

IN THE FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2024-CA-001964-XXXX-MB (AA)

EB5 UNITED, LLC, a Washington limited
liability company, EB5 UNITED
OKEECHOBEE, LLC, a Delaware limited
liability company, and EB5U FL, LLC, a
Delaware limited liability company,

Plaintiffs/Counter-defendants,

v.

EB5AN, LLC, a Florida limited liability
company,

Defendant/Counterclaimant,

v.

EB5 UNITED BIG SKY III, LLC,

Additional Counter-defendant.

_____ /

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO
AMENDED COMPLAINT AND COUNTERCLAIMS**

Defendant, EB5AN, LLC (“EB5AN”), files this Amended Answer and Affirmative Defenses to the Amended Complaint filed on January 20, 2025 and Counterclaims against Plaintiffs/Counterclaim-Defendants, EB5 United, LLC, EB5 United Okeechobee, LLC, and EB5U FL, LLC, and additional Counterclaim-Defendant EB5 United Big Sky III, LLC (“Big Sky”), as follows:¹

¹ To avoid multiple operative answers, this Amended Answer, filed after disposition of EB5AN’s Motion to Dismiss Counts II and III of the Amended Complaint, supersedes the Answer to Count I and Counterclaims filed on March 11, 2025.

INTRODUCTION²

1. Denied in full and specifically denied as to Plaintiffs' inflammatory, pejorative rhetoric, which appears to reflect Plaintiffs' bitterness toward EB5AN for outperforming Plaintiffs in the global EB-5 marketplace. Plaintiffs have turned to litigation libel as an alternative strategy to try to gain a competitive advantage.

2. Denied in full. Plaintiffs apparent disdain for and allegations of an "unethical approach to business" is belied by Plaintiffs' unlawful attempt to associate themselves with EB5AN evidenced by the below Counterclaims. Further, by all measures and accounts, and notwithstanding Plaintiffs' grossly overinflated financials, the Lakefront Project is unsound – an opinion held not just by EB5AN, but by marketing agents, investors, and the public at large. Specifically denied that any foreign investors need any dissuading from participating in this distressed Project.

3. Denied in full. These allegations comprise Plaintiffs' concocted tale, which they are using to smear EB5AN in an attempt to use it as a scapegoat to appease Plaintiffs' investors and conceal the shortcomings of Plaintiffs' Project.

4. Admitted only that neither Mr. Schoenfeld nor EB5AN have retracted their truthfully held opinions concerning Plaintiffs' troubled Lakefront Project. Otherwise denied in full and specifically denied that EB5AN published its truthfully held opinions to anyone, let alone on a "global basis."

5. Denied. Plaintiffs filed this lawsuit for the purpose of smearing a more successful competitor, using EB5AN as their scapegoat to appease investors, concealing

² We incorporate Plaintiffs' headings for ease of reference only and without admitting any facts implied therein.

Plaintiffs' own shortcomings and those of its Project, and libeling EB5AN as an alternative strategy to try to gain a competitive advantage.

6. EB5AN declines to respond to Plaintiffs' self-aggrandizing rhetoric other than to utterly deny its place in their pleading. The irony of Plaintiffs' statement is evidenced by the Counterclaims below detailing Plaintiffs' false advertising to unlawfully associate themselves with EB5AN's proprietary and highly successful Twin Lakes project.

7. Denied and specifically denied that EB5AN ever "admitted liability," a rank lie. If anyone is to be made whole it is EB5AN for Plaintiffs' libelous litigation scheme, and false advertising and false association with EB5AN's Twin Lakes project.

THE PARTIES

8. Without specific knowledge of Plaintiff EB5 United's corporate matters.

9. Without specific knowledge of Plaintiff EB5 United Okeechobee's corporate matters.

10. Without specific knowledge of Plaintiff EB5U FL's corporate matters.

11. Admitted

JURISDICTION AND VENUE

12. Denied that Plaintiffs are entitled to any damages whatsoever. They are liable to EB5AN, however, for damages as set forth in the Counterclaims below.

