain Hanul Professional Law Corporation to perform legal services on behalf of it or the SDIBI. Nor was I ever approached by NSU, the SDIBI, or Mr. Bollen with a request to review contracts of any sort related to South Dakota's EB-5 Immigrant Investor Program or to any other SDIBI initiative. Prior to January 27, 2009, I had never heard of Darley International, LLC, or Robert D. Stratmore, much less of any purported involvement by them in activities undertaken under the authority of the Board.

6. I first learned that the SDIBI had become involved in litigation and an arbitration with Darley International, LLC, on January 27, 2009, when John Meyer, the campus-based attorney at NSU, contacted me to inform me that he had just learned of this from Joop Bollen,

the SDIBI's Director. The first time that I saw any document in connection with the above-captioned matter was on January 27, 2009, when I first saw a California federal court's order compelling the SDIBI to participate in an arbitration with Darley. I immediately began to find California counsel and first spoke to James Lynch, a former attorney for the California State University system, on January 29, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of April, 2010, at Pierre, South Dakota.

James F. Shekleton

Exhibit T

ORIGINAL

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FILED
Los Angeles Superior Court

AUG 13 2009

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
SHAUNYA WESLEY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Darley International, LLC, a Delaware corporation,

Petitioner,

vs.

South Dakota International Business Institute, an Administrative Unit of Northern State University,

Respondent.

CASE NO.: BS121441

NOTICE OF HEARING; MOTION TO QUASH SERVICE OF PROCESS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF JACK R. WARNER, LAWRENCE E. LONG, JAMES F. SHEKLETON, JOOP BOLLEN, JOHN MEYER, JAMES J. PARK, JAMES R. LYNCH; EXHIBITS; APPENDIX OF NON-CALIFORNIA AUTHORITIES

Filed concurrently with Request for Judicial Notice

Date: September 22, 2009
Time: 9:30 a.m.
Dept.: 38
Judge: Hon. Maureen Duffy-Lewis

CIT/CASE: BS121441 LEA/DEF#:
RECEIPT #: CCH46598011 9
DATE PAID: 08/13/09 04:04:50 PM
PAYMENT: $355.00 0310
RECEIVED:
CHECK: 355.00
CASH:
CHANGE:
CARD:

NOTICE OF HEARING

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the Motion by Respondent South Dakota Board of Regents, doing business as the South Dakota International Business Institute, to Quash Service of Process will come for hearing in Department 38 of this Court, at 111 N. Hill Street, Los Angeles, California, on September 22, 2009, at 9:30 a.m.

Dated: August 13, 2009

GARCIA CALDERÓN RUÍZ, LLP

By:_____
James R. Lynch
Attorneys for Respondent
South Dakota Board of Regents, dba South Dakota International Business Institute

MOTION TO QUASH SERVICE OF PROCESS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to section 418.10(a)(1) of the Code of Civil Procedure, Respondent SOUTH DAKOTA BOARD OF REGENTS, DOING BUSINESS AS THE SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE, hereby moves this Court for an Order quashing service of process of Petitioner DARLEY INTERNATIONAL, LLC's Petition For Order Compelling Arbitration Pursuant To Written Agreement upon Respondent in the above-captioned matter.

This motion is made on the ground that the Court lacks personal jurisdiction, generally or specifically, over Respondent, which is an arm and alter ego of the sister State of South Dakota, and that the South Dakota International Business Institute lacks the independent legal capacity to sue or be sued in its own name. This motion will be based upon this motion, the accompanying notice of hearing, memorandum of points and authorities, declarations, exhibits, appendices, and such additional arguments or evidence as may be presented to this Court upon the hearing of this motion.

Dated: August 13, 2009

GARCIA CALDERÓN RUÍZ, LLP

By: _____
James R. Lynch
Attorneys for Respondent
South Dakota Board of Regents, dba South Dakota International Business Institute

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 2

ARGUMENT 5

I. STANDARDS FOR EXERCISE OF JURISDICTION OVER NON-RESIDENT DEFENDANTS 5

II. THIS COURT LACKS PERSONAL JURISDICTION OVER THE SOUTH DAKOTA BOARD OF REGENTS, WHICH HAS NOT COMMITTED OR AUTHORIZED ANY ACTS IN CALIFORNIA OR WHICH HAD AN EFFECT IN CALIFORNIA 7

A. Neither Mr. Bollen Nor Hanul Had The Authority To Cause The Board To Purposefully Avail Itself Of The Benefits Of California With Respect To The Subject Of The Darley/Hanul Agreement 8

B. The Darley/Hanul Controvery Did Not Arise Out Of The Board's Nonexistent Contacts with California 9

C. Even If Mr. Bollen's Or Hanul's Actions Were Attributed To The Board, They Do Not Rise To the Level Of Creating Personal Jurisdiction In California 9

D. Exercising Jurisdiction Would Not Comport With Fair Play And Substantial Justice 10

III. PERSONAL JURISDICTION CANNOT BE ESTABLISHED THROUGH APPARENT OR OSTENSIBLE AUTHORITY PRINCIPLES, ESTOPPEL, OR WAIVER 12

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

Case ..... **Page**

Action Mechanical, Inc. v. Deadwood Historic Pres. Comm'n
(S.D. 2002) 652 N.W. 2d 742 15

Armato v. Baden
(1999) 71 Cal. App. 4th 885 12

Asahi Metal Industry Co. v. Superior Court
(1987) 480 U.S. 102 6

Bakersfield Elementary Teachers Assn. v. Bakersfield City School District
(2006) 145 Cal. App. 4th 1260 15

Baptist Memorial Hosp. System v. Sampson
(Tex. 1998) 969 S.W.2d 945 12

Chleboun v. Varilek
(S.D. 1965) 136 N.W. 2d 348 12

City of Brookings v. Ramsay
(S.D. 2007) 743 N.W. 2d 433 12

Dahl v. Sittner
(S.D. 1988) 429 N.W.2d 458 14

Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund
(S.D. 2004) 689 N.W. 2d 196 12

El Camino Community College District v. Superior Court (Information Associates)
(1985) 173 Cal. App. 3d 606 ..... 12, 13

Federal Land Bank of Omaha v. Sullivan
(S.D. 1988) 430 N.W. 2d 700 12

Freeman v. State Farm Mut. Auto. Ins. Co.
(1975) 14 Cal. 3d 473 14

Hall v. LaRonde
(1997) 56 Cal.App.4th 1342 7

Halls v. White
(S.D. 2006) 715 N.W. 2d 577 15

Hanson v. Brookings Hospital
(S.D. 1991) 469 N.W. 2d 826 13

In re America West Airlines
(9th Cir. 1994) 40 F. 3d 1058 1

Inglewood Teachers Assn. v. Public Employment Relations Board
(1991) 227 Cal. App. 3d 767 12

International Shoe Co. v. Washington
(1945) 326 U.S. 310 ..... 6, 7, 9

Judd v. Superior Court
(1976) 60 Cal. App. 3d 38 7

Kasselder v. Kapperman
(S.D.1982) 316 N.W. 2d 628 12

Mihlon v. Superior Court
(1985) 169 Cal. App. 3d 703 ..... 6, 10

Modlin v. Superior Court (Modlin)
(1986) 176 Cal. App. 3d 1176 ..... 6, 7, 11

Rowland v. California Men's Colony
(1993) 506 U.S. 194 1

Seymour v. State of California
(1984) 156 Cal. App. 3d 200 13

Sonora Diamond Corp. v. Superior Court (Sonora Union High School District)
(2000) 83 Cal. App. 4th 523 6

South Dakota Board of Regents v. Hoops
(D.S.D. 1986) 624 F. Supp. 1179 ..... 7, 15

Star Motor Imports, Inc. v. Superior Court (Shake)
(1979) 88 Cal. App. 3d 201 2

Vons Companies, Inc. v. Seabest Foods, Inc.
(1996) 14 Cal. 4th 434 ..... 6, 7, 10

Ziller Electronics Lab GmbH v. Superior Court
(1988) 206 Cal. App. 3d 1222 7

STATUTES

Statute ..... **Page**

Civil Code § 19 13

Code of Civil Procedure § 410.10 6

Code of Civil Procedure § 418.10 5

S.D. Const., Art. XIV, § 3 ..... 3, 7

South Dakota Codified Laws § 1-11-4 3

South Dakota Codified Laws § 1-11-5 3

South Dakota Codified Laws § 1-11-15 3

South Dakota Codified Laws § 13-49-1 7

South Dakota Codified Laws § 13-49-11 ..... 3, 7

South Dakota Codified Laws § 13-59-1 3

South Dakota Codified Laws 3-21-10 15

INDEX OF EXHIBITS

Exhibit No.	Description	Page Nos.
1	Minutes of the South Dakota Board of Regents, May 4-5, 1994, meeting (pp. 558, 999 through 1004 thereof)	001-007
2	Minutes of the South Dakota Board of Regents, December 9 - 10, 2003 meeting (pp. 3002, 3632, 3649-3650 thereof)	008-011
3	Contracts between James R. Lynch and the South Dakota Board of Regents to perform legal services in litigation and/or arbitration against Darley International, LLC, and appointment of Mr. Lynch as a special assistant attorney general	012-032
4	December 12, 2008, letter from JAMS regarding mediation	033
5	Excerpts from Northern State University office and persons directories	034-036
6	October 4, 2007, correspondence from James Park to Robert Stratmore	037-048
7	California State Bar member information for Robert Stratmore	049
8	Documents from case record on file with U.S. District Court for the Central District of California, Case No. CV08-05034 DDP: • August 22, 2008, Opposition to petition to compel arbitration; • Hanul Professional Law Corporation's September 30, 2008, request to substitute in as counsel; • Minutes of October 6, 2008, hearing on petition; • Dismissal of petition on June 15, 2009	050-091

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner Darley International, LLC's Petition for an order compelling the South Dakota International Business Institute (SDIBI) describes most of the events that have led to this point but omits the critical facts that bear on this Court's jurisdiction over the SDIBI and, by legal extension, the South Dakota Board of Regents ("Board").

The most important omission is that the individual whose actions are cited as creating Respondent's minimum contacts in California to invoke this Court's jurisdiction, SDIBI Director Joop Bollen, acted without permission or the knowledge of the Board and, more importantly, without authority to act on the Board's behalf. Mr. Bollen went far beyond simply acting outside of his authority, however. With the aid of Hanul Professional Law Corporation ("Hanul"), a California law firm that Mr. Bollen had no authority to retain, and Darley, Mr. Bollen concealed his activities from the Board, Northern State University (where the SDIBI is located), and legal counsel for the Board of Regents and the Attorney General of the State of South Dakota.

In July 2008, Darley petitioned a federal court to compel arbitration; in October 2008 the federal court ordered the SDIBI to arbitration in California on a contract between Darley and Hanul. At no time during these proceedings did Mr. Bollen, Hanul, or Darley inform the federal court that the SDIBI was a functionary of the Board of Regents and an arm of the State of South Dakota, such that the federal court would have known of potential sovereign immunity issues, or that Mr. Bollen lacked legal authority to act on behalf of the Board of Regents in these matters.

In the course of the federal action, Mr. Bollen, who is not an attorney, appeared in pro per for the SDIBI, even filing opposition to the federal petition; he substituted Hanul in as counsel days before the hearing on Darley's petition (Ex. 7).[1] Then, Mr. Bollen and Hanul, having exposed the Board of Regents to Darley's claims of $4 million in liability, participated in mediation and scheduled an arbitration in which Hanul was going to represent the SDIBI despite

[1] The Board is surprised that the federal court permitted Mr. Bollen, a non-attorney, to file a pro per opposition on behalf of a business entity (see Ex. 8, pp. 050, 067), as that is not permitted under federal law. *In re America West Airlines* (9th Cir. 1994) 40 F. 3d 1058, 1059 (*citing Rowland v. California Men's Colony* (1993) 506 U.S. 194, 201-202. Unfortunately, unbeknownst to the court, this aided the concealment of these affairs from the Board.

the glaring conflict of interest that existed between the SDIBI and Hanul as co-defendants alleged to have collaborated on a breach of contract.

When Mr. Bollen finally realized that he could no longer conceal this matter and liability from the Board of Regents, in January 2009 he advised legal counsel for the Board of Regents of what had happened. The Board of Regents promptly retained California counsel and filed a motion in federal court to reconsider its order compelling arbitration. Faced with the federal court's clear statement in a tentative ruling that it would rescind its October 2008 order unless Darley could prove that the SDIBI was not an arm of the State of South Dakota, Darley withdrew its federal court petition in order to file in the California courts. Darley still presents the defunct order of the federal court, however, as though the federal court had considered Mr. Bollen's authority to act on behalf of or bind the Board of Regents, or even the SDIBI's status as a state entity—when in fact the federal court was unaware of these issues in October 2008.

In effect, Darley asks this Court to take jurisdiction and order the Board to arbitrate a contract to which it was not a party, based solely on the acts of an individual who had no greater authority to commit the Board to contacts in California than a custodian at Northern State University. A sister state cannot be committed to California jurisdiction on the acts of an employee acting beyond his authority, however.

STATEMENT OF FACTS

The Board will not restate facts that Darley has pleaded in terms of how the parties have arrived at this Court's doorstep. Although Darley's pleadings are inadmissible hearsay because they are only verified on information and belief, *Star Motor Imports, Inc. v. Superior Court (Shake)* (1979) 88 Cal. App. 3d 201, 204, they presumably fully set forth the facts that Darley believes establish jurisdiction if it can prove them through admissible evidence. Suffice to say that Darley believes this Court has jurisdiction because Mr. Bollen was involved in the discussions leading to the agreement between Darley and Hanul and because Darley believes that Hanul and Mr. Bollen had the authority to direct the Board's activities toward California.

Robert D. Stratmore, Darley's President, has been a California attorney since 1972. Ex. 6.

The South Dakota Board of Regents ("Board of Regents") manages and controls the State

university system for the State of South Dakota. *S.D. Const., Art. XIV, § 3*; Warner Dec., pg. 1, ¶ 3. The Board of Regents, while a State agency, also exists as a corporation, with the delegated power to sue and be sued and to hold, lease, and manage its properties. *SDCL § 13-49-11.*

Northern State University ("NSU") is one of the public institutions of higher education under the Board of Regents' jurisdiction. *SDCL § 13-59-1.* The Board of Regents operates and determines the mission of NSU. Warner Dec., pp. 1-2, ¶¶ 3, 5; Ex. 2.

The SDIBI was created by official act of the Board of Regents in 1994, to replace the existing International Business Center at NSU. Warner Dec., pg. 1, ¶ 4; Ex. 1. The SDIBI is funded by the Board of Regents and the South Dakota Governor's Office of Economic Development, another State agency. Warner Dec., pp. 2-3, lines 25-10, ¶ 9; Bollen Dec., pg. 1, ¶ 2. Any money judgment or arbitration award against the SDIBI, for this or any other matter, would be paid out of the funds of the State of South Dakota. Warner Dec., pg. 3, ¶ 10. Conversely, any funds earned by the SDIBI are placed in an account controlled by NSU. Warner Dec., pg 3, lines 10-12, ¶ 9. Employees of both the SDIBI and NSU receive their paychecks on the account of the State of South Dakota. Meyer Dec., pg. 2, ¶ 7; Bollen Dec., pg. 3, ¶ 10.

The SDIBI's Director at all times relevant to this action has been Joop Bollen. Mr. Bollen, who is not an attorney, is an employee of NSU and is listed in the staff directory for NSU. Meyer Dec., pg. 1, ¶ 3; Ex. 5; Bollen Dec., pg. 1, ¶¶ 2-3. The SDIBI is a constituent part of NSU and the Board of Regents and has no independent legal capacity to sue or be sued, or to enter into contracts without an express grant of authority from the Board or other official authorized to grant such authority. *SDCL § 13-49-11.* Warner Dec., pg. 2, ¶ 6; Long Dec., pg. 1, ¶ 4; Shekleton Dec., pg. 1, ¶ 4. Mr. Bollen did not have authority to retain attorneys to perform legal services for the SDIBI, nor did he seek such authority. Long Dec., pp. 1-2, ¶¶ 4-6; Warner Dec., pg. 2, ¶ 7; Shekleton Dec., pg. 1, ¶ 5.

The State of South Dakota prohibits the performance of legal services for the State except where performed by assistant or deputy attorneys general employed by the State, via contract with a State agency filed with the South Dakota Attorney General, or by special written appointment from the Attorney General. *SDCL §§ 1-11-4, 1-11-5, 1-11-15.* Long Dec., pg. 1, ¶ 4.

SuKi Austin Kim, an attorney with Hanul, briefly appeared as an attorney for the SDIBI at the hearing on Darley's petition in federal court to compel arbitration, after first requesting permission to substitute in on September 30, 2008. Ex. 8, pp. 086-089. However, neither Mr. Kim nor any attorney working for Hanul had authorization or appointment from the Board of Regents or the South Dakota State Attorney General's office to represent SDIBI or the Board of Regents. Mr. Bollen did not have such authorization or appointment, either. No contract authorizing Mr. Kim to represent the State of South Dakota or any of its agencies is on file with the South Dakota Attorney General. Long Dec., pg. 2, ¶ 6; Warner Dec., pg. 2, ¶ 8.

James Lynch, who represents the Board of Regents and its constituent part, the SDIBI, has a legal services contract with the Board of Regents and a special appointment from the State Attorney General's office for this purpose. Long Dec., pg. 2, ¶ 7; Ex. 3.

In August 2008, Hanul, which was not then a counsel of record, filed a "pro per" opposition to the Petition by the SDIBI bearing Mr. Bollen's signature. In September 2008, Mr. Kim filed a request to substitute into the action as the SDIBI's attorney, which the federal court approved. Mr. Kim subsequently "represented" the SDIBI before the federal court at the hearing on Darley's Petition on October 6, 2008.

On October 7, 2008, the federal court ordered the SDIBI to participate in the arbitration between Darley and Hanul (the "Order"), thereby exposing the SDIBI and, unbeknownst to the Court, the Board of Regents to liability under Hanul's contract with Darley. The SDIBI, again "represented" by Mr. Kim, subsequently participated in an unsuccessful mediation in December 2008. Petition (Exhibit 2 thereto); Bollen Dec., pg. 2, ¶ 7; Ex. 4.

Throughout the foregoing events, Mr. Bollen purposefully avoided informing attorneys for NSU, the Board of Regents, or the State of South Dakota of his dealings with Darley or Hanul, or that these litigation events were taking place, and he continued to withhold this information from them until January 23, 2009, when he realized that he could not make the matter go away with just the assistance of Hanul. On that date, he contacted John Meyer, the University attorney for NSU, about the problem and forwarded some documents relating to the arbitration, but did not mention a lawsuit. On January 27, 2009, Mr. Meyer, having reviewed the

documents and become suspicious that a lawsuit might be involved, instructed Mr. Bollen to bring him more documents related to the dispute, which revealed to Mr. Meyer the instant action but not the federal court order. Meyer Dec., pp. 1-2, ¶¶ 4-5; Bollen Dec., pp. 1-3, ¶¶ 4-9.

Neither the South Dakota Attorney General's office nor the Board of Regents had any knowledge of the existence of the federal action until January 27, 2009, and then only after Mr. Bollen spoke to Mr. Meyer. Having spoken to Mr. Bollen and seen some of the court documents, Mr. Meyer immediately notified James Shekleton, the General Counsel for the Board of Regents, of what Mr. Bollen had told him. Bollen Dec., pp. 2-3, ¶¶ 8-9; Shekleton Dec., pp. 1-2, ¶ 6; Meyer Dec., pg. 2, ¶ 6; Warner Dec., pg. 2, ¶¶ 6-8. The federal court order was discovered shortly thereafter. Meyer Dec., pg. 2, lines 4-7, ¶ 5. Mr. Shekleton thereafter searched for and, through the South Dakota Attorney General, retained California counsel to have the federal court vacate its arbitration order. Shekleton Dec., pg. 2, lines 1-5, ¶ 5.

The Board moved to vacate the order and the federal court tentatively ruled that the SDIBI was an arm of the State of South Dakota, shared the State's Eleventh Amendment immunity, and was not a "citizen" for the purposes of diversity jurisdiction; the federal court also permitted Darley 60 days to conduct discovery on the SDIBI's status, however. Darley asked the federal court to postpone finalizing its ruling because Darley was considering withdrawing its petition altogether. The federal court agreed. Darley thereafter filed a request for permission to withdraw its petition, which was granted on June 15, 2009. Lynch Dec., pp. 1-2, ¶ 5; Ex. 8, pp. 090-091. The withdrawal effectively nullified the federal court's October 2008 order. Darley filed and served the Petition in the instant case on July 2 and 14, 2009, respectively.

ARGUMENT

I.
STANDARDS FOR EXERCISE OF JURISDICTION OVER NON-RESIDENT DEFENDANTS.

The manner by which a party may challenge a court's personal jurisdiction over that party, and thereby avoid making a general appearance, is a motion to quash service of process or a motion asserting inconvenient forum, under section 418.10 of the Code of Civil Procedure. *Code Civ. Proc. § 418.10.*

California courts may exercise jurisdiction over nonresidents on any basis not inconsistent with the California or U.S. Constitutions. *Code Civ. Proc. § 410.10.* The U.S. Constitution permits a state to exercise jurisdiction over a nonresident if the defendant has sufficient "minimum contacts" with the state such that maintenance of the suit there does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316. The connection between the defendant and the forum state must come about by an action of the defendant purposefully directed toward the forum state. *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112.

Personal jurisdiction over a nonresident defendant may be general or specific. General jurisdiction exists when the defendant's contacts with the state are "substantial . . . continuous and systematic." *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 445.

If (as in the instant case) general jurisdiction is not alleged or evident[2], the defendant may be subject to the court's specific jurisdiction if 1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy, 2) the controversy is related to arises out of the defendant's contacts with the forum, and 3) the exercise of jurisdiction would comport with fair play and substantial justice. *Vons, supra*, 14 Cal. 4th at 447. The determination of "fairness" requires a balancing of the burden or inconvenience to the defendant against the plaintiff's interest in obtaining relief, and the state's interest in adjudicating the dispute (turning on the nature and quality of the defendant's forum-related activity). *Modlin v. Superior Court (Modlin)* (1986) 176 Cal. App. 3d 1176, 1179.

When a defendant challenges personal jurisdiction, the burden is on the plaintiff to establish facts justifying the exercise of jurisdiction. *Vons, supra,* 14 Cal. 4th at 449; *Sonora Diamond Corp. v. Superior Court (Sonora Union High School District)* (2000) 83 Cal. App. 4th 523, 535. The plaintiff must present facts demonstrating, by a preponderance of evidence, that the defendant's conduct constitutes constitutionally cognizable "minimum contacts." *Mihlon v.*

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[2] Darley does not actually plead the basis of this Court's purported jurisdiction; instead, it apparently presumes that jurisdiction exists. However, Darley relies entirely on the circumstances relating to a single contract. Darley does not plead that the SDIBI or the Board frequently conducts business in California or has a presence in California through other means such as offices, employees, accounts, property, etc.

Superior Court (1985) 169 Cal. App. 3d 703, 710. The evidence must be competent evidence set forth in affidavits and authenticated documents. *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal. App. 3d 1222, 1232. If the plaintiff does this, the defendant then must demonstrate that the exercise of jurisdiction would be unreasonable. *Vons, supra*, 14 Cal. 4th at 449. If there are no disputed facts, then the question of personal jurisdiction is one of law. *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, 1346.

Courts may analyze the facts in accordance with the factors set forth in *International Shoe. Modlin, supra*, 176 Cal. App. Ed at 1179-1180; *Judd v. Superior Court* (1976) 60 Cal. App. 3d 38, 43. Those factors include: 1) presence in the forum state; 2) domicile; 3) residence; 4) nationality/citizenship; 5) consent; 6) general appearance; 7) doing business in the state; 8) doing an act within the state; 9) causing an effect in the state by an act done elsewhere; 10) ownership or possession or use of a thing within the state; and 11) other relationships to the state which make the exercise of jurisdiction reasonable. *Modlin, supra; Judd, supra.*

II.
THIS COURT LACKS PERSONAL JURISDICTION OVER THE SOUTH DAKOTA BOARD OF REGENTS, WHICH HAS NOT COMMITTED OR AUTHORIZED ANY ACTS IN CALIFORNIA OR WHICH HAD AN EFFECT IN CALIFORNIA.

The Board of Regents is an arm and alter ego of the State of South Dakota. *South Dakota Board of Regents v. Hoops* (D.S.D. 1986) 624 F. Supp. 1179, 1184. *S.D. Const. Art. XIV, § 3*; *SDCL § 13-49-1*; Warner Dec., pg. 1, ¶ 3. Under South Dakota law, the SDIBI is a part of NSU, which in turn is part of the state university system over which the Board presides. Having not been granted authority by the South Dakota Legislature to sue or be sued (as opposed to the Board of Regents, which has), neither the SDIBI nor NSU has the legal capacity to sue or be sued. See, *SDCL § 13-49-11*; Warner Dec., pg. 1, ¶ 6.

Since the SDIBI does not have the legal capacity to sue or be sued, the real Respondent in this action is the Board. The only persons whose actions Darley pleads in support of its Petition are Mr. Bollen and employees of Hanul. Thus, there are two questions at hand: 1) whether Mr. Bollen or Hanul had the ability, through their actions, to give this Court specific personal jurisdiction over the Board; and 2) if so, whether those actions are sufficient to create such

jurisdiction, as a matter of law. As will be explained, the answer to each question is no.

A. Neither Mr. Bollen Nor Hanul Had The Authority To Cause The Board To Purposefully Avail Itself Of The Benefits Of California With Respect To The Subject Of The Darley/Hanul Agreement.

The Petition does not allege that Mr. Bollen or Hanul engaged in any actions with the knowledge and/or approval of the Board or NSU. Other than Mr. Bollen's and Hanul's activities relating to the Darley/Hanul agreement, the Petition does not allege any activities undertaken by Mr. Bollen, Hanul, the SDIBI, NSU, or the Board in California.

Mr. Bollen did not have the authority to contract with Hanul or retain Hanul as an agent of the SDIBI or the Board. Hanul has never been retained to perform legal services or otherwise act on behalf of the Board. Hanul never had a contract of any nature with the Board, or even with the SDIBI. Indeed, Mr. Bollen and Hanul conducted their actions in such a manner as to avoid proper channels within the Board and NSU, so much so that neither the Board, nor even NSU, was aware of Mr. Bollen's dealings with Hanul or Darley until late January 2009. Indeed, Mr. Bollen and Hanul even concealed the existence of a federal court action, a court order, and the December 2008 mediation from the Board.

Mr. Bollen's lack of authority aside, the Petition does not allege much to show that Mr. Bollen directed any substantial activity toward California. The Petition alleges a single call between Mr. Bollen and Mr. Stratmore of Darley, which Stratmore initiated. Petition, ¶ 9, pg. 3. Mr. Bollen understood Mr. Park to be working out of Hanul's Seoul, South Korea office during Mr. Bollen's communications with him. Bollen Dec., pg. 1, lines 16-21, ¶ 4. The Petition vaguely asserts that the SDIBI "negotiated" provisions of Hanul's and Darley's agreement and that Mr. Bollen received correspondence (without alleging that he sent any). Petition, ¶ 12, pp. 3-4. This took place over a three-month period in 2007. Petition, ¶¶ 9, 11, pg. 3. Darley's alleged performance under the agreement was done entirely in China. Petition, ¶ 17, pp. 4-5.

Some of Hanul's activity may have occurred in California, but Hanul was not lawfully representing the Board or the SDIBI. Indeed, the Board and the South Dakota Attorney General were unaware that their "representative" was purporting to grant, to quote the agreement, "exclusive marketing rights . . . based on the unofficial rights . . . promised by SDIBI to Hanul."

Petition [Exhibit 1, section 1(A].

Once the actions of an employee acting ultra vires and a non-retained law firm are removed from the equation, there is nothing tying the Board to California and the California courts have no basis upon which to exercise personal jurisdiction over a sovereign sister State.

B. The Darley/Hanul Controversy Did Not Arise Out Of The Board's Nonexistent Contacts With California.

Since Hanul had no legal authority to hold itself out as the SDIBI's counsel, representative, or friend, the controversy that subsequently arose under a contract between Hanul and Darley, to which neither the SDIBI, NSU, nor the Board were parties, could not in law and did not in fact arise out of any contacts with California initiated by the Board.

C. Even If Mr. Bollen's Or Hanul's Actions Were Attributed To The Board, They Do Not Rise To The Level Of Creating Personal Jurisdiction In California.

Assuming arguendo that Mr. Bollen's or Hanul's actions are attributable to the Board, few if any of the *International Shoe* factors weigh in Darley's favor:

Factor	Evidence
Presence in forum state	The Board has no presence in California; it is a state agency of South Dakota
Domicile	If the Board can be said to be domiciled, it is in South Dakota, not California
Residence	If the Board can be said to have a residence, it is in South Dakota, not California
Nationality/Citizenship	The Board is an arm of the State of South Dakota, which Darley admits
Consent	The Board has not consented to jurisdiction, as evidenced by this motion
General appearance	The Board has not made a general appearance in this action
Doing business in state	Darley pleads this but only to the extent that Mr. Bollen communicated directly with Darley; Mr. Bollen communicated with Mr. Park, understanding him to be in South Korea
Doing act within state	Darley pleads this but only to the extent that Mr. Bollen communicated directly with Darley; Mr. Bollen communicated with Mr. Park, understanding him to be in South Korea
Causing effect in state	The Petition does not plead any effect in California; the pleaded effects, if any, appear to have been felt in China

Ownership/possession of a thing within state	Darley has not pleaded that the Board owns or possesses anything in California
Other relationships to state	Darley has not alleged any other relationships of Board, or even the SDIBI, to California

As previously mentioned, the Petition offers scant allegations by way of establishing minimum contacts in California. Perhaps Darley believes that the mere fact of it having its principal office in Orinda, California, is all it need show to establish jurisdiction. The burden is on Darley to prove this Court's jurisdiction, however. *Vons, supra,* 14 Cal. 4th at 449; *Mihlon, supra,* 169 Cal. App. 3d at 710. Since the Petition is not admissible evidence, Darley has thus far put nothing on the jurisdiction table.

