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February 11, 2014

Martin L. Guindon, Auditor General
Department of Legislative Audit
500 E. Capitol
Pierre SD 57501-5070

Re: House Concurrent Resolution No. 1010

Dear Auditor General:

This memorandum is provided in response the above-described resolution accompanied with CD 1 containing supporting attachments for analysis below and CD 2 supporting Appendix "A."

I. What is EB 5?

In 1990, Congress created the USCIS Immigrant Investor Program, also known as the Employment-Based Fifth Preference (EB-5) Program under 203(b)(5) of the *Immigration and Nationality Act (INA) in 1990*¹ to stimulate the U.S. economy through job creation and capital investment by foreign investors.

Through the EB-5 Program, foreign investors have the opportunity to obtain lawful, permanent residency in the U.S. for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. Three years later, the Departments of Commerce, Justice and State, the Judiciary, and *Related Agencies Appropriations Act, 1993* (The Appropriations Act) created the concept of the regional center pilot program for pooling investor money in a defined industry and geographic area to promote economic growth.

U.S. citizens or foreign nationals can operate regional centers, which can be any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, or increased domestic capital investment. As of October 1, 2013, USCIS reports that there are 325 approved regional centers.

The EB-5 program requires that the foreign investor make a capital investment of either \$500,000 or \$1 million, depending on whether or not the investment is in a high unemployment area. The foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying

¹ Public Law 101-649, Section 121(a).

U.S. workers, within 2 years of receiving conditional permanent residency. Two distinct EB-5 pathways exist for a foreign investor to gain lawful permanent residency; each pathway differs in job creation requirements:

1. The Basic Immigrant Investor Program requires the new commercial enterprise to create or preserve only direct jobs that provide employment opportunities for qualifying U.S. workers by the commercial enterprise in which capital has been directly invested.
2. The Regional Center Program, formerly known as the Regional Center Pilot Program, allows the foreign investor to fulfill the job creation requirement through direct jobs or projections of jobs created indirectly. Jobs created indirectly are the job opportunities that are predicted to occur because of investments associated with the regional center.

II. When Did South Dakota Begin Administering EB 5?

The South Dakota International Business Institute ("SDIBI") was created by the South Dakota Board of Regents in 1994 as an administrative unit of Northern State University in Aberdeen, South Dakota. SDIBI promoted export activities and foreign investment in South Dakota.

Enclosure 1. On April 8, 2004, the South Dakota International Business Institute Dairy International Business Institute Dairy Economic Development Region ("SDIBI / DEDR") was approved and designated as an Economic Development Regional Center by USCIS. Enclosure 2. Joop Bollen served as SDIBI's director. On March 30, 2005, the South Dakota Department of Tourism and State Development entered into an Agreement with SDIBI to carry out export activities. Enclosure 3. SDIBI was to provide monthly reports on its activities and expenses. *Id.* Similar agreements were executed between SDIBI and the State through the period of June 30, 2008. Enclosure 4.

On December 12, 2006, USCIS approved SDIBI to also act as Regional Center for, among other things, beef processing and packing operations. *See* Enclosure 2. By further amendment, on November 8, 2007, USCIS approved the Regional Center's application to change its name from SDIBI to "South Dakota Regional Center," or "SDRC." *Id.* USCIS specified that "the minimum capital investment threshold for any individual immigrant investment into a new commercial enterprise through the SDRC shall be not less than \$500,000." *Id.*

On January 10, 2008, Bollen incorporated SDRC, Inc. to serve as the management company that monitors and affects the performance of EB-5 funds and secures the repayment of EB-5 loans by the project entities. Enclosure 5. Jeffrey Sveen, attorney from Siegel, Barnett and Schutz, filed SDRC, Inc.'s Amended Articles of Incorporation on June 1, 2009. Enclosure 6. Bollen is currently the President of SDRC, Inc.

On December 22, 2009, the South Dakota Department of Tourism and State Development entered into an Agreement with SDRC, Inc. to monitor the EB-5 program. Enclosures 7 and 8. On August 29, 2012, the South Dakota Governors Office of Economic Development entered into a Deposit Account Control Agreement with SDRC, Inc. as debtor. Enclosure 9. Although a name change was effectuated, the USCIS never changed regional center designation from SDIBI now doing business under the name South Dakota Regional Center.²

² Northern State University has limited records regarding EB 5 activities. Enclosure 21.

III. SDRC, Inc.'s Administration of the EB-5 Program

During the period SDIBI operated under NSU, oversight of EB-5 activities was closely monitored. For example, letters of agreement were only executed on an annual basis and administration of the program was closely monitored as to budgetary issues. Specifically, in 2005, the EB-5 operated on a budget of \$132,697. *See* Enclosure 3. Final distributions of funds would only be issued upon receipt of the final monthly report. *Id.* In 2006, the budget was limited to \$49,132. *See* Enclosure 4. In 2007, the budgeted amount totaled \$50,540. *Id.* In 2008, the budget was increased to \$172,160. *Id.* Now, for some unexplained reason, when SDRC, Inc. became primarily responsible for the marketing of the EB-5 program, budgeted amounts were no longer allocated but a straight fee plus a percentage was to be retained by SDRC, Inc. Specifically, according to Section 6 of the Amended and Restated Consulting Contract, SDRC, Inc. would receive \$44,000 PLUS a percentage that was to be calculated as follows:

The parties agree, however, that the fee for each project shall be based generally upon the following: ten percent of the origination/closing fee and twenty five basis points of any and all interested collected in connection with the project except for SDIF LP 1 and SDIF LP4's programs where 10 basis points is agreed upon.

To illustrate a small fraction of fees taken in by SDRC, Inc. one only needs to look as far as the November 2010 SDIF LP6-Northern Beef Packers loan agreement. Enclosure 10:

- Section 1.8 exacts a 1% origination fee on the loan. So for every \$500,000 EB-5 investment, SDRC, Inc. collected another \$5,000. That would appear to be in addition to whatever fees SDRC collected directly from the EB-5 investors.
- Section 1.9 requires Northern Beef Packers to pay "any fees incurred by Lender [SDRC] in monitoring all disbursements of funds." That would seem to include SDIF LP 6 loan monitor Richard Benda's salary of \$225,000 a year, which ultimately came out of state grant #1434.
- Section 1.9 also obligates NBP to pay any attorney fees related to loan monitoring and investor approvals. The contract specifies Siegel, Barnett & Schutz LLP of Aberdeen, but allows payment to other attorneys.

The November 10th loan was for \$60 million to be funded by up to 120 investors. Assuming each investor invested the usual \$500,000.00, SDRC, Inc. received \$600,000 from loan origination fees alone from which the state would receive a mere \$60,000.00.

When SDRC, Inc. assumed marketing authority for the EB-5 program the following projects were well underway:

- Van Winkle Dairy Limited Partnership (\$7 million budget/4 EB-5 investors);
- Global Dairy Limited Partnership (\$6.9 million budget/4 EB-5 investors);
- Winter Dairy Limited Partnership (\$6.8 million budget/4 EB-5 investors);
- K&K Dairy Limited Partnership (\$2.37 million budget/1 EB-5 investor);
- Swier Dairy Limited Partnership (\$3.42 million budget/2 EB-5 investors);
- Drumgoon Dairy Limited Partnership (\$6.8 million budget/4 EB-5 investors); and
- Veblen East Dairy Limited Partnership (\$40 million budget/27 EB-5 investors).