13. Denied that there is any valid "action" assertable against EB5AN, but without challenge to venue.

GENERAL ALLEGATIONS

I. THE EB-5 PROGRAM

- 14. Admitted
- 15. Admitted
- 16. Admitted
- 17. Admitted

II. EB-5 REGIONAL CENTERS

- 18. Admitted
- 19. Admitted
- 20. Admitted
- 21. Admitted
- 22. Admitted

III. THE PROJECT

- 23. Admitted
- 24. Without knowledge as to what the Project will actually consist of if and when it is ever completed and therefore denied.
- 25. Without knowledge as to what the Project will actually consist of if and when it is ever completed and therefore denied.
- 26. Admitted
- 27. Admitted only that Plaintiffs have published a budget perceived by EB5AN as questionable and likely devious, but without specific knowledge as to the accuracy of the remaining allegations.
- 28. Without knowledge and therefore denied.

29. Admitted

30. Denied that EB5 United is deserving of any of the platitudes it attaches to itself and otherwise denied.

31. Admitted

32. Without knowledge as to why EB5 United Okeechobee was organized and otherwise denied.

33. Denied

34. Admitted only that Plaintiffs purport to have identified investment terms in the PPM but denied as to their accuracy or truthfulness and otherwise denied.

35. Without knowledge and therefore denied.

36. Without knowledge and therefore denied.

37. Without knowledge and therefore denied.

IV. FALSE ACCUSATIONS AGAINST EB5AN

38. Admitted

39. Admitted

40. Denied; the Project Summary Comments (“Comments”) consist purely of EB5AN’s opinions, which are incapable of being proven true or false. All facts relied upon by EB5AN, including any that are purportedly set forth in the Comments, are accurate and truthful.

41. Admitted only that the Comments are divided into sections but otherwise denied in full and specifically denied there is anything “provocative” about them.

42. Denied; the Comments consist purely of EB5AN's opinions, which are incapable of being proven true or false. All facts relied upon by EB5AN, including any that are purportedly set forth in the Comments, are accurate and truthful.

43. Denied; the Comments consist purely of EB5AN's opinions, which are incapable of being proven true or false. All facts relied upon by EB5AN, including any that are purportedly set forth in the Comments, are accurate and truthful.

V. EB5AN'S ALLEGED KNOWLEDGE OF PROJECT

44. Without knowledge and therefore denied.

45. Without knowledge and therefore denied.

46. Admitted only that Mr. Schoenfeld received an email from Scott Fuller; otherwise denied.

47. Admitted only that Mr. Schoenfeld spoke with Scott Fuller; otherwise denied.

48. Admitted only that Mr. Schoenfeld spoke with Scott Fuller; otherwise denied.

49. Denied

50. Denied

51. Admitted only that neither Mr. Schoenfeld nor Mr. Silverman have retracted their truthfully held opinions concerning Plaintiffs' troubled Lakefront Project.

VI. FALSE ACCUSATIONS ABOUT “DOUBLES DOWN”

52. Denied

53. Admitted

54. Admitted only that Mr. Schoenfeld has spoken in the past with Ms. Poirier but denied that Plaintiffs accurately portrayed their conversations. Otherwise denied in full.

55. Denied

56. Without knowledge and therefore denied.

57. Without knowledge and therefore denied.

58. Denied

VII. PLAINTIFFS’ FALSELY CLAIMED REPUTATIONAL HARM

59. Denied

60. Denied and specifically denied that EB5AN published any defamatory statements. Moreover, to the extent that potential investors are questioning the Project and delaying their investments, it is likely because, through the course of conducting basic due diligence on the Project, they arrived at the same conclusion as EB5AN—that the Project is a financially unsound investment.

61. Denied and specifically denied that EB5AN published any defamatory statements. Moreover, to the extent that potential investors are questioning the Project and delaying their investments, it is likely because, through the course of conducting basic due diligence on the Project, they arrived at the same conclusion as EB5AN—that the Project is a financially unsound investment.

62. Denied

63. Denied

64. Denied. Moreover, to the extent that agents and investors are questioning whether they wish to work with EB5 United on other investments, it is likely because, through the course of conducting basic due diligence on the Project, they arrived at the same conclusion as EB5AN—that the Project is a financially unsound investment.