D. Exercising Jurisdiction Would Not Comport With Fair Play And Substantial Justice.

This case presents a highly unusual set of facts because the purported jurisdiction over a sister State's university system is premised entirely on the unauthorized, willfully concealed actions of a low-level campus manager. In and of itself, this merits a rejection of jurisdiction by this Court. When the "fairness" angle is considered, however, Darley's knowing, active participation in this concealment provides a compelling reason to reject jurisdiction.

On October 4, 2007, Mr. Park responded to several questions Mr. Stratmore had raised, including about the exclusivity provisions that they were negotiating for the agreement between Hanul and Darley. The correspondence restates Mr. Stratmore's questions and provides Mr. Park's response to each question. Park Dec., pp. 1-2, ¶ 5; Ex. 6.

In particular, Mr. Stratmore questioned the "unofficial exclusive rights" claimed by Hanul. In response, Mr. Park stated:

> This is a big point. As I mentioned in my email, Hanul does not have an exclusive agreement signed between Hanul and SDIBI. This is because SDIBI (South Dakota) SDIBI and Hanul felt that substance over form was important. WE wanted to start the work and secure our place by our performance. Furthermore, State government granting any sort of exclusivity is a major endeavor as you may know. Rather than to spend time on formalizing everything, we've decided to use the time on creating results. That strategy worked well as we have 'implied' exclusivity from SDIBI and South Dakota.
>
> I understand that this alone can derail our agreement effort since we do not have expressed right to base our agreement on. If Darley is willing to trust Hanul's relationship with SDIBI, our agreement will have the intended meaning.

> However, if not, there might not be anything that Hanul can offer Darley to Darley's legal satisfaction.
>
> Hanul is confident that the working relationship between Hanul and SDIBI is sufficient for Darley to take on the marketing efforts that it intends to. Therefore, our agreement will be one of practicality rather than absolute legal right. That is the best that we can offer at this time. We have had no reason to seek cumbersome, and may be impossible, expressed exclusivity from SD attorneys. I hope you can reason our rationale in this regard." Ex. 6, pp. 037-038.

Mr. Park laid it right out there for Mr. Stratmore to see: Hanul had no agreement with the SDIBI, SDIBI was a functionary of South Dakota, and they were knowingly end-running the appropriate governmental procedures and approvals.

Applying the fairness balancing required by *Modlin, supra*, the Board posits that the balance is entirely in the Board's favor. This case does not involve an unconsenting person or company, but an unconsenting sister State. Darley knowingly participated in a scheme designed to skirt the authority of the appropriate South Dakota state agency, the Board, with persons of highly questionable purported agency, because Darley placed its desires first and incredulity last. This Court should not take lightly the proposed exercise of jurisdiction over a sister State at the behest of a California attorney-plaintiff who entered into a contract with persons whom he knew had no authority to bind the sister State and whom he knew had attempted to conceal the contract from proper authorities in the sister State.

California has no interest in rewarding one of its residents for behaving in this manner while forcing an unknowing, unconsenting sister State to litigate in a forum to which it did not direct these activities. The Board, on the other hand, has a clear and compelling interest in not being dragged halfway across the country to litigate or arbitrate in California over an agreement it did not authorize or participate in making.

Darley should not benefit from its intentional acts to avoid the authority of the Board by getting to litigate this matter in California. Darley's actions literally are not "fair play" and it would work a substantial injustice to the Board to litigate here.

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III.
PERSONAL JURISDICTION CANNOT BE ESTABLISHED THROUGH APPARENT OR OSTENSIBLE AUTHORITY PRINCIPLES, ESTOPPEL, OR WAIVER.

Darley's Petition clearly relies on the unstated premise that Mr. Bollen's apparent or ostensible authority to retain Hanul and engage in discussions with Darley and Hanul established the minimum contacts to bring the Board within California's jurisdiction. Presumably, Darley will argue that the Board is estopped to deny such minimum contacts. Such premise must fail.

The concepts of apparent authority or ostensible authority are the same as an estoppel argument, in which the defendant is purportedly barred from denying the authority of its agent because of the plaintiff's blameless ignorance and detrimental reliance on the agent's representations. See, *Armato v. Baden* (1999) 71 Cal. App. 4th 885, 897 fn. 4 (*citing Baptist Memorial Hosp. System v. Sampson* (Tex. 1998) 969 S.W.2d 945, 948, fn. 2). South Dakota law similarly views these theories as interchangeable. *Federal Land Bank of Omaha v. Sullivan* (S.D. 1988) 430 N.W. 2d 700, 701 (*citing Chleboun v. Varilek* (S.D. 1965) 136 N.W. 2d 348).

Whether it be called estoppel, apparent authority, or ostensible authority, any argument on this matter by Darley is ineffective as to public employees and public agencies.

First, the existence of agency is not presumed but must be proven by the plaintiff by preponderance of the evidence. *Inglewood Teachers Assn. v. Public Employment Relations Board* (1991) 227 Cal. App. 3d 767, 779-780. The Petition offers nothing suggesting that Mr. Bollen or Hanul were authorized to act as the Board's agent in directing activities into California.[3]

Second, Darley's pleadings, even if accepted as true, are insufficient to establish the elements of estoppel, as a matter of law. In California, two of the four elements of equitable estoppel are that 1) the party asserting it was ignorant of the true state of facts, and 2) that party relied upon the conduct of the party to be estopped, to its detriment.[4] *El Camino Community*

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[3] Under South Dakota law, ostensible agency must be traceable to the principal and is not established solely by the acts, declarations, or conduct of an agent; if the principal has had no dealings with a claimant, the claimant has no recourse against the principal. *Kasselder v. Kapperman* (S.D. 1982) 316 N.W. 2d 628, 630. Darley had no dealings with the principal, which is the Board.

[4] South Dakota also requires these two elements, *Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund* (S.D. 2004) 689 N.W. 2d 196, 204, and only applies estoppel against public entities in exceptional circumstances to prevent manifest injustice. *City of Brookings v. Ramsay* (S.D. 2007) 743 N.W. 2d 433, 674.

College District v. Superior Court (Information Associates) (1985) 173 Cal. App. 3d 606, 613. Darley cannot establish either of these two elements.

Darley cannot claim ignorance of the true state of facts and its consequent detrimental reliance (i.e., Mr. Bollen's and Hanul's authority to create contacts in California on behalf of the Board, causing Darley to assume it could rely on this Court's personal jurisdiction over the Board in the event of a dispute). The laws and rules governing the authority of an employee of a public entity are matters of statute and a plaintiff is held to constructive, if not actual, notice of any restrictions thereon. *Id*, at 613-614. *Seymour v. State of California* (1984) 156 Cal. App. 3d 200, 205 fn. 3.[5] Coincidentally, the issue in *El Camino* was the enforceability of contractual arbitration clauses that had been signed by two vice presidents for a community college district—but not approved by the district's board, which by statute had the authority to bind the district.[6] *El Camino, supra*, 173 Cal. App. 3d at 612-613.

The foregoing principles should apply generally to knowledge of a person's authority to act on behalf of a public entity, such as committing the entity to contacts within a particular state. If Darley is held to knowledge of Mr. Bollen's lack of capacity to contract or create California contacts on behalf of the Board, as a matter of law, it logically follows that Darley is similarly held to knowledge of Mr. Bollen's lack of authority to effectively negotiate the terms of a contract or even to engage in business in California.

Perhaps more importantly, Darley knew that Mr. Bollen and Hanul were making highly questionable assertions of their own authority to act, and was required to further investigate, as a matter of law. Section 19 of the Civil Code states:

> "Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact." *Civ. Code § 19.*[7]

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[5] In South Dakota, persons are presumed to know the law and the public entity status of public entities. *Hanson v. Brookings Hospital* (S.D. 1991) 469 N.W. 2d 826, 828.

[6] Within this motion the Board does not speak to the validity or binding nature of the contract on it or the SDIBI, as that is an issue that will be addressed on the merits of the Petition if personal jurisdiction is found. The Board offers these cases for the proposition that an employee of a public entity cannot take actions that legally direct the entity's actions without the properly-granted authority; therefore, a plaintiff cannot legitimately claim reliance on those unauthorized actions for <u>any</u> purpose, including jurisdiction.

[7] South Dakota also requires diligent inquiry. A plaintiff "must show not only damages resulting from his reliance

Mr. Park's October 4, 2007, correspondence to Mr. Stratmore triggered Mr. Stratmore's duty to inquire. If that were not enough, the very first page of the agreement should have roused Mr. Stratmore's suspicions, particularly given that, at the time the agreement was executed, Mr. Stratmore had been an attorney for 35 years. Section 1(A) of the agreement, "Appointment," states:

> "Because State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects, Hanul's right to grant exclusive marketing rights specified herein is based on the unofficial rights[8] to exclusively market SDIBI EB-5 Projects promised by SDIBI to Hanul and therefore shall be valid only while Hanul's rights are honored by SDIBI and all rights, powers and authorities granted to DARLEY herein shall terminate when Hanul's rights are rescinded by SDIBI." Petition [Exhibit 1, page 1].

Translated into plain English, and in light of the October 4 correspondence just two weeks earlier, Mr. Stratmore knew that this clause meant 'The State of South Dakota is really in charge and cannot and will not legally grant exclusive rights of this nature, so SDIBI is unofficially (read: without authority) giving us exclusive rights that we hereby pass on to you for as long as we are all able to maintain this artifice by keeping the State out of the loop.'

This is the agreement that Mr. Stratmore, the attorney, signed in October 2007, after Mr. Bollen allegedly stated to him in July 2007 that Hanul had exclusive authority (see Petition, ¶ 9, pg. 3). Any prudent person in Mr. Stratmore's position, let alone a prudent attorney, would have questioned whether Mr. Bollen or Hanul had authority to do any of the things that had taken place during negotiations. Indeed, a reasonable person would have wondered if Mr. Bollen and Hanul were actually breaking the laws of South Dakota. Any reasonable inquiry by Mr. Stratmore would have quickly revealed that Mr. Bollen had no authority to direct the Board's activities toward California and that Hanul had no authority to represent the SDIBI.

This conduct by Darley leads to the third point: Darley's unclean hands. A proceeding to compel arbitration is in essence a suit in equity for specific performance of a contract. *Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal. 3d 473, 479. One who comes into equity must

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on the appearance of authority, but also reasonable diligence and prudence in ascertaining the fact of the agency and the nature and extent of the agent's authority." *Dahl v. Sittner* (S.D. 1988) 429 N.W.2d 458, 462.

[8] Amazingly, Darley pleads the "unofficial" rights in paragraph 8 of its Petition as though this establishes Hanul's authority rather than calling it into question.

come with clean hands, or he/she is not entitled to equitable relief. *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260, 1275; *Halls v. White* (S.D. 2006) 715 N.W. 2d 577, 585 (*quoting Action Mechanical, Inc. v. Deadwood Historic Pres. Comm'n* (S.D. 2002) 652 N.W. 2d 742). Darley cannot cry "agency!" when it knowingly conspired to evade the authority of the Board and the State of South Dakota.

Lastly, to the extent that Darley would argue that Mr. Bollen and/or Hanul waived South Dakota's and the Board's sovereign immunity, thereby consenting to California jurisdiction, it not only would rely on the untenable agency theory but would argue a legal impossibility. Even the Board is powerless to waive immunity. *Hoops, supra*, 624 F. Supp. at 1184. Section 3-21-10 of the South Dakota Codified Law explicitly prohibits <u>any</u> officer or agent of the State from waiving the State's immunities in a court outside of South Dakota:

> "Immunity from lawsuits in courts of other jurisdictions. No waiver of state immunity by statute or, where permitted, by any officer or agent of the state may constitute or be interpreted as a waiver of the state's immunity from lawsuits in federal court or the courts of any jurisdiction other than the South Dakota Unified Judicial System." *SDCL § 3-21-10.*

This statute is among the obvious items that Mr. Stratmore would have found had he undertaken his duty to reasonably inquire as to the extent of Mr. Bollen's and Hanul's authority.

CONCLUSION

For the foregoing reasons, the South Dakota Board of Regents, doing business as the South Dakota International Business Institute, requests that this Court grant its motion to quash service of process on the ground that it lacks personal jurisdiction over the Board of Regents and the Institute.

Dated: August 13, 2009

GARCIA CALDERÓN RUÍZ, LLP

By: _____
James R. Lynch
Attorneys for Respondent
South Dakota Board of Regents, dba South Dakota International Business Institute

DECLARATION OF JACK R. WARNER

I, JACK R. WARNER, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. Since July 8, 2009, I have been employed by the South Dakota Board of Regents on a regular basis, full-time, as its Executive Director. I succeeded Dr. Robert T. Perry, who retired after 15 years of service as the Executive Director.

3. My official responsibilities include various aspects of supervision of the six state universities governed by the South Dakota Board of Regents pursuant to the provisions of article XIV, § 3, of the South Dakota Constitution and section 13-49-1 of the South Dakota Codified Laws. Northern State University (NSU) numbers among these institutions. SDCL § 13-59-1 and § 2, of chapter 114 of the 1901 Session Laws.

4. I also serve as custodian of all the official minutes of the South Dakota Board of Regents. The minutes are made and maintained by employees of the Board of Regents acting in the course and scope of their duties. The Board's secretary prepares the minutes of each meeting at and/or near the time of the meeting, from notes made during the course of the meeting. The draft minutes are then submitted to the Board of Regents for approval. Following approval, which may or may not include revisions to the draft minutes, the then-official minutes are maintained by employees of the Board of Regents. Among the matters set forth in the Board minutes is an official action taken by the Board of Regents at its May 4-5, 1994 meeting, to establish the Northern State University International Business Institute, also known as the South Dakota International Business Institute (SDIBI). Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Minutes of the South Dakota Board of Regents, May 4-5, 1994, pp. 558, 999 through 1004.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Board minutes reflecting an official action taken by the Board of Regents at its December 9 - 10, 2003 meeting (pp. 3002, 3632, 3649-3650), to amend its official mission statements to remove references to all centers and institutes at all universities under its control from such official mission statements.

Dec.

This action did not repeal the 1994 authorization to operate the SDIBI as an administrative unit within NSU. It merely eliminated from Board policy statements enumerations of academic centers and public service programs that, in the case of some institutions, had grown to inordinate length. The revisions to Board Policy No. 1:10:6 (D) shown on page 3650 of the Minutes of the South Dakota Board of Regents, December 9 - 10, 2003 meeting, document the revision and confirm that the institute approved in 1994 had come to be known as the South Dakota International Business Institute.

6. The SDIBI does not have any capacity to sue or be sued that is independent of the Board of Regents. No university, institution, department, of the Board, or employee thereof, has the authority to conduct business or enter into contracts on behalf of the Board absent an express grant of authority by the Board or delegation by an official with such express grant of authority. There is no record of the Board of Regents ever authorizing Joop Bollen or the SDIBI to enter into or negotiate contracts generally, or with Darley International, LLC, or Hanul Professional Law Corporation specifically; there is no record of a delegation of authority to this effect, either. Indeed, there is no record of Mr. Bollen having ever requested that the Board of Regents approve agreements with Darley or Hanul.

7. Mr. Bollen has never served as an attorney for the Board of Regents, NSU, or the SDIBI; to my knowledge, Mr. Bollen is not licensed to practice law. The Board of Regents has never authorized Mr. Bollen to defend or appear in litigation on behalf of the Board of Regents, NSU, or the SDIBI, or to represent the Board of Regents, NSU, or the SDIBI in any legal disputes with Darley International, LLC.

8. There is no record that the Board of Regents has never authorized the Hanul Professional Law Corporation, or any of its attorneys, to represent the Board of Regents, NSU, or the SDIBI, in any action or in any capacity.

9. The Governor's Office of Economic Development is a state agency operating within the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the

state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. The Governor's Office of Economic Development operates with the South Dakota Department of Tourism and State development and is charged with promotion of "private-public partnership among state government, local communities, higher education, and the private sector to create jobs that create goods and services for use within the state and for export outside the state, which results in the creation of new wealth." SDCL § 1-52-3.2. Pursuant to that charge, the Governor's Office of Economic Development entered into a Letter of Agreement with NSU to provide funding to support the SDIBI. The SDIBI receives primary support from state funds paid to it through NSU's contract with GOED or from some $100,000 allocated to it annually by NSU. Incidental income from seminars is deposited into accounts held by Northern Plains International Inc., a nonprofit corporation controlled by NSU, and such funds are disbursed to cover expenses that may not be compensable from state fund sources. In addition to its educational activities within the state, the SDIBI promotes export activities through providing trade leads, consulting and maintaining a directory of South Dakota exporters. The SDIBI also pursues foreign direct investment activities in South Dakota.

10. Were a court to permit a suit against the SDIBI in its own name and a money judgment were to be entered against the SDIBI, such judgment would be paid out of funds of the State of South Dakota.

11. The Board of Regents does not have any offices in California, nor does it have any employees who work in California. The Board of Regents does not maintain bank accounts in California, does not pay income taxes in California, and does not own any personal or real property in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of August, 2009, at Pierre, South Dakota.

Jack R. Warner

Received: Aug 12 2009 07:23am
AUG-12-2009 09:18 FROM:SD BOARD OF REGENTS 6057735320 TO:912133470216 P.2/3

DECLARATION OF LAWRENCE E. LONG

I, LAWRENCE E.LONG, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am the Attorney General for the State of South Dakota. I was first elected to this position in 2002 and was reelected in 2006. Prior to that, I served as Chief Deputy Attorney General for South Dakota from 1991 to 2002.

3. The Attorney General's Office has received information that South Dakota International Business Institute, located at Northern State University in Aberdeen, South Dakota, was established by the South Dakota Board of Regents and, under South Dakota law, the Institute has no independent legal capacity to sue or be sued.

4. The attorney general has the duty under SDCL 1-11-1(1) to represent the state in legal proceedings. As such, in order for a person to represent the State of South Dakota in litigation generally requires a legal services contract with the State under SDCL 1-11-15 and an appointment from the attorney general under SDCL 1-11-4 and SDCL 1-11-5. This would apply to representation of the Board of Regents of South Dakota, as well, because the Board is a State agency. The Attorney General's Office maintains records of legal services contracts the State enters into with privately retained counsel as provided by SDCL 1-11-15. I am the custodian of these records. The Attorney General's Office also maintains records of assistant attorney general and special assistant attorney general appointments made during my tenure as attorney general. An appointment can last no longer than the term of the attorney general. I am the custodian of these records.

5. Joop Bollen has never served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Joop Bollen to represent the State of South Dakota in a litigation matter has been filed with my office. Mr. Bollen has never been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Mr. Bollen has never been authorized by me or an authorized representative of my

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office to accept service of process, defend, or to appear in litigation for, the State of South Dakota.

6. No attorney for the Hanul Professional Law Corporation, nor Hanul itself, has ever served as a deputy or assistant attorney general for the State of South Dakota. No legal services contract for Hanul or its attorneys to represent the State of South Dakota in a litigation matter has been filed with my office. Neither Hanul nor any attorney working for Hanul has ever been appointed as a special assistant attorney general for the State of South Dakota during my term as attorney general. Neither Hanul nor any attorney working for Hanul has ever been authorized by me or an authorized representative of my office to accept service of process, defend, appear in litigation for, or otherwise represent the State of South Dakota.

7. Attached hereto as Exhibit 3 are true and correct copies of contracts between James R. Lynch and the South Dakota Board of Regents to perform legal services in litigation and/or arbitration against Darley International, LLC, and the appointment of Mr. Lynch as a special assistant attorney general to that end.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2009, at Pierre, South Dakota.

Lawrence E. Long

DECLARATION OF JAMES F. SHEKLETON

I, JAMES F. SHEKLETON, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have been the General Counsel for the South Dakota Board of Regents. I have served in this capacity for nineteen years.

3. As the General Counsel, I am advised of and become involved in the handling of all litigation and legal disputes that involve the Board of Regents, the State universities of South Dakota, and their constituent colleges, schools, departments, institutes, and other bodies. I am also intimately familiar with the laws of South Dakota concerning the capacity of the Board of Regents and other State agencies to sue or be sued. I am also familiar with who is authorized to accept service of legal process on behalf of the Board of Regents.

4. The South Dakota International Business Institute (SDIBI) is a component of Northern State University (NSU), one of the universities over which the Board of Regents presides. The SDIBI was created by the Board of Regents in 1994. Although the Board of Regents has the legal capacity to sue and be sued, by virtue of section 13-49-11 of the South Dakota Codified Laws, neither NSU nor the SDIBI have been granted such authority by the State of South Dakota or by the Board of Regents.

5. At no point did NSU approach me to request that the Board of Regents authorize it to retain Hanul Professional Law Corporation to perform legal services on behalf of it or the SDIBI. Nor was I ever approached by NSU, the SDIBI, or Mr. Bollen with a request to review contracts of any sort related to South Dakota's EB-5 Immigrant Investor Program or to any other SDIBI initiative. Prior to January 27, 2009, I had never heard of Darley International, LLC, or Robert D. Stratmore, much less of any purported involvement by them in activities undertaken under the authority of the Board.

6. I first learned that the SDIBI had become involved in litigation and an arbitration with Darley International, LLC, on January 27, 2009, when John Meyer, the campus-based attorney at NSU, contacted me to inform me that he had just learned of this from Joop Bollen,

the SDIBI's Director. The first time that I saw any document in connection with the above-captioned matter was on January 27, 2009, when I first saw a California federal court's order compelling the SDIBI to participate in an arbitration with Darley. I immediately began to find California counsel and first spoke to James Lynch, a former attorney for the California State University system, on January 29, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of August, 2009, at Pierre, South Dakota.

James F. Shekleton

Received: Aug 12 2009 07:23am
AUG-12-2009 09:18 FROM:SD BOARD OF REGENTS 6057735320 TO:9121334702 16 P.3/3

DECLARATION OF JOOP BOLLEN

I, JOOP BOLLEN, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served in the capacity of Director of the South Dakota International Business Institute (SDIBI). The SDIBI is part of Northern State University (NSU) and the South Dakota Board of Regents system and has no independent status of its own. SDIBI's purpose is to promote international exports, trade, and investments on behalf of the State of South Dakota. SDIBI's funding comes entirely from the State, primarily from NSU and contracts from the Governor's Office of Economic Development and the South Dakota Department of Tourism and Development.

3. I am not and never have been an attorney. I am not admitted to practice law in any state in the United States, nor have I ever been a member of the bar of any court.

4. The SDIBI has no offices or employees in the State of California, nor does it maintain bank accounts, own or possess real or personal property, or carry on any operation in the State of California. In July 2007 through January 2008, I was involved in some written and telephone communications with James Park of Hanul Professional Law Corporation (Hanul) and Robert Stratmore of Darley International, LLC (Darley) relating to an agreement between Hanul and Darley to conduct investor recruitment activities in China for the benefit of the SDIBI's EB-5 Program, more particularly a Tilapia Fish Farm project. At the times of my communications with Mr. Park, he was in Hanul's Seoul, South Korea office.

5. In late 2007, with Mr. Park's and Mr. Stratmore's consent, I cancelled the Tilapia project. In the early part of 2008, Darley made an arbitration demand upon the SDIBI on the basis of an arbitration clause in the agreement between Darley and Hanul. Mr. Stratmore was claiming a breach of the agreement owing to not receiving proper documents related to the Tilapia project. I ignored the demand as the SDIBI was not a party to the contract between Hanul and Darley and that the demand was simply an effort by Darley to involve the SDIBI in the dispute between Darley and Hanul. Since the SDIBI was not a party to that contract, and

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based upon my general familiarity with international business practices, I could see no basis for believing that Darley had any ability to bring the SDIBI into this dispute. I thought that Darley was trying to get the SDIBI to become voluntarily involved in an arbitration dispute that did not concern it, and I sought to avoid that gambit by refusing to cooperate.

6. I recall that in August 2008, the dispute escalated to the point that Darley initiated a federal court proceeding in California. Mr. Park and/or Peter Lee of Hanul assured me that Hanul would take care of the matter and expressed the opinion that it would be easily resolved. I confess to not paying close attention to the details and timing with respect to this matter; I generally forwarded e-mails on this matter to my assistant, Cherri Brick, without reading them or their attachments. I relied exclusively upon attorneys from Hanul to deal with this. I do not recall experiencing any change in my thinking about this matter even after a federal court issued an Order in October 2008 because I assumed that Hanul would dispose of the matter insofar as the SDIBI's involvement was concerned.

7. On December 1, 2008, Mr. Lee sent me an e-mail informing me that a mediation matter was scheduled with "JAMS" on December 12, 2008, to which he attached a copy of a letter from JAMS relating to the same. A true and correct copy of the JAMS letter is attached hereto as Exhibit 4. I did not attend the mediation, as I continued to believe that Hanul would resolve this matter short of any real participation by the SDIBI.

8. Throughout 2008 and until January 23, 2009, I did not inform John Meyer, the NSU attorney, of the agreement between Hanul and Darley or of the subsequent dispute over the agreement. I believed and was reassured that no liability beyond participating as a witness would exist for the SDIBI in the worst case scenario. I thought that I could resolve this matter through Hanul, without having to bring Mr. Meyer or other South Dakota attorneys into it. For the same reasons, I did not inform anyone else in authority at NSU or at the Board of Regent's offices about the situation. Around January 22 or 23, 2009, Mr. Kim, upon questioning by myself, stated that a financial liability for the SDIBI could exist, after which I immediately contacted Mr. Meyer.

9. On January 22 or 23, 2009, I spoke to Mr. Meyer by telephone and on January 23 sent some documents to him by e-mail, inquiring about whether someone who was not party to a contract could be compelled to participate in arbitration under that contract. I told him of the situation in which the SDIBI had been brought into the arbitration between Darley and Hanul. However, I did not inform him at that time there had been a lawsuit, as I was unaware there was one, nor did I send him any captioned documents from the Darley federal notification. On January 27, 2009, in response to a request from Mr. Meyers for additional documents relating to the arbitration, I suggested that he contact Hanul directly, but he instructed me to send him any documents that I had. I subsequently provided Mr. Meyer with all documents related to the Darley-Hanul dispute that I had printed out from e-mails from Hanul and met with him in person on January 27, 2009. These documents did not include the federal court's October 7, 2008, order.

10. Although I work for the SDIBI, my paychecks are issued on the account of the State of South Dakota.

11. The SDIBI does not have any offices in California, nor does it have any employees who work in California. The SDIBI does not maintain bank accounts in California, does not pay income taxes in California, and does not own any personal or real property in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2009, at Aberdeen, South Dakota.

Joop Bollen

DECLARATION OF JOHN MEYER

I, JOHN MEYER, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. At all times referred to herein, I have served as a Professor of Business Law at Northern State University (NSU) in Aberdeen, South Dakota. During the same time, I have also served part-time as a campus-based attorney for NSU. In my role as an NSU attorney, I normally would be aware of, and expect to promptly be notified of, any impending arbitrations or ongoing lawsuits naming NSU or SDIBI as a party.

3. The South Dakota International Business Institute (SDIBI) is physically housed at NSU. It and its Director, Joop Bollen, are listed in the NSU directory. True and correct copies of portions of the NSU web site directory listing Mr. Bollen and the SDIBI are attached hereto as Exhibit 5.

4. On January 22 or 23, 2009, Mr. Bollen called me on the telephone and asked me questions about whether someone who was not party to a contract could nevertheless be compelled to arbitrate the contract. On January 23, 2009, he sent me some documents by e-mail that I understood to relate to an arbitration between Hanul Professional Law Corporation and Darley International, LLC, which now also included the SDIBI. He had not previously advised me of any dispute involving these businesses and the SDIBI, or of any arbitration or litigation involving these parties.

5. By January 27, 2009, I had reviewed the documents that Mr. Bollen sent to me on the 23rd. I became concerned that this likely had involved litigation and instructed Mr. Bollen to provide me with additional documents. He suggested that I contact Hanul directly, but I insisted that he provide me with whatever he had. Later that day, he brought to me voluminous papers and documents relating to the impending arbitration. Mr. Bollen told me that he had deliberately not brought this dispute to my attention because he had been led to believe by attorneys from Hanul that this was a minor dispute that would be quickly resolved as to the SDIBI's participation. Upon examining these papers and documents, I immediately discovered that

Dec.

SDIBI had been sued in the U.S. District Court for the Central District of California, having observed a captioned document with a "Filed" stamp on it. It was also apparent that the SDIBI had made an attempt to deny jurisdiction in the matter via a letter sent to Maxwell M. Belcher from Mr. Bollen dated May 7, 2008. An October 7, 2008, order from the federal court was not among the documents that Mr. Bollen provided to me. I did not see that document until several days later, after attorneys for the Board of Regents obtained a fuller set of documents relating to federal case.

6. On January 27, 2009, I informed James Shekleton, the Board of Regents' General Counsel, of what Mr. Bollen told me that day and of the apparent fact that the SDIBI had been involved in a lawsuit. Up until that time, I had never heard of Hanul or Darley, or the matters that were part of the federal suit.

7. Although I work for NSU, my paychecks are issued on the account of the State of South Dakota.

8. NSU does not have any offices in California, nor does it have any employees who work in California. NSU does not maintain bank accounts in California, does not pay income taxes in California, and does not own any personal or real property in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2009, at Aberdeen, South Dakota.

John Meyer

John Meyer

DECLARATION OF JAMES J. PARK

I, JAMES J. PARK, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto if called as a witness.

2. I am a partner with the Hanul Professional Law Corporation ("Hanul"), and served in that capacity at all times referred to herein. My firm is located in Los Angeles, California. I am licensed to practice law in the State of California.

3. In or about July 2007, I began discussing a possible contract between Hanul and Darley International, LLC ("Darley"), for Darley's recruitment of investors in China and other countries for the benefit of the South Dakota International Business Institute ("SDIBI"). Specifically, I spoke with Robert Stratmore, Darley's President. I understand that Mr. Stratmore is also licensed to practice law in the State of California.

4. The agreement between Darley and Hanul was executed in October 2007. Si Il Jang, a partner for Hanul, executed the agreement on behalf of Hanul. However, I was the person who negotiated the terms of the agreement with Mr. Stratmore. I forwarded the executed agreement to Mr. Stratmore on October 18, 2007.