At this stage, Northern Beef Packers had obtained only an initial equity. *See* Enclosure 8. Under the authority of Joop Bollen and SDRC, Inc. loan transactions began to become convoluted and further insulated from state scrutiny. For each loan transaction, Mr. Bollen would incorporate a separate entity wholly within his control. For example, on or about October 27, 2009, Dakota Provisions was scheduled to receive \$40 million in EB-5 funding. Instead of simply providing the investment to Dakota Provisions, Mr. Bollen created "SD Investment Fund LLC1." Enclosure 11. Mr. Bollen is listed as the sole organizer and the registered agent. Mr. Bollen then created "SDIF Limited Partnership 1" which would maintain and distribute the loan. Again, Mr. Bollen is listed as the registered agent and SD Investment Fund LLC1 is listed as the sole General Partner (Mr. Bollen solely controls both entities). All further loan transactions were now fashioned in the foregoing manner. Under Mr. Bollen's reign, the following entities were created:

- SDIF Limited Partnership 2/SD Investment Fund LLC2/Deadwood Mountain Grand Hotel, Casino and Event Center; Enclosure 12.
- SDIF Limited Partnership 3/SD Investment Fund LLC3/Basin Electric Deer Creek Station; *Id.*
- SDIF Limited Partnership 4/SD Investment Fund LLC4/ Dakota Provisions; *Id.*
- SDIF Limited Partnership 5/SD Investment Fund LLC5/Day County Wind Farm; *Id.*
- SDIF Limited Partnership 6/SD Investment Fund LLC6/Northern Beef Packers; *Id.*
- SDIF Limited Partnership 7/SD Investment Fund LLC7/Basin Electric Deer Creek Station; *Id.*
- SDIF Limited Partnership 8/SD Investment Fund LLC8/Iberdrola Buffalo Ridge; *Id.*
- SDIF Limited Partnership 9/SD Investment Fund LLC9/Northern Beef Packers; *Id.*
- SDIF Limited Partnership 10/SD Investment Fund LLC10/Unknown; *Id.*
- SDIF Limited Partnership 20/SD Investment Fund LLC20/Northern Beef Packers. *Id.*

IV. South Dakota's Role in Administering EB 5 – SDRC v. SDRC, Inc.

The media has cited governmental officials who claim that the "regional center" is simply a project area and not a specific entity. To the contrary, the USDCIS defines a Regional Center as "any *economic entity*, public or private, which is involved with the promotion of economic growth, improved regional productivity, job creation and increased domestic capital investment." Emphasis added. As of today, the United States Citizenship and Immigration Services lists the South Dakota International Business Institute as the sole regional center for the State of South Dakota. SDIBI was created by official act of the State in 1994. Accordingly, it is a public entity. In the case entitled *Zhang, et al. v. SDRC*, Case No. 11-cv-4148, Jeffrey Sveen, on behalf of SDRC, clarified the following (Enclosure 13):

1. South Dakota Regional Center (another public entity) succeeded SDIBI's role as South Dakota Regional Center and is ultimately responsible for overseeing the EB-5 program.
2. SDRC, Inc. is a separate entity from the South Dakota Regional Center. It is a private company established by Bollen to market and oversee the authorities delegated by the State in the Consulting Agreement dated December 22, 2009.
3. SDRC, Inc. was only delegated the following authorities: (1) corresponding and meeting requirements of USCIS; (2) maintaining all records as required by federal law; (3) making recommendations to the state on improving the EB-5 program; (4) service

existing EB-5 projects, (5) maintaining a website; and (6) market EB-5 programs - but only upon the written approval of the state.

South Dakota Regional Center is more than a project area – it is an entity of South Dakota. Now, USCIS did approve a name change from SDIBI to the South Dakota Regional Center but there was no change in the structure of the organization. Accordingly, if SDRC, Inc. is found guilty of any misconduct, Northern State University and the Board of Regents will pay the ultimate price, because based upon filings with the federal government, they are ultimately responsible for oversight of the regional center.

V. Where Has South Dakota's Oversight Been Inadequate?

The State of South Dakota provided little to no oversight of the EB-5 program, and yet, continued to waste valuable grants on said projects. For example, in March 2010, Northern Beef Packers was only partially completed, out of money and in danger of collapse. NBP finally opened for business at the end of 2012. Just a few months later, however, the company laid off 108 of its 420 workers. Northern Beef filed for bankruptcy in July of 2013. Despite the continual precarious position of Northern Beef, the State of South Dakota provided the entity the following financial assistance:

- In 2006, Northern Beef received \$8.6 million in Tax Increment Financing; Enclosure 14.
- Revolving Economic Development and Initiative Funding in the amount of \$5 million; Enclosure 15.
- Future Funds on the amount of \$2 million for FY2011; Enclosure 16.
- Additionally, the project received the following from the Workforce Development Program:
 - December 1, 2011: \$80,325.00
 - January 19, 2012: \$85,425.00
 - February 13, 2013: \$295,800.00
 - April 23, 2012: \$47,175.00
 - March 5, 2013: \$37,575.00
 - March 27, 2013: \$35,700.00 (\$582,000) (16,182,000)

If the State of South Dakota had maintained proper oversight over the EB-5 program and the entities that benefited from the program, it would have known the project was already in financial straits and valuable grants and/or loans could have been bestowed upon other entities.

Next, the South Dakota Division of Banking should have been more diligent in exempting a foreign company that intended to make a questionable loan to a company that was reliant on EB-5 funding. A company called "Epoch Star Limited" offered to loan \$30 million to Northern Beef to complete the plant. Epoch Star was a company, incorporated in the British Virgin Islands, "solely for the purposes of providing a one-time lending facility of foreign investors to Northern Beef." Enclosure 17. Epoch Star, in turn, was wholly owned by another company, the Cayman Islands-incorporated Pine Street Special Opportunity Fund I. And both Epoch Star and Pine Street were run by a professional fund manager corporation called Anvil Asia Partners, also incorporated in the Cayman Islands but based out of Hong Kong. The investors in Epoch Star and Pine Street were and remain secret. All that was disclosed to the public was that there were fewer than 10, and that none were a bank, financial institution, or "in the sole business of lending money." Because South Dakota law imposed taxes and regulations on lending institutions, Epoch

Star and Northern Beef asked South Dakota's banking commission to rule that "Epoch does not engage in the business of lending money as contemplated" under South Dakota law, and thus was not subject to those laws. Enclosure 18. In July 2010, the commission voted 4-0 to grant Epoch Star's request. Enclosure 19. Not one state entity questioned why the Epoch Star loan was "short-term" and carried a high rate of interest — 29 percent. Had the Banking Commission ruled Epoch Star was subject to banking laws, it would have been required to apply for a money-lending license — meaning the Division of Banking would examine financial documents to determine whether to approve the license. Additionally, lenders have to pay South Dakota's bank franchise tax. That's 6 percent per year on net income for companies with income below \$400 million. If Epoch Star had had to pay that tax on a full \$30 million loan, it would have owed hundreds of thousands of dollars per year to the state with a 29 percent interest rate.

Finally, someone in state government should have questioned why Northern Beef received in or about October, 2007, their first influx of EB-5 funding and as early as December 2007, Northern Beef was making the following off shore wire transfers:

1. December 6, 2007, in the amount of \$504,350;
2. January 3, 2008, in the amount of \$308,500; and
3. April 21, 2008, in the amount of \$687,225.

Enclosure 20. All of the foregoing off shore transfers were to Ultra Care Holdings, Limited³ — a company organized under the laws of Cyprus. It does not appear that Ultra Care or any of its corporate shareholders are involved in the beef industry in any manner.