CLAIMS

COUNT I **DEFAMATION**

65. EB5AN incorporates by reference ¶¶ 1-64 as though set forth in full herein.

66. Without knowledge and therefore denied.

67. Admitted

68. Admitted

69. Denied. The Comments consist purely of EB5AN's opinions, which are incapable of being proven true or false. All facts relied upon by EB5AN, including any that are purportedly set forth in the Comments, are accurate and truthful.

70. Denied

71. Denied

72. Denied

73. Denied

74. Denied

75. Denied

76. Denied

COUNT II
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

77. EB5AN incorporates by reference ¶¶ 1-64 as though set forth in full herein.

78. Admitted

79. Without knowledge as to the Developer's current quests.

80. Admitted

81. Admitted

82. Without knowledge and therefore denied.

83. Admitted

84. Without knowledge and therefore denied.

85. Admitted

86. Admitted

87. Admitted only that EB5AN is a competitor of Plaintiff EB5 United. Denied as to all remaining allegations and specifically denied that EB5AN knew of any relationships with any investors who were considering investing or had invested in the Project – those allegations are pure fabrication maliciously intended to create a cause of action where none exists.

88. Admitted only that EB5AN is aware that Plaintiff EB5 United works with foreign migration agents but without knowledge concerning "closely" and denied as to all remaining allegations.

89. Admitted only that EB5AN created the Comments but denied as to all remaining allegations and specifically denied that EB5AN ever distributed the Comments, whether to "agents," "existing or potential investors," or otherwise.

90. Denied in full. The Comments consist purely of EB5AN's opinions, which are incapable of being proven true or false. All facts relied upon by EB5AN, including any that are purportedly set forth in the Comments, are accurate and truthful.

91. Denied in full and specifically denied that EB5AN disseminated the Comments or interfered with any relationships - those allegations are pure fabrication maliciously intended to create a cause of action where none exists.

92. Denied

93. Admitted only that Mr. Schoenfeld conversed with Ms. Poirer. Denied in full as to remaining allegations, including Plaintiff's maliciously fabricated recitation of a conversation to which they were not even a party.

94. Denied in full. These allegations, like many herein, are pure fabrication maliciously intended to create a cause of action where none exists.

95. Denied in full as to the introductory paragraph and all subparts and specifically denied that EB5AN ever published the Comments or ever published any defamatory statements.

96. Denied in full. EB5AN has never communicated with any of the listed "firms" about the Comments, has never been aware of any relationship they may have had with Plaintiff, and most definitely never interfered with any such relationships, whether knowingly or otherwise. These allegations, like many herein, are pure fabrication maliciously intended to create a cause of action where none exists.

97. Without knowledge concerning whether GlobeVisa considered any alleged activities of its own sales team to be unfortunate or unprofessional and otherwise denied in full.

98. Denied; if anyone has been damaged, it is EB5AN, as set forth in the Counterclaims.

COUNT III
PERMANENT INJUNCTION

99. EB5AN incorporates by reference ¶¶ 1-64 as though set forth in full herein.

100. Denied

101. Denied

102. Denied

103. Denied

104. Denied

105. Denied

DEFENSES AND AFFIRMATIVE DEFENSES

Without admitting the allegations set forth in the Amended Complaint, EB5AN alleges and asserts the following defenses, affirmative or otherwise, without assuming any burden of proof that it would not otherwise have, without prejudice to its right to modify or withdraw any defense and/or assert additional defenses that become known through the course of discovery.

1. **Pure Opinion.** The Project Summary Comments consist of pure opinion not actionable as defamation.

2. **Substantial Truth.** The Project Summary Comments, taken as a whole, are substantially true.

3. **Qualified Privilege.** All statements attributed to EB5AN in the Project Summary Comments are qualifiedly privileged, including, *inter alia*, because of legitimate business competition between the parties.

4. **Fair Comment Privilege.** The Project Summary Comments are privileged as fair comment because they involve a matter of public concern, are based upon true or privileged facts, represent the actual opinion of EB5AN, and were not made solely for the purpose of causing harm.

5. **Good motive.** Any purported creation and publication of the Project Summary Comments was with a good motive not actionable as defamation.