5. Although the agreement confers certain "exclusive" rights upon Darley, throughout my negotiations I advised Mr. Stratmore that Hanul did not have a written agreement with the SDIBI and therefore actually characterized the "exclusive" rights we were discussing as "unofficial." I also let Mr. Stratmore know that the SDIBI was a functionary of the State of South Dakota and that we were avoiding normal State procedures to obtain "official" exclusivity rights. By correspondence on October 4, 2007, to Mr. Stratmore, I also specifically addressed these issues in writing, in response to questions he had posed to me on or about October 1, 2007,

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via e-mail. Attached hereto as Exhibit 6 is a true and correct copy of the October 4, 2007, correspondence that I sent to Mr. Stratmore via e-mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of August, 2009, at Los Angeles, California.

James J. Park

DECLARATION OF JAMES R. LYNCH

I, JAMES R. LYNCH, declare:

1. I have personal knowledge of the facts stated herein and would competently testify thereto under oath if called as a witness.

2. I am a partner with the firm of Garcia Calderon Ruiz, LLP. Our firm represents the South Dakota Board of Regents. Our firm, and I personally, first became aware of a dispute between Darley International, LLC ("Darley") and the South Dakota International Business Institute (the "SDIBI," a functionary of the Board of Regents) in late January 2008, when James Shekleton, the Board's General Counsel, contacted me. The Board of Regents thereafter retained my firm and the South Dakota Attorney General appointed me as a special assistant attorney general. My appointment and our firm's contracts for legal services (collectively covering the period from January 2009 through June 2010) are attached hereto as Exhibit 3.

3. Attached hereto as Exhibit 7 is a true and correct copy of the data I retrieved from the web site of the State Bar of California for Robert D. Stratmore, State Bar No. 52930. The document link is http://members.calbar.ca.gov/search/member_detail.aspx?x=52930. I retrieved this from the web site on August 11, 2009.

4. Attached hereto as Exhibit 8 are true and correct copies of the August 22, 2008, Opposition to Darley's petition in federal court to compel arbitration, Hanul Professional Law Corporation's September 30, 2008, request to substitute in as counsel in that action (with what appears to be Joop Bollen's signature as the original "attorney" authorizing the substitution), the minutes of the October 6, 2008, hearing on the petition, and the federal court's dismissal of the petition on June 15, 2009, each of which is part of the case record on file with the U.S. District Court for the Central District of California in Case No. CV08-05034 DDP. The headers at the tops of these documents indicate that each was received as an electronic filing with that court.

5. Prior to the federal court's dismissal of the petition in June 2009, the Board of Regents moved that court to vacate its October 2008 order on the grounds that Mr. Bollen and Hanul lacked authority to represent the Board in federal court and that the SDIBI was an arm

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and alter ego of the Board and, by extension, the State of South Dakota. I represented the Board on the motion to vacate and appeared before the Honorable Dean Pregerson at the hearing on the motion on June 8, 2009. The federal court's tentative ruling was in favor of the Board, both in terms of Eleventh Amendment immunity from federal court jurisdiction and the Board's lack of status as a "citizen" within the meaning of diversity of citizenship jurisdiction. However, Darley's Petition in the instant case (at paragraph 33) correctly notes that the federal court was also going to give Darley 60 days to conduct jurisdictional discovery, in case it could establish that the SDIBI was not an arm or alter ego of South Dakota. The federal court never finalized its order, as Darley's counsel asked the federal court to postpone making a final ruling while Darley considered withdrawing the petition. Darley requested dismissal of its federal court petition shortly thereafter.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of August, 2009, at Los Angeles, California.

James R. Lynch

Exhibit U

BLECHER & COLLINS, P.C.
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Attorneys for Petitioner
DARLEY INTERNATIONAL, LLC

FILED
Los Angeles Superior Court
JUL 02 2009
John A. Clarke, Executive Officer/Clerk
By DOROTHY SWAIN, Deputy

ORIGINAL

BLECHER & COLLINS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DARLEY INTERNATIONAL, LLC, a Delaware corporation, Petitioner, vs. SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE, an Administrative Unit of Northern State University, Respondent.	CASE NO. BS121441 DARLEY INTERNATIONAL LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT [CCP §1290] Hearing Date: August 31, 2009 Time: N/A Courtroom: N/A

Petitioner DARLEY INTERNATIONAL, LLC alleges as follows:

1. Petitioner Darley International, LLC ("Darley" or "Petitioner") is a limited liability corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Orinda, California.

2. Robert D. Stratmore, Esq. ("Stratmore") is the President and founder of Darley.

3. Petitioner Darley provides an array of business and consulting services to commercial and governmental clients around the world. Over the past twenty years, Stratmore and Darley have participated in international business transactions that have included advising foreign governments and private companies in contract negotiations to consulting and

CIT/CASE: BS121441 LEA/DEF#:
RECEIPT #: CP11870027
DATE PAID: 07/02/09 12:17:05 PM
PAYMENT: $350.00 0310
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CASH:
CHANGE:
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representing entities in the purchase and sale of valuable goods abroad.

4. Respondent South Dakota International Business Institute ("SDIBI") supports state agencies and organizations in their endeavor to stimulate economic growth, business activity and quality job opportunities in the state of South Dakota. Specifically, SDIBI is responsible for managing and promoting direct foreign investment activity in the State of South Dakota. SDIBI also offers South Dakota businesses a variety of continuing education opportunities and consultation services designed to assist, facilitate and promote international trade by and amongst South Dakota companies.

5. Based upon information and belief, Respondent SDIBI is a constituent part of Northern State University ("NSU") located in Aberdeen, South Dakota. The South Dakota Board of Regents ("Board of Regents") manages and controls the State university system for the State of South Dakota. NSU is governed by the Board of Regents.

6. SDIBI attracts foreign investment to South Dakota by utilizing what is known as the EB-5 investor visas program. The EB-5 investor visa grants (conditional) U.S. permanent residence, i.e. green cards, to foreign nationals who will, indirectly or directly, create or save at least 10 full-time jobs by investing at least $500,000 in an American business located within an area that has been approved by the United States Citizenship and Immigration Services ("USCIS") as a Regional Center. A Regional Center, located in rural or high unemployment areas, can be a private entity, a corporation or a regional governmental agency with targeted investment businesses within a defined geographic region. As an incentive to attract foreign investment to the United States and increase job opportunities, USCIS offers the prospect of permanent residency to foreign nationals utilizing investing in a commercial enterprise located in a designated Regional Center.

7. In June 2004, SDIBI became an approved Regional Center for a contiguous 45 county area in eastern South Dakota. As a result, SDIBI manages and promotes foreign investment to sprouting or failing businesses located within the designated 45 county regional center. Businesses located in SDIBI's Regional Center are primarily related to South Dakota's

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dairy and meat packing industries. Currently, SDIBI has approximately fourteen (14) investment opportunities/businesses located within its Regional Center that qualify for the EB-5 investor visa program. As such, foreign entrepreneurs seeking U.S. permanent resident status may apply for an EB-5 visa by making a minimum $500,000 investment in one of the commercial enterprises located in SDIBI's designated Regional Center.

8. Hanul Professional Law Corporation ("Hanul"), with offices in Seoul and Los Angeles, works closely with SDIBI to recruit foreign investment to the EB-5 qualifying businesses within SDIBI's Regional Center. Hanul has the "unofficial" exclusive rights to market SDIBI's EB-5 businesses in foreign investors as well as appoint private parties to do the same. In addition, Hanul provides legal services to the SDIBI investors applying for an EB-5 visa on an exclusive basis.

9. In or around July 2007, Stratmore, on behalf of Darley, contacted SDIBI about the possibility of obtaining exclusive rights to recruit investors for the EB-5 projects located in its designated Regional Center. Joop Bollen ("Bollen"), SDIBI's director, explained that Hanul had exclusive authority to appoint third parties to market SDIBI's EB-5 projects on both an exclusive and nonexclusive basis vis-a-vis certain geographic territories. Bollen specifically directed Darley to contact James J. Park, Esq. ("Park"), a Partner in Hanul's Los Angeles office.

10. Following Bollen's instruction, Darley contacted Hanul to explore the possibility of promoting SDIBI's projects on an exclusive basis in certain countries and/or territories. By late August 2007, Darley and Hanul began negotiating the terms of an agreement that supported both parties' efforts to promote and recruit investors for SDIBI's EB-5 projects. Hanul acted for and on behalf of SDIBI in negotiating the agreement with SDIBI.

11. On October 18, 2007, Stratmore, as President of Darley and Si Ill Jang, Esq., a Partner Attorney with Hanul, entered into an Overseas Recruitment and Service Agreement for U.S. EB-5 Permanent Residence Visa ("Agreement"), of which SDIBI was a direct beneficiary. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

12. SDIBI was an active participant in the contract negotiations between Hanul and

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Darley. Bollen was copied on virtually all correspondence leading up to the execution of the Agreement. In fact, SDIBI negotiated the terms of the Agreement relating to Darley's exclusivity rights in regard to particular territories designated in the Agreement.

13. The overlying purpose of the Agreement was to recruit foreign nationals to invest in qualifying businesses in SDIBI's designated Regional Center. During the term of the Agreement, Darley was precluded from recruiting investors for any other EB-5 program or Regional Center in the United States.

14. The Agreement gave Darley (and its international subagents) rights to market SDIBI's EB-5 projects in specified territories. Under the Agreement, Hanul was obligated to support Darley's marketing and recruitment efforts by, *inter alia*, providing Darley with information, documents and materials on SDIBI's EB-5 projects, translating documents into Mandarin and English and processing visa applications for investors recruited by Darley.

15. Inherent in the Agreement was SDIBI's commitment to support the efforts of both Darley and Hanul so that they could effectively recruit investment to its EB-5 approved projects/businesses.

16. Paragraph 13 (B) of the Agreement contained an arbitration provision, which provided that:

> Any dispute arising out of this Agreement shall be compulsory mediated followed, if necessary, by Arbitration under the auspices of JAMS ADR (Arbitration and Dispute Resolution) in San Francisco, California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. . . .

17. In accordance with the terms of the Agreement, Darley employed its best efforts recruit qualified foreign nationals to invest in the SDIBI project that was seeking foreign

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investment at the time, namely SDIBI's "Tilapia Fish Farm" project. During December 2007, less than two months after the parties entered into the Agreement, Darley and its subagents conducted seminars in Beijing and Shanghai to recruit investors for SDIBI's Tilapia Fish Farm project. In order to effectively conduct these seminars, Darley needed materials on the Tilapia Fish Farm project as well as documents necessary to begin the EB-5 application process for interested investors.

18. Hanul and SDIBI promised that Hanul would provide Darley with all the necessary materials relating to the Tilapia Fish Farm project by early November 2007, which was one month prior to Darley's scheduled Beijing and Shanghai seminars. Hanul failed to do so.

19. Darley and its subagents had invested a substantial amount of time and resources in marketing and promoting the Beijing and Shanghai seminars. Despite the lack of project materials, Darley proceeded with the seminars. Bollen, SDIBI's director, and representatives from Hanul attended both seminars.

20. The seminars produced a total of thirty (30) potential investors that showed a definite and concrete interest in the investment opportunities located within SDIBI's regional center. Darley could not, however, recruit any of these interested investors without the requisite information and materials from Hanul. Upon returning from China, Darley continued to request that Hanul and/or SDIBI provide the promised products and information so that its subagents could continue the recruitment process with respect to the thirty (30) interested investors. Hanul and SDIBI again failed to do so.

21. In late December 2007, SDIBI informed Darley that it was withdrawing the Tilapia Fish Farm project as a potential investment opportunity. This was the precise project that SDIBI and Hanul encouraged Darley to promote in China.

22. At the same time, SDIBI simultaneously established an internal recruitment agency, the South Dakota Regional Center, Inc. ("SDRC") to manage relationships with overseas immigration agencies and recruit investors on SDIBI's behalf. This entity served, in effect, the exact same purpose as SDIBI.

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23. Petitioner alleges that SDIBI created the SDRC only after realizing the potential in China as a result of SDIBI's seminars. Darley alleges that SDIBI's new entity was created solely to exploit the investor potential in China and to avoid paying Darley recruitment fees via the Agreement with Hanul. Petitioner further alleges that the SDRC eliminated the need for Darley's services. With the creation of the SDRC Hanul stopped providing Darley with any SDIBI EB-5 projects to market. Without any EB-5 project to promote, Darley could not follow up on its efforts to recruit the interested investors in China. Darley learned that SDIBI and Hanul, in violation of the Agreement, had contacted its subagents about developing a partnership and collaborative recruitment effort albeit without Darley's involvment.

24. A dispute has arisen between the parties to the Agreement in that Petitioner contends that SDIBI induced Hanul to breach the Agreement by failing to provide it (and its subagents) information necessary to recruit investors both before and after SDIBI withdrew the Tilapia Fish Farm project from the market. Petitioner further alleges that Hanul's breach, in conjunction with SDIBI's bad faith withdrawal of the Tilapia Fish Farm project, directly resulted in the loss of substantial fees to Darley.

25. In accordance with the terms of the Agreement, Petitioner sent a demand for arbitration before JAMS to Hanul, asserting that it breached the October 18, 2007 Agreement, on March 17, 2008. A true and correct copy of Petitioner's March 17, 2008 demand for letter is attached to the Declaration of Maxwell M. Blecher ("Blecher Decl."), filed concurrently, Exh. 1.

26. Petitioner sent a demand for arbitration before JAMS to Respondent SDIBI, asserting that it breached the October 18, 2007 Agreement, on March 18, 2008. A true and correct copy of Petitioner's March 18, 2008 demand letter is attached to Blecher Decl., Exh. 2.

27. By letter on May 7, 2008, SDIBI responded to Petitioner's arbitration demand by asserting that it is not subject to the arbitration because it is not a party to the contract. A true and correct copy of Respondent SDIBI's May 7, 2008 letter is attached to Blecher Decl., Exh. 3.

28. On May 13, 2008, Hanul responded to Petitioner's arbitration demand and agreed to submit the dispute to arbitration pursuant to the terms of the parties' Agreement. A true and

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correct copy of Hanul's May 13, 2008 response is attached to Blecher Decl., Exh. 4.

29. On May 15, 2008, counsel for Petitioner responded to SDIBI's May 13, 2008 letter and again urged that it submit to arbitration. A true and correct copy of Petitioner Darley's May 15, 2008 response is attached to Blecher Decl., Exh. 5.

30. Respondent SDIBI failed to respond to Petitioner's May 15, 2008 follow-up letter.

31. Hanul and Petitioner Darley are currently parties to an ongoing arbitration pending before JAMS in San Francisco, California.

32. On July 31, 2008, Darley filed a petition to compel arbitration as to SDIBI in the United States District Court for the Central District of California. On October 6, 2008, the matter was heard before U.S. District Court Judge Dean D. Pregerson. The Court granted Darley's Petition finding that SDIBI was bound by the Agreement's arbitration clause and compelled to arbitrate. A true and correct copy of the Court's October 7, 2008 Order is attached hereto as Exhibit 2.

33. On March 20, 2009, nearly five months after being compelled to arbitrate, SDIBI filed a motion to vacate the Court's October 7, 2008 Order on the grounds that the Court lacked jurisdiction because it was an alter ego or arm of the State of South Dakota and was immune from suit under the Eleventh Amendment. At the June 8, 2009 hearing, the Court offered to grant Darley sixty (60) days to conduct jurisdictional discovery on SDIBI's status as a state entity and entitlement to Eleventh Amendment immunity. Darley, however, informed the Court that it would instead voluntarily withdraw its petition without prejudice and refile in this Court where the Eleventh Amendment would not bar jurisdiction.

34. Petitioner Darley now files this Petition with the Court seeking an order compelling Respondent SDIBI to participate in the pending arbitration in San Jose, California between Darley and Hanul.

WHEREFORE, Petitioner respectfully requests that the Court:

1. Enter an order finding that a written Agreement to arbitrate the controversy exists, that Respondent SDIBI is subject to the Agreement's arbitration provision,

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and that arbitration proceed in the manner provided in the written Agreement;

2. Award Petitioner recovery of costs in this proceeding; and,

3. Award such other relief as the Court considers proper.

DATE: July 2, 2009

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
JENNIFER S. ELKAYAM

By: _____
MAXWELL M. BLECHER
Attorneys for Petitioner DARLEY INTERNATIONAL, LLC

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VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

I, the undersigned, certify and declare that I have read the foregoing PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT and know its contents.

I am President of PETITIONER DARLEY INTERNATIONAL, LLC, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the Petition are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of July 2009 at the City of Orinda, California.

Robert D. Stratmore
President, Darley International, LLC

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OVERSEAS RECRUITMENT AND SERVICE AGREEMENT FOR US EB-5 PERMANENT RESIDENCY VISA

THIS OVERSEAS RECRUITMENT AND SERVICE AGREEMENT ("Agreement") is made between the following parties:

--HANUL PROFESSIONAL LAW CORPORATION, Los Angeles, CA USA and Seoul, Korea, hereinafter referred to as "Hanul"; and
--DARLEY INTERNATIONAL, LLC, Orinda, CA USA, a Delaware limited liability corporation, hereinafter referred to as "Darley."

Hanul and Darley agree to the following terms and conditions:

DEFINITIONS OF TERMS USED HEREIN:

SDIBI EB-5 Projects: Various for-profit projects reviewed and approved by South Dakota International Business Institute that are candidate for US EB-5 projects under the auspices of USCIS designated Regional Center that SDIBI obtained in June of 2004 and amended thereon that Hanul holds unofficial exclusive rights to promote and process from SDIBI.

Investor(s): Alien beneficiary who has been recruited by DARLEY for SDIBI EB-5 Projects including I-526,/I-829 petition and IV processing.

1. <u>APPOINTMENT:</u>

A. Because State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects, Hanul's right to grant exclusive marketing rights specified herein is based on the unofficial rights to exclusively market SDIBI EB-5 Projects promised by SDIBI to Hanul and therefore shall be valid only while Hanul's rights are honored by SDIBI and all rights, powers and authorities granted to DARLEY herein shall terminate when Hanul's rights are rescinded by SDIBI.

B. HANUL hereby appoints DARLEY as an <u>EXCLUSIVE INDEPENDENT CONTRACTOR (AND NOT AN EMPLOYEE OR AGENT OF HANUL,) TO RECRUIT INVESTORS FROM TERRITORIES SPECIFIED IN APPENDIX A & C AND SHALL BE NON-EXCLUSIVE INDEPENDENT CONTRACTOR FOR OTHER TERRITORIES SPECFIED IN APPENDIX B</u> for a US EB-5 Entrepreneur Program that grants US Permanent Residency ("Green Card") to qualified investors that makes qualified investment

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with the South Dakota International Business Institute ("SDIBI") approved EB-5 projects In the SDIBI Regional Center as referred to as SD EB-5..

C. The Exclusivity granted herein shall be subject to performance review of DARLEY (i) producing minimum of fifty (50) SDIBI EB-5 Investors from China/Taiwan/Hong Kong within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. (ii) A minimum of twenty-five (25) EB-5 Investors must be produced from provinces and cities of China that are outside of the exclusive territories in APPENDIX A by end of month five (5) in order that the rest of China (less Beijing and Guangdong Province) be added to Appendix A as exclusive for Darley. Not producing the minimum number of Investors as specified herein in (i) shall result in Appendix A territories no longer remaining exclusive. Not producing the minimum number of investors in (ii) as outlined above shall result in those territories remaining non-exclusive. Upon reaching the goal of twenty-five Investors by end of month five (5) as per (ii) above and a total of fifty (50) Investors by end of month nine (9) (from a total of fifty (50) investors (from a combination of (i) and (ii),) all of the cities and Provinces of China will be added to APPENDIX A as Exclusive, with the exception of the city of Beijing and Guangdong Province.

D. DARLEY's exclusivity for all of China less Beijing and Guangdong, as gained, through its performance above shall be subject to the minimum performance quota of DARLEY producing 100 Investors from its exclusive territories of APPENDIX A, to be produced by annual anniversary of DARLEY obtaining such exclusivity above. Not meeting the minimum performance requirement shall constitute a breach giving rights to immediately terminate this Agreement at the sole discretion of HANUL.

E. Former Soviet Union Countries. HANUL further grants exclusivity to DARLEY for former Soviet Union Countries as listed in APPENDIX C, subject to performance review of DARLEY producing minimum of thirty (30) SDIBI EB-5 Investors from these countries within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. Not producing the minimum number of Investors as specified herein shall result in APPENDIX C territories no longer remaining exclusive.

F. Even if for some reason the relationship ends between HANUL and DARLEY at some point in time, any Investors in writing to HANUL before termination takes full effect, shall be 'grandfathered,' such that DARLEY is compensated in full for said fees of any nature payable by HANUL to DARLEY.

G. During the period of time when exclusivity for all of China (less Beijing and Guangdong above) is in effect, DARLEY shall market only for SDIBI in regards to EB-5 projects.

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H. Said Appendix A & C above may be amended from time to time by written approval of all parties and made a part of this Agreement.

I. Said Appendix B may be amended by HANUL, at HANUL's sole discretion, as HANUL business necessitates. If however, DARLEY is engaged in meaningful activities in the territories in APPENDIX B, HANUL and DARLEY shall come to reasonable agreement as to protect the marketing and business activities of DARLEY.

J. DARLEY agree to use diligent efforts to recruit Investors for SDIBI EB-5 Project and assist Investor to obtain EB-5 Visa ("Green Card") and cooperate with the HANUL, and assist Hanul to obtain payments from Investors for services provided herein.

K. DARLEY has the exclusive rights in those territories designated in Appendix A & C attached hereto and the non-exclusive rights in those territories designated in Appendix B attached hereto to designate sub-agents to assist in the marketing in connection with the efforts of DARLEY. All contacts and business relationships between any sub-agents including all business resulting from all its sub-agents and DARLEY shall be honored as such by Hanul for the term of this Agreement. HANUL agree to never circumvent the business relationship of DARLEY and its sub-agents even after termination of this Agreement between HANUL and DARLEY.

2. HANUL RESPONSIBILITIES:

A. For Investors, make best attempt to match SDIBI EB-5 Project for Investors whereby, DARLEY will engage in marketing and recruiting qualified Investors. HANUL will provide placement in a SDIBI EB-5 Projects for DARLEY recruited Investors and coordinate with SDIBI to place DARLEY's Investors without undue delay in such projects.

B. HANUL will provide Information on SDIBI EB-5 Project that DARLEY is recruiting at the time and support the marketing and recruitment efforts with all reasonably necessary documentation for such recruitments.

C. Process Investors application for the I-526 Alien Entrepreneur Petition; manage and oversee all NVC form and processes and assist with the immigrant visa approval from overseas US consular office, and subsequent I-829 condition removal process thereof.

D. HANUL shall promptly answer any questions asked by DARLEY regarding the immigration and consular processing and upon request of DARLEY, explain and inform DARLEY of any potential problems or problems encountered.

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E. HANUL shall engage the SDIBI EB-5 Project general partners throughout the duration of the project such that a fair rate of return of Investor's funds from their Investment is returned to Investors in accordance with the mandates of the SDIBI EB-5 Project and all applicable laws and regulations of the United States.

F. HANUL and DARLEY shall communicate together about the details of its monitoring progress on the SDIBI EB-5 Projects such that HANUL and DARLEY can inform Investors from time to time of such updates.

G. HANUL shall provide Chinese speaking employee to be the liaison between DARLEY's Chinese recruiters, Investors and HANUL.

3. DARLEY RESPONSIBILITES:

A. Establish or use an existing office with designated person(s) to be the contact and liaison with HANUL.

B. Provide HANUL with the ability to identify and screen qualified Investors.

C. Pre-screen Investors for the following qualifications:
Investors shall have a qualification generally required by US EB-5 program and in particular the following:

1. Educational background, employment and general personal history to ensure that the Investor has solid personal history for US EB-5 visa;
2. Pre-screen and review Investor's current passport. If prior visa denials, immigration or passport problems, DARLEY must communicate and coordinate with HANUL for further processing of such application of Investor;
3. Pre-screen Investors for financial ability required for EB-5 immigrant visa issuance;
4. Pre-screen Investor for any health or medical related conditions on Investor and family members that may hinder obtaining US EB-5 visa by US consular post;
5. Pre-screen Investor for any criminal records on Investor or family members that may hinder obtaining US EB-5 visa by US consular post; and,
6. Any known conditions or situations which otherwise may pose difficulties for US EB-5 visa issuance.

D. Explain to Investor relevant aspects of immigration through SDIBI EB-5 Projects and assist Investor to complete HANUL Application Forms and to provide HANUL a personal qualification package on Investor based on HANUL's standard formats as provided by HANUL.

E. Explain to the Investor the actions and activities that may jeopardize the Permanent Resident Status and may lead to possible removal from the U.S.

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G. Assist Investors to complete Application for Visa and prepare for interview with Overseas US Consular Officers.

H. Cause Investors to deposit investment amount (USD $500,000) and Legal and Service and Processing Fees as specified below.

4. ESCROW/TRUST BANK ACCOUNT:

Investment Amount: At minimum, $500,000 investment in US dollar currency is to be paid by the Investor in to the designated escrow or attorney-client trust account (hereinafter "escrow/Trust Account"), that HANUL will provide from time to time, for the purposes of fulfilling investment in accordance with Escrow Agreement that investors will sign with the SDIBI and escrow/Trust Account bank. The escrow/Trust Account shall be established under the name of the investor in a bank of international reputation as practical and safe and will have conditions that are described in the Escrow Agreement specified above. The investment in the escrow/Trust Account bank account will be released to the SDIBI EB-5 Project's limited partnership account AFTER the Investor's I-526 petition is approved by USCIS per escrow instructions of the Escrow Agreement.

5. FEES AND COSTS:

A. The Legal Fees for EB-5 Visa Applicants shall be USD$20,000.00 plus out of pocket filing fees and costs payable to USCIS (currently, the EB-5 filing fee is $1,435.00; National Visa Center fees of $338 per person; or I-485 fee of up to $1,200.00 per person as appropriate; and, subsequent Removal of Conditions Fee to obtain a Green card at about USD$3,000.00. In addition, out-of-pocket fees may include any accounting work needed for the visa process and any out-of-pocket fees for translation work). The Legal Fees include services for the following:

(1) preparation and submission of I-526 Alien Entrepreneur Petition with the USCIS and all necessary acts and service thereof;
(2) preparation and subsequent processing of US Consular processing through US consular post of interest OR I-485 adjustment of status for USCIS processing whichever may apply;
(3) preparation and subsequent processing of I-829 Condition Removal when due in 21 months from the date of Investor's conditional green card obtainment; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

B. The Service Fees for SDIBI EB-5 Projects shall be USD$30,000.00 and shall include the following services:

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(1) Organizing, coordinating and syndicating with SDIBI EB-5 Project general partners for establishing a SDIBI EB-5 Project for Investor;
(2) monitoring and communicating on behalf of Investors to ensure successful operation of the SDIBI EB-5 Project;
(3) negotiating and representing Investors interest through exit by Investor from their SDIBI EB-5 Project; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

C. DARLEY shall have Investor directly submit payment of USD$50,000.00 (the Legal and Service Fees) PLUS the filing fees specified above, to HANUL's Trust Account in Los Angeles, California. HANUL shall draw fees from the Trust Account according to the following schedule:

STAGE 1: USD$20,000.00, at any time of HANUL's choosing prior to submission of I-526 petition to USCIS whereby Legal Fees and Service Fees shall constitute USD$10,000.00 each:

STAGE 2: USD$30,000.00; AFTER successful approval of I-526 petition and within fifteen (15) days of HANUL's notice of such approval to DARLEY and Investors whereby USD$10,000.00 shall be for Legal Fees and USD$20,000.00 shall be for remaining Service Fees; and,

Filing Fee: As necessary at the time of submission of respective filings.

D. Success Fee at Divestment. Should an agreement be made with Investor for success fee at the time of divestment from SDIBI EB-5 Project, HANUL shall retain 50% and DARLEY the 50% of such success fee.

6. DARLEY AGENT FEES:

A. DARLEY shall be entitled to following fees, to be paid out of HANUL Trust Account, for the services DARLEY provides HANUL for SDIBI EB-5 Projects as specified in Section 3 above and shall be paid in following manner:

(1) All payments from HANUL shall be made on a valid invoice or statement from DARLEY that includes bank account information and international wire-transfer instruction ("Invoice");

(2) In respect to Project 12 (NBP—Northern Beef Packers LP), of the above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees;
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees; and,
(iii) USD$5,000.00 to ROBERT D. STRATMORE from the STAGE 2 Legal Fees.

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(3) In respect to new SDIBI EB-5 Projects (project 13 and beyond), of above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees; and,
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees.

(4) The payment to DARLEY shall be further distributed between DARLEY and STRATMORE as necessary.

7. REFUNDS TO INVESTOR, HANUL AND DARLEY:

A. In accordance with Fee Schedule above, refunds will be administered as follows:

(1) In any case of Investor not receiving his/her US immigrant visa or Green Card, Investor's $500,000 investment shall be returned to Investor from Limited Partnership within a reasonable time for Limited Partnership to refund the investment not to exceed more than three (3) months from date of denial of such approval;

(2) If the Investor terminates the Agreement at any specific Stage of the process as outlined above, HANUL and the DARLEY will NOT refund any Fees deposited and received from the Investor up to that Stage, but shall return all remaining fees in the Trust Account;

(3) However, in case the I-526 petition is not approved for reasons other than the Investor's fault (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), then the Investor shall be refunded all the Fees in the Trust Account, including the $10,000 legal fee paid for submitting I-526 but shall not be refunded any government fees or costs paid up to that stage;

(4) If the INS does not approve the I-485 adjustment application or the overseas US Consulate does not issue the EB-5 visa for reasons other than the Investor's misrepresentations about material facts of the Investor's case (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), HANUL and DARLEY will refund all Fees deposited including the USD$10,000.00 Legal Fees but not any government fees or costs already paid up to that stage.

(5) In any case, of any legal fees being retained [e.g. of $10,000], HANUL shall pay half ($5,000) to DARLEY for services rendered.

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8. COVENANTS, WARRANTIES AND CONDITIONS:

A. DARLEY agrees to use only HANUL approved forms, and agrees to make no inaccurate representations to the Investor other than the information provided by HANUL in writing.

