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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 Plaintiff,

15 vs.

16 **HUI FENG and LAW OFFICES OF**
17 **FENG & ASSOCIATES P.C.,**

18 Defendants.

Case No.

COMPLAINT

19
20 Plaintiff Securities and Exchange Commission (the "SEC") alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§
24 77t(b), 77t(d)(1) and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of
25 the Securities and Exchange Act ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),
26 78u(d)(3)(A), 78u(e), and 78aa.

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1 received at least \$1,168,000 in commissions from at least five Promoters for referring
2 dozens of clients to invest in EB-5 offerings. The Defendants are also contractually
3 entitled to receive at least \$3,100,000 in additional commissions from the Promoters
4 for the referral of scores of additional clients once the United States Citizenship and
5 Immigration Services (“USCIS”) approves the clients’ petitions for conditional
6 residency. As attorneys, the Defendants had fiduciary, legal and ethical duties
7 towards their clients to disclose their receipt of the commissions and the conflicts of
8 interest such compensation created, but knowingly, recklessly and/or negligently
9 failed to make the required disclosures in breach of those duties.

10 7. Feng and his law firm also defrauded certain of the Promoters whose
11 offerings they marketed by using overseas nominees to receive the commissions,
12 while falsely representing to the Promoters that those foreign-based persons were
13 responsible for finding investors, rather than Feng. In reality, the commission
14 recipients consisted of one of Feng’s friends, Feng’s relatives, and an entity Feng
15 controlled, none of whom played any role in finding investors.

16 8. By engaging in this conduct, the Defendants have violated and are
17 continuing to violate the antifraud provisions of Section 17(a) of the Securities Act,
18 15 U.S.C. § 77q; Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules
19 10b-5(a), (b), and (c) thereunder, 17 C.F.R. §240.10b-5(a)-(c); and Section 15(a) of
20 the Exchange Act, 15 U.S.C. § 78o(a).

21 **THE DEFENDANTS**

22 9. **Hui Feng** is a resident of Flushing, New York and has been licensed to
23 practice law in New York since 1998. He has been providing immigration law
24 services to his legal clients since approximately 2005. Feng has never been registered
25 with the SEC in any capacity.

26 10. **Law Offices of Feng & Associates P.C.** is a New York professional
27 corporation incorporated in October 2011. Feng & Assocs. maintains an office in
28 Flushing, New York and, until approximately October 2014, also maintained an

1 office in Alhambra, California. Feng founded the firm and is the primary attorney at
2 the firm. Feng & Assocs. has never been registered with the SEC in any capacity.

3 **RELATED ENTITY**

4 11. **Atlantic Business Consulting Limited (“ABCL”)** is a Hong Kong
5 entity that Feng formed in April 2014 for the purpose of receiving commissions from
6 the Promoters. Until at least December 2014, Feng controlled ABCL and its bank
7 account.

8 **THE FRAUDULENT SCHEME**

9 **A. The EB-5 Immigrant Investor Program**

10 12. Congress created the EB-5 Program in 1990 to stimulate the U.S.
11 economy through job creation and capital investment by foreign investors. In 1992,
12 Congress created the EB-5 Immigrant Investor Program, also known as the Regional
13 Center Program.

14 13. The EB-5 Immigrant Investor Program sets aside EB-5 visas for
15 participants who invest in commercial enterprises associated with regional centers
16 approved by the USCIS based on proposals for promoting economic growth.

17 14. The EB-5 Immigrant Investor Program is designed to attract individuals
18 from other countries who are willing to put their capital at risk in the United States
19 with a hope of making a return on their investment.

20 15. Under the EB-5 Immigrant Investor Program, foreign investors who
21 invest capital in a “commercial enterprise” in the United States may petition the
22 USCIS (called an “I-526 Petition”) and receive conditional permanent residency
23 status for a two-year period. The USCIS defines a “commercial enterprise” as any
24 for-profit activity formed for the ongoing conduct of lawful business.

25 16. To qualify for the program, the foreign investors must invest \$1 million
26 (\$500,000 if in a rural area or area of high unemployment) and thereby create at least
27 ten full-time jobs for United States workers.

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1 17. The EB-5 Immigrant Investor Program requires a showing that the
2 foreign investor “has placed the required amount of capital at risk for the purpose of
3 generating a return on the capital placed at risk.”

4 18. If the foreign investor satisfies these and other conditions within the two-
5 year period, the foreign investor may apply to have the conditions removed from his
6 or her visa and live and work in the United States permanently.