6. **Single Publication Rule.** Count II for tortious interference with business relationships is barred by the single publication rule, which precludes a plaintiff from asserting multiple causes of action when they arise from the same publication upon which plaintiff's defamation claim is based.

7. **Lack of Standing.** Plaintiffs lack standing to assert a claim for tortious interference with a business relationship, including, without limitation, because Plaintiffs fail to allege any business relationship with whom they had legal rights that were supposedly interfered with.

8. **Competition Privilege.** To the extent Plaintiffs were to prove tortious interference with a business relationship (which EB5AN rejects), EB5AN was privileged to interfere because, *inter alia*, its purpose was at least in part to advance its interest in competing with Plaintiffs.

9. **Protection Privilege.** To the extent Plaintiffs were to prove tortious interference with a business relationship (which EB5AN rejects), EB5AN was privileged to interfere to protect its own financial and contractual interests.

10. **Failure to State a Cause of Action.** The Amended Complaint utterly fails to state a cause of action, including, *inter alia*, failure to allege that the Comments were published or distributed by EB5AN to any agent, investor, or firm with whom Plaintiffs had attendant legal rights, failure to allege any identifiable understandings or agreements which in all probability would have been completed without the alleged interference, failure to allege that EB5AN knew about any of the purported relationships, failure to allege that EB5AN intended to interfere with any of these unknown purported relationships, and failure to allege that any interference arising from the Comments resulted in the termination or impairment of any relationship.

WHEREFORE, Defendant, EB5AN, LLC, respectfully requests and demands that:

- (a) Plaintiffs be denied all relief;
- (b) Plaintiffs take nothing by way of their Amended Complaint and go hence without day;
- (c) the Court grant such other and further relief as it deems just and proper; and
- (d) Defendant be afforded a trial by jury as to all claims and issues so triable.

**COUNTERCLAIMS AGAINST ALL PLAINTIFFS AND ADDITIONAL
COUNTERCLAIM-DEFENDANT EB5 UNITED BIG SKY III, LLC**

Defendant/Counterclaimant EB5AN, LLC, sues Plaintiffs/Counterclaim-Defendants, EB5 UNITED, LLC, EB5 UNITED OKEECHOBEE, LLC, and EB5U FL, LLC, and additional Counterclaim-Defendant EB5 UNITED BIG SKY III, LL, (“Big Sky”) (collectively, the “Counterclaim-Defendants”), for false advertising, false designation of origin, misleading advertising, unfair competition, unjust enrichment, and tortious interference with contract and with business relationships, and states:

Jurisdiction and Venue

1. This is an action for false designation of origin and false advertising under the Lanham Trademark Act, 15 U.S.C. 1051, *et. seq.*, and unfair competition, deceptive and unfair trade practices, and related claims under Florida law.
2. Counterclaim-Defendants are subject to personal jurisdiction in accordance with their filing of the Complaint in this case.
3. Additionally, Counterclaim Defendants EB5 United, EB5 United Okeechobee, EB5U FL operate, conduct, engage in, or carry out a business or business venture and have an office or agency in Florida under Fla. Stat. § 48.193(1)(a)(1), committed a tortious act within Florida under § 48.193(1)(a)(2), and are engaged in substantial and not isolated activity within Florida under § 48.193(2).
4. Counterclaim-Defendant Big Sky is a Delaware limited liability company with an address at 5290 NE Ray Circle, Suite 180, Hillsboro, Oregon, 97124, and an agent for service of process ATA Corporate Services, LLC, 1201 Market Street, Suite 2300, Wilmington, Delaware, 19801.

5. Big Sky is subject to personal jurisdiction in Florida because it is merely an agent through which Counter-Defendant EB5 United, a Florida company, conducts business.

6. Big Sky is further subject to personal jurisdiction in Florida because its separate corporate status is formal only and without any semblance of individual identity apart from Counter-Defendant UB5 United, a Florida company.

7. Big Sky is further subject to personal jurisdiction in Florida because Counter-Defendant EB5 United, a Florida company, acts on behalf of its foreign affiliates, including Big Sky.