B. DARLEY may advertise referring to the name of HANUL or in any marketing materials. (DARLEY or Robert D. Stratmore, Esq. may advertise in their own name.)

C. DARLEY agrees not to incur any charges, costs or other liabilities on behalf of HANUL without the express written consent and authorization from HANUL. Hanul agrees similarly as to Darley.

D. DARLEY and HANUL agree, to the best of their knowledge, to maintain compliance with all laws of the US government, including but not limited to: Citizenship and Immigration Services and the Department of State, and all other applicable government agencies.

F. HANUL covenants and warrants that it will comply with all California State Bar Rules in respect to its laws, rules and regulations governing segregation of funds for clients and the proper maintenance of records and balances in Attorney-Client Trust Fund matters.

9. CONFIDENTIALITY AND NON COMPETE:

A. DARLEY agree to hold all disclosed confidential and proprietary information and trade secrets in confidence and agrees to use this information only for the contemplated purposes and not for use, adaptation or copy for any company or commercial purpose unrelated to the SDIBI EB-5 Projects, including competition or disclosure to any third parties (except Darley's sub-agents as necessary in the sole view of Darley). HANUL shall, however, indicate when certain information or material is on confidential basis in writing to DARLEY.

B. DARLEY does expressly covenant and agree that during the term of this Agreement and for a period of two years immediately following termination of this Agreement with HANUL, regardless of the reasons for said termination, the DARLEY will not, without prior written consent of HANUL, directly or indirectly, for itself, or through or on behalf of others, as an individual, or as an employee, agent, or sales representative for any person, partnership, firm, corporation, or other entity either contact or do business with SDIBI EB-5 Project principals (i.e. general partners of each project, etc...).

C. HANUL shall not conduct business with DARLEY's sub-agents and Investors for two (2) years following termination of this Agreement, PROVIDED that

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DARLEY specify such sub-agents to HANUL by giving list of name, contact information, business credentials and identification of affiliation with DARLEY of such sub-agents within two (2) months of this Agreement or two months after signing any new sub-agents while this Agreement is in effect. Any sub-agents of DARLEY not identified consistent with the above shall not be considered DARLEY's sub-agents for the purposes of non-compete UNLESS HANUL and DARLEY agree otherwise.

D. HANUL agrees to keep personal information of Investors as provided by DARLEY, its sub-agents, and Investors confidential and shall treat such information as proprietary information.

10. TERM:

A. This Agreement will be effective upon execution by and between HANUL and DARLEY.

B. This Agreement to be in effect for two (2) years from the date of full execution and thereafter this Agreement will automatically be renewed for additional terms of twelve (12) month periods unless terminated by sixty (60) days written notice prior to renewal period by either party.

11. DISCLAIMERS AND WARRANTY:

A. HANUL cannot and will not promise or guarantee that any Investor will receive the EB-5 Visa or I-485 adjustment of status approval, as such approval is subject to the sole discretion of the US government agencies, including Citizenship and Immigration Service (CIS), and Department of State (DOS).

B. HANUL cannot and will not promise or guarantee the performance or conduct, of the SDIBI EB-5 Project participating general partners or partnerships and HANUL further cannot and will not promise any profit on the investment from SDIBI EB-5 Projects.

C. DARLEY will not be responsible for the Investor's misrepresentation or actions either prior to or after the Investor obtains immigrant visa. However, DARLEY on behalf of HANUL will explain the U.S. immigration laws to the Investor.

12. BREACH AND DAMAGES:

That, in the event of a breach of this Agreement, this Agreement shall be cancelled and terminated subject to any ruling or determination by JAMS either by mediation or arbitration (See Par. 13 hereinbelow). All parties are liable to each other for actual

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damages, and other injunctive and equitable relief that is allowed by law pursuant to the determination by JAMS. Refund to the Investor that is provided in Section 7 shall survive any cancellation or termination.

13. MISCELLANEOUS:

A. All parties will communicate with each other on a regular basis in English (Chinese may also added) as to the status of projects being released, recruitment, visa approvals, time schedules, and other matters necessary for the administration of this Agreement. The primary method of communication will be by e-mail, however, express mailings, fax and telephone will be used as necessary and English shall be the only official language used for any correspondence or communication between HANUL and DARLEY.

B. This Agreement will be binding upon the parties, their successors and assigns. Time is of the essence in respect to this Agreement. This Agreement will be enforced under the laws of the State of California, United States of America and the laws of the State of California will have exclusive authority, exclusive jurisdiction, and exclusive venue and be binding upon the parties.
Any dispute arising out of this Agreement shall be compulsory mediated followed, if necessary, by Arbitration under the auspices of JAMS ADR (Arbitration and Dispute Resolution) in San Francisco, California.
Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
Prior to the appointment of the arbitrator, and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and I promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that

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is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrator. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as the arbitrator in the case. The pendency of the mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

C. This is the entire Agreement and no oral provisions or other agreements unless referred to herein or as written executed amendments will be binding between the parties. In the event any section of this is unlawful or illegal, the balance of the Agreement will continue and be binding.

D. COUNTERPARTS. This Agreement and any addendums may be executed in counterpart and transmitted via facsimile as if originally-executed documents.

IN WITNESS WHEREOF, the DARLEY and HANUL hereto have signed this Agreement as of the dates indicated below.

Signatures

HANUL

HANUL PROFESSIONAL LAW CORP.
DAEGAK BLDG., 14TH FLOOR 1319-5
SEOCHO-2DONG, SEOCHO-GU, SEOUL
137-857, SEOUL KOREA

SIGNED for and on behalf of **HANUL Professional Law Corporation** by its authorized signatory:

Si Il Jang

Authorized Signatory

Si Il Jang, Esq.
Name

Partner Attorney
Title

JSL

DARLEY

DARLEY INTERNATIONAL, LLC
277 LA ESPIRAL ROAD
ORINDA, CALIFORNIA 94563 USA

SIGNED for and on behalf of **Darley International** LLC. by its authorized signatory:

Robert D. Stratmore
Name

President
Title

Authorized Signatory

752

APPENDIX A

EXCLUSIVE TERRITORIES AND CITIES AS PER THE HANUL, DARLEY AGREEMENT

CHINA
Provinces:

Anhui
Jiangsu
Zhejiang

Cities or Municipalities:

Shanghai
Nanjing

TAIWAN

HONG KONG

752

APPENDIX C

COMMONWEALTH OF INDEPENDENT STATES
Aka FORMER SOVIET UNION (15 Republics)

RUSSIAN FEDERATION
UKRAINE
KAZAKHSTAN
LITHUANIA
LATVIA
ESTONIA
AZERBAIJAN
ARMENIA
TURKMENISTAN
MOLDOVA
TAJIKISTAN
BELARUS
KYRGYZSTAN
GEORGIA

Jennifer Elkayam

From: Robert Stratmore [sovtrade@pacbell.net]
Sent: Thursday, July 17, 2008 5:58 PM
To: Jennifer Elkayam
Subject: Fw: Agreement Scan File

---- Original Message ----
From: Sovtrade@pacbell.net
To: James Park
Cc: Austin Kim ; bollenj@northern.edu ; Joe Kim ; 하지원
Sent: Friday, October 19, 2007 12:11 AM
Subject: Re: Agreement Scan File

Dear James,

Bravo!
Thank you for the fully executed Agreement signed by Mr. Jang. Well received.Please add the execution page you received from me as a counterpart and we have a complete Agreement.
I have reviewed the subscription agreement you have attached and it looks fine to me.Please proceed with the translation into Mandarin as well.
I will contact Austin on Friday & will wait for the other items from you.
The Tilapia Business Plan & slide show looked very intriguing & I believe has the potential to be a great success.I want to study it more in detail and further for your thoughts and any proposed changes.
By the way, please try to incorporate a 20% Success fee for both of our sides into the initial framework of the Tilapia deal.
I suppose since it is going to be in the form of a loan with a 5% per annum return rather than an equity investment, it will not have the upside it otherwise might attain.

Thanks for your looking after this all quickly.

Sincerely,

Robert

---- Original Message ----
From: James Park
To: Sovtrade@pacbell.net
Cc: Austin Kim ; bollenj@northern.edu ; Joe Kim ; 하지원
Sent: Thursday, October 18, 2007 11:53 PM
Subject: Agreement Scan File

Robert:

Please find our agreement initialed and signed by our partner attorney, Mr. Jang. We are ready to roll.

Also attached is our subscription agreement. See if you like it. If you do, we'll have it translated to Mandarin over the weekend.

As for the attorney-client agreement. Please talk to Austin tomorrow and draft it with him tomorrow. Once you and Austin reach a final draft, I will also have it translated in to Mandarin over the weekend as well.

we'll also send you Chinese version of our client questionnaire early next week.

Finally, I will have a complete package on Tilapia plant ready for marketing within two weeks. That means, we can start marketing and filling this project in November. Thanks.

James J. Park, Esq.
Hanul Professional Law Corporation

Korea Office
Daegak Bldg., 14th Fl. 1319-5 Seocho 2-dong, Seocho-gu
Seoul 137-857 Korea. T. 82-2-522-9799. F. 82-2-522-1270 Mobil: 82-11-9446-0848

Los Angeles Office
3699 Wilshire Blvd., Suite 1150 Los Angeles, CA 90010
T. 213-386-0008. F. 213-386-0088

THIS TRANSMISSION AND THE ATTACHED DOCUMENTS, IF ANY, ARE INTENDED ONLY FOR THE USE OF ADDRESSEE, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE OR RETURN E-MAIL AND DELETE THIS E-MAIL MESSAGE. THANK YOU.

DARLEY INTERNATIONAL, LLC
TEL: (925) 258-0600
FAX: (925) 253-0999

FACSIMILE TO (213) 622-1656
THREE PAGES TOTAL

ATTENTION: JENNIFER ELKAYAM, ESQ.
BLECHER & COLLINS
LOS ANGELES, CA

Dear Jennifer,

Attached, please find a copy of the fax cover sheet, dated October 18, 2007, I sent to Mr. Park along with my executed signature page.

Please see the emails I sent you re Hanul's executed Agreement (by Mr. Si Il Jang, Esq.) and my email to Mr. Park confirming that I sent him this fax & signature page.

Best regards,

Bob Stratmore

October 18, 2007, 2007
TWO PAGES TOTAL

FAX TO: MR. JAMES PARK
HANUL PLC
SEOUL

FAX NUMBER: 011 82 2 522 1270

FROM: ROBERT D. STRATMORE, DARLEY INTERNATIONAL,LLC
EMAIL: sovtrade@pacbell.net
Fax: (925) 253-0999

Dear James,

I am pleased to attach my signature page fully executed on behalf of Darley International, LLC in respect to the clean version of the final Agreement I sent to you via email about 1:50PM CA time today.

As I requested in my note to you attaching the final Agreement, please have the signature page executed by Mr. Si Il Jang, Esq. of Hanul.

In addition, if you can please have all of the other pages initialed and then scan them to me via email for attachment to the Agreement.

Thank you very much.

I am looking forward to a great long-term success for all of us.

Sincerely yours,

ROBERT D. STRATMORE, President
DARLEY INTERNATIONAL, LLC

Confidential Information

DARLEY

DARLEY INTERNATIONAL, LLC
277 LA ESPIRAL ROAD
ORINDA, CALIFORNIA 94563 USA

SIGNED for and on behalf of **Darley International LLC.** by its authorized signatory:

Robert D. Stratmore
Name

President
Title

Authorized Signatory

Exhibit V

ORIGINAL

James R. Lynch (SBN 144694)
GCR, LLP
520 S. Grand Ave., Ste. 695
Los Angeles, California 90071
Tel: (213) 347-0210
Fax: (213) 347-0216

Attorneys for South Dakota Board of Regents
dba South Dakota International Business Institute

FILED
LOS ANGELES SUPERIOR COURT

APR 23 2010

JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ, DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Darley International, LLC, a Delaware corporation,

Petitioner,

vs.

South Dakota International Business Institute, an Administrative Unit of Northern State University,

Respondent.

CASE NO.: BS121441

SOUTH DAKOTA BOARD OF REGENTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR ORDER COMPELLING ARBITRATION; DECLARATIONS; EXHIBITS; APPENDIX OF NON-CALIFORNIA AUTHORITY

Filed concurrently with Respondent's Objections to Evidence

Date: May 21, 2010
Time: 9:30 a.m.
Dept.: 38
Judge: Hon. Maureen Duffy-Lewis

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 1

ARGUMENT 4

I. STANDARD OF REVIEW 4

A. This Court Is Empowered To Decide The Issues Of Arbitrability 4

B. The Federal Arbitration Act Does Not Preempt California Arbitration Statutes And Rules, and So California Law Governs 4

II. THE SDIBI CANNOT BE SUED IN ITS OWN NAME, AS IT HAS NO LEGAL CAPACITY INDEPENDENT OF THE BOARD OF REGENTS 5

III. A THIRD PARTY CANNOT BE COMPELLED TO ARBITRATE A CONTRACT DISPUTE WHEN IT HAS NOT AGREED IN WRITING TO ARBITRATE THE DISPUTE OR TRIED TO ENFORCE ITS RIGHTS UNDER THE CONTRACT 6

A. The Constitutional Right To Jury Trial Must Be Preserved Whenever There Is Doubt As To The Existence Of An Agreement To Arbitrate 6

B. Section 1281.2 Of The Code Of Civil Procedure Authorizes The Courts To Compel A "Party To An Arbitration" Agreement To Arbitrate 6

C. As A Matter of Law, Darley Cannot Prove The Purported Agency Of Hanul Or Mr. Bollen, Nor May The Board Of Regents Be Estopped From Denying Agency 6

1. Darley Has Not Pleaded Or Proved That Hanul Had Authority To Act As An Agent Of The Board of Regents 7

2. Darley Cannot Argue That Hanul Had Apparent Or Ostensible Authority, Such That The Board Of Regents Is Estopped From Denying Hanul's "Agency" 8

3. The U.S. District Court's Now-Defunct Order Is Irrelevant 11

4. Even If Mr. Bollen Were Presumed To Be An Agent, He Did Not Sign An Arbitration Agreement 12

D. The Non-Signatory Arbitration Cases Cited By Darley Do Not Apply To The Instant Case 12

IV. DARLEY'S PETITION IS BARRED BY THE DOCTRINE OF UNCLEAN HANDS 15

V. JURISDICTION 15

TABLE OF AUTHORITIES

CASES

Case ..... **Page**

Action Mechanical, Inc. v. Deadwood Historic Pres. Comm'n
(S.D. 2002) 652 N.W. 2d 742 15

Armato v. Baden
(1999) 71 Cal. App. 4th 885 10

Bakersfield Elementary Teachers Assn. v. Bakersfield City School District
(2006) 145 Cal. App. 4th 1260 15

Baptist Memorial Hosp. System v. Sampson
(Tex. 1998) 969 S.W.2d 945 10

Chleboun v. Varilek
(S.D. 1965) 136 N.W. 2d 348 10

City of Brookings v. Ramsay
(S.D. 2007) 743 N.W. 2d 433 8

County of Contra Costa v. Kaiser Foundation Health Plan, Inc.
(1996) 47 Cal.App.4th 237 ..... 6, 13

Crowley Maritime Corp. v. Boston Old Colony Ins. Co.
(2008) 158 Cal. App. 4th 1061 13

Dahl v. Sittner
(S.D. 1988) 429 N.W.2d 458 9

Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund
(S.D. 2004) 689 N.W. 2d 196 8

Efund Capital Partners v. Pless
(2007) 150 Cal. App. 4th 1311 5

El Camino Community College District v. Superior Court (Information Associates)
(1985) 173 Cal. App. 3d 606 8

Federal Land Bank of Omaha v. Sullivan
(S.D. 1988) 430 N.W. 2d 700 10

Fisser v. International Bank
(2nd Cir. 1960) 282 F. 2d 231 ..... 13, 14

Freeman v. State Farm Mut. Auto. Ins. Co.
(1975) 14 Cal. 3d 473 15

Hanson v. Brookings Hospital
(S.D. 1991) 469 N.W. 2d 826 8

Inglewood Teachers Assn. v. Public Employment Relations Board
(1991) 227 Cal. App. 3d 767 7

Kasselder v. Kapperman
(S.D.1982) 316 N.W. 2d 628 7

Lazarescu v. Arizona State University
(D.Ariz. 2005) 230 F.R.D. 596 5

Magness Petroleum Co. v. Warren Resources of Cal., Inc.
(2002) 103 Cal. App. 4th 901 ..... 6, 12

Matthau v. Superior Court (William Morris Agency, LLC)
(2007) 151 Cal. App. 4th 593 ..... 12, 13

Seymour v. State of California
(1984) 156 Cal. App. 3d 200 8

South Dakota Board of Regents v. Hoops
(D.S.D. 1986) 624 F. Supp. 1179 5

Star Motor Imports, Inc. v. Superior Court (Shake)
(1979) 88 Cal. App. 3d 201 1

Thomson-CSF, S.A. v. American Arbitration Assn.
(2nd Cir. 1995) 64 F. 3d 773 13

Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.
(1985) 164 Cal. App. 3d 1122 6

Volt Info. Sciences v. Leland Stanford Jr. Univ.
(1989) 489 U.S. 468 5

Watts v. Pinckney
(9th Cir. 1985) 752 F. 2d 406 11

Yanchor v. Kagen
(1971) 22 Cal. App. 3d 544 7

STATUTES

Statute ..... **Page**

9 U.S.C. § 1 5

9 U.S.C. § 4 11

28 U.S.C. § 1332 11

Cal. Cons., Art. I, § 16 6

Civil Code § 19 9

Civil Code § 1559 14

Code of Civil Procedure § 1280(e) 6

Code of Civil Procedure § 1280(f) 12

Code of Civil Procedure § 1281 6

Code of Civil Procedure § 1281.2 ..... 5, 6

S.D. Const., Art. XIV, § 3 ..... 1, 5

South Dakota Codified Laws § 1-11-4 2

South Dakota Codified Laws § 1-11-5 2

South Dakota Codified Laws § 1-11-15 2

South Dakota Codified Laws § 13-49-1 5

South Dakota Codified Laws § 13-49-11 ..... 1, 2, 5

South Dakota Codified Laws § 13-59-1 2

U.S. Constitution, Eleventh Amendment 11

INTRODUCTION

Petitioner Darley International, Inc.'s ("Darley") petition to compel arbitration against the South Dakota International Business Institute ("SDIBI") and, by extension, the South Dakota Board of Regents ("Board of Regents"), is premised on three fictions: 1) that the SDIBI may sue and be sued in its own name; 2) that SDIBI Director Joop Bollen or Hanul Professional Law Corporation ("Hanul") had the authority to act as an agent of the SDIBI or the Board of Regents; 3) that Darley could acquire rights against the Board of Regents based upon an alleged violation of exclusive representation rights arising from a contract that specifically states, "the State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects" (Petition (Exhibit 1 thereto, pg. 1 of 15, § I(A)); and 4) that the Board of Regents, although not a signatory to a contractual arbitration agreement, may nevertheless be compelled to arbitrate Darley's claims against the Board of Regents, even though the Board of Regents has never sought to enforce any third party rights it may have under the contract.

As a matter of law, this Court cannot compel the Board of Regents to participate in the arbitration that Darley demands.

STATEMENT OF FACTS

Darley's pleadings are inadmissible hearsay because they are only verified on information and belief, *Star Motor Imports, Inc. v. Superior Court (Shake)* (1979) 88 Cal. App. 3d 201, 204. Thus, Darley relies solely upon the Declaration of Robert D. Stratmore for the facts that it believes support its petition.[1]

Suffice to say that Darley believes this Court may compel arbitration because Mr. Bollen was involved in the discussions leading to the Darley/Hanul contract and Darley "believed" that Hanul and Mr. Bollen had the authority to bind the SDIBI and the Board of Regents.

The Board of Regents manages and controls the State university system for the State of South Dakota. *S.D. Const., Art. XIV, § 3*; Warner Dec., pg. 1, ¶ 3. The Board of Regents, while a State agency, also exists as a corporation, with the delegated power to sue and be sued and to hold, lease, and manage its properties. *SDCL § 13-49-11.*

[1] Mr. Stratmore, Darley's President, has been a California attorney since 1972. Ex. 7.

Northern State University ("NSU") is one of the public institutions of higher education under the Board of Regents' jurisdiction. *SDCL § 13-59-1*. The Board of Regents operates and determines the mission of NSU. Warner Dec., pp. 1-2, ¶¶ 3, 5; Ex. 2.

The SDIBI was created by official act of the Board of Regents in 1994, to replace the existing International Business Center at NSU. Warner Dec., pg. 1, ¶ 4; Ex. 1. The SDIBI is funded by the Board of Regents and the South Dakota Governor's Office of Economic Development, another State agency. Warner Dec., pp. 2-3, lines 25-10, ¶ 9; Bollen Dec., pg. 1, ¶ 2. Any money judgment or arbitration award against the SDIBI, for this or any other matter, would be paid out of the funds of the State of South Dakota. Warner Dec., pg. 3, ¶ 10. Conversely, at the time this dispute arose any funds earned by the SDIBI were placed in an account controlled by NSU. Warner Dec., pg 3, lines 10-12, ¶ 9. Employees of both the SDIBI and NSU have received their paychecks on the account of the State of South Dakota. Meyer Dec., pg. 2, ¶ 7; Bollen Dec., pg. 3, ¶ 10.

The SDIBI's Director at all times relevant to this action was Mr. Bollen. Mr. Bollen, who is not an attorney, was then an employee of NSU and listed in the staff directory for NSU. Meyer Dec., pg. 1, ¶ 3; Ex. 5; Bollen Dec., pg. 1, ¶¶ 2-3. The SDIBI is a constituent part of NSU and the Board of Regents and has no independent legal capacity to sue or be sued, or to enter into contracts without an express grant of authority from the Board or other official authorized to grant such authority. *SDCL § 13-49-11*. Warner Dec., pg. 2, ¶ 6; Jackley Dec., pg. 1, ¶ 4; Shekleton Dec., pg. 1, ¶ 4. Mr. Bollen did not have authority to retain attorneys to perform legal services for the SDIBI, nor did he seek such authority. Jackley Dec., pp. 1-2, ¶¶ 4-6; Warner Dec., pg. 2, ¶ 7; Shekleton Dec., pg. 1, ¶ 5.

The State of South Dakota prohibits the performance of legal services for the State except where performed by assistant or deputy attorneys general employed by the State, via contract with a State agency filed with the South Dakota Attorney General, or by special written appointment from the Attorney General. *SDCL §§ 1-11-4, 1-11-5, 1-11-15*. Jackley Dec., pg. 1, ¶ 4.

Su Ki Austin Kim, an attorney with Hanul, briefly appeared as an attorney for the SDIBI at the hearing on Darley's petition in federal court to compel arbitration, after first requesting

permission to substitute in on September 30, 2008. Ex. 8, pp. 086-089. However, neither Mr. Kim nor any attorney working for Hanul had authorization or appointment from the Board of Regents or the South Dakota State Attorney General's office to represent SDIBI or the Board of Regents, in litigation or in any other capacity. Mr. Bollen did not have such authorization or appointment, either. There is no contract authorizing Mr. Kim to represent the State of South Dakota or any of its agencies. Jackley Dec., pg. 2, ¶ 6; Warner Dec., pg. 2, ¶ 8.

James Lynch, who represents the Board of Regents and its constituent part, the SDIBI, has a legal services contract with the Board of Regents and a special appointment from the State Attorney General's office for this purpose. Jackley Dec., pg. 2, ¶ 7; Ex. 3.

In August 2008, Hanul, which was not then a counsel of record, filed a "pro per" opposition to the Petition by the SDIBI bearing Mr. Bollen's signature. In September 2008, Mr. Kim filed a request to substitute into the action as the SDIBI's attorney, which the federal court approved. Mr. Kim subsequently "represented" the SDIBI before the federal court at the hearing on Darley's Petition on October 6, 2008.

On October 7, 2008, the federal court ordered the SDIBI to participate in the arbitration between Darley and Hanul, thereby exposing the SDIBI and, unbeknownst to that court, the Board of Regents to liability under Hanul's contract with Darley. The SDIBI, again "represented" by Mr. Kim, subsequently participated in an unsuccessful mediation in December 2008. Petition (Exhibit 2 thereto); Bollen Dec., pg. 2, ¶ 7; Ex. 4.

Throughout the foregoing events, Mr. Bollen purposefully avoided informing attorneys for NSU, the Board of Regents, or the State of South Dakota of his dealings with Darley or Hanul, or that these litigation events were taking place, and he continued to withhold this information from them until January 23, 2009, when he realized that he could not make the matter go away with just the assistance of Hanul. On that date, he contacted John Meyer, the University attorney for NSU, about the problem and forwarded some documents relating to the arbitration, but did not mention a lawsuit. On January 27, 2009, Mr. Meyer, having reviewed the documents and become suspicious that a lawsuit might be involved, instructed Mr. Bollen to bring him more documents related to the dispute, which revealed to Mr. Meyer the instant action

but not the federal court order. Meyer Dec., pp. 1-2, ¶¶ 4-5; Bollen Dec., pp. 1-3, ¶¶ 4-9.

Neither the South Dakota Attorney General's office nor the Board of Regents had any knowledge of the existence of the federal action until January 27, 2009, and then only after Mr. Bollen spoke to Mr. Meyer. Having spoken to Mr. Bollen and seen some of the court documents, Mr. Meyer immediately notified James Shekleton, the General Counsel for the Board of Regents, of what Mr. Bollen had told him. Bollen Dec., pp. 2-3, ¶¶ 8-9; Shekleton Dec., pp. 1-2, ¶ 6; Meyer Dec., pg. 2, ¶ 6; Warner Dec., pg. 2, ¶¶ 6-8. The federal court order was discovered shortly thereafter. Meyer Dec., pg. 2, lines 4-7, ¶ 5. Mr. Shekleton thereafter retained California counsel to have the federal court vacate its arbitration order. Shekleton Dec., pg. 2, lines 1-5, ¶ 5.

The Board moved to vacate the order and the federal court tentatively ruled that the SDIBI was an arm of the State of South Dakota, shared the State's Eleventh Amendment immunity, and was not a "citizen" for the purposes of diversity jurisdiction; the federal court also permitted Darley 60 days to conduct discovery on the SDIBI's status, however. Darley asked the federal court to postpone finalizing its ruling because Darley was considering withdrawing its petition altogether. The federal court agreed. Darley thereafter filed a request for permission to withdraw its petition, which was granted on June 15, 2009. Lynch Dec., pp. 1-2, ¶ 5; Ex. 8, pp. 090-091. The withdrawal effectively nullified the federal court's October 2008 order. Darley filed and served the Petition in the instant case on July 2 and 14, 2009, respectively.

ARGUMENT

I.

STANDARD OF REVIEW

A. This Court Is Empowered To Decide The Issue Of Arbitrability.

The Board of Regents agrees that this Court, not an arbitrator, has the power to decide the arbitrability of the dispute between Darley and the Board of Regents.

B. The Federal Arbitration Act Does Not Preempt California Arbitration Statutes And Rules, And So California Law Governs.

Darley seemingly argues that California law, which only authorizes compelling parties to a written arbitration agreement to arbitrate, gives way to a more lenient 'apropriateness'

standard under the Federal Arbitration Act (*9 U.S.C. § 1 et seq.*) ("FAA"), on the purported basis that the FAA preempts California law. Darley is incorrect.

The U.S. Supreme Court has ruled that when a contract with an arbitration agreement has a "choice of law" clause, the chosen forum's law governs the arbitration process and rules to be applied in compelling a party to arbitrate, even if it results in no arbitration taking place where the FAA would have compelled arbitration. *Volt Info. Sciences v. Leland Stanford Jr. Univ.* (1989) 489 U.S. 468, 477-479. *Volt* involved the application of *section 1281.2 of the California Code of Civil Procedure*, the same statute invoked in the instant action.

The Court of Appeal for the Second Appellate District followed *Volt*, ruling that the FAA's limited preemptive powers did not preempt applying California law to a contract with a "California law" clause. *Efund Capital Partners v. Pless* (2007) 150 Cal. App. 4th 1311, 1319.

The contract pleaded by Darley states that the contract is governed by and will be enforced under California law. (Petition (Exhibit. 1 thereto, Section 13(B)). Consequently, the provisions of California law governing the compulsion of arbitration apply to the Darley/Hanul contract and the FAA has no bearing on the outcome of this action.

II.

THE SDIBI CANNOT BE SUED IN ITS OWN NAME, AS IT HAS NO LEGAL CAPACITY INDEPENDENT OF THE BOARD OF REGENTS.

The Board of Regents is an arm and alter ego of the State of South Dakota. *South Dakota Board of Regents v. Hoops* (D.S.D. 1986) 624 F. Supp. 1179, 1184. *S.D. Const. Art. XIV, § 3*; *SDCL § 13-49-1*; Warner Dec., pg. 1, ¶ 3. Under South Dakota law, the SDIBI is a part of NSU, which in turn is part of the state university system over which the Board of Regents presides. Having not been granted authority by the South Dakota Legislature to sue or be sued (as opposed to the Board of Regents, which has), neither the SDIBI nor NSU has the legal capacity to sue or be sued. See, *SDCL § 13-49-11*; Warner Dec., pg. 1, ¶ 6. Cf. *Lazarescu v. Arizona State University* (D.Ariz. 2005) 230 F.R.D. 596, 601 (Arizona State University cannot be subject to suit because the Arizona Legislature has not so provided.)

III.

A THIRD PARTY CANNOT BE COMPELLED TO ARBITRATE A CONTRACT DISPUTE WHEN IT HAS NOT AGREED IN WRITING TO ARBITRATE THE DISPUTE OR TRIED TO ENFORCE ITS RIGHTS UNDER THE CONTRACT.

A. The Constitutional Right To Jury Trial Must Be Preserved Whenever There Is Doubt As To The Existence Of An Agreement To Arbitrate.

Although California law favors the resolution of contractual disputes by arbitration, courts are nevertheless required to zealously guard the rights of a party to trial by jury, which is basic and fundamental. *Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal. App. 3d 1122, 1127-1128; *Cal. Const., Art. I, § 16.* Thus, absent a clear and unmistakable waiver of the right to jury trial, a court must deny a petition to compel arbitration. *Id*, at 1129.

"Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement." *County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245.