As the foregoing illustrates, all it would have taken is a little oversight from the state and just maybe Northern Beef would still be functional.

VI. Should an Audit Be Conducted?

First, a forensic audit will determine whether the South Dakota Regional Center is compliant with federal recordkeeping requirements. Inadequate oversight of same could result in decertification of the EB-5 program. The USCIS has indicated that it has experienced an

³ According records on file with the government of Cyprus, Ultra Care Holdings was first registered on September 25, 2008 — 5 months after Northern Beef made the last transfer to same. Globaltrans, current owner of Ultra Care, declares that the company was formed as an intermediary holding company. In 2009 Ultra Care was 90% owned by Ingulana Holdings Limited, a corporation registered with Cyprus on July 29, 2009. The remaining 10% of Ultra Care was held by BaltransServis, LLC ("BTS"). In turn, Ingulana Holdings held a 90% share and a majority controlling interest in BTS. In December 2009, Transportation Investments Holding Limited contributed its 55.56% shareholding in Ingulana Holdings Limited to Globaltrans for the consideration of 29,411,764 ordinary shares of Globaltrans. The total consideration for the acquisition amounted to 250 million. Further, in December 2009 Ingulana Holdings transferred its 90% share in BTS to its 90% subsidiary, Ultracare Holdings. At the same time the 10% minority shareholder of BTS also transferred its 10% share in BTS to UltraCare. Following the transaction and as at 31 December 2009, Globaltrans held an effective 50% controlling stake in BTS.

approximately 30% increase in the number of petitions received from Fiscal Year 2010 to Fiscal Year 2011 in the EB-5 program. Of the petitions received, the approval rate in the EB-5 program decreased from 89% in Fiscal Year 2010 to 81% in Fiscal Year 2011. Additionally, the number of EB-5 Regional Centers significantly increased from 114 in Fiscal Year 2010 to 174 in Fiscal Year 2011. However, statistics indicate that USCIS is increasing its scrutiny of Regional Centers. Of the 60 Regional Center applications that were submitted in the first quarter of 2012, only 14 were approved and 22 were denied. As the USCIS begins to implement a recertification process for Regional Centers in the future, it is assumed that some of the currently approved Regional Centers may have their designation revoked if they cannot evidence that they are currently complying with the terms of the EB-5 Regional Center program. As SDRC, Inc. was contractually responsible for complying with federal EB-5 requirements, it is unknown whether the South Dakota Regional Center is compliant.

A number of state officials have stated that a state forensic audit is unnecessary because it would be duplicative of the federal investigation. This assertion is glaringly inaccurate. First, we are not sure what the federal government is investigating so there is no way of knowing whether or not a simultaneous state investigation is duplicitous. Second, and most importantly, the federal government would have no jurisdiction to investigate any claim that falls under state law. *Id.* For example, “Regional centers” seeking investors for their EB-5 projects need to understand that raising capital from investors likely involves issuing securities to those investors, and such programs are therefore subject to stringent securities laws. In the United States, there are both federal and state laws that concurrently govern the sale of securities. The Securities Act of 1933, otherwise commonly referred to as the “Securities Act”, is the starting point for federal securities regulation for regional centers issuing securities. Each state also has its own version of securities laws which are commonly referred to as “blue sky” laws. The bottom line is that if one is selling securities or offering to sell securities, one must simultaneously comply with both federal law as well as the relevant state blue sky laws. If SDRC, Inc. violated the state’s blue sky laws, the federal government would not have jurisdiction over same.

VII. Why Is a Forensic Audit Appropriate?

Forensic accounting is usually described as the integration of accounting and auditing skills with investigative techniques and professional skepticism. Alan Zysman, a noted forensic accountant since 1987, states, “Forensic accounting provides an accounting analysis that is suitable to the court which will form the basis for discussion, debate and ultimately dispute resolution.” (Hecht and Redmond, 2012). One area of similarity is the provision in the Statement of Auditing Standard (SAS 1) that requires an auditor to approach his assignment with ‘professional skepticism’ which requires auditors to adopt a questioning mind and a critical assessment of audit evidence in assessing audit risk of fraud. (Ojo, 2012). A forensic audit will accomplish much more than simply determining how to avoid issues in the future. It will determine what issues exist so that it can properly be determined what requires fixing and how to accomplish same. No one desires to have the EB-5 regional center decertified. There are approximately 12 other South Dakota projects that hopefully took advantage of the benefits offered by the program. This program must be properly managed so that all South Dakotans can benefit whether it be from employment or investment into individual projects.

VIII. Who Should Do the Forensic Audit?

Objective verification is the primary goal of forensic accounting. For this reason, many forensic accountants are asked to testify in court cases as expert witnesses for either the prosecution or the defense. It can be said therefore that forensic accounting is not limited to fraud detection but also assisting in litigations with the hope of recovering any losses, hence a forensic accountant assignment must be of such a quality that it can withstand scrutiny by attorneys, judges and juries.

The South Dakota Board of Accountancy requires each auditor to adhere to the American Institute of Certified Public Accountants' (AICPA) "Professional Ethics " which requires "attitudes and habits of truthfulness and integrity in all of a CPA's practice, including tax practice." When performing any professional service, Rule 102 requires that a CPA "shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others." Interpretation 102-2 (revised in March 1995) specifically describes conflict of interest:

A conflict of interest may occur if [an accountant] performs a professional service for a client or employer and the [accountant] or his or her firm has a relationship with another person, entity, product, or service that could, in the [CPA's] professional judgment, be viewed, by the client, employer, or other interested parties, as impairing the [CPA's] objectivity. If the [accountant] believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other interested parties, the rule shall not operate to prohibit the performance of the professional service. When making the disclosure, the [accountant] should consider Rule 301, *Confidential Client Information*.

It has been averred by some that our demand for a forensic audit is an attempt to influence the political arena. This is simply false and to buttress same, it is highly recommended that an auditing firm from outside the State of South Dakota be utilized to ensure this issue remains free and clear of all political influence.

IX. What Should Be Included in the Forensic Audit.

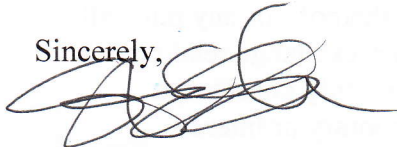
It has been said that the current investigation is focusing on allegations of double-billing and transfer of loans fees. However, the USCIS mandated that the South Dakota Regional Center – not SDRC, Inc. – “monitor all investment activities under the sponsorship of your regional center” and maintain records, data and information on a quarterly basis in order to report to USCIS. As such, the scope of the audit should cover all federal requirements and all information necessary to ensure the State received its share of funds as mandated by the Consulting Agreement with SDRC. This information should include the following:

- All payments made to and from South Dakota International Business Institute;
- All payments made to and from the designated Economic Development Regional Center from date of organization to the present;
- All offshore wire transfers made to Northern Beefpackers Plant LP before 2010 SD Banking Commission’s decision that Epoch Star Limited (“Epoch”) could lend to Northern Beefpackers Plant LP without a license pursuant to SDCL 54-5 and 54-14;
- Offshore wire transfers made to Northern Beefpackers Plant LP after 2010 SD Banking Commission’s decision that Epoch Star Limited could lend to Northern Beefpackers Plant LP without a license pursuant to SDCL 54-5 and 54-14;

- Offshore wire transfers made to Northern Beefpackers Plant LP from China.
- Terms for all loans made to Northern Beefpackers Plant LP from 2007 to the present;
- Identifying/background information for parties with an ownership interest in Epoch Star; Identifying/background information for parties with an ownership interest in Pine Street Special Opportunity Fund I ("Pine Street");
- Background information for parties with an ownership interest in Anvil Asia Partners ("AAA"); All payments to and from Joop Bollen from the South Dakota Regional Center from the date of organization to the present;
- All payments made to Northern Beef Packers from SDCR through the present;
- Payments made to and from Richard Benda from the South Dakota Regional Center from the date of organization to the present;
- Amount and identifying information for all attorneys who were paid by the South Dakota Regional Center from the date of organization to the present;
- Fees due the South Dakota Regional Center for its participation with the EB-5 program;
- Amount invested by each foreign investor;
- Review each I-526 petition to ensure investment was made consistent with wishes of investor; and
- Identification of each target category of business activity within the geographical boundaries of the South Dakota Regional Center that has received alien investors' capital and in what aggregate amounts, received non-EB-5 domestic capital that has been combined and invested together, specifying the separate aggregate amounts of the domestic investment capital.