7 19. Many EB-5 investments are administered by entities called “regional
8 centers.” EB-5 regional centers are designated by the USCIS to administer the EB-5
9 investment projects based on proposals for promoting economic growth.

10 20. Regional center investment vehicles are typically offered as limited
11 partnership interests or limited liability company units, which are managed by a
12 person or entity other than the foreign investor, who acts as a general partner or
13 managing member of the investment vehicle.

14 21. The EB-5 investments made by the Defendants’ clients were all
15 associated with regional centers. The regional centers, the investment vehicles, and
16 the managers thereof are collectively referred to herein as the “Promoters.”

17 **B. Defendants’ EB-5 Immigration Law Business**

18 22. In 2010, the Defendants began promoting EB-5 investments to actual
19 and potential immigration law clients, many of whom were located in China.

20 23. In 2012, Feng & Assocs. began using a Chinese language website that
21 was hosted in the United States through 2013 to advertise the firm’s EB-5
22 immigration services and promote certain EB-5 investments. Feng believed that his
23 website was popular with clients and potential clients because they “feel they are
24 getting something independent, something objective.”

25 24. Feng wrote or reviewed and approved the website’s content.

26 25. In April 2013, Feng opened four Feng & Assocs. offices in China that
27 were generally staffed with one non-lawyer employee each. Feng directed those
28 employees to actively promote Feng & Assocs. and its website, which was primarily

1 focused on the EB-5 investment program, in online chat rooms.

2 26. Through at least December 2014, the employees received compensation
3 based on their success in having prospective clients retain Feng & Assocs. as their
4 attorney.

5 27. Feng drafted and signed retainer agreements through which clients
6 retained Feng & Assocs. The retainer agreements typically required the clients to pay
7 a legal fee of between \$10,000 and \$15,000 for legal work associated with the clients'
8 petitions under the EB-5 program. The retainer agreements touted Feng's purported
9 objectivity in conscientiously studying, investigating and recommending only the
10 most reliable EB-5 investment projects

11 28. The retainer agreements did not disclose the Defendants' receipt of
12 commissions in connection with the clients' EB-5 investments.

13 29. Feng primarily communicated with his clients and the Promoters over
14 the phone, via email, and through online chat platforms. Feng or his law office
15 employees also met with some clients at the Feng & Assocs. office in New York. At
16 the time they retained Feng & Assocs., some of the clients were also already residing
17 in the United States on temporary visas.

18 **C. EB-5 Investments Made By Defendants' Clients Were Securities**

19 30. The Defendants recommended that their clients invest in EB-5 offerings
20 associated with at least five different EB-5 Promoters. Some of the Promoters had
21 multiple offerings that the Defendants referred their clients to.

22 31. The Promoters are headquartered in the United States and at least two of
23 them operate in this judicial district (Irvine, California and El Segundo, California).

24 32. The offerings required the Defendants' foreign clients to invest a capital
25 contribution of either \$1 million or \$500,000, and pay a separate administrative or
26 management fee, which was used to pay other fees and expenses incurred by the
27 Promoters, including the payment of commissions and finder's fees.

28 33. The Promoters pooled the foreign investors' capital contributions, but

1 not the administrative fees, for the purpose of making loans to fund United States-
2 based construction projects.

3 34. At the end of the loan term, the foreign investors expected to receive a
4 return of their capital contributions.

5 35. The investments by the Defendants' clients were passive investments, as
6 they relied on others to develop the job-creating projects.

7 36. The Defendants' clients were not involved in the making or servicing of
8 loans on EB-5 construction projects or in the operation or management of the
9 construction projects themselves.

10 37. Rather, the clients relied on the Promoters for the success of the projects
11 and obtaining a return on their investments.

12 38. The limited partnership and limited liability company operating
13 agreements for the EB-5 investments vested management control in the hands of the
14 Promoters.

15 39. Thus, the Defendants' clients were dependent on the efforts of others to
16 realize their profits.

17 40. Generally, the Defendants circulated private placement memoranda
18 and/or other offering documents to their clients for the offerings that the Defendants
19 recommended their clients invest in.

20 41. These offering documents described the terms of the investment, and
21 how the profits would be allocated to the investors.

22 42. The investments offered annual rates of return that generally ranged
23 from approximately 0.5% to 0.8% of the capital contribution.

24 43. For example, one of the investments provided that net proceeds realized
25 from the sale, repayment or distribution of realized profits from the limited
26 partnership's investments (including any interest) would be allocated and distributed
27 99% to the limited partners and 1% to the general partner.

28 44. Some of the investments also allowed for investors to earn additional

1 returns if the Promoters extended the loan terms associated with the offerings.