B. Section 1281.2 Of The Code Of Civil Procedure Authorizes The Courts To Compel A "Party To An Arbitration Agreement" To Arbitrate.

Sections 1281 and 1281.2 of the Code of Civil Procedure authorize courts to compel parties to arbitrate but, by their own terms, limit that authority to parties to the arbitration agreement. *Code Civ. Proc. §§ 1281, 1281.2. Section 1280(e)* limits "party to the arbitration" to a party to the arbitration agreement. *Code Civ. Proc. § 1280(e).*[2]

Moreover, these statutes extend only to written agreements to arbitrate and oral agreements to extend or renew a written agreement. *Code Civ. Proc. § 1281. Magness Petroleum Co. v. Warren Resources of Cal., Inc.* (2002) 103 Cal. App. 4th 901, 907-909.

C. As A Matter of Law, Darley Cannot Prove The Purported Agency Of Hanul Or Mr. Bollen, Nor May The Board Of Regents Be Estopped From Denying Agency.

Darley argues that the Board of Regents and the SDIBI may be compelled to arbitrate

[2] The Board of Regents recognizes that there are judicially-created exceptions, which it will discuss further below.

under judicially-recognized exceptions to the "party" rule. The two exceptions upon which it relies are 1) that agency and estoppel theories compel requiring them to arbitrate; and 2) non-signatories may always be compelled to arbitrate if the contract with the arbitration clause is for their benefit.

1. Darley Has Not Pleaded Or Proved That Hanul Had Authority To Act As An Agent Of The Board of Regents.

Darley argues that Hanul was a duly-appointed agent of the SDIBI (and, by extension, the Board of Regents). Indeed, Darley needs for Hanul to be an agency, as Hanul, not someone in South Dakota, signed the Darley/Hanul contract. However, Hanul had no authority to act as an agent, as a matter of law.

The existence of an agency relationship is not presumed but must be proven by the plaintiff by preponderance of the evidence. *Inglewood Teachers Assn. v. Public Employment Relations Board* (1991) 227 Cal. App. 3d 767, 779-780. Agency authority cannot be created by the purported agent. It created by express authority granted by the principal or the ostensible/ apparent authority based on the acts and knowledge of the principal. *Yanchor v. Kagan* (1971) 22 Cal. App. 3d 544,549. *Inglewood Teachers Assn., supra*, 227 Cal. App. 3d at 781. Darley offers no evidence of express authority granted to Mr. Bollen to take the actions he did, nor does it offer evidence of knowledge by the Board of those actions. Thus, Darley offers no evidence that Hanul was the Board of Regents' agent when Hanul entered into the Darley/Hanul contract.[3] Indeed, the only evidence is that Mr. Bollen and Hanul knowingly and deliberately avoided informing the Board of Regents what they were doing.

Not being the Attorney General for South Dakota, Mr. Bollen had no authority to contract with Hanul or retain Hanul as an agent of the SDIBI or the Board. Darley has presented no evidence that Hanul was lawfully retained to perform legal services or otherwise act on behalf of the Board, or that Hanul had a contract of any nature with the Board or even with the SDIBI.

[3] Under South Dakota law, ostensible agency must be traceable to the principal and is not established solely by the acts, declarations, or conduct of an agent; if the principal has had no dealings with a claimant, the claimant has no recourse against the principal. *Kasselder v. Kapperman* (S.D. 1982) 316 N.W. 2d 628, 630. Darley had no dealings with the principal, which is the Board of Regents.

2. Darley Cannot Argue That Hanul Had Apparent Or Ostensible Authority, Such That The Board Of Regents Is Estopped From Denying Hanul's "Agency."

Darley's arguments rely in part on asserting that Hanul had ostensible or apparent authority, and therefore the Board of Regents is estopped from denying Hanul's agency. However, Darley cannot establish the elements of estoppel, as a matter of law. In California, two of the four elements of equitable estoppel are that 1) the party asserting it was ignorant of the true state of facts, and 2) that party relied upon the conduct of the party to be estopped, to its detriment.[4] *El Camino Community College District v. Superior Court (Information Associates)* (1985) 173 Cal. App. 3d 606, 613. Darley cannot establish either of these two elements.

Darley cannot claim ignorance of the true state of facts and its consequent detrimental reliance. Even Darley knew that the SDIBI was not a private entity. The laws and rules governing the authority of an employee of a public entity are matters of statute and a plaintiff is held to constructive, if not actual, notice of any restrictions thereon. *Id*, at 613-614. *Seymour v. State of California* (1984) 156 Cal. App. 3d 200, 205 fn. 3.[5] Coincidentally, the issue in *El Camino* was the enforceability of contractual arbitration clauses that had been signed by two vice presidents for a community college district—but not approved by the district's board, which by statute had sole authority to bind the district. *El Camino, supra*, 173 Cal. App. 3d at 612-613.

Based on the foregoing, as a matter of law Darley is charged with knowledge of Hanul's, and even Mr. Bollen's lack of authority to contract with Darley and to offer Darley the vague "unofficial exclusive rights" set forth in the Darley/Hanul contract.

El Camino further stands for the proposition that a public employee who has not been granted official authority to act has no power to bind the employing public entity by virtue of his ultra vires actions.

Perhaps more importantly, Darley knew that, with phrases such as "unofficial exclusive rights," Mr. Bollen and Hanul were making highly questionable assertions of their own authority

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[4] South Dakota also requires these two elements, *Dakota Truck Underwriters v. South Dakota Subsequent Injury Fund* (S.D. 2004) 689 N.W. 2d 196, 204, and only applies estoppel against public entities in exceptional circumstances to prevent manifest injustice. *City of Brookings v. Ramsay* (S.D. 2007) 743 N.W. 2d 433, 674.

[5] In South Dakota, persons are presumed to know the law and the public entity status of public entities. *Hanson v. Brookings Hospital* (S.D. 1991) 469 N.W. 2d 826, 828.

to act, and was required to further investigate, as a matter of law. *Civil Code § 19* states:

> "Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact." *Civ. Code § 19.*[6]

On October 4, 2007, before the Darley/Hanul contract was signed, Mr. Park responded to several questions Mr. Stratmore had raised about some contract provisions. The correspondence restates Mr. Stratmore's questions and provides Mr. Park's response to each question. Park Dec., pp. 1-2, ¶ 5; Ex. 6. In particular, Mr. Stratmore questioned the "unofficial exclusive rights" claimed by Hanul. In response, Mr. Park stated:

> "This is a big point. As I mentioned in my email, Hanul does not have an exclusive agreement signed between Hanul and SDIBI. This is because SDIBI (South Dakota) SDIBI and Hanul felt that substance over form was important. WE wanted to start the work and secure our place by our performance. Furthermore, State government granting any sort of exclusivity is a major endeavor as you may know. Rather than to spend time on formalizing everything, we've decided to use the time on creating results. That strategy worked well as we have 'implied' exclusivity from SDIBI and South Dakota.
>
> "I understand that this alone can derail our agreement effort since we do not have expressed right to base our agreement on. If Darley is willing to trust Hanul's relationship with SDIBI, our agreement will have the intended meaning. However, if not, there might not be anything that Hanul can offer Darley to Darley's legal satisfaction.
>
> "Hanul is confident that the working relationship between Hanul and SDIBI is sufficient for Darley to take on the marketing efforts that it intends to. Therefore, our agreement will be one of practicality rather than absolute legal right. That is the best that we can offer at this time. We have had no reason to seek cumbersome, and may be impossible, expressed exclusivity from SD attorneys. I hope you can reason our rationale in this regard." Ex. 6, pp. 037-038.

Mr. Park was candid and blunt: Hanul had no agreement with the SDIBI, the SDIBI was a South Dakota functionary, and they were knowingly avoiding required governmental approval.

Mr. Park's October 4, 2007, correspondence to Mr. Stratmore triggered Mr. Stratmore's duty to inquire about Hanul's purported "agency" relationship with South Dakota and, indeed, the supposed authority of Mr. Bollen. Additionally, the very first page of the agreement should have roused the suspicions of Mr. Stratmore, the attorney. Section 1(A) of the agreement states:

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[6] South Dakota also requires diligent inquiry. A plaintiff "must show not only damages resulting from his reliance on the appearance of authority, but also reasonable diligence and prudence in ascertaining the fact of the agency and the nature and extent of the agent's authority." *Dahl v. Sittner* (S.D. 1988) 429 N.W.2d 458, 462.

> "Because State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects, Hanul's right to grant exclusive marketing rights specified herein is based on the unofficial rights[7] to exclusively market SDIBI EB-5 Projects promised by SDIBI to Hanul and therefore shall be valid only while Hanul's rights are honored by SDIBI and all rights, powers and authorities granted to DARLEY herein shall terminate when Hanul's rights are rescinded by SDIBI." Petition (Exhibit 1 thereto, Section 1(A), page 1 of 15).

Translated into plain English, and in light of the October 4 correspondence just two weeks earlier, Mr. Stratmore knew that this clause meant 'The State of South Dakota is really in charge and will never grant exclusive rights of this nature, so the SDIBI is unofficially (i.e., without authority) giving us "exclusive" (wink, wink) rights that we hereby pass on to you for as long as we are all able to maintain this artifice by keeping the State out of the loop.'

This is the agreement that Darley urges this Court to impose upon the Board of Regents. Any prudent person in Mr. Stratmore's position, let alone a prudent attorney, would have questioned whether Mr. Bollen or Hanul had authority to do any of the things that had taken place during negotiations. Indeed, a reasonable person should have wondered if Mr. Bollen and Hanul were actually breaking South Dakota law. If Mr. Park's October 4 letter did not already inform Mr. Stratmore, the attorney, that government approval was needed for what they were doing, a reasonable inquiry would have quickly revealed that Hanul had no authority to represent the SDIBI and Mr. Bollen had no authority to negotiate or approve the Darley/Hanul contract.

The concepts of apparent authority or ostensible authority are the same as an estoppel argument, in which the defendant is purportedly barred from denying the authority of its agent because of the plaintiff's blameless ignorance and detrimental reliance on the agent's representations. See, *Armato v. Baden* (1999) 71 Cal. App. 4th 885, 897 fn. 4 (*citing Baptist Memorial Hosp. System v. Sampson* (Tex. 1998) 969 S.W.2d 945, 948, fn. 2). South Dakota law similarly views these theories as interchangeable. *Federal Land Bank of Omaha v. Sullivan* (S.D. 1988) 430 N.W. 2d 700, 701 (*citing Chleboun v. Varilek* (S.D. 1965) 136 N.W. 2d 348).

Lastly, the Petition's description of a private corporation, SDRC, Inc., as an extension of the SDIBI is not only inadmissible speculation but actually false. The SDRC was never

[7] Amazingly, Darley pleads the "unofficial" rights in paragraph 8 of its Petition as though this establishes Hanul's authority rather than calling it into question.

approved or authorized by, or affiliated with, the Board of Regents or the SDIBI. Warner Dec., pp. 3-4, ¶¶ 13-14; Ex. 9.

3. The U.S. District Court's Now-Defunct Order Is Irrelevant.

Curiously, Darley acts as though Hanul's lack of agency authority does not matter, as though Mr. Bollen's "authority" will suffice. This is the point at which Darley undoubtedly will try to fall back on the defunct order of the U.S. District Court and the FAA, attempting to argue that Mr. Bollen's authority has already been adjudicated. The Board of Regents has already shown why the FAA is inapplicable to this case. The District Court's order is also inapplicable.

First, Darley dismissed the federal action in the face of the Court's stated intention to dismiss it once it learned that the SDIBI was a public entity; the order thus is not a final adjudication, as the matter was dismissed. More importantly, a federal court order issued in excess of its jurisdiction is void. *Watts v. Pinckney* (9th Cir. 1985) 752 F. 2d 406, 409. Thus, the federal court's order, made in violation of the *Eleventh Amendment* and *section 1332 of title 28 of the U.S. Code* (because a state is not a "citizen" for diversity jurisdiction purposes), was void—which is why the federal court was going to dismiss the action before Darley acted preemptively. It is not authority for any purpose.

Second, the Board of Regents was not represented in the federal action until long after the order was issued. Indeed, there was no legal representation at all, at the time that Mr. Bollen, a non-attorney, filed opposition to the federal petition.

Lastly, the federal court's order was issued under the authority and standards of the FAA[8], not under the *Code of Civil Procedure*, which governs here and contains more specific requirements that Darley does not meet. Thus, the federal court's ruling is simply inapplicable to the instant case.

[8] Moreover, the Federal Arbitration Act does not apply to a claim that the federal court would have jurisdiction over absent the arbitration agreement (*9 U.S.C. § 4*), because, as the Board of Regents demonstrated in federal court, the Board of Regents and the SDIBI had Eleventh Amendment immunity and were not "citizens" for purposes of diversity jurisdiction.

4. Even If Mr. Bollen Were Presumed To Be An Agent, He Did Not Sign An Arbitration Agreement.

Aside from the absence of evidence of Mr. Bollen's purported authority to bind the Board of Regents or to support its claim that the SDIBI has the capacity to sue or be sued, one simple fact still works against Darley: Mr. Bollen did not sign the arbitration agreement.

The "subsequent ratification" of the Darley/Hanul agreement by the SDIBI is nowhere to be found in the evidence and ignores the lack of authority of Mr. Bollen or the SDIBI to ratify anything. Moreover, Darley offers no evidence that such "ratification" was made in a writing that agreed to arbitrate disputes. There still is no written agreement by Mr. Bollen to arbitrate.

This Court only has authority to compel arbitration pursuant to a written arbitration agreement. *Magness, supra,* 103 Cal. App. 4th at 907-909.[9] If Hanul was not lawfully acting on the Board of Regents' behalf and did not bind the Board of Regents, there is no written arbitration agreement to which the Board of Regents (or the SDIBI) can be said to have subscribed; hence, there is no written arbitration agreement to enforce. This Court is without authority to order the Board of Regents or the SDIBI to arbitration, as a matter of law.

D. The Non-Signatory Arbitration Cases Cited By Darley Do Not Apply To The Instant Case.

Darley cites several cases for the proposition that a non-signatory third party beneficiary of a contract with an arbitration clause may be compelled to arbitrate. However, Darley fails to provide any context that makes these cases applicable to the facts in the instant case.

Matthau v. Superior Court (William Morris Agency, LLC) (2007) 151 Cal. App. 4th 593, involved the son of actor Walter Matthau and a "loan-out" company, each of whom were successors in interest to Matthau's rights (royalties, etc.) following Matthau's death. The William Morris Agency had received a commission from such benefits, as Matthau's agent. The successors refused to pay commissions to the agent. The agent demanded arbitration pursuant to the Screen Actors Guild contract arbitration clause, on the theory that the son and

[9] The lone exception, an oral agreement to extend or renew an expired written agreement, is not applicable here. *Code Civ. Proc. § 1280(f); Magness, supra.*

the loan-out company were third party beneficiaries to Matthau's contract and thereby bound to his obligations. The court found that they were not third party beneficiaries and refused to compel arbitration. *Id*, at 602. Thus, the *Matthau* court's comment on third party beneficiaries being bound to arbitrate was not only dicta but inapplicable to the facts of the instant case.

In *Contra Costa*, involving medical malpractice claims, the court, like the *Matthau* court, commented generally on the third party beneficiary rule without elaborating on it – or applying it. The Contra Costa court refused to compel arbitration because the signatory to the arbitration agreement did not have authority to do so for the non-signatory against whom the order to compel was sought. *Id*, at 245-246.

In *Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal. App. 4th 1061, the court of appeal, as in Matthau and Contra Costa, cited the rule without applying it. The court found that the party against whom arbitration was sought was not a third party beneficiary. *Id*, at 1069-1070. However, the *Crowley* court did point out that third party beneficiaries historically have been compelled to arbitrate when they sought to enforce rights arising from the contract. *Id*, at 1070-1073.[10]

Thomson-CSF, S.A. v. American Arbitration Assn. (2nd Cir. 1995) 64 F. 3d 773, is yet another case in which the appellate court ruled against compelling arbitration. *Thomson-CSF* did not involve any third party beneficiaries but instead addressed agency, parent-subsidiary relationships, and veil-piercing issues. Additionally, the court found that estoppel would not lie to permit a signatory to an arbitration agreement to compel a non-signatory to arbitrate a dispute arising under the contract to which the arbitration agreement related. *Id*, at 779.

The last case cited by Darley, *Fisser v. International Bank* (2nd Cir. 1960) 282 F. 2d 231, also ended with a court's refusal to compel arbitration by the non-signatory. In that case, the court found that a non-signatory parent was not bound by an agreement signed by its

[10] This concept is acknowledged, to a point, by Darley in its equitable estoppel argument. However, Darley's argument omits the element of a third party beneficiary trying to enforce its rights under the agreement, substituting the word "embracing" so as to suggest that not rejecting the agreement is the equivalent of trying to enforce it against a party to the agreement. They are not the same; the premise of equitable estoppel is that a third party ought not to be permitted to accept the benefits of the contract but bring suit in a court to evade the arbitration clause. Neither the SDIBI nor the Board of Regents has ever sought to enforce the Darley/Hanul agreement, however.

subsidiary because it had not acted as the "puppetmaster" so as to control the actions of the subsidiary; the court rejected the idea that merely being the parent rendered the parent subject to the arbitration agreement. *Id*, at 237-241.

Lest this Court believe that *Fisser* provides authority for compelling the SDIBI to arbitrate independently of the Board of Regents, please note that, in *Fisser*, the legal capacity of the subsidiary to sue and be sued was not in question, so the court did not address what occurs when the subsidiary is without legal authority to act. Similarly, the case did not involve public agencies for which agency and contract authority is prescribed and limited by statute or rule.

In summary, to support its burden of proving that a non-signatory may be bound by an arbitration agreement, Darley not only fails to cite a case in which the non-signatory was actually required to arbitrate (in the absence of proven agency), but fails to cite any case remotely describing facts similar to those of the instant case. Darley has failed to carry its burden of proof.

Additionally, Darley has not offered evidence that the SDIBI or the Board of Regents actually received or derived any benefit from the Darley/Hanul contract. Rather, Darley's allegations are premised on an assertion that Hanul and the SDIBI scuttled the agreement within mere weeks, before any benefit could be generated.

Section 1559 of the Civil Code confers upon third party beneficiaries the right to enforce the contract benefiting them. There is no parallel statute permitting a signatory to the contract to use the contract to sue the non-signatory third party beneficiary for breach, which Darley is in effect attempting to do through the arbitration clause. The Board of Regents is unaware of any authority holding that a signatory may sue a third party beneficiary non-signatory for the third party's alleged breach of the contract; rather, the cases involving third parties (not involving an agency issue) have compelled arbitration when the third party pursued its rights in court. However, the Board of Regents has never sought to enforce the Darley/Hanul contract.

Darley's argument for arbitration, based just on the Board of Regents' third party status, makes little sense. Effectively, Darley asserts that two parties may enter into an agreement to benefit a third person, include an arbitration agreement therein, and then either may deprive the

third person of its constitutional jury trial rights by forcing it to arbitrate a breach of contract claim against it, even though it never signed the contract, never agreed to perform anything under the contract, and was never a party to the contract.

IV.

DARLEY'S PETITION IS BARRED BY THE DOCTRINE OF UNCLEAN HANDS.

A proceeding to compel arbitration is in essence a suit in equity for specific performance of a contract. *Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal. 3d 473, 479. One who comes into equity must come with clean hands, or he/she is not entitled to equitable relief. *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260, 1275; *Halls v. White* (S.D. 2006) 715 N.W. 2d 577, 585 (*quoting Action Mechanical, Inc. v. Deadwood Historic Pres. Comm'n* (S.D. 2002) 652 N.W. 2d 742).

Darley knowingly participated in a scheme designed to skirt the authority of the appropriate South Dakota state agency, the Board, with persons of highly questionable purported agency, because Darley placed its desires first and incredulity last. This leave Darley with unclean hands. Darley cannot cry "agency!" when it knowingly conspired to evade the authority of the Board and the State of South Dakota. Darley is not entitled to the equitable relief of compelling the Board of Regents to arbitrate under its fraudulent contract.

V.

JURISDICTION

A substantial portion of Darley's points and authorities is devoted to the issue of the Court's personal jurisdiction over the Board of Regents and the SDIBI. These issues have already been addressed at length in the Board of Regents' motion to quash, which has been argued as far as it can be argued at the present time and will be revisited on appeal, if and when necessary, to the U.S. Supreme Court.

Dated: April 23, 2010

GCR, LLP

By: _____
James R. Lynch
Attorneys for South Dakota Board of Regents,
dba South Dakota International Business Institute

Exhibit W

ORIGINAL

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JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ, DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Darley International, LLC, a Delaware corporation, Petitioner, vs. South Dakota International Business Institute, an Administrative Unit of Northern State University, Respondent.	CASE NO.: BS121441 **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPPOSITION TO RESPONDENT'S MOTION TO QUASH SERVICE; APPENDIX OF NON-CALIFORNIA AUTHORITIES** **Filed concurrently with Objections To Evidence** Date: September 22, 2009 Time: 9:30 a.m. Dept.: 38 Judge: Hon. Maureen Duffy-Lewis

INTRODUCTION

In an episode of the television show "Cheers," bartender Sam Malone described his approach to difficult issues: "Ignore the problem. It'll go away." That philosophy describes Darley International, Inc.'s apparent strategy for opposing the South Dakota Board of Regents' motion to quash service.

Rather than counter the evidence presented by the Board of Regents that the South Dakota International Business Institute ("SDIBI") has no capacity to sue or be sued, that Joop Bollen had no authority to direct the activities of the Board of Regents toward California, and that Hanul Professional Law Corporation ("Hanul") had authority to do anything, Darley simply ignores it, hoping that this Court will make the problem go away by relying on hearsay statements from a web site and a great number of unsubstantiated factual statements in Darley's brief.

Similarly, Darley ignores both California and South Dakota authorities concerning ostensible authority, agency, and estoppel as applied to public entity activities, instead citing irrelevant authority that applies only to private entities.

Startlingly, Darley even ignores the one piece of evidence it could have contradicted if it believed it to be untrue: James Park's explicit statements to Robert Stratmore that they were all doing an end run around the State of South Dakota and Park's "take my word for it" description of the SDIBI's and Mr. Bollen's authority.

While the "ignore it" approach may work well in a fictional bar where everybody knows your name — for Sam Malone, it often did — it is not a basis for a California court to exercise jurisdiction over a sister State.

ARGUMENT

I.

DARLEY HAS OFFERED NOTHING TO OPPOSE THE FACTS AND LEGAL AUTHORITIES CITED BY THE BOARD OF REGENTS.

In its moving papers, the Board of Regents produced extensive evidence, including the constitutional and statutory law of South Dakota and relevant case authority, showing that the

SDIBI is an instrumentality of the Board of Regents and therefore an entity of the State of South Dakota. It produced evidence that neither the SDIBI nor Mr. Bollen possessed authority to contract for the Board of Regents or direct the activities of the SDIBI independent of Board of Regents approval.[1]

While baldly dismissing the Board of Regents' argument that the SDIBI and Mr. Bollen had no greater authority to conduct business in California than did the English Department or a groundskeeper at Northern State University, Darley offers nothing that contradicts the Board of Regents' evidence.[2] In substance, Darley relies upon the following three fictions as the basis of its opposition:

1. That the SDIBI has a legal capacity independent of the Board of Regents;
2. That Mr. Bollen had authority to direct the Board of Regents' activities toward California;
3. That Darley was ignorant of the SDIBI's true legal status and Mr. Bollen's lack of authority, apparently because the web page did not have "Board of Regents" on it.

The Board of Regents is not going to waste this Court's time by restating or re-citing the evidence and authorities, set forth in its moving papers, establishing the opposite of each of the foregoing fictions, particularly since Darley did not see fit to address it. Instead, the Board of Regents will address here the lack of evidence or inadmissible evidence upon which Darley relies for each of these fictions.

A. Darley Offers No Evidence Of The Supposed Independent Authority Of The SDIBI.

For its argument that the SDIBI had the ability to act independently of the Board of Regents, or at least without its approval, Darley offers an SDIBI web page, describing the SDIBI's function, that doesn't mention the Board of Regents. Darley also cites the "fact" (found

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[1] Contrary to Darley's assertion, this is not a case of the SDIBI trying to have it "both ways" or placing form over substance. Darley fails to comprehend that the law concerning authority of public entities and their employees is substance. The SDIBI is not a legal entity and public employees are not free to take actions that bind their employers. This is a case of the Board of Regents, the lawful and sole Respondent in this action, not wishing to be haled into another state's court for the unauthorized actions of an employee and attorneys it did not retain.

[2] Indeed, Darley pleads that the SDIBI is an instrumentality of the Board of Regents, at paragraph 5 of its Petition.

in Paragraphs 22 and 23 of the Petition) that the SDIBI created a separate corporation, South Dakota Regional Center, Inc. ("SDRC") and includes some SDRC web pages, ostensibly to show that the SDIBI created and is irrevocably linked to the SDRC and had authority to do whatever it wanted.

The problem for Darley is that the web pages are not evidence of anything concerning the alleged independence or authority of the SDIBI.[3] As for the other corporation, Darley's evidence is woefully incomplete. It offers no evidence that SDRC is a functionary of or substitute for the SDIBI; Mr. Stratmore's declaration stating that the SDIBI created SDRC, and stating its purported purpose in doing so, is hearsay and beyond his personal knowledge.[4] The exhibits attached to Jennifer Elkayam's and Maxwell Blecher's declarations only show that the SDRC and the SDIBI have separate web pages and that the SDRC claims to have a relationship with the SDIBI. The allegations in the Petition are not admissible as evidence because the verification of the Petition is made only on information and belief, not on the personal knowledge of the declarant executing the verification. Thus, the Petition is hearsay. *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal. App. 4th 1609, 1614 fn. 4; *Star Motor Imports, Inc. v. Superior Court (Shake)* (1979) 88 Cal. App. 3d 201, 204.

To the extent that Darley's Petition has anything to do with the SDRC, of course, the SDRC is not named as a party in the Petition nor is it alleged to have committed any of the acts described in the Petition. Surely Darley cannot be heard to say that the SDIBI is independent of the Board of Regents but that the SDIBI and the SDRC are one in the same, particularly when it has offered no evidence of the latter.

Darley cites the defunct order of the U.S. District Court, apparently under some "law of the case" theory. The problems with this are legion. First, Darley dismissed the federal action in the face of the Court doing it for Darley once it learned that the SDIBI was a public entity; the

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[3] Certainly, the fact that the SDIBI has its own web site is not evidence of independent authority. NSU's athletics program has its own web page, http://nsuwolvesathletics.com, but no one would seriously suggest that the Athletics Department operates independently of the Board of Regents' authority.

[4] Presumably the references to Mr. Stratmore's and Maxwell Blecher's declarations are to those documents filed in support of Darley's motion on the merits of the Petition in July 2009, for which Darley has not requested judicial notice for purposes of opposing the motion to quash.

order thus is not a final adjudication, as the matter was dismissed. Moreover, a federal court order issued in excess of its jurisdiction is void. *Watts v. Pinckney* (9th Cir. 1985) 752 F. 2d 406, 409. Second, the Board of Regents was not represented in the federal action until long after the order was issued. Indeed, there was no purported legal representation at all, at the time that Mr. Bollen, a non-attorney, filed opposition to the federal petition.

Third, the order did not address the issues now being presented, largely because the federal court was relying on the premise that the SDIBI was a private entity and did not rule on the issue of personal jurisdiction over a sister State. The federal court not having addressed these issues, the Board of Regents fails to see how the defunct order could be authority for them or binding as to the outcome here.

Lastly, the federal court's order was issued under the authority of the Federal Arbitration Act (*9 U.S.C. § 4*)[5], which prescribes the federal courts' authority to compel a party to arbitration –not under the California Code of Civil Procedure, which governs the California courts' authority to compel arbitration. The rules will prove to be quite different. Thus, the federal court's ruling is simply inapplicable here.[6]

Darley's final argument is to invoke this Court's purported jurisdiction over the Board of Regents directly if the SDIBI is not independent. For this, Darley cites cases for the principle that a subsidiary corporation's actions may bind the parent corporation if they are alter egos. While this is true in the context of private entities, Darley ignores the fact that the SDIBI is not a subsidiary corporation and the Board of Regents is not a private corporation. Darley also simply ignores the different state of the law concerning the activities of public entities and the ability of their subordinates to bind them. Although the SDIBI is an alter ego of the Board of Regents, the SDIBI's and Mr. Bollen's authority was limited by laws that Darley is legally presumed to know. Thus, Mr. Bollen's ultra vires activities in the name of the SDIBI do not form a basis for

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[5] Moreover, the Federal Arbitration Act does not apply to a claim that the federal court would have jurisdiction over absent the arbitration agreement (*9 U.S.C. § 4*), because, as the Board of Regents demonstrated in federal court, the Board of Regents and the SDIBI had Eleventh Amendment immunity and were not "citizens" for purposes of diversity jurisdiction.

[6] This will prove to be a key distinction if the instant Petition goes to a hearing on the merits, as the subject matter jurisdiction is different: California law only confers subject matter jurisdiction upon its courts to compel parties to an agreement to arbitrate under the agreement. *Code Civ. Proc. §§ 1280(e), 1281.2.*

exercising jurisdiction over the Board of Regents, nor would Hanul's unauthorized actions.

B. Darley Offers No Evidence Of Mr. Bollen's Supposed Authority Or Agency To Direct The Board Of Regents' Activities Toward California.

For its argument that Mr. Bollen individually had the authority to engage in the activities that he did, so as to direct the Board of Regents' activities toward California, Darley really offers nothing at all. The argument is premised entirely on the SDIBI being able to act independently of the Board of Regents, which Darley has not proven. Indeed, Darley's opposition brief would have one believe that Mr. Bollen and the SDIBI are alter egos – even when the only evidence in the record is that Mr. Bollen is an employee of the Board of Regents and the SDIBI is a functionary of the Board of Regents, neither being vested with power to retain counsel or contract in California without the Board of Regents' authority.

Darley's remaining argument, that Mr. Bollen's and Hanul's deliberate efforts to avoid the authority of the Board of Regents, NSU, and their legal counsel actually evidences Mr. Bollen's authority, is sophistry.