Please contact me if there are any questions.

Sincerely,



STEVEN D. SANDVEN

Enclosures

Cc: Sponsor Representatives Hunoff, Bartling, Cronin and Lust
Sponsor Senators Frerichs, Lederman, Rave and Sutton

APPENDIX A

Jeffrey T. Sveen of Siegel Barnett & Schutz LLP, Attorney for SDRC, Inc. and Joop Bollen, President of SDRC, Inc. recruit foreign investors for the EB-5 program. But, once they have done so, Sveen and Bollen divert the money to the SDIF LLC's they control, and then SDIF loans the pooled money to Northern Beef Packers LP and others, with the expectation of a return on its "investment." Despite the fact that the money originated overseas, the investments look like the offering of a security because EB-5 participants are not being asked to invest directly in an EB-5 approved entity like Northern Beef Packers LP but are instead being asked to put their money into an LLC that does not create any jobs, which in turn acts as a lender and puts the investments at risk. Any expectation of return or profit comes from the LLC's collection of loaned funds and not from Northern Beef Beef Packers LP.

If the investments are securities, as they appear to be, the securities fraud statutes have likely been violated because there was no offering memorandum or prospectus, no registration or exemption from registration as a private placement, no disclosure of material facts, and more likely than not a number of material false statements. Under 15 U.S.C. Sec. 77b(a)(1), a "security" means:

"any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "

Pursuant to Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. Sec. 240.10b-5, **it is unlawful for any person to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.**

Pursuant to 15 U.S.C. Section 77l(a)(2), **it is unlawful for any person to offer or sell securities by means of a prospectus or oral communication, which includes any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.**

Sveen and Bollen created individual entities for EB 5 investments for individual projects funded by EB 5 investments. For example:

- Immigrant investors who originally placed their \$500,000 apiece into loan funds for two other projects in South Dakota wound up transferring their money to a loan fund for Northern Beef Packers.
- Northern Beef Packers received transfers from 21 investors who originally placed their money into a loan fund for the Iberdrola wind farm project known as Buffalo Ridge II. That project's use of the immigrant investor loans, under what's known as the federal EB-5 program, was ultimately blocked by the U.S. Citizenship and Immigration Services agency.
- Six to nine more transfers to Northern Beef — the number varies in different parts of the records — were made by investors who originally placed their money into a loan pool for Dakota Provisions, the Huron-based turkey operation that processes meat.
- Dakota Provisions received immigrant-investor financing under EB-5 through two previous loan pools. The third loan pool for Dakota Provisions, known as SDIF LP 20, was organized two years ago.

Sveen/Bollen organized at least 11 such loan pools using in each instance a combination of a limited partnership and a limited liability company, with Bollen as the general partner for the limited partnership and the manager for the limited liability company.

- Dakota Provisions was the object of the first loan pool organized by Sveen/Bollen using this LP-LLC approach after his formation of the South Dakota Regional Center ("SDRC") in 2008. The first EB-5 solicitation for Dakota Provisions, known as LP 1 attracted 99 clients, according to an SDRC report to South Dakota Governor's Office of Economic Development ("GOED"). Sveen's name is listed with that information. The report says the first loan totaling \$40 million to Dakota Provisions was effective Oct. 27, 2009.
- The second pool of EB-5 loans for Dakota Provisions brought 11 investors, according to the SDRC report. That loan, known as LP 4, likewise took effect Oct. 27, 2009, according to the report. Sveen's name appears on a filing with the SD Secretary of State's office for SDRC in 2009. For unpublicized reasons, the presidency of SDRC was shifted in 2009 from Bollen to Park. This was shown in a filing by Park with the secretary of state. Park also filed a change naming him as manager for the Dakota Provisions LP 1 loan fund, again in place of Bollen. Later in 2009 Sveen filed amended incorporation paperwork for SDRC that created a board of directors and named Bollen as the only director. Months later a change was also filed returning Bollen to manager of Dakota Provisions LP 1.
- The third pool of EB-5 loans for Dakota Provisions, known as SDIF LP 20, brought in 92 investors at \$550,000 apiece for a total of \$46 million, according to the report. How much if any money eventually reached Dakota Provisions isn't clear. The report shows five of the investments aged-out, approximately 21 investments were withdrawn or had withdrawal notices filed, and six investors transferred to one of the Northern Beef loan pools. The version of the report that was obtained as a public record from GOED had much of the information removed because that information dealt with specific individual investors. Most of the dates also were removed. But information that remains available

on the public version of the report shows nine transfers to the Northern Beef LP 9 loan pool. Transfer dates aren't shown. The public version of the report does show dates of withdrawals from the Dakota Provisions LP 20 loan pool. The withdrawals took place from approximately June 2012 through March 2013. The report doesn't show whether Dakota Provisions received the remaining money in the LP 20 loan fund nor does it show the status of the investments if that isn't the case.

- The same types of information are shown for Iberdrola's Buffalo Ridge II wind project. That loan pool is known as LP 8. Sveen/Bollen filed the paperwork creating the limited partnership and the limited liability company for Buffalo Ridge II on May 3, 2010. They continued to file annual reports for that project, the most recent dated April 23, 2013. The annual reports don't disclose any information about the fund's internal operations.
- The SDRC report to GOED shows an assortment of withdrawals from LP 8 began in late 2011 and continued through June 2012. The report also shows nine undated transfers from LP 8 to the Northern Beef LP 9 loan fund. The original solicitation of EB-5 immigrant investors for the Buffalo Ridge II project generated 200 clients, according to the report. The report doesn't indicate the status of the remaining majority of those investors whose money wasn't withdrawn or transferred.
- Sveen/Bollen filed the organizational paperwork for the Northern Beef LP 9 loan fund Sept. 30, 2010. The SDRC report to GOED shows LP 9 had 50 investors, including 21 who transferred from the Dakota Provisions LP 20 fund and nine who transferred from the Buffalo Ridge LP 8 fund. The dates of Northern Beef LP 9's receipt of those transfers aren't shown on the public version of the SDRC report. Northern Beef LP 9 is referred to as NBP III on the SDRC report, suggesting it was the third round of EB-5 loan financing for Northern Beef. Two other Northern Beef loan funds are shown on the report. They are listed as NBP II and NBP IV.
- NBP IV was for a new company created by Karl Wagner of Aberdeen called Dakota Farm Raised High Quality Beef Limited Partnership. Its limited partnership and limited liability company paperwork was filed in May 2013 by the Aberdeen law firm of Rory King, who has been the attorney for the Northern Beef project. While the company was listed on SDRC's report to GOED, Bollen and SDRC evidently hadn't yet filed paperwork to create an EB-5 loan pool for Dakota Farm Raised High Quality Beef. GOED also hadn't given its approval.
- The SDRC report doesn't show the first loan pool created for the main Northern Beef project. The report shows NBP II. That loan fund was called LP 6 by SDRC. Bollen filed the organization paperwork Oct. 28, 2009. The SDRC report show NBP II had 68 EB-5 investors. That would have generated approximately \$34 million.
- There were 65 EB-5 investors in LP 2 for the Deadwood Mountain Grand hotel, casino and events center complex.
- There were 200 EB-5 investors initially in LP 3 for the Deer Creek generation station, a project of Basin Electric. A second offering known as LP 7 brought money from 10 more EB-5 investors.