8. Numerous factual examples, without limitation, demonstrate the foregoing bases for personal jurisdiction over Big Sky.

9. For instance, Big Sky is managed by the very same executive officers as Counter-Defendant EB5 United, including Scott Fuller (CEO of both LLCs), Brad Stedem (President), and Tiffany Wrinkles (CFO) (the “Common Executive Team”). *Compare* U.S. SEC Form D, Notice of Exempt Offering of Securities (Big Sky), **Exhibit 1**, with EB5 United Website; Management Team, **Exhibit 2**.

10. Further, with a deliberate intention of indistinguishably identifying themselves, Big Sky and Counter-Defendant EB5 United robustly brand Big Sky and its projects, including Yellowstone Club, One&Only Moonlight Basin, and The Montage Hotel & Residences, under the “EB5 United” name, as reflected below:

EB-5 Projects



At EB5 United, we work with well-established developers that invest significant amounts of capital in our EB-5 projects. In the last 13 years, we've raised over \$1.51 Billion for various EB-5 Investment Projects. Since the passing of the Reform and Integrity Act (RIA) of 2022, our Rural EB-5 Projects have benefited from Priority Processing with investors receiving I-526E Approvals as quickly as 29 days, with an average of 9 months.

[Request Project Access](#)[All Projects](#)[Current EB-5 Projects](#)[Completed EB-5 Projects](#)

Yellowstone Club

Big Sky, Montana

[Under Construction](#)

Lakefront Estates and Villas

Okeechobee - Glades County, Florida

[Under Construction](#)