C. Darley Has Not Contradicted The Evidence Of Mr. Stratmore's Knowledge Of The SDIBI's Status As A Functionary Of South Dakota And That The Parties Were Evading The State's Authority.

While not stating it outright, Darley implicitly argues that it was ignorant of the Board of Regents' authority over and relationship to the SDIBI, or even the SDIBI's status as a part of the State of South Dakota. Darley does not contradict Mr. Park's declaration that Mr. Stratmore knew, before signing the agreement with Hanul, that they were deliberately avoiding the authority of the State to quash the proposed exclusive deal. Instead, the opposition brief is littered with statements about "Mr. Bollen said this, Hanul said that."

Darley's opposition also cites cases regarding the principle of agency. The Board of Regents has no reason to dispute these authorities. They simply do not apply here, however. Agency is grounded in the actual or apparent authority of the agent purportedly acting in the principal's stead. The Board of Regents has already shown that the SDIBI, Mr. Bollen, and Hanul did not possess actual authority. The Board of Regents has already shown why, as a

matter of law, Darley cannot claim their apparent authority.[7] Indeed, none of the cases cited by Darley addresses the law that one who deal with public entities is presumed to know and understands the limitations on the powers of the such entities.

Darley's presumptive knowledge of the lack of authority of the players with whom it dealt aside, Darley's arguments also simply ignore the evidence produced by the Board of Regents that Darley's own principal, Mr. Stratmore, who is an attorney, actually knew that the SDIBI was a State functionary. Darley has not cited authority for the proposition that choosing to look the other way relieves a party of its duty to inquire further into the authority of the persons with whom he/she deals.

II.

DARLEY'S ARGUMENT THAT MINIMUM CONTACTS WITH CALIFORNIA EXIST IS PREMISED ENTIRELY ON THE UNAUTHORIZED ACTIONS OF MR. BOLLEN AND HANUL, AND SO IT NECESSARILY FAILS.

Ultimately, Darley's opposition is exactly what the Board of Regents predicted it would be: an argument that is based entirely on Mr. Bollen's and Hanul's purported authority to direct the Board of Regents' activities toward California. For the reasons stated in the Board of Regents' moving papers, Mr. Bollen's and Hanul's actions were null and did not affect the Board of Regents' non-contacts with California. Darley chose to ignore the Board's evidence and citations to the law, perhaps assuming that just trumpeting loudly what Mr. Bollen and Hanul did should suffice. It does not.

Darley's entire opposition smacks of "it's not fair" for Darley to not get to force the Board of Regents to arbitrate here in California. However, the Board of Regents has an equal stake in the "fairness" aspect of this, supported by sound arguments and legal authority for its position. For its part, Darley, like Sam Malone, chooses to ignore the problem of the evidence and the law.

Darley's citation to *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal. 4th 1054 and

[7] Darley's statement, near the end of its brief, that the Board of Regents does not "interfere" with other otherwise supervise the activities of the SDIBI is not substantiated by any evidence before this Court, nor does Darley even pretend to have such evidence.

Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal. 4th 434, for the proposition that in a case without an evidentiary hearing Darley need only make a *prima facie* case for jurisdiction, is not supported by either case. Instead, each case states what the Board of Regents already stated in its moving papers: that the initial burden is on the plaintiff to produce evidence showing a basis for jurisdiction and, if it meets this burden, the defendant must then show why an exercise of jurisdiction would be unreasonable. When no conflict in evidence exists, the court may independently review the record and decide the jurisdictional question as a matter of law. *Snowney*, at 1062; *Vons*, at 449. Neither case sets forth a *prima facie* standard; indeed, neither case even uses the words "prima facie" or anything implying such a standard. Here, the evidence of Mr. Bollen's and Hanul's authority to act on behalf of the Board of Regents is hotly contested, even though only the Board has stepped up to the plate with actual evidence. Darley must bear its burden of proof by a preponderance of evidence (as shown by authority cited by the Board of Regents), not on a *prima facie* showing. It has not met this burden.

Based on the foregoing, Darley has offered nothing to show why it would be reasonable for this Court to exercise jurisdiction over an unconsenting sister State. Indeed, it would be unreasonable to exercise such jurisdiction.

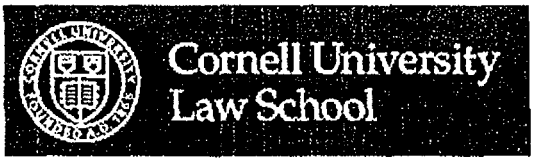
CONCLUSION

For the foregoing reasons, the South Dakota Board of Regents, doing business as the South Dakota International Business Institute, requests that this Court grant its motion to quash service of process on the ground that it lacks personal jurisdiction over the Board of Regents and the Institute.

Dated: September 14, 2009

GARCIA CALDERÓN, LLP

By: _____
James K. Lynch
Attorneys for Respondent
South Dakota Board of Regents, dba South Dakota International Business Institute



U.S. Code collection

TITLE 9 > CHAPTER 1 > § 4

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

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Appendix

LexisNexis

LEXSEE 752 F.2D 406, 409

PAUL E. WATTS and LYNN WATTS, his wife, individually and as husband and wife, Plaintiffs-Appellants, v. LOREN G. PINCKNEY, dba PINCKNEY CONSTRUCTION COMPANY, Defendant-Third Party, Plaintiff/Appellee; PAUL E. WATTS and LYNN WATTS, his wife, individually and as husband and wife, Plaintiffs-Appellants, v. LOREN G. PINCKNEY, dba PINCKNEY CONSTRUCTION COMPANY, Defendant-Third Party, Plaintiff/Appellee, v. UNITED STATES OF AMERICA, Third-Party Defendant-Appellee

Nos. 83-2616, 83-2715

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

752 F.2d 406; 1985 U.S. App. LEXIS 28685; 40 Fed. R. Serv. 2d (Callaghan) 1415

October 2, 1984, Argued and Submitted
January 22, 1985, Decided

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Arizona at Phoenix, Valdemar A. Cordova, District Judge, Presiding.

DISPOSITION: Affirmed

COUNSEL: For Appellant:

John B. Schuyler, Jr., Esq., John M. Favour, Esq., Favour, De Pasquale, Moore & Schuyler, P.A., Prescott, Arizona.

For Appellee:

Robert P. Simbro, Esq., Phoenix, Arizona, Paul Gary Sterling, San Francisco, California.

JUDGES: Farris, Alarcon, and Norris, Circuit Judges. Norris, J., concurring separately.

OPINION BY: ALARCON

OPINION

[*407] ALARCON, Circuit Judge:

These are consolidated appeals from two separate judgments entered against Paul E. Watts and Lynn Watts (hereinafter the Watts). We are asked to decide: (1) whether the district court lacked subject matter jurisdiction in an action against the United States under the Suits in Admiralty Act *46 U.S.C. § 742* and *(2)* whether the court had the authority to vacate a void judgment and to order restitution pursuant to *Fed. R. Civ. P. 60(b)(4)*. For the reasons set forth below, we affirm both judgments.

I PERTINENT FACTS

On September 12, 1975, the Watts' houseboat was severely damaged during a storm while moored at a marina operated under the authority [**2] of the National Park Service (hereinafter United States). When the damage occurred, Loren G. Pinckney, doing business as the Pinckney Construction Company (hereinafter Pinckney), was in the process of relocating a floating breakwater pursuant to a contract with the United States.

On November 30, 1976, the Watts filed a diversity action against Pinckney in which it was alleged that the vessel was destroyed as a direct result of Pinckney's negligence in moving the breakwater. On August 30, 1977, Pinckney filed a third-party complaint against the United States in which he sought indemnity for any damages that might be awarded to the Watts.

On June 30, 1978, -- thirty-three months after the cause of action arose -- the Watts filed an amended complaint which joined the United States as a defendant. The amended complaint alleged that "Pinckney was employed under the direct supervision and control of the United States." (CR 114(5)). Federal jurisdiction was invoked under the Federal Tort Claims Act (FTCA) *28 U.S.C. § 1346(b)*, §§ 2671-2680 and the Suits in Admiralty Act (SSA) *46 U.S.C. §§ 741-752*. The complaint was mailed to the United States Attorney and the United States Department [**3] of Justice.

On August 25, 1978, the United States answered. At the same time, it filed a cross-complaint against Pinckney claiming a right to indemnification.

On July 3, 1980, the district court entered judgment in favor of the Watts on their amended complaint against Pinckney and the United States. Judgment was entered in favor of Pinckney against the United States in the third-party complaint.

The United States appealed both judgments. Pinckney did not appeal the judgment against him. Instead, he paid the Watts the full amount awarded by the court.

In a memorandum disposition filed on November 24, 1982, we held that the Watts' claim was exclusively within admiralty jurisdiction and that the Watts' remedy was solely against the *United States.* [*408] *696 F.2d 1003, 696 F.2d 1005.* We reversed and remanded to the district court with directions to determine: (1) whether the mailing of the amended complaint to the United States Attorney satisfied the "forthwith service" requirements of *46 U.S.C. § 742* and *(2)* whether the complaint could satisfy the two year statute of limitation period in *46 U.S.C. § 745* in light of the relation back doctrine set forth in *Fed. R. Civ. P.* [**4] *15(c).*

The district court determined that it lacked subject matter jurisdiction because the Watts failed to comply with the "forthwith service" requirements of *46 U.S.C. § 742.* The Watts' complaint against the United States was dismissed on November 22, 1983.

The Watts' appeal No. 83-2715 is from this judgment.

On June 24, 1983, Pinckney filed a motion pursuant to *Fed. R. Civ. P. 60(b)(4)* in which he requested that judgment against him be vacated as void. He also requested that the court order restitution of the funds paid in satisfaction of that judgment.

On September 1, 1983, the district court granted this motion stating:

> That by virtue of the law as set forth in the Memorandum Opinion of the 9th Circuit, Court of Appeals, [the Watts'] cause of action was exclusively against the United States of America; that the judgment against [Pinckney] is void; that pursuant to *Rule 60(b)(4), Federal Rules of Civil Procedure,* [Pinckney] is entitled to be relieved from the effect of a final judgment which is void; that as the underlying judgment is void, the Court must grant appropriate *Rule 60(b)* relief.

The Watts attack this order in Appeal No. 83-2716.

[**5] II DISCUSSION

A. *Effect of the Absence of Forthwith Service (Appeal No. 83-2715)*

In our earlier decision, we held that the Watts' case arose solely within admiralty jurisdiction. In order to effect jurisdiction over the United States in an admiralty action:

> The libelant shall forthwith serve a copy of his libel on the United States Attorney of such district and mail a copy thereof by registered mail to the Attorney General of the United States and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States.

46 U.S.C. § 742.

The record satisfies us that the Watts failed to comply with the "forthwith service" requirement of *§ 742.* The record conclusively demonstrates that "forthwith service" was not effected. The amended complaint was filed thirty-three months after the cause of action arose. The United States Attorney and the Attorney General of the United States were not served as required by Congress.

We have consistently held that a "failure to comply with the forthwith service demand of *§ 742* is a jurisdictional defect which denied a court subject matter jurisdiction [**6] in the controversy." *Amella v. United States, 732 F.2d 711, 713 (9th Cir. 1984), citing Kenyon v. United States, 676 F.2d 1229 (9th Cir. 1981)* (per curiam).

The district court's dismissal of the Watts' claim against the United States for lack of subject matter jurisdiction was compelled by the law of this circuit. [1]

> 1 We do not address the Watts' other arguments in Appeal No. 83-2715 because of our determination that the district court lacked subject matter jurisdiction.

B. *Dismissal of Void Judgment is a Direct Attack (Appeal No. 83-2716)*

The Watts' amended complaint alleged that Pinckney was acting as an agent of the United States. As noted above, we held in our memorandum disposition of the appeal filed by the United States that the Watts' exclusive remedy, under *46 U.S.C. § 745* [2], was against the United States.

2 *Section 745* provides in relevant part:

> Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, that where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim . . .

[**7] Pinckney successfully persuaded the district court to vacate the judgment and to [*409] order restitution by invoking *Fed. R. Civ. P. 60(b)(4)* which provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: . . .
>
> (4) the judgment is void.

The district court held that the original judgment against Pinckney was invalid for lack of jurisdiction.

The Watts contend that the court was without power to act under *Rule 60(b)(4)* because the judgment against Pinckney was merely erroneous, not void.

Relying on *Kansas City Southern Ry. Co. v. Great Lakes Carbon, 624 F.2d 822* (8th Cir.), *cert. denied, 449 U.S. 955, 66 L. Ed. 2d 220, 101 S. Ct. 363 (1980)*, the Watts contend that the district court was without power to declare the judgment against Pinckney void under *Rule 60(b)(4)*. This authority is neither dispositive nor apposite.

In *Kansas City Southern Ry. Co.*, the Eighth Circuit was required to determine whether the failure of the district court to join an indispensable party pursuant to *28 U.S.C. § 2322* rendered a prior judgment [**8] void under *Section 60(b)(4)*. The Eighth Circuit held that it did not. The court held that absence of subject matter jurisdiction will render a judgment void when there is a "'total want of jurisdiction' as distinguished from an error in the exercise of jurisdiction." *Id. at 825.*

The Eighth Circuit noted that the district court had personal jurisdiction over the appellant Kansas City Southern Railway Company and "jurisdiction over the general subject matter and accordingly could decide whether the United States should be joined and whether its non joinder was a jurisdictional defect." *Id. at 826.*

Here, there was a total want of jurisdiction over the claim against Pinckney due to the strict requirements of *§ 745. Williams v. United States, 711 F.2d 893, 897 (9th Cir. 1983). Section 745* mandates that an action in admiralty be brought solely against the United States. The remedy for an aggrieved party "is exclusive of any action against the agent or employee of the United States whose act or omission gave rise to the claims." *Doyle v. Bethlehem Steel Corp., 504 F.2d 911, 912 (5th Cir. 1974)*; *Smith v. United States, 346 F.2d 449* (4th Cir.), *cert. denied, 382* [**9] *U.S. 878, 15 L. Ed. 2d 119, 86 S. Ct. 163 (1965)* (intent of Congress in promulgating proviso excluding agent from suitability was not to keep alive liability of private person, firm, or corporation). The district court correctly concluded that the original judgment against Pinckney was void and the proper subject of a 60(b)(4) motion to vacate.

It is well settled that a judgment is void "*if the court that considered it lacked jurisdiction of the subject matter*, or if the parties or if [the court] acted in a manner inconsistent with due process of law." Vol. 11, Wright and Miller, *Federal Practice and Procedure* at 198, 200 (emphasis added); *Textile Banking Co., Inc. v. Rentschler, 657 F.2d 844, 850 (7th Cir. 1981)* (judgment is void if the court lacked jurisdiction); *Marshall v. Board of Ed. Bergenfield, N.J., 575 F.2d 417, 422 (3d Cir. 1978)* (judgment may be void and therefore subject to relief under 60(b)(4) if rendering court lacked subject matter jurisdiction).

The Watts assert that Pinckney was not entitled to relief because *Rule 60(b)(4)* applies only to relief from judgments. We are told that "where the judgment previously entered by a court has been fully [**10] paid and satisfied, the judgment no longer exists, the duties and obligations imposed by the judgment are extinguished and there remains nothing from which the party seeking relief can be relieved." The Watts rely on *Mitchell v. Lindly, 351 P.2d 1063, 1067 (Okla. 1960)* in support of this argument. The *Mitchell* decision is inapplicable [*410] to a challenge of a void judgment. The Oklahoma court, after noting that the appellant did not contend that the judgment was void, held that "a correct judgment, although based on the wrong reasons, will not be set aside on appeal." *Id. at 1066.* Here, the judgment against Pinckney was void. Thus, Pinckney was entitled to restitution under *Section 60(b)(4). See Jordon v. Gilligan, 500 F.2d 701, 704 (6th Cir. 1974), cert. denied, 421 U.S. 991, 44 L. Ed. 2d 481, 95 S. Ct. 1996 (1975)* (a *Rule*

60(b) motion is proper where appellants failed to object to an award of attorney's fees and expenses until after the judgment is entered and execution proceedings were undertaken); *See also Vander Zee v. Karabatsos, 683 F.2d 832 (4th Cir. 1982)* (garnisher entitled to restitution of payment made on void judgment).

The Watts also argue [**11] that the doctrine of res judicata precludes a collateral attack upon a court's determination of its own jurisdiction. In support of this proposition, the Watts cite *Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 84 L. Ed. 329, 60 S. Ct. 317 (1940)* and *Lubben v. Selective Service System Local Board No. 27, 453 F.2d 645 (1st Cir. 1972)*. While it is true that these cases provide that res judicata bars a collateral attack on a final judgment, the Watts' reliance on these decisions is misplaced.

Pinckney's attack on the judgment was *direct*, not collateral. A direct attack is defined as follows:

> A direct attack on a judicial proceeding is an attempt to correct it, or to void it, in some manner provided by law to accomplish that object. It is an attack . . . by appropriate proceedings between the parties to it seeking, for sufficient cause alleged, to have it annulled, reversed, vacated or declared void.

1B J. Moore, *Moore's Federal Practice* para. 0.407 at 282 n. 1, *quoting Intermill v. Nash, 94 Utah 271, 75 P.2d 157.*

The doctrine of res judicata does not apply to *direct* attacks on judgments. "Res judicata does not preclude [**12] a litigant from making a direct attack [under *Rule 60(b)*] upon the judgment before the court which rendered it." *Jordan v. Gilligan, 500 F.2d at 710, quoting* 1B J. Moore, *Moore's Federal Practice* para. 0.407 at 931 (2d ed. 1973).

The district court was compelled to exercise its authority under *Rule 60(b)(4)* to vacate the judgment against Pinckney. "A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside." *Jordan at 704, citing* 7 J. Moore, *Moore's Federal Practice*, para. 60.25[2] at 301 (2d ed. 1973).

The judgment in each matter is AFFIRMED.

CONCUR BY: NORRIS

CONCUR

Norris, J., concurring separately.

I concur in Judge Alarcon's opinion except for Part IIB. I concur in Part IIB solely to the extent it rests on the ground that appellants' failure to comply with the forthwith requirements of *46 U.S.C. § 742* resulted in a total want of jurisdiction and, therefore, the district court's judgment was void and subject to attack pursuant to *Rule 60(b)(4)*. I think that Judge Alarcon's discussion of res judicata and direct versus collateral attack is unnecessary to the disposition [**13] of the case.

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, Suite 1100, Los Angeles, California 90071.

On **September 14, 2009**, I served the following documents: **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPOSSITION TO RESPONDENT'S MOTION TO QUASH SERVICE; APPENDIX OF NON-CALIFORNIA AUTHORITIES** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

Maxwell M. Blecher
Jennifer S. Elkayam
515 South Figueroa Street, 17th Floor
Los Angeles, CA 90071-3334

( ) **BY MAIL:** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California. Pursuant to Code of Civil Procedure § 415.20.

(X) **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be deposited in a box or other facility regularly maintained by the overnight courier, or I delivered the above-referenced document(s) to an overnight courier service, for delivery to the above addressee(s).

( ) **BY HAND-DELIVERY:** I caused the above-referenced document(s) to be hand-delivered to the addressee(s)

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed **September 14, 2009**, Los Angeles, California.

Marie Velez

Exhibit X

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

D.) 10/14/09			DEPT. 38
HONORABLE ROBERT H. O'BRIEN	JUDGE	E. VERNER	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI; CA	Deputy Sheriff	G. VIRAY, CSR 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel Defendant Counsel	JENNIFER S. ELKAYAM (X) via Court Call JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

HEARING RE DARLEY INTERNATIONAL, LLC'S PETITION FOR ORDER COMPELLING ARBITRATION PURSUANT TO WRITTEN AGREEMENT

Matter comes on calendar for Motion to Quash Service of Process filed August 13, 2009. Opposition filed September 9, 2009. Reply filed September 14, 2009.

Motion to Quash Service of Process is argued and stands submitted.

Later, the Court rules, as follows:

Motion to Quash is denied. The Court overrles the objections. The Court accepts the Request for Judicial Notice.

Counsel for the moving party shall have until noon, 12:00 p.m. on October 23, 2009 to personally serve and file (with a copy to Department 38) Opposition to the pending Motion to Compel Arbitration. Any Reply to be personally served and filed (with a copy to Department 38) by noon, 12:00 p.m. on October 27, 2009.

MOTION TO COMPEL ARBITRATION is continued to October 30, 2009 at 8:30 a.m. in Department 38, set concurrent with the Case Management Conference set that date.

CLERK'S CERTIFICATE OF MAILING/

MINUTES ENTERED
10/14/09
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/14/09		DEPT. 38	
HONORABLE ROBERT H. O'BRIEN	JUDGE	E. VERNER	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
R. LOMELI, CA	Deputy Sheriff	G. VIRAY, CSR 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel Defendant Counsel	JENNIFER S. ELKAYAM (X) via Court Call JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 10/14/2009 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 10/14/2009

John A. Clarke, Executive Officer/Clerk

By: _____
E. VERNER

JAMES R. LYNCH, ESQ.
GARCIA CALDERSON RUIZ LLP
500 S. GRAND AVENUE, SUITE 1100
LOS ANGELES, CA 90071

JENNIFER S. ELKAYAM, ESQ.
BLECHER & COLLINS, PC
515 S. FIGUEROA STREET, SUITE 1750
LOS ANGELES, CA 90071-3334

MINUTES ENTERED
10/14/09
COUNTY CLERK

Exhibit Y

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10			DEPT. 38
HONORABLE MAUREEN DUFFY-LEWIS	JUDGE	R. ALVA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
008. R. LOMELI, CA	Deputy Sheriff	GERI VIRAY, CSR # 7267	Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel Defendant Counsel	MAXWELL M. BLECHER (X) JENNIFER S. ELKAYAM (X) JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

PETITION FOR ORDER COMPELLING ARBITRATION

Matter is called for hearing.

Petition is argued and submitted.

LATER:

In the matter heretofore submitted earlier this date, the court announces its ruling as follows:

This court has already determined that respondent is an appropriate legal entity in that it has ruled on a motion to quash.

Judge Pregerson of the United States District Court concluded it would be inequitable to allow respondent to avoid arbitration.

This court finds that arbitration is proper under simple principles of contract and agency.

Joop Bollen - in his position as director - was authorized to act on behalf of respondent. By arranging and facilitating the Darley-Hanul agreement, Bollen did not act ultra vires, but acted within the scope of his role as director.

It was reasonable for petitioner to believe that an agency relationship existed between respondent and

MINUTES ENTERED
06/02/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10 | DEPT. 38

HONORABLE MAUREEN DUFFY-LEWIS JUDGE | R. ALVA DEPUTY CLERK

HONORABLE 008. JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

R. LOMELI, CA Deputy Sheriff | GERI VIRAY, CSR # 7267 Reporter

9:30 am BS121441

DARLEY INTERNATIONAL LLC
VS
SOUTH DAKOTA INTERNATIONAL
BUSINESS INSTITUTE

Plaintiff Counsel: MAXWELL M. BLECHER (X)
JENNIFER S. ELKAYAM (X)

Defendant Counsel: JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

Hanul. The facts support that Hanul had ostensible authority to bind respondent and that the Board of Regents ratified the agreement. A pre-existing agency relationship can bind a nonsignatory. County of Contra Costa v. Kaiser Foundation Health Plan, Inc. (1995) 47 Cal. App. 4th 237, 242.

There is insufficient showing for estoppel. There is no showing that the acts were outside authority. Under Federal law, petitioner claims direct benefits estoppel, preventing a nonsignatory from avoiding arbitration when it has already received a benefit from that contract. American Bureau of Shipping v. Tencara Shipyard (2nd Cir 1999) 170 F3d 349, 353. The evidence shows that respondent has received a benefit from the contract. Respondent's actions show an affirmation of the agreement.

Petition to compel arbitration GRANTED.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 06/02/10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope

MINUTES ENTERED
06/02/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/02/10	DEPT. 38
HONORABLE MAUREEN DUFFY-LEWIS JUDGE	R. ALVA DEPUTY CLERK
HONORABLE 008. JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
R. LOMELI, CA Deputy Sheriff	GERI VIRAY, CSR # 7267 Reporter

9:30 am	BS121441 DARLEY INTERNATIONAL LLC VS SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE	Plaintiff Counsel	MAXWELL M. BLECHER (X) JENNIFER S. ELKAYAM (X)
		Defendant Counsel	JAMES R. LYNCH (X)

NATURE OF PROCEEDINGS:

for each, addressed as shown below with the postage thereon fully prepaid.

Date: 06/02/10

John A. Clarke, Executive Officer/Clerk

By: _____
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MINUTES ENTERED
06/02/10
COUNTY CLERK

Exhibit Z

Claim: Millions in EB-5 liability hidden

John Hult, jhult@argusleader.com *10:29 p.m. CDT September 16, 2014*

(Photo: Joe Ahlquist / Argus Leader)

South Dakota Democrats are accusing Republican leaders of willfully hiding millions in potential taxpayer liability in an EB-5 lawsuit filed in California.

The GOP points to disclosures about the lawsuit in the state's 2010 and 2011 audit reports as evidence that the accusations are little more than political pandering.

The California Supreme Court has ordered the South Dakota into an arbitration hearing with a California firm that says former state employee Joop Bollen dishonored promising to share profits gathered through the recruitment of EB-5 investors.

The federal EB-5 program allows noncitizens to earn permanent U.S. residency by investing $500,000 in economic development projects. Bollen was one of the key players in drawing millions of foreign dollars to the state in the 2000s.

The news conference Wednesday with the director of the South Dakota Democratic Party was the second this week to call out U.S. Senate candidate and former Gov. Mike Rounds and other Republican officials for failure to properly monitor the EB-5 program while it was operational and fully investigate it once it fell apart.

On Monday, Democratic Rep. Kathy Tyler called attention to documents showing that Bollen, as a state employee, had signed a contract with a private firm to manage EB-5 investments without telling the state he had founded the firm himself.

Bollen founded SDRC Inc. and worked with it for two years before resigning his post as head of the South Dakota International Business Institute.

Democratic Rep. Susan Wismer of Britton has scheduled another news conference for this morning to talk about how she would investigate the EB-5 issue, if elected.

"Our state leaders have not told the whole truth and nothing but the truth to the people of South Dakota," Zach Crago, South Dakota Democratic Party director, said Wednesday.

The news conference focused on Bollen's handling of a contract dispute as head of SDIBI.

In 2007, a Korea-based law firm Bollen had been working with called Hanul Law Corp. signed a deal with California-based Darley International to help South Dakota recruit EB-5 investors.

Darley was meant to split $50,000 per-investor fees with Hanul and the SDIBI.

That didn't happen, Darley contends. Instead, Bollen founded his own company in January 2008 and signed an agreement giving it the exclusive right to administer EB-5 investments in South Dakota.

In July 2008, Darley filed a federal lawsuit to force SDIBI and Hanul into arbitration for breach of contract.

Bollen filed a motion to resist on SBIBI's behalf. When a judge rejected his arguments, Bollen hired a lawyer from Hanul to appeal, but the judge again sided with Darley.

In January, Bollen finally told the South Dakota Board of Regents about the dispute. The state promptly appealed, with Gov. Rounds, former Attorney General Larry Long and several others filing sworn statements saying that Bollen didn't have the authority to arbitrate on the state's behalf.

The Board of Regents tried to have the case thrown out of federal court, saying claims against a state agency belong in South Dakota's court system.

A lawyer hired by the Board of Regents wrote a letter to Darley's lawyer at one point, explaining that Bollen "had no legal authority" to file claims for the state, and that "even Mr. Bollen did not understand this."

Lynch also wrote, however, that Bollen and the lawyer he had hired "willfully kept the existence of this action from the persons with such legal authority until the end of January 2009."

The regents' claim of immunity was rejected in June 2010. The California Supreme Court sided with Darley and ordered the state and Hanul into arbitration.

Darley never has stated the exact amount of damages it is seeking from the state. The arbitration, while ordered, has not been scheduled. Emails to Darley's legal representatives were not returned Wednesday.

What influence the arbitration could have on the state is unclear. Crago said the arbitration could leave taxpayers on the hook for "millions" in damages.

The state did disclose the potential for a payout in the California-based EB-5 contract dispute in its audit reports for 2010 and 2011, however.

Lawyers for the state Board of Regents called the risk of a general fund payout in the case "low, as the claim of damages is speculative and the underlying claims are uncertain."

Tony Venhuizen, spokesman for Gov. Dennis Daugaard, said the governor was aware of the arbitration and made no effort to conceal it. Each year, the audit report lists a handful of cases involving lawsuits against the state.

The risk that the arbitration would damage the state financially was deemed so low that it wasn't included in the audit reports from 2012 and 2103, Venhuizen said.

"The governor's always been up front with the public about what our potential liabilities are," Venhuizen said. "The idea that it's been hidden is patently false."

Venhuizen said lawyers for the Board of Regents are confident that the state will prevail when the arbitration does take place.

Crago said the case's connection to the state's EB-5 program, Bollen's questionable handling of the dispute and the potential for damages all deserved more explicit explanations to legislature and to the public.

Fine-print disclosure in an audit report running hundreds of pages doesn't amount to transparency, Crago said.

"This was hidden in plain sight," Crago said of the disclosures in the state's audit reports. "These reports lacked key details about the EB-5 scandal. They didn't mention that Joop Bollen, a Rounds employee, dragged South Dakota into a legal morass."

Rounds campaign manager Rob Skjonsberg called the disclosure of the lawsuit a political move.

"The Democrats are regurgitating old information," Skjonsberg wrote.

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Ex. AA

EB-5: Investment recruiter took cut of EB-5 money

POLITICAL SMOKEOUT David Montgomery, dmontgomery@argusleader.com 4:54 p.m. CDT August 1, 2014

(Photo: Argus Leader)

Note: This story by David Montgomery was originally published (http://archive.argusleader.com/article/20131106/NEWS/311060025/Beef-plant-Investment-recruiter-took-cut-money) on Nov. 6, 2013. The Argus Leader investigated the Northern Beef Plant and South Dakota's use of the federal EB-5 visa program extensively (/story/davidmontgomery/2014/07/29/questions-go-beyond-beef-plant/13317653/) in early November 2013 and is republishing some of those articles now as the issue remains in the public eye. Previously: "Questions go beyond beef plant (/story/davidmontgomery/2014/07/29/questions-go-beyond-beef-plant/13317653/)," "Loan relied on secret, offshore investors (/story/davidmontgomery/2014/07/30/loan-secret-offshore-investors/13359097/)." I've added footnote markers throughout the story, and at the bottom of the story explain new information that updates certain elements of this story. -DHM

The federal EB-5 visa program meant more than just a lot of money for projects such as the Northern Beef Packers plant, which took in almost $100 million from Korean and Chinese investors. It also meant the potential for big bucks for the private company recruiting those foreign investors.