- There were 100 EB-5 investors in LP 5 for the Day County wind farm, a project of Florida Power and Light, also known as Next Era. Unexplained is why SDRC jumped in its numbering system from LP 10 to LP 20. The final SDRC report to GOED doesn't reflect any projects for numbers 11 through 19. Secretary of State records also don't show any filings by Bollen for those numbers.
- The requirement that SDRC receive GOED approval for EB-5 offerings was enforced in 2012 by GOED commissioner Costello. GOED officials determined that SDRC's offerings for Buffalo Ridge II, Next Era and Dakota Provisions LP20 had been underway without GOED's approval.

The following information is provided regarding investigation of South Dakota's disbursement of EB-5 investment funds with referenced documents on CD:

1. *Northern Beef Packer Bankruptcy*: 37 files cited in sections titled "EB 5 Regional Center and Joop Bollen" and "Northern Beef Packers"
2. *Off Shore Wire Transfers*: 8 files cited in section titled "Off Shore Wire Transfers"
3. *MCC Dairy*: 35 files provided to South Dakota Attorney General Long in 2007 requesting investigation of EB-5 program, INS complaint and 2011 request
4. *Miscellaneous*: 29 files regarding 20012 information requests to and responses from the South Dakota Governor's office, EB-5 requirements and Joop Bollin
5. *Huron Turkey Farm*: 9 files cited in footnote 5
6. *Open Record Requests to South Dakota Governor and South Dakota Auditor in 2013*: 11 files
7. *Siegel, Barnett & Schutz, LLP*: 8 files regarding campaign contributions and involvement in EB 5 transactions

EB 5 REGIONAL CENTER AND JOOP BOLLEN

The South Dakota International Business Institute ("SDIBI") was created by the South Dakota Board of Regents in 1994 as an administrative unit of Northern State University in Aberdeen, South Dakota. SDIBI promoted export activities and foreign investment in South Dakota. (*See, e.g., Darley Int'l, Inc. v. SDRC, Inc.*, No. B240707, Cal. App. 2d, Div. 3 (April 16, 2013)). On April 8, 2004, the South Dakota International Business Institute Dairy International Business Institute Dairy Economic Development Region ("SDIBI / DEDR") was approved and designated as an Economic Development Regional Center by USCIS. (SDRC Amend. III, Revised). Joop Bollen served as SDIBI's director.

On December 12, 2006, USCIS approved SDIBI to also act as Regional Center for, among other things, beef processing and packing operations. (*Id.*). By further amendment, on November 8, 2007, USCIS approved the Regional Center's application to change its name from SDIBI to "South Dakota Regional Center," or "SDRC." (SDRC Amend. III, Revised). USCIS specified

that "the minimum capital investment threshold for any individual immigrant investment into a new commercial enterprise through the SDRC shall be not less than \$500,000." (*Id.*).

On January 10, 2008, Bollen incorporated SDRC, Inc. to serve as the management company that monitors and affects the performance of EB-5 funds and secures the repayment of EB-5 loans by the project entities. (South Dakota Secretary of State website; SDRC, Inc. website, <http://www.sdrc-eb5.com/>). SDRC Inc. also operates as the general partner for the South Dakota Investment Fund ("SDIF") Limited Partnerships (EB-5 entities). ([/www.sdrc-eb5.com/](http://www.sdrc-eb5.com/)). SDRC, Inc. is an independent company and is not the successor to the quasi-public entity known as South Dakota Regional Center. (*Id.*). Sveen filed SDRC, Inc.'s Amended Articles of Incorporation on June 1, 2009. (South Dakota Secretary of State website). Bollen is currently the President of SDRC, Inc. (*Id.*).

On December 22, 2009, the South Dakota Department of Tourism and State Development entered into an agreement for SDRC, Inc. to administer the Regional Center and the EB-5 program. (SDRC, Inc. website, <http://www.sdrc-eb5.com/>). South Dakota EB-5 Projects under Regional Center administration include: (1) Van Winkle Dairy; (2) Global Dairy; (3) Winter Dairy; (4) K&K Dairy; (5) Swier Dairy; (6) Drumgoon Dairy; (7) Moody Dairy; (8) Veblen East Dairy; (9) Northern Beef Packers; (10) Dakota Provisions; (11) Deadwood Mountain Grand Hotel; and (12) Basin Electric Power Cooperative. (*Id.*).

Despite the fact that Bollen is responsible for a quasi-public agency through SDRC, Inc.'s agreement with the State of South Dakota, however, he has repeatedly declined to respond to FOIA requests for information and to information requests from investors in the various projects he administers. (6-12-12 FOIA Request; 6-23-12 FOIA Requests; 7-5-12 Bollen Email).

On or about June 17, 2013, Sveen filed Articles of Organization for BOPA LLC. Bollen is the sole organizer, registered agent and member. (6-17-13 Articles of Organization). It appears BOPA LLC financed housing associated with Northern Beef Packer workers.

As of today, the United States Citizenship and Immigration Services lists the South Dakota International Business Institute as the sole regional center for the State of South Dakota. SDIBI was created by official act of the State in 1994. Accordingly, it is a public entity. In the case entitled *Zhang, et al. v. SDRC*, Case No. 11-cv-4148, Jeffrey Sveen, on behalf of SDRC, clarified the following (see attached excerpts and entire pleading filed by Mr. Sveen on January 26, 2012):

4. South Dakota Regional Center (another public entity) succeeded SDIBI's role as South Dakota Regional Center and is ultimately responsible for overseeing the EB-5 program.
5. SDRC, Inc. is a separate entity from the South Dakota Regional Center. It is a private company established by Bollen to market and oversee the authorities delegated by the State in the Consulting Agreement dated December 22, 2009.
6. SDRC, Inc. was only delegated the following authorities: (1) corresponding and meeting requirements of USCIS; (2) maintaining all records as required by federal law; (3) making recommendations to the state on improving the EB-5 program; (4) service existing EB-5 projects, (5) maintaining a website; and (6) market EB-5 programs - but only upon the written approval of the state.

The documents received from the SD Board of Regents on December 13, 2013 regarding SDIBI exemplify Governor Dugaard's lack of understanding of the South Dakota Regional Center. The SD Governor's Office claims the South Dakota Regional Center is simply a project area and not a separate entity. First, we know that USCIS approved a name change from SDIBI to the South Dakota Regional but there was no change in the structure of the organization. Second, the following excerpts clarify that SDIBI, i.e., South Dakota Regional Center is not simply an "area":

1. General Counsel for the Board of Regents states that SDIBI was created as an "administrative unit" of Northern State University.
2. SDIBI's mission includes: (1) provision of continuing of education opportunities, (2) provision of consulting services; (3) provide support to GOED; (4) provide bulletin board services; (5) development of various relationships between staff, students, and business entities. It is quite clear that a project area would be unable to perform these services.
3. Northern State University upon the urging of Joop Bollen applied for \$230,509 in funding from the Department of Education. I could find no precedent where the DOE gave assistance to a project area.
4. SDIBI created an international newsletter. Quite clear that a project area does not have this capability.