2 45. Also, one EB-5 private placement memorandum that the Defendants
3 circulated to their clients states that the investment of capital is intended to “generate
4 revenue for the Partnership” and sets forth a formula pursuant to which annual
5 interest is paid to the general partner and to the limited partners (that is, Feng’s
6 clients). The limited partnership agreement associated with this offering also
7 provides that the partners — that is, Feng’s clients — will “share in the risks,
8 benefits, profits, and losses.”

9 46. Depending on the stage of the construction project, Defendants’ clients
10 who invested in the EB-5 offerings would receive Schedule K-1s, which are federal
11 tax documents for an investment in partnership interests, that would reflect the
12 interest they had earned on their capital contributions.

13 47. The offering documents distributed to investors by the Defendants stated
14 that the investments were being offered pursuant to exemptions from the registration
15 requirements of the federal securities laws.

16 48. In addition, some of the offering documents associated with the clients’
17 investments also expressly described the investments as “securities.”

18 **D. Defendants Acted as Unregistered Brokers**

19 49. As early as 2010, Feng began recommending offerings associated with
20 certain Promoters as investments, in exchange for commissions on successful sales.
21 In approximately 2013, Feng began intensifying his efforts to sell EB-5 investments.

22 50. Feng began providing a list of recommended EB-5 offerings to his
23 clients through the Feng & Assocs. website in an effort to obtain more EB-5 investor
24 clients.

25 51. Feng facilitated his clients’ investments in the EB-5 offerings by
26 obtaining offering documents from the Promoters, printing out the signature pages of
27 the documents, preparing instructions explaining what the clients should sign, and
28 transmitting the signed offering documents to the Promoters.

1 52. Feng interfaced directly with the Promoters regarding his clients' EB-5
2 investments on their behalf.

3 53. In most instances, all of the communications and negotiations between
4 the clients and the Promoters leading to the investment were channeled through Feng.

5 54. On several occasions, Feng or Feng & Assocs. also received EB-5
6 investment funds from clients that they transmitted to one of the Promoters.

7 55. Feng described himself to the Promoters as "marketing" or "promoting"
8 the EB-5 investments.

9 56. On at least two occasions, Feng also requested allocations of spots in
10 EB-5 offerings that he could sell to his clients. This required Feng to fill the
11 allocated spots with investors by a certain date or give the spots up. Feng ultimately
12 sold one of those offerings to seven of his clients.

13 57. Defendants or Feng's nominees received commissions from the
14 Promoters for the sales of EB-5 investments. Those commissions ranged from
15 \$15,000 to \$70,000 per transaction.

16 58. Defendants or their nominees received payments from at least five
17 Promoters for referring their clients to those Promoters' EB-5 offerings.

18 59. In addition, if the USCIS approves other clients' pending I-526 Petitions,
19 the Defendants are contractually entitled to receive additional payments from the
20 Promoters for referring those clients to those Promoters' EB-5 offerings.

21 60. The Promoters wired the commissions out of United States-based bank
22 accounts to accounts held by Feng or his nominees.

23 61. The commissions were governed by written referral fee agreements with
24 the Promoters. The agreements were executed by Feng on behalf of Feng & Assocs.
25 or by Feng's nominees, which made payment of the commissions contingent on (1)
26 an investor making the required capital contribution and (2) the USCIS approving the
27 investor's I-526 Petition.

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1 62. Feng is not, and has never been, registered with the SEC as a broker-
2 dealer.

3 63. Feng & Assocs. is not, and has never been, registered with the SEC as a
4 broker-dealer.

5 **E. Defendants Defrauded their Clients**

6 64. As attorneys, the Defendants owed fiduciary, legal and ethical duties to
7 their clients to disclose their receipt of commissions from the EB-5 Promoters whose
8 offerings they recommended.

9 65. Defendants failed to disclose to their clients that the Defendants were
10 receiving commissions from the EB-5 Promoters, and failed to disclose their conflicts
11 of interest for the purpose of maximizing their own monetary compensation.

12 66. The Defendants knew, or were reckless or negligent in not knowing, that
13 their receipt of commissions was not disclosed to their foreign clients investing in the
14 Promoters' EB-5 investments.

15 67. The Defendants' receipt of commissions from the Promoters was
16 material to the investors' investment decisions.

17 68. That information, had it been disclosed, would have been significant
18 information to investors, as it would have affected their assessment of Feng's claimed
19 objectivity and due diligence in recommending certain Promoters over others.