SDRC Inc. wasn't paid any money by the state in its contract to run South Dakota's EB-5 program. But it did get a cut of every investment, a cut big enough to add up to millions of dollars per year.

(/assets/pdf/DF214705116.PDF)

PDF: The consulting contract between South Dakota and SDRC Inc. to handle EB-5 visa recruitment (/assets/pdf/DF214705116.PDF)

This cut probably didn't exist before December 2009, when SDRC took over managing the EB-5 program from a state agency. A 2004 contract shows the state paying that agency, the South Dakota International Business Institute, $130,000 for EB-5 activities.

"What I've been able to figure out is that the payment that (Joop Bollen) was getting was for setting up those SDIF funds, of which (SDRC) was the general partner," said Tony Venhuizen, a senior aide to Gov. Dennis Daugaard.

Venhuizen said he couldn't confirm that SDIBI didn't receive a cut of EB-5 investments Tuesday but said other SDIBI contracts are similar to the 2004 document.(1)

Bollen, who led SDIBI before resigning to continue promoting EB-5 at SDRC, of which he was president, said he didn't want to talk to the press when reached at his home Tuesday.

Millions in fees for private company

For every $500,000 investment into projects such as Northern Beef from a wealthy foreigner, SDRC was required by its state contract to take at least a 1 percent "closing fee" — or $5,000.

Those $5,000 fees can add up quickly. Just one of the 10 investment vehicles set up by Bollen, South Dakota Investment Fund Limited Partnership 6, recruited 70 Chinese investors to put in $500,000, which amounts to $350,000 in fees.

But the actual fees often went well beyond that minimum. Each of the 70 investors in SDIF LP 6 agreed to pay a fee of $10,000 to a wholly owned subsidiary of SDRC — every year.

That's $700,000 in total fees every year to SDRC, instead of just $350,000.

Offering agreements for the other EB-5 funds set up by SDRC aren't included in legal documents filed concerning Northern Beef. But SDRC's website lists nine different funds with more than 800 EB-5 investors among them. If every one of them paid $10,000 per year, that could mean as much as $8 million in yearly revenue, though how much was actually collected at one time is unknown and could be far less.

On top of those fees, each investor in SDIF LP 6 — and at least one other fund, SDIF LP 9, which also loaned money to Northern Beef — paid a one-time $30,000 "administration fee."

That was used to pay expenses related to issuing the fund. If expenses exceeded $30,000 per person, then SDRC was stuck with the bill. But if the expenses were less than that, SDRC could keep the difference.

For the 70 investors in LP 6, the expense fees totalled $2.1 million. The 50 Chinese investors in LP 9 paid another $1.5 million in expense fees.(2)

Money on hold in three accounts

There are millions of additional dollars sitting in three bank accounts related to SDRC.

The first year of each investment, 10 percent of the closing fee would be deposited in a special account to pay any legal costs SDRC owed the state of South Dakota, called "Indemnification Fund One." Money from that fund then would be periodically swept into another account, the "Expense Fund," to help pay South Dakota's expenses related to the EB-5 program, such as travel made by then-state development secretary Richard Benda to China to recruit investors.(3)

For SDIF LP 6, that's a $70,000 payment.

Additionally, a quarter of a percent of all interest earned by SDRC would go into those same funds potentially — $2,000 to $3,000 per year for a $35 million fund such as SDIF LP 6, which earned 3.5 percent interest.

All other revenue flowed to SDRC.

The contract also established a third fund, "Indemnification Fund Two," also used to cover South Dakota's costs in the event of legal costs.

SDRC was required to deposit $1 million into this fund in the first two years of the contract.

At first, it was unclear who exactly controlled these deposits. Gov. Dennis Daugaard's commissioner of economic development, Pat Costello, then forced Bollen to sign a "deposit account control agreement" in August 2012.(4)

"The deposit control agreement is typically something that would have been entered into at the time of the contract, but was not entered into," Venhuizen said.

In September 2013, Costello terminated the state's contract with SDRC. That, Venhuizen said, has put the accounts on hold.

"For the moment, all three of those funds are staying in place until things can be sorted out," he said. "Upon the termination of the agreement, which of course has happened, those funds stay in place until it can be determined what remains to be paid and who owes who what."

That's a lot of money waiting to be sorted out in the Aberdeen branch of Great Western Bank.

Venhuizen said Indemnification Fund One has $1.1 million. Indemnification Fund Two has $1 million. The Expense Fund has $28,000.(5)(6)

The Associated Press contributed to this report.

Footnotes:

(1) Later, Venhuizen confirmed that the South Dakota International Business Institute did not receive any cut or fee from EB-5 investments.

(2) These fees, as large as they are, are actually fairly standard for privately run EB-5 regional centers around the country, experts say.

(3) A later audit found that "inadequate controls existed over payments of the Expense Fund." Auditors were "not able to obtain documents for any of the $67,000 in expenses" paid out of that fund.

(4) Though the state had a stake in these funds, their existence was not reported to relevant state agencies, including the state auditor and the Bureau of Finance and Management. A later audit concluded those agencies should have been made aware of those funds.

(5) As of June 30, 2014, Indemnification Fund One had a balance of $1,271,043.73. Indemnification Fund Two has a balance of $1 million.

(6) In January 2014, the $28,240.03 remaining in the Expense Fund reverted to the state of South Dakota. The two indemnification funds remain under control of SDRC. Any money still remaining six years and six days after the termination of the state's contract with SDRC -- Sept. 25, 2019 -- reverts to the state.

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Ex. BB

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Fraud Policy

NUMBER: 4:37

This policy does not displace policies surrounding academic misconduct.

1. Definitions

   A. Fraud shall be defined to include the following for purposes of this policy:

      1. Conduct within the scope of employment, or conduct apparently within the scope of employment, and representations to the Board, or any of the institutions governed by it or any affiliated organizations that constitutes:

         a. Intentional or deliberate act to deprive the State of South Dakota, the Board, any of the institutions governed by it or any affiliated organizations or students of something of value (property, money, services, or opportunities).

         b. Deception, false representation of fact by either conduct or other communication, or concealing what should have been disclosed, or made when the actor knew or should have known that the other party relied upon his or her representations, leading to injury of the State of South Dakota, the Board, any of the institutions governed by it or any affiliated organizations or students.

         c. Examples of a fraudulent act include but are not limited to:

            i. Embezzlement
            ii. Misappropriation, misapplication, destruction, removal, or concealment of property
            iii. Alteration or falsification of documents
            iv. Theft of any asset (money, tangible property, etc.)
            v. Authorizing or receiving compensation for goods not received or services not performed
            vi. Authorizing or receiving compensation for hours not worked
            vii. Misrepresentation of fact

B. Suspected fraud is defined as a reasonable belief or actual knowledge that fraud has occurred or is occurring.

2. Responsibilities

A. Each university and special school shall designate a contact for employees to report suspected or known fraudulent acts.

B. Employees of the South Dakota Regental System shall read and understand this policy. Additionally, suspected or known fraudulent acts shall be reported to their respective supervisor or to the Director of Internal Audit of the Board Office.

C. Supervisors shall 1) communicate the provisions of this policy to all staff, 2) take no action without consulting the designated contact at the respective university or special school, 3) recommend appropriate temporary disciplinary action when there is evidence of wrong-doing, and 4) if suspension or termination is recommended, consult with a campus representative.

D. The designated contact at the respective university or special school shall communicate the suspected or known fraudulent act to the Director of Internal Audit of the Board Office. The designated contact shall initiate internal investigative actions of the suspected or known act.

E. Director of Internal Audit shall investigate suspected or known fraudulent acts in cooperation with the designated contact at the respective university or special school.

F. Recognized fraudulent acts will be reported to the appropriate law enforcement authorities by the Director of Internal Audit or the designated contact at the respective university or special school.

2. Prevention

Each university and special school shall maintain an internal control environment to protect the university or special school from loss or other damages as a result of a fraudulent act.

3. False Allegations

False allegations of suspected fraud with the intent to disrupt or cause harm to another will be subject to disciplinary action according to procedures in place for their respective employment classification.

4. Corrective Actions and Discipline

Appropriate and timely action will be taken against those proven to have committed a fraudulent act. These remedial actions may include, but are not limited to:

A. Disciplinary action (up to and including termination of employment),

B. Restitution for all losses, including investigation and legal expenses,

C. Forwarding information to the appropriate authorities for criminal prosecution,

and

D. Institution of civil action to recover losses.

E. Where an institution elects to take corrective or disciplinary action, it will proceed under the procedures in place under Board policy or under any collective bargaining agreement for the respective employment classification.

F. An institution may take corrective or disciplinary action without awaiting the resolution of criminal or civil proceedings arising from the fraudulent conduct.

5. Other

All investigations will be conducted in confidence insofar as reasonably possible. The name or names of those communicating information about a fraudulent act and the name or names of those suspected of a fraudulent act will be revealed when required in conjunction of the investigation or legal action.

SOURCE: BOR, June 2002

Ex. CC

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Ex. DD

TSL 2

OVERSEAS RECRUITMENT AND SERVICE AGREEMENT FOR US EB-5 PERMANENT RESIDENCY VISA

THIS OVERSEAS RECRUITMENT AND SERVICE AGREEMENT ("Agreement") is made between the following parties:

--HANUL PROFESSIONAL LAW CORPORATION, Los Angeles, CA USA and Seoul, Korea, hereinafter referred to as "Hanul"; and
--DARLEY INTERNATIONAL, LLC, Orinda, CA USA, a Delaware limited liability corporation, hereinafter referred to as "Darley."

Hanul and Darley agree to the following terms and conditions:

DEFINITIONS OF TERMS USED HEREIN:

SDIBI EB-5 Projects: Various for-profit projects reviewed and approved by South Dakota International Business Institute that are candidate for US EB-5 projects under the auspices of USCIS designated Regional Center that SDIBI obtained in June of 2004 and amended thereon that Hanul holds unofficial exclusive rights to promote and process from SDIBI.

Investor(s): Alien beneficiary who has been recruited by DARLEY for SDIBI EB-5 Projects including I-526,/I-829 petition and IV processing.

1. APPOINTMENT:

A. Because State of South Dakota is prohibited from granting exclusive rights to private entities in regards to SDIBI EB-5 Projects, Hanul's right to grant exclusive marketing rights specified herein is based on the unofficial rights to exclusively market SDIBI EB-5 Projects promised by SDIBI to Hanul and therefore shall be valid only while Hanul's rights are honored by SDIBI and all rights, powers and authorities granted to DARLEY herein shall terminate when Hanul's rights are rescinded by SDIBI.

B. HANUL hereby appoints DARLEY as an **EXCLUSIVE INDEPENDENT CONTRACTOR (AND NOT AN EMPLOYEE OR AGENT OF HANUL.) TO RECRUIT INVESTORS FROM TERRITORIES SPECIFIED IN APPENDIX A & C AND SHALL BE NON-EXCLUSIVE INDEPENDENT CONTRACTOR FOR OTHER TERRITORIES SPECFIED IN APPENDIX B** for a US EB-5 Entrepreneur Program that grants US Permanent Residency ("Green Card") to qualified investors that makes qualified investment

TSZ

with the South Dakota International Business Institute ("SDIBI") approved EB-5 projects In the SDIBI Regional Center as referred to as SD EB-5..

C. The Exclusivity granted herein shall be subject to performance review of DARLEY (i) producing minimum of fifty (50) SDIBI EB-5 Investors from China/Taiwan/Hong Kong within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. (ii) A minimum of twenty-five (25) EB-5 Investors must be produced from provinces and cities of China that are outside of the exclusive territories in APPENDIX A by end of month five (5) in order that the rest of China (less Beijing and Guangdong Province) be added to Appendix A as exclusive for Darley. Not producing the minimum number of Investors as specified herein in (i) shall result in Appendix A territories no longer remaining exclusive. Not producing the minimum number of investors in (ii) as outlined above shall result in those territories remaining non-exclusive. Upon reaching the goal of twenty-five Investors by end of month five (5) as per (ii) above and a total of fifty (50) Investors by end of month nine (9) (from a total of fifty (50) investors (from a combination of (i) and (ii),) all of the cities and Provinces of China will be added to APPENDIX A as Exclusive, with the exception of the city of Beijing and Guangdong Province.

D. DARLEY's exclusivity for all of China less Beijing and Guangdong, as gained, through its performance above shall be subject to the minimum performance quota of DARLEY producing 100 Investors from its exclusive territories of APPENDIX A, to be produced by annual anniversary of DARLEY obtaining such exclusivity above. Not meeting the minimum performance requirement shall constitute a breach giving rights to immediately terminate this Agreement at the sole discretion of HANUL.

E. Former Soviet Union Countries. HANUL further grants exclusivity to DARLEY for former Soviet Union Countries as listed in APPENDIX C, subject to performance review of DARLEY producing minimum of thirty (30) SDIBI EB-5 Investors from these countries within the nine (9) month period beginning from the execution of this Agreement between the HANUL and DARLEY. Not producing the minimum number of Investors as specified herein shall result in APPENDIX C territories no longer remaining exclusive.

F. Even if for some reason the relationship ends between HANUL and DARLEY at some point in time, any Investors in writing to HANUL before termination takes full effect, shall be 'grandfathered,' such that DARLEY is compensated in full for said fees of any nature payable by HANUL to DARLEY.

G. During the period of time when exclusivity for all of China (less Beijing and Guangdong above) is in effect, DARLEY shall market only for SDIBI in regards to EB-5 projects.

JSZ

H. Said Appendix A & C above may be amended from time to time by written approval of all parties and made a part of this Agreement.

I. Said Appendix B may be amended by HANUL, at HANUL's sole discretion, as HANUL business necessitates. If however, DARLEY is engaged in meaningful activities in the territories in APPENDIX B, HANUL and DARLEY shall come to reasonable agreement as to protect the marketing and business activities of DARLEY.

J. DARLEY agree to use diligent efforts to recruit Investors for SDIBI EB-5 Project and assist Investor to obtain EB-5 Visa ("Green Card") and cooperate with the HANUL, and assist Hanul to obtain payments from Investors for services provided herein.

K. DARLEY has the exclusive rights in those territories designated in Appendix A & C attached hereto and the non-exclusive rights in those territories designated in Appendix B attached hereto to designate sub-agents to assist in the marketing in connection with the efforts of DARLEY. All contacts and business relationships between any sub-agents including all business resulting from all its sub-agents and DARLEY shall be honored as such by Hanul for the term of this Agreement. HANUL agree to never circumvent the business relationship of DARLEY and its sub-agents even after termination of this Agreement between HANUL and DARLEY.

2. HANUL RESPONSIBILITIES:

A. For Investors, make best attempt to match SDIBI EB-5 Project for Investors whereby, DARLEY will engage in marketing and recruiting qualified Investors. HANUL will provide placement in a SDIBI EB-5 Projects for DARLEY recruited Investors and coordinate with SDIBI to place DARLEY's Investors without undue delay in such projects.

B. HANUL will provide Information on SDIBI EB-5 Project that DARLEY is recruiting at the time and support the marketing and recruitment efforts with all reasonably necessary documentation for such recruitments.

C. Process Investors application for the I-526 Alien Entrepreneur Petition; manage and oversee all NVC form and processes and assist with the immigrant visa approval from overseas US consular office, and subsequent I-829 condition removal process thereof.

D. HANUL shall promptly answer any questions asked by DARLEY regarding the immigration and consular processing and upon request of DARLEY, explain and inform DARLEY of any potential problems or problems encountered.

752

E. HANUL shall engage the SDIBI EB-5 Project general partners throughout the duration of the project such that a fair rate of return of Investor's funds from their Investment is returned to Investors in accordance with the mandates of the SDIBI EB-5 Project and all applicable laws and regulations of the United States.

F. HANUL and DARLEY shall communicate together about the details of its monitoring progress on the SDIBI EB-5 Projects such that HANUL and DARLEY can inform Investors from time to time of such updates.

G. HANUL shall provide Chinese speaking employee to be the liaison between DARLEY's Chinese recruiters, Investors and HANUL.

3. DARLEY RESPONSIBILITES:

A. Establish or use an existing office with designated person(s) to be the contact and liaison with HANUL.

B. Provide HANUL with the ability to identify and screen qualified Investors.

C. Pre-screen Investors for the following qualifications:
Investors shall have a qualification generally required by US EB-5 program and in particular the following:

1. Educational background, employment and general personal history to ensure that the Investor has solid personal history for US EB-5 visa;
2. Pre-screen and review Investor's current passport. If prior visa denials, immigration or passport problems, DARLEY must communicate and coordinate with HANUL for further processing of such application of Investor;
3. Pre-screen Investors for financial ability required for EB-5 immigrant visa issuance;
4. Pre-screen Investor for any health or medical related conditions on Investor and family members that may hinder obtaining US EB-5 visa by US consular post;
5. Pre-screen Investor for any criminal records on Investor or family members that may hinder obtaining US EB-5 visa by US consular post; and,
6. Any known conditions or situations which otherwise may pose difficulties for US EB-5 visa issuance.

D. Explain to Investor relevant aspects of immigration through SDIBI EB-5 Projects and assist Investor to complete HANUL Application Forms and to provide HANUL a personal qualification package on Investor based on HANUL's standard formats as provided by HANUL.

E. Explain to the Investor the actions and activities that may jeopardize the Permanent Resident Status and may lead to possible removal from the U.S.

J52

G. Assist Investors to complete Application for Visa and prepare for interview with Overseas US Consular Officers.

H. Cause Investors to deposit investment amount (USD $500,000) and Legal and Service and Processing Fees as specified below.

4. ESCROW/TRUST BANK ACCOUNT:

Investment Amount: At minimum, $500,000 investment in US dollar currency is to be paid by the Investor in to the designated escrow or attorney-client trust account (hereinafter "escrow/Trust Account"), that HANUL will provide from time to time, for the purposes of fulfilling investment in accordance with Escrow Agreement that investors will sign with the SDIBI and escrow/Trust Account bank. The escrow/Trust Account shall be established under the name of the investor in a bank of international reputation as practical and safe and will have conditions that are described in the Escrow Agreement specified above. The investment in the escrow/Trust Account bank account will be released to the SDIBI EB-5 Project's limited partnership account AFTER the Investor's I-526 petition is approved by USCIS per escrow instructions of the Escrow Agreement.

5. FEES AND COSTS:

A. The Legal Fees for EB-5 Visa Applicants shall be USD$20,000.00 plus out of pocket filing fees and costs payable to USCIS (currently, the EB-5 filing fee is $1,435.00; National Visa Center fees of $338 per person; or I-485 fee of up to $1,200.00 per person as appropriate; and, subsequent Removal of Conditions Fee to obtain a Green card at about USD$3,000.00. In addition, out-of-pocket fees may include any accounting work needed for the visa process and any out-of-pocket fees for translation work). The Legal Fees include services for the following:

(1) preparation and submission of I-526 Alien Entrepreneur Petition with the USCIS and all necessary acts and service thereof;
(2) preparation and subsequent processing of US Consular processing through US consular post of interest OR I-485 adjustment of status for USCIS processing whichever may apply;
(3) preparation and subsequent processing of I-829 Condition Removal when due in 21 months from the date of Investor's conditional green card obtainment; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

B. The Service Fees for SDIBI EB-5 Projects shall be USD$30,000.00 and shall include the following services:

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(1) Organizing, coordinating and syndicating with SDIBI EB-5 Project general partners for establishing a SDIBI EB-5 Project for Investor;
(2) monitoring and communicating on behalf of Investors to ensure successful operation of the SDIBI EB-5 Project;
(3) negotiating and representing Investors interest through exit by Investor from their SDIBI EB-5 Project; and,
(4) The above-noted services are the responsibility of HANUL to fulfill provided that DARLEY assist HANUL in communicating with DARLEY Investors.

C. DARLEY shall have Investor directly submit payment of USD$50,000.00 (the Legal and Service Fees) PLUS the filing fees specified above, to HANUL's Trust Account in Los Angeles, California. HANUL shall draw fees from the Trust Account according to the following schedule:

STAGE 1: USD$20,000.00. at any time of HANUL's choosing prior to submission of I-526 petition to USCIS whereby Legal Fees and Service Fees shall constitute USD$10,000.00 each:

STAGE 2: USD$30,000.00. AFTER successful approval of I-526 petition and within fifteen (15) days of HANUL's notice of such approval to DARLEY and Investors whereby USD$10,000.00 shall be for Legal Fees and USD$20,000.00 shall be for remaining Service Fees; and,

Filing Fee: As necessary at the time of submission of respective filings.

D. Success Fee at Divestment. Should an agreement be made with Investor for success fee at the time of divestment from SDIBI EB-5 Project, HANUL shall retain 50% and DARLEY the 50% of such success fee.

6. DARLEY AGENT FEES:

A. DARLEY shall be entitled to following fees, to be paid out of HANUL Trust Account, for the services DARLEY provides HANUL for SDIBI EB-5 Projects as specified in Section 3 above and shall be paid in following manner:

(1) All payments from HANUL shall be made on a valid invoice or statement from DARLEY that includes bank account information and international wire-transfer instruction ("Invoice");

(2) In respect to Project 12 (NBP—Northern Beef Packers LP), of the above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees;
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees; and,
(iii) USD$5,000.00 to ROBERT D. STRATMORE from the STAGE 2 Legal Fees.

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(3) In respect to new SDIBI EB-5 Projects (project 13 and beyond), of above-noted USD$50,000.00, following distribution shall apply:

(i) USD$10,000.00 to DARLEY from the STAGE 1 Service Fees; and,
(ii) USD$20,000.00 to DARLEY from the STAGE 2 Service Fees.

(4) The payment to DARLEY shall be further distributed between DARLEY and STRATMORE as necessary.

7. REFUNDS TO INVESTOR, HANUL AND DARLEY:

A. In accordance with Fee Schedule above, refunds will be administered as follows:

(1) In any case of Investor not receiving his/her US immigrant visa or Green Card, Investor's $500,000 investment shall be returned to Investor from Limited Partnership within a reasonable time for Limited Partnership to refund the investment not to exceed more than three (3) months from date of denial of such approval;

(2) If the Investor terminates the Agreement at any specific Stage of the process as outlined above, HANUL and the DARLEY will NOT refund any Fees deposited and received from the Investor up to that Stage, but shall return all remaining fees in the Trust Account;

(3) However, in case the I-526 petition is not approved for reasons other than the Investor's fault (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), then the Investor shall be refunded all the Fees in the Trust Account, including the $10,000 legal fee paid for submitting I-526 but shall not be refunded any government fees or costs paid up to that stage;

(4) If the INS does not approve the I-485 adjustment application or the overseas US Consulate does not issue the EB-5 visa for reasons other than the Investor's misrepresentations about material facts of the Investor's case (i.e. false documents, medical conditions, criminal records, immigration status violation, etc.), HANUL and DARLEY will refund all Fees deposited including the USD$10,000.00 Legal Fees but not any government fees or costs already paid up to that stage.

(5) In any case, of any legal fees being retained [e.g. of $10,000], HANUL shall pay half ($5,000) to DARLEY for services rendered.

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8. COVENANTS, WARRANTIES AND CONDITIONS:

A. DARLEY agrees to use only HANUL approved forms, and agrees to make no inaccurate representations to the Investor other than the information provided by HANUL in writing.

B. DARLEY may advertise referring to the name of HANUL or in any marketing materials. (DARLEY or Robert D. Stratmore, Esq. may advertise in their own name.)

C. DARLEY agrees not to incur any charges, costs or other liabilities on behalf of HANUL without the express written consent and authorization from HANUL. Hanul agrees similarly as to Darley.

D. DARLEY and HANUL agree, to the best of their knowledge, to maintain compliance with all laws of the US government, including but not limited to: Citizenship and Immigration Services and the Department of State, and all other applicable government agencies.

F. HANUL covenants and warrants that it will comply with all California State Bar Rules in respect to its laws, rules and regulations governing segregation of funds for clients and the proper maintenance of records and balances in Attorney-Client Trust Fund matters.

9. CONFIDENTIALITY AND NON COMPETE:

A. DARLEY agree to hold all disclosed confidential and proprietary information and trade secrets in confidence and agrees to use this information only for the contemplated purposes and not for use, adaptation or copy for any company or commercial purpose unrelated to the SDIBI EB-5 Projects, including competition or disclosure to any third parties (except Darley's sub-agents as necessary in the sole view of Darley). HANUL shall, however, indicate when certain information or material is on confidential basis in writing to DARLEY.

B. DARLEY does expressly covenant and agree that during the term of this Agreement and for a period of two years immediately following termination of this Agreement with HANUL, regardless of the reasons for said termination, the DARLEY will not, without prior written consent of HANUL, directly or indirectly, for itself, or through or on behalf of others, as an individual, or as an employee, agent, or sales representative for any person, partnership, firm, corporation, or other entity either contact or do business with SDIBI EB-5 Project principals (i.e. general partners of each project, etc...).

C. HANUL shall not conduct business with DARLEY's sub-agents and Investors for two (2) years following termination of this Agreement, PROVIDED that

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DARLEY specify such sub-agents to HANUL by giving list of name, contact information, business credentials and identification of affiliation with DARLEY of such sub-agents within two (2) months of this Agreement or two months after signing any new sub-agents while this Agreement is in effect. Any sub-agents of DARLEY not identified consistent with the above shall not be considered DARLEY's sub-agents for the purposes of non-compete UNLESS HANUL and DARLEY agree otherwise.

D. HANUL agrees to keep personal information of Investors as provided by DARLEY, its sub-agents, and Investors confidential and shall treat such information as proprietary information.

10. TERM:

A. This Agreement will be effective upon execution by and between HANUL and DARLEY.

B. This Agreement to be in effect for two (2) years from the date of full execution and thereafter this Agreement will automatically be renewed for additional terms of twelve (12) month periods unless terminated by sixty (60) days written notice prior to renewal period by either party.

11. DISCLAIMERS AND WARRANTY:

A. HANUL cannot and will not promise or guarantee that any Investor will receive the EB-5 Visa or I-485 adjustment of status approval, as such approval is subject to the sole discretion of the US government agencies, including Citizenship and Immigration Service (CIS), and Department of State (DOS).

B. HANUL cannot and will not promise or guarantee the performance or conduct, of the SDIBI EB-5 Project participating general partners or partnerships and HANUL further cannot and will not promise any profit on the investment from SDIBI EB-5 Projects.

C. DARLEY will not be responsible for the Investor's misrepresentation or actions either prior to or after the Investor obtains immigrant visa. However, DARLEY on behalf of HANUL will explain the U.S. immigration laws to the Investor.

12. BREACH AND DAMAGES:

That, in the event of a breach of this Agreement, this Agreement shall be cancelled and terminated subject to any ruling or determination by JAMS either by mediation or arbitration (See Par. 13 hereinbelow). All parties are liable to each other for actual

752

damages, and other injunctive and equitable relief that is allowed by law pursuant to the determination by JAMS. Refund to the Investor that is provided in Section 7 shall survive any cancellation or termination.

13. MISCELLANEOUS:

A. All parties will communicate with each other on a regular basis in English (Chinese may also added) as to the status of projects being released, recruitment, visa approvals, time schedules, and other matters necessary for the administration of this Agreement. The primary method of communication will be by e-mail, however, express mailings, fax and telephone will be used as necessary and English shall be the only official language used for any correspondence or communication between HANUL and DARLEY.

B. This Agreement will be binding upon the parties, their successors and assigns. Time is of the essence in respect to this Agreement. This Agreement will be enforced under the laws of the State of California, United States of America and the laws of the State of California will have exclusive authority, exclusive jurisdiction, and exclusive venue and be binding upon the parties.
Any dispute arising out of this Agreement shall be compulsory mediated followed, if necessary, by Arbitration under the auspices of JAMS ADR (Arbitration and Dispute Resolution) in San Francisco, California.
Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
Allocation of Fees and Costs: The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
Prior to the appointment of the arbitrator, and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and I promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that

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is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrator. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as the arbitrator in the case. The pendency of the mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

C. This is the entire Agreement and no oral provisions or other agreements unless referred to herein or as written executed amendments will be binding between the parties. In the event any section of this is unlawful or illegal, the balance of the Agreement will continue and be binding.

D. COUNTERPARTS. This Agreement and any addendums may be executed in counterpart and transmitted via facsimile as if originally-executed documents.

IN WITNESS WHEREOF, the DARLEY and HANUL hereto have signed this Agreement as of the dates indicated below.

Signatures

HANUL

HANUL PROFESSIONAL LAW CORP.
DAEGAK BLDG., 14TH FLOOR 1319-5
SEOCHO-2DONG, SEOCHO-GU, SEOUL
137-857, SEOUL KOREA

SIGNED for and on behalf of **HANUL Professional Law Corporation** by its authorized signatory:

Si Il Jang, Esq.
Name

Partner Attorney
Title

Authorized Signatory

DARLEY

DARLEY INTERNATIONAL, LLC
277 LA ESPIRAL ROAD
ORINDA, CALIFORNIA 94563 USA

SIGNED for and on behalf of **Darley International LLC.** by its authorized signatory:

Robert D. Stratmore
Name

President
Title

Authorized Signatory

JSL

APPENDIX A

EXCLUSIVE TERRITORIES AND CITIES AS PER THE HANUL, DARLEY AGREEMENT

CHINA
Provinces:

Anhui
Jiangsu
Zhejiang

Cities or Municipalities:

Shanghai
Nanjing

TAIWAN

HONG KONG

JSL

APPENDIX B

NON-EXCLUSIVE TERRITORIES AND CITIES AS PER THE HANUL, DARLEY AGREEMENT

CHINA (Except as Per Appendix A)., except for Guangdong Province, where business may be conducted & visa applicants accepted, but without advertising by Darley in Guangdong Province unless amended in writing at a later date.