In conclusion, the structural documents of SDIBI directly controvert the Governor's position.

SIEGEL, BARNETT & SCHUTZ LLP

The articles for SDRC, Inc. were filed by Jeffrey T. Sveen, Siegel Barnett & Schutz LLP, on June 1, 2008 (001-004). Mr. Sveen and Mr. Jewett of Siegel Barnett & Schutz LPP donated \$32,000.00 to Governor Dugaard in 2011-12 (005-008). Mr. Jewett donated \$6,000.00 in 2010 - second largest contributor - and \$2000.00 to SD AG Jackley in 2011 - largest contributor (009-011).

During cross examination of Mr. Jewett in CIV 10-260 on February 14, 2012, Jewett admits to being listed on Siegel, Barnett & Schutz LLP website as an attorney with that firm and is on their health insurance plan:

Q: And you're currently listed on the Siegel, Barnett and Schutz, LLP website as an attorney with that firm, as well; correct?

A: I am.

Q: What is your affiliation with Siegel, Barnett & Schutz?

A: It's kind of a combination affiliation. I haven't done any work down there in years and I don't share in any of the proceeds of the firm, unless by some odd duck I'd actually produce some money down there, and it's been a long time. But I still remain and their health insurance.

Q: And it is fair to say that having your name and your photograph on the Siegel, Barnett, Schutz website is a benefit to that firm?

A: Maybe at one time (012-014).

During a second cross examination of Mr. Jewett on June 25, 2012, Jewett admits that he, Jeff Sveen and Rod Tobin (Siegel Barnett & Schutz LLP) represented Hutterite colonies for more than 30 years:

Q: Well, you know Jeff Sveen and Rod Tobin and yourself and Siegel, Barnett, for more than 30 years, has represented Hutterville and some of its individual members; correct?

A: Have represented all the Hutterites (015-016).

Attorneys from Siegel Barnett & Schutz LLP are referenced throughout loan documents with Northern Beefpackers LP. For example:

1. Siegel Barnett & Schutz LLP is named in section 1.9 of the November 4, 2010 Credit Agreement for \$60,000,000.00 between Northern BeefPackers LP and SDIF Limited Partnership 6 for payment of legal fees (018-019). Notices in this agreement for the Lender went to Joop Bollen and Jeffrey T. Sveen (020).
2. The amended credit agreement for \$60,000,000.00 dated March 4, 2011 also names Siegel Barnett & Schutz LLP for payment of legal fees (021-022) and notice to Lender with Joop Bollen (021-024).
3. Jeff Sveen prepared and recorded mortgage instruments (025 - 027)

Siegel Barnett & Schutz LLP provided legal services to the Office of SD Governor Litigation and Legal Services Manager 2008-09 (15557), 2009-10 (20273), 2010-11 (24035), 2011-12 (27497), 2012-13 (30192) and 2013-14 (33076).

OFF SHORE WIRE TRANSACTIONS

On April 20, 2010, Rory King, Bantz, Gosch & Cremer – attorneys for Northern Beef Packers LP⁴, corresponded with Roger Novotny, South Dakota Director of Banking, noting that “Epoch Star Limited, a British Virgin Island Company, was created solely for the purposes of providing a one-time lending facility of foreign investors to Northern Beef Packers Limited Partnership for the purposes of bailing out the current EB-5 investors (69) of Northern Beef Packers, LP.” Ex 1. The memorandum also noted that the loan to Northern Beef was an “isolated transaction” and “Epoch is not in the business of lending money.” *Id.*

In a memorandum dated May 10, 2010, Mr. King informed Richard Benda, South Dakota Governor’s Office of Economic Development, that he had requested determinations from the appropriate agencies on the loan from Epoch Star. *Id.* On May 12, 2010, Mr. Roger Novotny concluded as follows:

From the facts presented, it is my position that Epoch Star Limited is not in the business of lending money nor does it hold itself out to the public as a lender. The partnership completes one transaction and no others. The program is controlled by the State of South

⁴ Cadwell Sanford Deibert & Garry LLP are South Dakota counsel for Epoch and provided legal services to South Dakota Unified Judicial System (17217).

Dakota with the partnership only acting as a conduit for the investment, which is required by the Department of Immigration.

Id. On June 9, 2010, Mr. King petitioned for a declaratory ruling that Epoch did not have to be licensed to make a secured loan to Northern Beef Packers LP. Ex. 2 Therein, Mr. King declared that Epoch Star “is wholly owned by Pine Street Special Opportunity Fund 1 (“PSSOF1”), a fund incorporated in the Cayman Islands. *Id.* Epoch and PSSOF1 are both managed by Anvil Asia Partners (“AAP”). *Id.* In support of the request for declaratory relief, Wai Yee Christine Ma, a resident of Hong Kong and a director of AAP filed her June 29, 2010 Affidavit (Ex. 3) with the South Dakota Banking Commission where she represented:

1. Epoch Star Limited is a special purpose entity incorporated in the British Virgin Islands where its only office is located;
2. Epoch is wholly owned by PSSOF1 who is incorporated in the Cayman Islands where its only office is located;
3. Epoch and PSSOF1 are both managed by AAP who is incorporated in the Cayman Islands;
4. Epoch’s sole business purpose and reason for formation was to provide approximately \$30 million in bridge financing to Northern Beef Packers LP.
5. Epoch, PSSOF1 and AAP do not have business offices in the United States;
6. Pine Street has less than 10 investors; and
7. A “second wave” of EB-5 investors has been obtained and other incentives have been assembled, including those from the State of South Dakota.

On July 1, 2010, the South Dakota Banking Commission concluded that Pine Street is not regularly engaged in the business of lending money and Epoch is not required to obtain a license. Ex. 4

The loan transaction from Epoch Star was not approved by the Banking Commission until July 1, 2010, and yet as early as December 2007, Northern Beef was making the following off shore wire transfers:

4. December 6, 2007, in the amount of \$504,350;
5. January 3, 2008, in the amount of \$308, 500; and
6. April 21, 2008, in the amount of \$687,225. Ex. 5

All of the foregoing off shore transfers were to Ultra Care Holdings, Limited – a company organized under the laws of Cyprus.

*Ultra Care Holdings Limited – Intermediary Holding Company*⁵

According records on file with the government of Cyprus, Ultra Care Holdings was first registered on September 25, 2008 – 5 months after Northern Beef made the last transfer to same. Globaltrans, current owner of Ultra Care, declares that the company was formed as an intermediary holding company. As you may know, an intermediary holding company is a company that is interposed between one company and another, ideally an ultimate holding company and operating subsidiaries. Thus, it is both a subsidiary and a holding company in

⁵ All information in this section was obtained from the annual reports of Globaltrans.

relation to different companies. It is a legal entity separate and distinct from its members. The capital of the company is raised by the issue of shares and the liability of the shareholders of a company is limited to the amount which each shareholder has paid for his or her shares. In other words, a holding is a company which usually does not produce goods or services itself, rather its purpose is to own shares in other companies. It is a company that owns part, all, or a majority of other companies' outstanding stock. The primary functions of an intermediary holding company are limited and focused as opposed to those of holding companies in general. The primary functions of an intermediary holding company are to acquire, manage and sell investments in group companies, mainly its subsidiaries and, in general, to provide transactional and organizational flexibility in a group of companies.