20 69. That information would also have affected the investors' understanding
21 and belief that Feng, as their legal representative and as a licensed attorney, was free
22 of any undisclosed financial conflicts of interest in his dealings with his clients.

23 70. The commission payments to Feng, had they been disclosed, would also
24 have affected the investors' understanding of the overall terms, conditions, risks and
25 costs associated with their EB-5 investments, and would have been significant
26 information to them in deciding whether to proceed with the EB-5 investments that
27 Feng recommended.

28 71. Rather than disclose their receipt or right to receive commissions from

1 the Promoters, Defendants only told their clients about their receipt of commissions if
2 the client specifically asked.

3 72. As a result, Defendants did not inform the vast majority of their clients
4 that they received commissions from the Promoters.

5 73. The clients who did learn about the commissions requested that
6 Defendants refund all or a portion of the commissions to them.

7 74. Feng knowingly, recklessly and/or negligently chose not to inform his
8 clients about the commissions so that he could avoid having to negotiate with his
9 clients to share or refund the commissions to them, which in many cases exceeded the
10 legal fees he also charged them.

11 **F. Defendants Also Defrauded the Promoters**

12 75. The Defendants' practice of receiving commissions changed over time.
13 Feng initially received wire transfer payments of referral fees starting in March 2011
14 directly into a United States-based bank account held in his name.

15 76. In or about May 2013, some of the Promoters informed Feng that they
16 would not wire commissions to United States-based bank accounts as part of an
17 apparent effort to avoid running afoul of the broker-dealer registration requirements
18 contained in the federal securities laws.

19 77. As a result, Feng had relatives or friends act as "nominees" or
20 "surrogates" to execute the referral fee agreements with the Promoters and to receive
21 the commissions on his behalf or on behalf of Feng & Assocs. through overseas bank
22 accounts.

23 78. In communications with some of the Promoters, Feng represented that
24 the individuals he designated to sign the agreements or receive the commissions were
25 "partners" or "agents" that he worked with in China.

26 79. The Defendants never disclosed to the Promoters that these "nominees"
27 or "surrogates" were, in fact, Feng's relatives or friends.

28 80. Also, in communications with some Promoters, Feng represented that

1 these “nominees” or “surrogates” were the ones soliciting and referring investors to
2 the Promoters, when, in fact, it was Feng or his employees.

3 81. These representations were materially false and misleading because
4 certain of the Promoters would not have continued paying the Defendants to refer
5 clients to the Promoters’ EB-5 investments if the Promoters knew that the agreements
6 were not signed by bona fide partners or agents that had referred the investors, but
7 rather by Feng’s relatives or friends. The Promoters would also not have continued
8 paying the Defendants to refer clients if the Promoters knew that the commissions
9 they were paying were being wired to bank accounts held by Feng’s relatives or
10 friends.

11 82. Defendants knew, or were reckless or negligent in not knowing, that
12 these representations to the Promoters were materially false and misleading because
13 those individuals were actually Feng’s friends or relatives who played no substantive
14 role in soliciting investors.

15 83. For example, in May 2013 Feng had his relative sign a referral fee
16 agreement with one of the Promoters, which represented that his relative had access
17 to sophisticated investors that the relative could introduce to parties interested in
18 investing with the Promoter.

19 84. Similarly, in January and February 2014 Feng sent emails to another
20 Promoter stating that “our partners” or “agents” in China would execute the referral
21 fee agreements. Feng then had his relative who played no role in locating investors
22 sign the referral fee agreement with this Promoter.

23 85. Feng’s relatives who signed these agreements with the Promoters were
24 not partners or agents who found investors. Instead, they were nominees that Feng
25 used to secretly receive commissions on his behalf.

26 86. In addition to designating friends or relatives as nominees to receive
27 referral fees, Feng formed ABCL, a Hong Kong entity, in April 2014 for the purpose
28 of receiving referral fee payments through a Hong Kong bank account that he

1 controlled.

2 87. Feng had his relatives execute referral fee agreements with some of the
3 Promoters, on behalf of ABCL, even though the relatives had no role with ABCL.

4 88. For example, in May 2014 Feng had a relative execute a referral fee
5 agreement as a “principal” of ABCL even though that relative did not, in fact, have
6 any such role.

7 89. In total, Feng and his nominees, including ABCL, have represented over
8 100 investors for EB-5 investments with at least five Promoters.

9 90. From at least March 2011 to April 2015, Defendants or their nominees,
10 including ABCL, have received at least \$1,168,000 in commissions from these five
11 Promoters for their clients’ investments in those Promoters’ EB-5 offerings.