ALL OTHER COUNTRIES IN ASIA, EUROPE, SOUTH AMERICA AND MIDDLE EAST EXCEPT FOR KOREA.

752

APPENDIX C

COMMONWEALTH OF INDEPENDENT STATES
Aka FORMER SOVIET UNION (15 Republics)

RUSSIAN FEDERATION
UKRAINE
KAZAKHSTAN
LITHUANIA
LATVIA
ESTONIA
AZERBAIJAN
ARMENIA
TURKMENISTAN
MOLDOVA
TAJIKISTAN
BELARUS
KYRGYZSTAN
GEORGIA

Ex. EE

AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

Section I. **Scope of Work:**

James R. Lynch agrees to provide legal services and represent BOARD OF REGENTS to defend the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development in court or arbitration proceedings brought by Darley International, LLC, against the South Dakota International Business Institute and the Hanul Professional Law Corporation.

Section II. **Payment Provisions:**

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars ($300.00). The total amount expended under this contract shall not exceed ($20,000.00).

Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. **Independent Contractor:**

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.

Section IV. **Hold Harmless and Indemnification:**

James R. Lynch agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. **Insurance:**

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. **Limitations Upon Legal Representation:**

It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. **Term of the Agreement:**

The term of this Agreement shall commence on January 30, 2009 and shall remain in effect through June 30, 2009.

Section VIII. **Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

Section IX. **Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. **Agreement Not Assignable:**

This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII **Payments Include All Taxes:**

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

Section XIV Conflict of Interest:

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

FOR SOUTH DAKOTA BOARD OF REGENTS:

Robert T. Perry

Dated: 2/4/09

JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP

James R. Lynch

Dated: 2/3/09

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 2/4/09

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

Jeffrey P. Hallem

Dated: 2/5/09

The foregoing Agreement is hereby approved as to form.

Post-it® Fax Note 7671	Date	# of pages ▶
To Jim Sheldon	From John Meyer	
Co./Dept. BOR	Co.	
Phone #	Phone # 626-2521	
Fax # 773-2422	Fax #	

Approved as to Form
Larry Long

by JPKAAG

Larry Long
Attorney General

Dated: 2/5/09

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.

3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to

information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of $50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of $50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

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Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. **Independent Contractor:**

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.

Section IV. **Hold Harmless and Indemnification:**

James R. Lynch agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. **Insurance:**

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. **Limitations Upon Legal Representation:**

It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. **Term of the Agreement:**

The term of this Agreement shall commence on July 1, 2009 and shall remain in effect through June 30, 2010.

Section VIII. **Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

Section IX. **Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. **Agreement Not Assignable:**

This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII **Payments Include All Taxes:**

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

Section XIV **Conflict of Interest:**

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

FOR SOUTH DAKOTA BOARD OF REGENTS:

(Jack Warner, Executive Director and CEO)

Dated: 8/3/09

JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP

(James R. Lynch)

Dated: 7/28/09

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 8/10/09

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

Jeffrey P. Hallem

Dated: 8/11/09

The foregoing Agreement is hereby approved as to form.

Approved as to Form
Larry Long

by JPK AAC

Larry Long
Attorney General

Dated: 8/11/09

Ex. FF

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under

these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.

3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.

6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.

8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.

9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of

waiver within seven days of the Attorney General's actual notice of the contracting attorney' s action against the State.

D. For purposes of this policy: 1) the term "c ontracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "sig nificant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of $50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of $50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

Ex. GG

AGREEMENT FOR LEGAL SERVICES

BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS

STATE OF SOUTH DAKOTA, AND

James R. Lynch of Garcia Calderon Ruiz, LLP

AMENDMENT 1 TO CONTRACT

This Amendment 1 is made and entered into between the parties this 3 day of August, 2009 and amends a February 4, 2009 State of South Dakota Legal Services Contract ("Agreement") by and between The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter (Consultant).

The parties hereby agree that the Agreement shall be amended as follows:

1. That Section II. be amended as follows to increase the total contract amount by $30,000:

   Section II. **Payment Provisions:**

   It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars ($300.00). The total amount expended under this contract shall not exceed ($50,000.00).

   Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred.

2. The amendments set forth above are effective (upon execution or as of May 1, 2009).

3. All other terms and conditions of the Agreement and all addendums thereto shall remain as originally written.

4. Upon execution this Amendment will be attached to the Agreement and made part therein

In Witness Whereof, the parties signify their agreement by the signatures affixed below.

FOR SOUTH DAKOTA

BOARD OF REGENTS:

Executive Director

Dated: 8/3/09

JAMES R. LYNCH OF

GARCIA CALDERON RUIZ, LLP

James R. Lynch

Dated: 7/28/09

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 8/10/09

SOUTH DAKOTA OFFICE OF

THE ATTORNEY GENERAL:

Approved as to Form
Larry Long by JPR AAG

Jeffrey P. Hallem

Dated: 8/10/09

AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

Section I. Scope of Work:

James R. Lynch agrees to provide legal services and represent BOARD OF REGENTS to defend the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development in court or arbitration proceedings brought by Darley International, LLC, against the South Dakota International Business Institute and the Hanul Professional Law Corporation.

Section II. Payment Provisions:

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars $300.00. The total amount expended under this contract shall not exceed $30,000.00.

Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. Independent Contractor:

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.

Section IV. Hold Harmless and Indemnification:

James R. Lynch agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require

James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. Insurance:

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. Limitations Upon Legal Representation:

It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. Term of the Agreement:

The term of this Agreement shall commence on July 1, 2010, and shall remain in effect through June 30, 2012 in the event that the proceedings continue beyond June 30, 2011.

Section VIII. Termination:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

Section IX. Default Provision:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. Amendment:

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. Agreement Not Assignable:

This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII. Payments Include All Taxes:

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII. South Dakota Law Controlling:

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

Section XIV. Conflict of Interest:

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

FOR SOUTH DAKOTA BOARD OF REGENTS:

Jack Warner, Executive Director and CEO

Dated: 7/27/10

JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP

James R. Lynch

Dated: 7/14/10

FOR NORTHERN STATE UNIVERSITY:

John Meyer

Dated: 8/23/10

James M. Smith, President

Dated: 8/16/10

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

Jeffrey P. Hallem

Dated: 8/23/2010

The foregoing Agreement is hereby approved as to form.

Approved as to Form
Marty J. Jackley by JPH AAG

Marty Jackley
Attorney General

Dated: 8/23/2010

Ex. HH

AG

COPY

AMENDMENT TO THE AGREEMENT FOR LEGAL SERVICES DATED JULY 1, 2010

STATE
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

Hereinafter referred to as State

CONSULTANT
Chaka Okadigbo
GCR, LLP
520 S. Grand Avenue, Suite 695
Los Angeles, CA 90071

Hereinafter referred to as Consultant

Section 1 of the agreement designates Mr. James R. Lynch as the attorney responsible for the services provided under the agreement. Upon the untimely death of Mr. James R. Lynch, and with the consent of the Board, GRC, LLP assigned Mr. Chaka Okadigbo to handle the file. Section 1 of the agreement is hereby amended to reflect the reassignment of primary responsibility under the agreement to Mr. Okadigbo.

Section 2 of the agreement executed on June 27, 2011 is hereby amended to read as follows:

Section 2: The agreed upon hourly rate for services performed under this Agreement is $300 per hour. The State will pay Consultant's expenses as a separate item at state rates. The TOTAL CONTRACT AMOUNT is an amount not to exceed **$50,000.** Unless otherwise agreed to, Consultant will submit monthly itemized invoices to the State.

STATE

Executive Director
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

CONSULTANT

Chaka Okadigbo
GCR, LLP
520 S. Grand Avenue, Suite 695
Los Angeles, CA 90071

DocuSign Envelope ID: 784E1CFA-469C-4687-A995-3D5847200C7A

AMENDMENT TO THE AGREEMENT FOR LEGAL SERVICES DATED MARCH 1, 2012

STATE
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

Hereinafter referred to as State

CONSULTANT
Chaka Okadigbo
Garcia, Hernandez, Sawhney & Bermudez, LLP
(formerly known as GRC, LLP)
625 Broadway, Suite 1400
San Diego, CA 92101

Hereinafter referred to as Consultant

The undersigned parties, the same parties to the original contract #13-1500-002, hereby agree to revise the terms of a legal services agreement as follows. Items that have been revised are shown in **bold.**

Section 2: It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay Chaka Okadigbo, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars $300.00. The total amount expended under this contract shall not exceed **$350,000.00.**

Expenses for travel, meals and lodging incurred by Chaka Okadigbo on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section 7: The term of this Agreement shall commence on July 1, 2012, and shall remain in effect through **June 30, 2015** in the event that the proceedings continue beyond **June 30, 2014.**

STATE

Executive Director
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

CONSULTANT

Chaka Okadigbo
Garcia, Hernandez, Sawhney & Bermudez, LLP
625 Broadway, Suite 1400
San Diego, CA 92101

COPY

AMENDMENT TO THE AGREEMENT FOR LEGAL SERVICES DATED MARCH 1, 2012

STATE
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

CONSULTANT
Chaka Okadigbo
Garcia, Hernandez, Sawhney & Bermudez, LLP
(formerly known as GRC, LLP)
625 Broadway, Suite 1400
San Diego, CA 92101

Hereinafter referred to as State

Hereinafter referred to as Consultant

The undersigned parties, the same parties to the original contract #13-1500-002, hereby agree to revise the terms of a legal services agreement as follows. Items that have been revised are shown in **bold.**

Section 2: It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay Chaka Okadigbo, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars $300.00. The total amount expended under this contract shall not exceed **$120,000.00**.

Expenses for travel, meals and lodging incurred by Chaka Okadigbo on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

STATE

Executive Director
South Dakota Board of Regents
306 E. Capitol, Suite 200
Pierre, SD 57501

CONSULTANT

Chaka Okadigbo
Garcia, Hernandez, Sawhney & Bermudez, LLP
625 Broadway, Suite 1400
San Diego, CA 92101

08-0400-032

08-0400-032

LETTER OF AGREEMENT

This contract confirms that the South Dakota Department of Tourism & State Development (SDDT&SD) and the South Dakota International Business Institute (SDIBI) have entered into an agreement for SDIBI to carry out the following export promotion activities and foreign direct investment (FDI) activities:

CONTRACT PERIOD: The contract period shall be from January 1, 2008 to June 30, 2008.

EXPORT PROMOTION ACTIVITIES TO BE PERFORMED:

1) International Business Seminars

A) Provide a minimum of 1 workshop for South Dakota exporters on a yet-to-be-determined international business topic.

2) International Trade Leads & Consulting

A) SDIBI will consult and assist South Dakota companies with general and specific international business issues on a request basis.

B) SDIBI will provide international trade leads obtained from a variety of sources to 130 South Dakota companies who have signed up for this service.

3) South Dakota Exporters Directory

A) SDIBI will maintain the electronic version of the South Dakota Exporters Directory in order to assure that South Dakota made products are effectively promoted in cyberspace.

B) SDIBI will keep a number of hard copies of the directory on file for those who do not have internet access to the electronic version of the Directory.

4) EX-IM Bank City/State Program

A) SDIBI will conduct a direct mailing campaign to maintain awareness of EX-IM Bank's export finance products. SDIBI will provide additional consultations and follow-up in order to assure that South Dakota companies can make an informed decision whether or not they would like to take advantage of EX-IM Bank's services.

B) Serve as the South Dakota liaison for the City/State EX-IM Bank financing programs.

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5) Other Promotion Activities

A) A brochure listing all the available export assistance services will be mailed to all South Dakota companies.

B) SDIBI will keep up-to-date information on SDIBI's webpage that serves as an international business resource.

C) SDIBI will continue assisting all entities in the State of South Dakota with international business related issues or needs, responding to the international mailings and requests received by the SDDT&SD.

FOREIGN DIRECT INVESTMENT ACTIVITIES TO BE PERFORMED:

SDIBI will focus on expanding the geographical area of the regional center to include all of South Dakota except for the cities of Aberdeen, Watertown, MSA of Rapid City and MSA of Sioux Falls. SDIBI also will seek to expand the activities of the regional center to include six additional industry clusters. Additionally, foreign investor recruitment efforts will be intensified in China and expanded in South America. SDIBI will continue to work exclusively with Hanul Professional Law Corporation for submission of the I-526 petitions and management of the regional center. Finally, SDIBI will explore a new structure to better select and monitor EB-5 projects.

A. SDIBI will submit an amendment request to the USCIS to expand the geographical area of the regional center and to expand the activities of the center with six industry sectors.

B. SDIBI will identify additional relationships in South America for dairy projects and additional relationships in China for better foreign investor recruitment. This work will be done with Hanul.

C. SDIBI will develop and implement a better structure to select and monitor EB-5 projects.

D. SDIBI, with Hanul, will further develop a website to recruit investors worldwide for our EB-5 projects. The internet is to identify investors in non-targeted countries as well as an information source for all investors.

SDDT&SD AGREES TO:

1) Provide SDIBI with appropriate links to SDDT&SD's webpage.
2) Provide SDIBI with ample recruitment promotional material currently used by SDDT&SD.
3) Assist in creating awareness of SDIBI's export promotion

08-0400-032

activities and services.

REPORTING: The SDIBI will provide the SDDT&SD Commissioner a monthly report by the last business day of each month. The report shall provide information on each of the services addressed in this agreement. Additionally, each monthly report shall provide a summary of expenses incurred as they pertain to this agreement.

PAYMENTS: The SDDT&SD shall make two payments with the first payment of $53,856 due on January 1, 2008 and the second payment of $5,984 upon receipt of the final monthly report on June 30, 2008.

Partrick Schlogs, President
Northern State University

Date: 1-2-08

Richard Benda, Secretary,
South Dakota Department of
Tourism & State Development

Date: 1-2-08

State Agency Coding (MSA Center) 041001
State Agency MSA Company for which contract will be paid: 1000
Object/subobject MSA account to which voucher will be coded: 52041300
Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Marty Davis 773-3301

08-0400-032

DETAILED BUDGET
(January 1, 2008 - June 30, 2008)

	NSU	State	Total
EXPORT PROMOTION ACTIVITIES:			
1) International Business Seminars			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $84,300 x 5% / 2)	$2,108		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 20% of her time to this project - $26,000 x 20% / 2)	$2,600		
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $4,708 x 23.5%)	$1,106		
Contractual (1 speaker at a speaking fee of $400; transportation/ accommodations per diem cost will average $700		$1,100	
Flyers and Materials for seminars (1 workshop @ $250)		$ 250	
Conference room cost (1 @ $350)		$ 350	
Supplies/faxing/phoning/mailing Personnel		$ 350	
Total project cost	*$5,814*	*$2,050*	*$ 7,864*
2) International Trade Leads and Consulting			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $84,300 x 5% / 2)	$2,108		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 5% of her time on this project - $26,000 x 5% / 2)	$ 650		
Fringe Benefits			

(The fringe benefit rate is 23.5% of salaries - $2,758 x 23.5%)	$ 648		
Student Labor (20 hours a week x 25 weeks x $6)	$1,500	$1,500	
Supplies/postage/faxing/phoning	$ 600		
Total project cost	*$5,506*	*$1,500*	*$7,006*
3) South Dakota Exporters Directory			
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 20% of her time on this project - $26,000 x 20% / 2)	$2,600		
Fringe Benefits (The fringe benefit rate is 23.5%) of salaries - $2,600 x 23.5%)	$ 611		
Student Labor (10 hours a week x 25 weeks x $6)		$1,500	
Total project cost	*$3,211*	*$1,500*	*$4,711*
4) EX-IM Bank City/State Program			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $84,300 x 5% / 2)	$2,108		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 5% of her time on this project - $26,000 x 5% / 2)	$ 650		
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $2,758 x 23.5%)	$ 648		
Student Labor (10 hours a week x 25 weeks x $6)		$1,500	
Supplies/postage/faxing/phoning		$ 500	
Total project cost	*$3,406*	*$2,000*	*$ 5,406*

5) Other Promotion Activities

Ms. Brick, SDIBI Secretary (Ms. Brick will devote 10% of her time on this project - $26,000 x 10% / 2)	$1,300		
Fringe Benefits (The fringe benefit rate is 23.5%) of salaries - $1,300 x 23.5%)	$305		
Student Labor (20 hours a week x 25 weeks x $6)	$1,000	$ 2,000	
Supplies/postage/faxing/phoning	$250	$400	
Total project cost	*$2,855*	*$2,400*	*$ 5,255*
Total Export Promotion Costs	**$20,792**	**$ 9,450**	**$30,242**

FOREIGN DIRECT INVESTMENT ACTIVITIES:

Mr. Bollen, SDIBI Director Mr. Bollen will devote 70% of his time on this project - $84,300 x 70% / 2)	$14,815	$14,690	
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $29,505 x 23.5%)	$ 6,934		
Overseas Promotional Travel 1 trip to Korea @ $5,000 2 trips to China @ $10,000 1 trip to SE Asia @ $4,000 2 trips to South America @ $8,000		$27,000	
Phone, fax, postage, brochures		$ 3,500	
Total FDI Promotion Costs	***$21,749***	***$45,190***	***$66,939***

GENERAL EXPENSES
(for all proposed activities)

Mr. Bollen, SDIBI Director (Mr. Bollen will devote 15% of his time to manage all projects - $84,300 x 15% / 2)	$ 6,323		
Secretarial Assistance (For all projects it is estimated			

that Ms. Brick will spent 40% of her time on the projects - $26,000 x 40% / 2)		$5,200	
Fringe Benefits (The fringe benefit rate is 23.5% of salaries-$11,523 x 23.5%)	$2,708		
Supplies/postage/faxing/phoning	$1,250		
Total General Expenses	**$10,281**	**$ 5,200**	**$ 15,481**
TOTAL CONTRACT AMOUNT	**$52,822**	**$59,840**	**$ 112,662**

Contract Number:		Date Paid:			Edit Payment
Contract Number:	08-0400-032	Date Paid:	04/17/2008	Amount:	($5,054.00)
Contract Number:	08-0400-032	Date Paid:	02/06/2008	Amount:	$5,054.00
Contract Number:	08-0400-032	Date Paid:	01/31/2008	Amount:	$53,856.00

09-0400-016

LETTER OF AGREEMENT

This contract confirms that the South Dakota Department of Tourism & State Development (SDDT&SD) and the South Dakota International Business Institute (SDIBI) have entered into an agreement for SDIBI to carry out the following export promotion and foreign direct investment (FDI) activities:

CONTRACT PERIOD: The contract period shall be from July 1, 2008 to June 30, 2009.

EXPORT PROMOTION ACTIVITIES TO BE PERFORMED:

1) International Business Seminars

A) Provide 3 workshops for South Dakota exporters on international business topics.

2) International Trade Leads & Consulting

A) SDIBI will consult and assist South Dakota companies with general and specific international business issues on a request basis.

B) SDIBI will provide international trade leads obtained from a variety of sources to 168 South Dakota companies who have signed up for this service.

3) South Dakota Exporters Directory

A) SDIBI will maintain the electronic version of the South Dakota Exporters Directory in order to assure that South Dakota made products are effectively promoted in cyberspace.

B) SDIBI will keep a number of hard copies of the directory on file for those who do not have internet access to the electronic version of the Directory.

4) EX-IM Bank City/State Program

A) SDIBI will conduct a direct mailing campaign to maintain awareness of EX-IM Bank's export finance products. SDIBI will provide additional consultations and follow-up in order to assure that South Dakota companies can make an informed decision whether or not they would like to take advantage of EX-IM Bank's services.

B) Serve as the South Dakota liaison for the City/State EX-IM Bank financing programs.

AUG 2008

5) Other Promotion Activities

A. A brochure listing all the available export assistance services will be mailed to all South Dakota companies.

B. SDIBI will keep up-to-date information on SDIBI's webpage that serves as an international business resource.

C. SDIBI will continue assisting all entities in the State of South Dakota with international business related issues or needs, responding to the international mailings and requests received by the SDDT&SD.

D. SDIBI will purchase MISER statistics on international trade and integrate them in a user-friendly statistical report. An annual computation of all statistics shall be provided to GOED by April 30.

FOREIGN DIRECT INVESTMENT ACTIVITIES TO BE PERFORMED:

A) SDIBI will further engage the PRC market by developing new relationships with additional recruiters.

B) SDIBI will follow up on the amendment request that has been submitted to the USCIS which would expand the geographical area of the regional center and increase the allowable activities to include 6 additional industry clusters.

C) SDIBI will work with International Immigration Services PA attempting to introduce dairy projects to South America.

D) SDIBI will continue to conduct investor recruitment events with Hanul in the PRC and South Korea.

SDDT&SD AGREES TO:

1) Provide SDIBI with appropriate links to SDDT&SD's webpage.

2) Provide SDIBI with ample recruitment promotional material currently used by SDDT&SD.

3) Assist in creating awareness of SDIBI's export promotion activities and services.

09-0400-016

REPORTING: The SDIBI will provide the SDDT&SD Commissioner a monthly report by the last business day of each month. The report shall provide information on each of the services addressed in this agreement. Additionally, each monthly report shall provide a summary of expenses incurred as they pertain to this agreement.

PAYMENTS: The SDDT&SD shall make two payments with the first payment of $112,320 due on July 1, 2008 and the second payment of $12,480 upon receipt of the final monthly report on June 30, 2009.

Laurie Stenberg Nicholas
Interim President
Northern State University

Date: 8/13/2008

Richard Benda
Secretary
South Dakota Department of
Tourism & State Development

Date: [illegible]

09-0400-016

DETAILED BUDGET
(July 1, 2008 - June 30, 2009)

	NSU	State	Total
EXPORT PROMOTION ACTIVITIES:			
1) International Business Seminars			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $87,000 x 5%)	$4,350		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 20% of her time to this project - $27,000 x 20%)	$5,400		
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $9,750 x 23.5%)	$2,291		
Contractual (3 speakers at a speaking fee of $400; transportation/ accommodations per diem cost will average $700 each		$3,300	
Flyers and Materials for seminars (3 workshops @ $250)		$ 750	
Conference room cost (2 @ $350)		$ 700	
Supplies/faxing/phoning/mailing Personnel		$1,000	
Total project cost	*$12,041*	*$5,750*	*$17,791*
2) International Trade Leads and Consulting			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $87,000 x 5%)	$4,350		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 5% of her time on this project - $27,000 x 5%)	$1,350		

09-0400-016

Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $5,700 x 23.5%)	$1,340		
Student Labor (20 hours a week x 50 weeks x $6)	$3,000	$3,000	
Supplies/postage/faxing/phoning	$1,200		
Total project cost	*$11,240*	*$3,000*	*$14,240*
3) South Dakota Exporters Directory			
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 20% of her time on this project - $27,000 x 20%)	$5,400		
Fringe Benefits (The fringe benefit rate is 23.5%) of salaries - $5,400 x 23.5%)	$1,269		
Student Labor (10 hours a week x 50 weeks x $6)		$3,000	
Total project cost	*$6,669*	*$3,000*	*$9,669*
4) EX-IM Bank City/State Program			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 5% of his time to the project - $87,000 x 5%)	$4,350		
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 5% of her time on this project - $27,000 x 5%)	$1,350		
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $5,700 x 23.5%)	$1,340		
Student Labor (10 hours a week x 50 weeks x $6)		$3,000	
Supplies/postage/faxing/phoning		$1,000	
Total project cost	*$7,040*	*$4,000*	*$11,040*

5) Other Promotion Activities			
Ms. Brick, SDIBI Secretary (Ms. Brick will devote 10% of her time on this project - $27,000 x 10%)	$2,700		
Fringe Benefits (The fringe benefit rate is 23.5%) of salaries - $2,700 x 23.5%)	$635		
Student Labor (20 hours a week x 50 weeks x $6)	$2,000	$ 4,000	
Supplies/postage/faxing/phoning	$500	$800	
Total project cost	*$5,835*	*$4,800*	*$10,635*
Total Export Promotion Costs	**$42,825**	**$20,550**	**$63,375**
FOREIGN DIRECT INVESTMENT ACTIVITIES:			
Mr. Bollen, SDIBI Director Mr. Bollen will devote 70% of his time on this project - $87,000 x 70%)	$30,450	$30,450	
Fringe Benefits (The fringe benefit rate is 23.5% of salaries - $60,900 x 23.5%)	$14,312		
Overseas Promotional Travel (travel, per diem & hosting events) 2 trips to Korea @ $7,000 3 trips to China @ $7,000 2 trips to SE Asia @ $7,000 1 trip to South America @ $7,000		$56,000	
Phone, fax, postage, brochures		$ 7,000	
Total FDI Promotion Costs	***$44,762***	***$93,450***	***$138,212***
GENERAL EXPENSES (for all proposed activities)			
Mr. Bollen, SDIBI Director (Mr. Bollen will devote 15% of his time to manage all projects - $87,000 x 15%)	$13,050		

09-0400-016

Secretarial Assistance (For all projects it is estimated that Ms. Brick will spent 40% of her time on the projects - $27,000 x 40%)		$10,800	
Fringe Benefits (The fringe benefit rate is 23.5% of salaries-$23,850 x 23.5%)	$5,605		
Supplies/postage/faxing/phoning	$2,500		
Total General Expenses	**$ 21,155**	**$ 10,800**	**$ 31,955**
TOTAL CONTRACT AMOUNT	**$108,742**	**$124,800**	**$233,542**

09-0400-016

-State Agency Coding (MSA Center): 0410
-State Agency MSA Company for which contract will be paid: 1000
-Object/Subobject MSA account to which voucher will be coded: 5204130
-Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Richard Benda 773-3301

Contract Number:		Date Paid:			Edit Payment
Contract Number:	09-0400-016	Date Paid:	06/18/2009	Amount:	$12,480.00
Contract Number:	09-0400-016	Date Paid:	09/03/2008	Amount:	$112,320.00

BY FAX

ORIGINAL

CHAKA C. OKADIGBO (SBN: 224547)
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Attorneys for South Dakota Board of Regents
on behalf of the South Dakota International Business Institute

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 2 7 2013

John A. Clarke, Executive Officer/Clerk
BY Raul Sanchez, Deputy
Raul Sanchez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DARLEY INTERNATIONAL, LLC, a Delaware Corporation, Claimant, vs. HANUL PROFESSIONAL LAW CORPORATIO, a California Corporation, *et al.*, Respondents.	Case No.: BS 121441 **OPPOSITION OF SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE TO DARLEY INTERNATIONAL, LLC'S APPLICATION FOR COMMISSION TO TAKE OUT-OF-STATE DEPOSITION OF JOOP BOLLEN AND TO COMPEL THE PRODUCTION OF DOCUMENTS FROM SDRC, INC.** ASSIGNED FOR ALL PURPOSES TO THE HONORABLE ABRAHAM KHAN, DEPT. 51

OPPOSITION TO APPLICATION FOR COMMISSION TO TAKE OUT OF STATE DEPOSITION OF JOOP BOLLEN AND COMPEL THE PRODUCTION OF DOCUMENTS FROM SDRC, INC.

The South Dakota Board of Regents on behalf of the South Dakota International Business Institute ("SDIBI") opposes the instant *Application for Issuance of Commission to Take the Out of State Deposition and Compel the Production of Documents* filed by Darley International, LLC ("Darley"). Darley is presently of a forfeited corporate status due to non-payment of taxes and, based on corporate records obtained by counsel for Hanul Law Corporation from the Delaware Secretary of State, Darley's has remained in a

08/27/2013

forfeited/suspended status since June, 2009. (*Okadigbo Decl.*, ¶¶ 3, 4; Exhibits A and B attached thereto.)

A corporation whose powers have been suspended for nonpayment of taxes lacks the capacity to prosecute or defend an action. (Revenue & Tax Code § 23301; *Reed v. Norman* (1957) 48 Cal.2d 338, 342; *Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1306.) Based on Darley's forfeited status, Darley is in no position to file pleadings before this Court requesting that it take depositions and propound discovery. Indeed, the arbitration has been postponed by JAMS arbitrator, the Honorable Robert Baines, on account of Darley's forfeited corporate status and its counsel's admission as to such. (*Okadigbo Decl.*, ¶ 6.)

Accordingly, SDIBI requests that this Court summarily deny Darley's application to conduct an out-of-state deposition of Joop Bollen and to propound discovery to SDRC, Inc. unless Darley can establish to the Court's satisfaction that it has revived its corporate status.

Date: August 27, 2013

GARCIA, HERNÁNDEZ, SAWHNEY & BERMUDEZ, LLP

By: _____
CHAKA C. OKADIGBO
Attorneys for SOUTH DAKOTA BOARD OF REGENTS on behalf of SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE

08/27/2013

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, am over the age of 18 and not a party to the within action. My business address is GARCIA, HERNANDEZ, SAWHNEY & BERMUDEZ, LLP, 700 N. Central Avenue, Suite 570, Glendale, California 91203. I am over the age of 18 and not a party to the action. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing.

On the date below, I served the following documents:

1. **OPPOSITION OF SOUTH DAKOTA INTERNATIONAL BUSINESS INSTITUTE TO DARLEY INTERNATIONAL, LLC'S APPLICATION FOR COMMISSION TO TAKE OUT-OF-STATE DEPOSITION OF JOOP BOLLEN AND TO COMPEL THE PRODUCTION OF DOCUMENTS FROM SDRC, INC.**

on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

Maxwell Blecher Jennifer Elkayam Blecher Collins Pepperman & Joye 515 South Figueroa Street, Suite 1750 Los Angeles, CA 90071 Tel: (213) 622-4222 Fax: (213) 622-1656 *Filing Regular U.S. Mail*	Alex Cha Law Offices of Alex Cha 3435 Wilshire Blvd, Suite 2000 Los Angeles, CA 90010 *Served Regular U.S. Mail*

[X] **BY MAIL**: I am "readily familiar" with GARCIA, HERNÁNDEZ, SAWHNEY & BERMDUEZ, LLP practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereof fully prepaid at Glendale, California, on that same day following ordinary business practices.

[ ] **BY FACSIMILE**: Before 5:00 p.m. on said date, I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (213) 347-0210. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

[X] (*State*) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (*Federal*) I declare under penalty of perjury under the laws of United States of America that the above is true and correct.

Executed on August 27, 2013, at Glendale, California.

Marie Velez

08/27/2013