According to the Complaint filed in captioned *Zhen et al v. SDRC, Inc. et al*, 4:11-cv-04148-KES, United States District Court, District of South Dakota, Northern Beef was in the process of obtaining EB-5 funding on or about October, 2007. A mere two months later, the first off shore transfer was made to Ultra Care in the amount of \$504,350.00. In 2009 Ultra Care was 90% owned by Ingulana Holdings Limited, a corporation registered with Cyprus on July 29, 2009. The remaining 10% of Ultra Care was held by BaltransServis, LLC ("BTS")⁶. In turn, Ingulana Holdings held a 90% share and a majority controlling interest in BTS.

In December 2009, Transportation Investments Holding Limited contributed its 55.56% shareholding in Ingulana Holdings Limited to Globaltrans for the consideration of 29,411,764 ordinary shares of Globaltrans. The total consideration for the acquisition amounted to 250 million.

Further, in December 2009 Ingulana Holdings transferred its 90% share in BTS to its 90% subsidiary, Ultracare Holdings. At the same time the 10% minority shareholder of BTS also transferred its 10% share in BTS to UltraCare. Following the transaction and as at 31 December 2009, Globaltrans held an effective 50% controlling stake in BTS.

Today, Ultracare Holdings and BaltTransServis are controlled by Globaltrans via majority shareholding held by the Company in Ingulana Holdings Limited, the parent entity of Ultracare Holdings Limited which in turn is the 100% shareholder of LLC BaltTransServis.

GlobalTrans

Based upon the annual and financial reports of Globaltrans, it does not appear they are involved in the beef industry in any manner. In fact, their business is entirely centered on the provision of railway services in Russia. As of March 2013, Globaltrans was owned by the following:

1. Maple Valley Investments	11.5%
2. Onyx Investments	11.5%
3. Marigold Investments	11.5%
4. Envesta Investments Ltd.	8.8%

⁶ BaltTransServis ("BTS") is one of Russia's leading freight rail operators specializing in the rail transportation of oil products and oil. BTS focuses on operating rail tank cars. BTS was one of the first private companies in Russia to focus on this market. It specializes in shipping oil products and oil, notably fuel oil, diesel and gasoline, and provides various logistics services and distribution to shipping terminals.

- | | |
|--|-------|
| 5. Other entities controlled by Globatrans | 2.2% |
| 6. Free Float ⁷ | 54.5% |

NORTHERN BEEFPACKERS PLANT, INC.

On September 28, 2005, Dennis Hellwig incorporated Northern Beef Packers, Inc. in South Dakota. (South Dakota Secretary of State website). That entity, however, has been listed as inactive since 2006. (*Id.*). On February 20, 2007, Hellwig organized Northern Beef Processors Management, LLC in South Dakota. (2-20-07 NBPM Articles of Organization). However, the South Dakota Secretary of State's website does not have any current listing for that entity.

On April 16, 2008, David Palmer organized Northern Beef Packers Limited Partnership, the bankruptcy Debtor, which is shown on the South Dakota Secretary of State's website as an active entity. There are, however, no Annual Reports or other documents available for public viewing on the Secretary's website.

Other persons of interest with regard to Northern Beef include Bob Breukleman, who we understand was instrumental in assisting Hellwig in the design and construction of the beef processing plant; Norg Sanderson, who was on Hellwig's original board of directors; and Richard Benda, who was Secretary of Tourism and State Development (later succeeded by the Governor's Office of Economic Development) in the Rounds administration and had responsibility for monitoring EB-5 loans to Northern Beef.

It is public information that Hellwig secured a \$35 million direct investment from the EB-5 program to finance the construction and start-up of the Northern Beef plant. But, in 2010, when the project got behind schedule and looked as though it may fail, a Cayman Islands LLC with "ten anonymous investors" agreed to loan Northern Beef an additional \$20-\$35 million to complete the initial construction. (6-30-10 Aberdeennews.com). According to news reports, Anvil Asia Partners, a Cayman Islands-incorporated company, manages Pine Street Special Opportunity Fund I, which is also incorporated in the Cayman Islands. (*Id.*). The entity that actually made the loan to Northern Beef is identified as Epoch Star Limited, a special purpose entity incorporated in the British Virgin Islands and wholly owned by Pine Street. (*Id.*).

Anvil Asia director Wai Yee Christine Ma, a resident of Hong Kong, China, filed a 2010 Affidavit with the South Dakota Banking Commission in which she represented that Pine Street has fewer than 10 investors, and that none of Anvil, Pine Street or Epoch is a related party to Northern Beef, is a bank, or is regularly engaged in the business of lending money. (6-30-10 Aberdeennews.com). But, contrary to those representations, Northern Beef's Statement of Financial Affairs identifies the debtor as Epoch Star Ltd., Inactive, 11-4-10 to present. And Northern Beef's Schedule B, Personal Property, lists ownership of 100% of Epoch Star's shares, valued at \$0.00.

It appears, therefore, that an anonymously owned, "unrelated" off-shore company created Epoch Star for the sole purpose of lending money to Northern Beef; but that somehow Northern Beef acquired all of the shares of the lending entity which currently has no value.

⁷ Public float or free float represents the portion of shares of a corporation that are in the hands of public investors and not locked-in by for example promoters, company officers, controlling-interest investors and government.

According to a source who claims to have interviewed them, Breukleman and Hellwig allege that, at a 2010 meeting with Sveen at his law office, Sveen forced Hellwig to sell his interest in Northern Beef to a group of Korean investors led by Oshik Song – who became owner of Northern Beef Packers Management, LLC, which is the general partner of Northern Beef Packers Limited Partnership. (2-18-10 Certificate of Amendment to Certificate of Limited Partnership for NBP). In particular, Hellwig has reportedly claimed that Sveen threatened him with criminal prosecution if he did not sign over his interest. The threats are alleged to relate to offshore wire transfers from the Northern Beef Packers, Inc. U.S. Bank checking account to Paribas Private Bank in Hong Kong for the account of “Ultra Care Holdings.” We have no information regarding Ultra Care Holdings, or why Northern Beef would have any legitimate reason to wire money to a Hong Kong private bank account.

On October 18, 2011, several Chinese investors who had each invested \$530,000 in the Northern Beef plant filed a suit against SDRC, Inc., SDIF No. 6 and Joop Bollen, in an action captioned *Zhen et al v. SDRC, Inc. et al*, 4:11-cv-04148-KES, United States District Court, District of South Dakota. (10-18-11 Complaint). The *Zhen* plaintiffs alleged that they each invested their money to become limited partners in SDIF No. 6, which is an entity created and promoted by SDRC, Inc. and managed by Bollen as its sole general partner. The *Zhen* plaintiffs claim, however, that they were fraudulently induced to do so by a series of material misrepresentations and omissions, and that the limited partnership funds were used and disbursed without their approval. (*Id.*). Sveen and his firm represented the defendants, and the suit was quickly and quietly dismissed pursuant to the parties’ stipulation for reasons that have not been made public. (Appearance and dismissal of suit noted on PACER).