12 91. Those five Promoters have paid at least \$662,000 in commissions to
13 Defendants’ nominees.

14 92. In addition, the Defendants directly, or through their nominees, are
15 contractually entitled to receive at least \$3,100,000 more in commission payments
16 upon the approval of the pending I-526 Petitions.

17 **FIRST CLAIM FOR RELIEF**

18 **Fraud in the Offer or Sale of Securities**

19 **Violations of Section 17(a) of the Securities Act**

20 **(against all Defendants)**

21 93. The SEC realleges and incorporates by reference paragraphs 1 through
22 92 above.

23 94. Defendants, and each of them, by engaging in the conduct described
24 above, directly or indirectly, in the offer or sale of securities by the use of means or
25 instruments of transportation or communication in interstate commerce or by use of
26 the mails:

- 27 (a) with scienter, employed devices, schemes, or artifices to defraud;
28 (b) obtained money or property by means of untrue statements of a

1 material fact or by omitting to state a material fact necessary in
2 order to make the statements made, in light of the circumstances
3 under which they were made, not misleading; or

4 (c) engaged in transactions, practices, or courses of business which
5 operated or would operate as a fraud or deceit upon the purchaser.

6 95. By engaging in the conduct described above, Defendants violated, and
7 unless restrained and enjoined, will continue to violate, Section 17(a) of the Securities
8 Act, 15 U.S.C. § 77q(a).

9 **SECOND CLAIM FOR RELIEF**

10 **Fraud in Connection with the Purchase or Sale of Securities**

11 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

12 **(against all Defendants)**

13 96. The SEC realleges and incorporates by reference paragraphs 1 through
14 92 above.

15 97. Defendants, by engaging in the conduct described above, directly or
16 indirectly, in connection with the purchase or sale of a security, by the use of means
17 or instrumentalities or interstate commerce, of the mails, or of the facilities of a
18 national securities exchange, with scienter:

19 (a) employed devices, schemes, or artifices to defraud;

20 (b) made untrue statements of a material fact or omitted to state a
21 material fact necessary in order to make the statements made, in
22 the light of the circumstances under which they were made, not
23 misleading; or

24 (c) engaged in acts, practices or courses of business which operated or
25 would operate as a fraud or deceit upon other persons.

26 98. By engaging in the conduct described above, Defendants violated, and
27 unless restrained and enjoined, will continue to violate, Section 10(b) of the
28 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

1 **THIRD CLAIM FOR RELIEF**

2 **Failure to Register as a Broker-Dealer**

3 **Violation of Section 15(a) of the Exchange Act**

4 **(against all Defendants)**

5 99. The SEC realleges and incorporates by reference paragraphs 1 through
6 92 above.

7 100. Defendants by engaging in the conduct described above, made use of the
8 mails or means or instrumentalities of interstate commerce to effect transactions in, or
9 to induce or attempt to induce the purchase or sale of securities, without being
10 registered as brokers or dealers in accordance with Section 15(b) of the Exchange
11 Act, 15 U.S.C. § 78o(b).

12 101. By engaging in the conduct described above, Defendants violated, and
13 unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange
14 Act, 15 U.S.C. § 78o(a).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the SEC respectfully requests that the Court:

17 **I.**

18 Issue findings of fact and conclusions of law that Defendants committed the
19 alleged violations.

20 **II.**

21 Issue orders, in a form consistent with Fed. R. Civ. P. 65(d), permanently
22 enjoining Defendants and their agents, servants, employees, and attorneys, and those
23 persons in active concert or participation with any of them, who receive actual notice
24 of the judgment by personal service or otherwise, and each of them, from violating
25 Section 17(a) of the Securities Act, 15 U.S.C. § 78q(a); Section 10(b) of the
26 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-
27 5; and Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

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1 **III.**

2 Order Defendants to disgorge all ill-gotten gains from their illegal conduct,
3 together with prejudgment interest thereon.

4 **IV.**

5 Order Defendants to pay civil penalties under Section 20(d) of the Securities
6 Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §
7 78u(d)(3).

8 **V.**

9 Retain jurisdiction of this action in accordance with the principles of equity and
10 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
11 all orders and decrees that may be entered, or to entertain any suitable application or
12 motion for additional relief within the jurisdiction of this Court.

13 **VI.**

14 Grant such other and further relief as this Court may determine to be just and
15 necessary.

16
17 Dated: December 7, 2015

Respectfully submitted,

18 */s/ Donald W. Searles*

19 _____
Donald W. Searles

20 Megan M. Bergstrom

21 Attorneys for Plaintiff

22 Securities and Exchange Commission
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