DAKOTA PROVISIONS

In 2003 several Hutterite Colonies each invested \$250,000.00 to \$500,000.00 to build a turkey processing plant. Their attorney, Sveen, incorporated Dakota Turkey Growers, L.L.C. as a South Dakota entity, listed himself as the registered agent, and used his law office address for the company’s principal place of business. (8-30-04 Dakota Turkey Growers Annual Report). John Waldner (D.O.B. 05/06/48), Riverside Colony Secretary-Treasurer located northeast of Huron SD, was Dakota Turkey Grower’s original manager. (*Id.*; 8-30-05 Dakota Turkey Growers Annual Report). In 2006 Sveen became Dakota Turkey Growers’ Chairman of the Board. (9-1-06 and 9-17-07 Dakota Turkey Growers Annual Reports).

On June 12, 2006, John Waldner, Riverside Hutterian Brethren, Inc. and Elmer Hofer (D.O.B. 12/11/46) of the Big Stone Hutterian Brethren, Inc. located approximately southwest of Graceville MN, formed Dakota Gobblers, LLC as a South Dakota entity. (6-12-06 Dakota Gobblers Articles of Organization). Waldner and Hofer were identified as the company’s managers. (*Id.*). In 2008 Sveen became a Dakota Gobblers manager, along with Waldner and Hofer. (6-9-08 Dakota Gobblers Annual Report). And, in 2009 Sveen and Ken Rutlege were listed as Dakota Gobblers’ members / managers, and Waldner and Hofer were not. (5-28-09 Dakota Gobblers Annual Report). According to publicly-filed documents, it appears that Sveen remains, to date, as a member and manager of Dakota Gobblers. (6-2-10, 5-24-11 5-31-12 and 5-21-13 Dakota Gobblers Annual Reports) .

According to the company’s web site, Dakota Turkey Growers was founded by 44 producers, most of whom are members of Hutterite communities, and is now known as “Dakota

Provisions.” (See www.dakotaprovisions.com.) The web site identifies Sveen as the Chairman of Dakota Turkey Growers, a/k/a Dakota Provisions, a/k/a Dakota Gobblers, and lists Ken Rutledge as president. (*Id.*). Sveen reportedly receives a salary of \$250,000 per year as Dakota Provisions’ Chairman. We have been told that, in or about April of 2009, Dakota Provisions received an EB-5 loan in the amount of \$50,000,000, and that the mortgage agreement indicates that \$60,000,000 in funding originated from SDIF-1, LLC.

In or about February of 2011, the Hutterite Colony investors including Jake Wipf (D.O.B. 05/22/52) from Oakland Colony located south of Alexandria SD and John Waldner (D.O.B. 06/15/34) from Spring Valley Colony located north of Hawley MN reportedly approached Sveen and asked him to distribute \$31,000,000 in cash that they believed to exist at Dakota Provisions. See February 5, 2011 letter from investors. Sveen allegedly refused, declaring that the money had already been invested in some undisclosed project. We are not aware that any further information regarding the undisclosed investment has ever been provided to the Hutterite Colony investors. At the time, however, Northern Beef was desperate for cash.

On June 6, 2012, Bollen received approval from the South Dakota Governor’s Office of Economic Development to provide additional funding for the Dakota Provisions project through the EB-5 program. (6-6-12 OED Ltr. to SDRC). Despite claims that the plant is profitable, however, we have been told by Josh Waldner (D.O.B. 07/26/55) from Rosedale Colony located southeast of Mitchell SD, John Waldner (11/27/45) from Cameron Colony located near Viborg SD, Joseph Waldner (D.O.B. 03/31/53) located at Spring Valley Colony near Wessington Springs SD that the Hutterite Colony investors have received little or no return on their investments and, in fact, have agreed to sell their turkeys to Dakota Provisions for less than what they could obtain on the open market just to keep the plant in business. Other potential witnesses include Gary Wurtz (D.O.B. 06/18/53) from Elmendorf Colony located southeast of Mountain Lake MN, Rueben Waldner (D.O.B. 03/19/54) from Riverside Colony northeast of Huron SD and Simon Decker (D.O.B. 04/10/60) from Spring Lake Colony located northwest of Madison SD.

We understand that Sveen represents the Hutterite investors, Dakota Turkey Growers, Dakota Gobblers, Dakota Provisions, SDRC, Inc., and Bollen, and that he also serves as the company’s Chairman.⁸

⁸ Dakota Gobblers was created on June 12, 2006, by John Waldner and Elmer Hofer. Ex. 1. Mr. Hofer and Mr. Waldner solely managed the company until 2008 when they were joined by Sveen. Ex. 2 and 3. In 2009, Mr. Waldner and Mr. Hofer were replaced as managers by Sveen and Mr. Rutledge, the current CEO of Dakota Provisions. Ex. 4. On June 6, 2012, Mr. Joop Bollen requested and received approval for the “Dakota Gobblers/Dakota Provisions Project.” EB5 Program promoted Dakota Gobblers in China – not Dakota Provisions. Ex. 5. Additionally, although Dakota Gobblers simply operates a cold storage unit, the company makes sufficient capital to borrow funds to Dakota Turkey Growers as evidenced by their two liens on Dakota Turkey Growers. Ex. 7. So, following the reasoning of Mr. Helge and Mr. Dunlevy it would appear that Dakota Gobblers received the EB5 funds, or a portion thereof, but liens were only placed on Dakota Turkey Growers. If the turkey plant were to file for bankruptcy, Dakota Gobblers would not be affected. After the approval was received there was no more mention of Dakota Gobblers and EB5 funds. In fact, SDRC placed liens on Dakota Turkey Growers but not Dakota Gobblers. The South Dakota Development Corporation or one of its investment companies has 6 liens on Dakota Turkey Growers. Ex. 8.

MCC DAIRY/VEBLEN EAST DAIRY/VEBLEN WEST DAIRY

According to documents filed in a prior lawsuit and bankruptcy proceeding, in 1997 MCC Dairy was formed as a small cooperative of 40 dairy farmers. Construction of the MCC Dairy began in 1998 after a \$2.3 million equity drive. In January 2000, Rick Millner was hired as MCC Dairy's second manager and in 2001 he became an official shareholder. As a cooperative, each member had the right to participate in the daily operations of the business if desired.

On May 5, 2006, the MCC Dairy board discussed the EB-5 program and, in September of that same year, Millner traveled to South Korea to solicit EB-5 investments. It was alleged in bankruptcy court filings that, on September 19, 2006, and without the cooperative members' knowledge, Millner and his associates established Veblen East Dairy L.L.P. Over the next few years, Millner was accused of systematically transferring MCC's employees, buildings, and equipment to Veblen East. The Veblen East Dairy is owned 60% by two limited partnerships, which are in turn owned by 32 individual Korean investors through the EB-5 program.

In 2009 the MCC minority shareholders sued, alleging that MCC's managers and directors had converted cooperative assets to their own benefit. Among other things, the shareholder plaintiffs claimed that cooperative assets were used to pay for EB-5 related consulting services, but that all \$13.5 million taken in through the EB-5 program was put into Veblen East. In his defense, Millner argued that EB-5 investments could not be used by co-ops, so he needed to direct them elsewhere. The MCC members responded that they could have qualified for EB-5 investments and, if not, could have created a new entity that would qualify had they been informed.

On July 2, 2010, Veblen East filed for bankruptcy. The company was represented by Sveen. When the EB-5 investors asked whether they would be able to recoup their investments, Bollen replied that they "might well have to take a haircut." They did.

I represent Hutterville Hutterian Brethren, Inc. against Siegel, Barnett & Schutz LLP in the attached RICO matter pending before the Eighth Circuit. No EB 5 funding went through Hutterville.