Long Cove

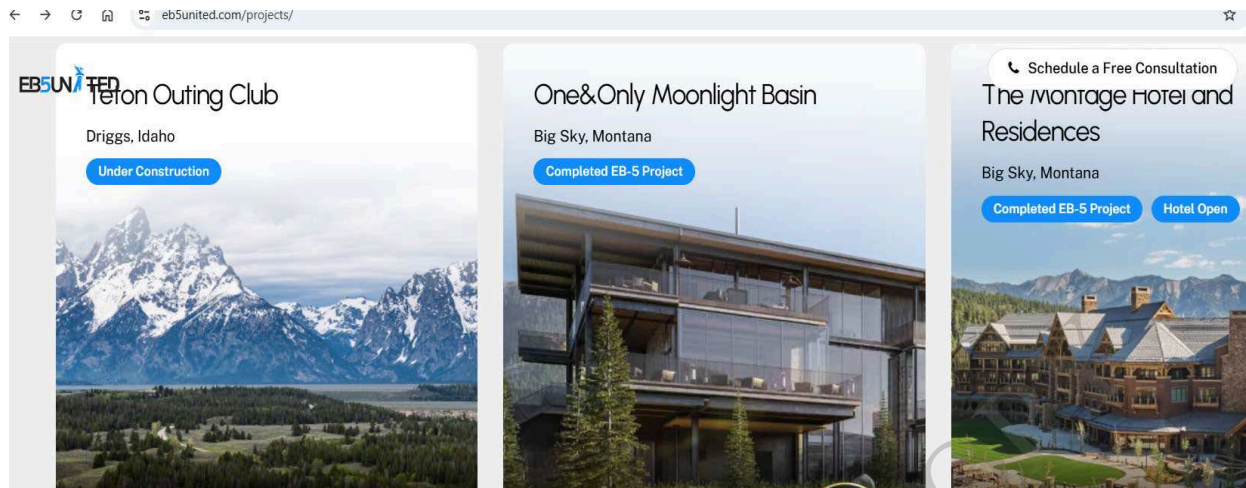
Malakoff, Texas

[Under Construction](#)eb5united.com/projects/

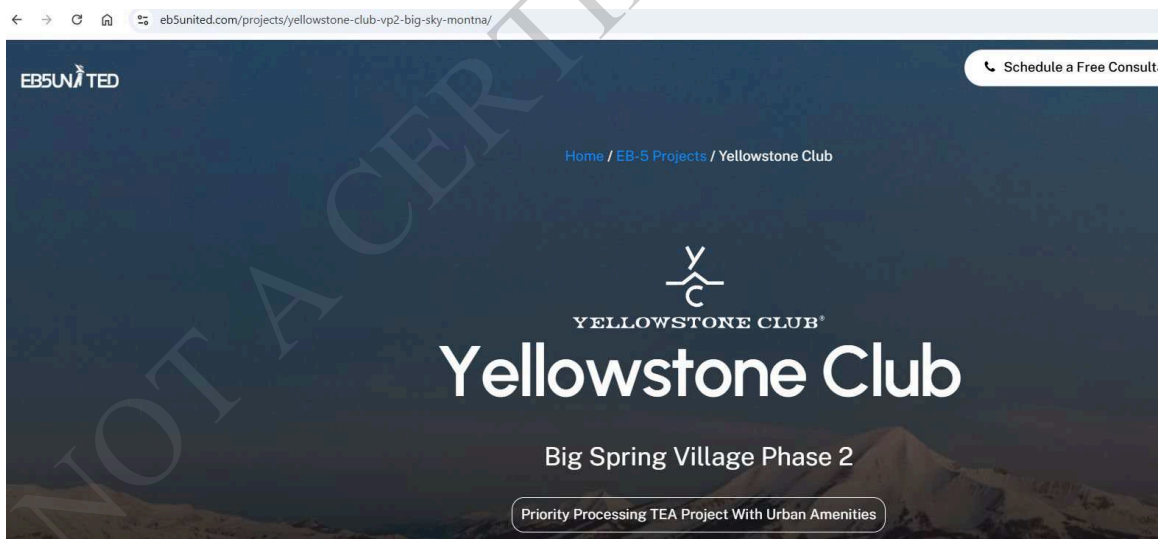
Yellowstone Club

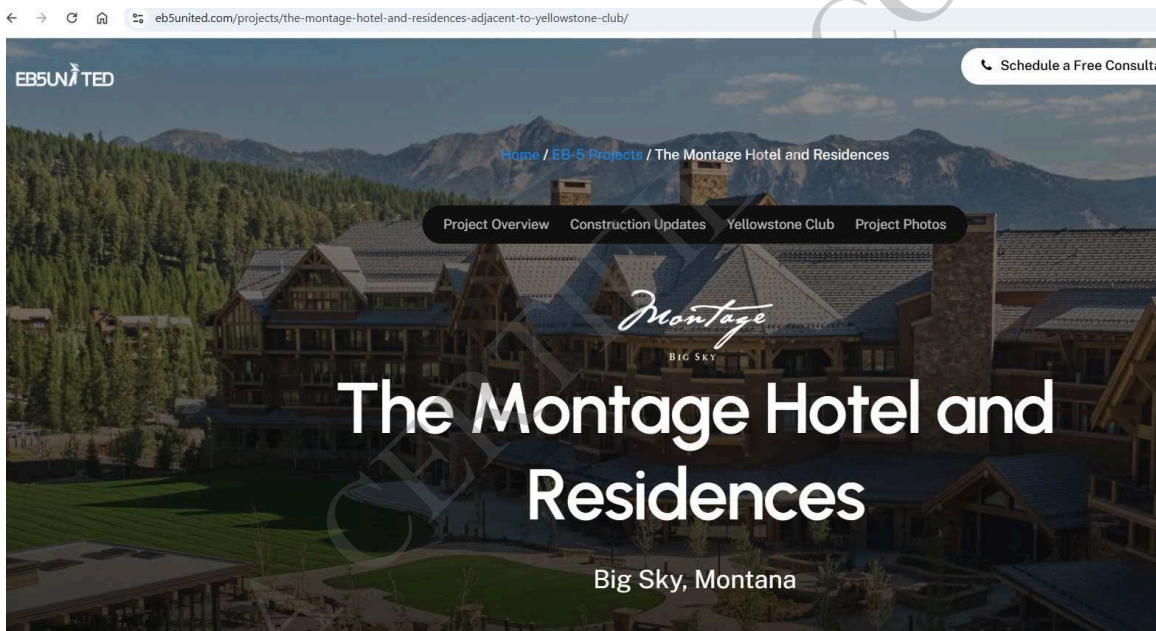
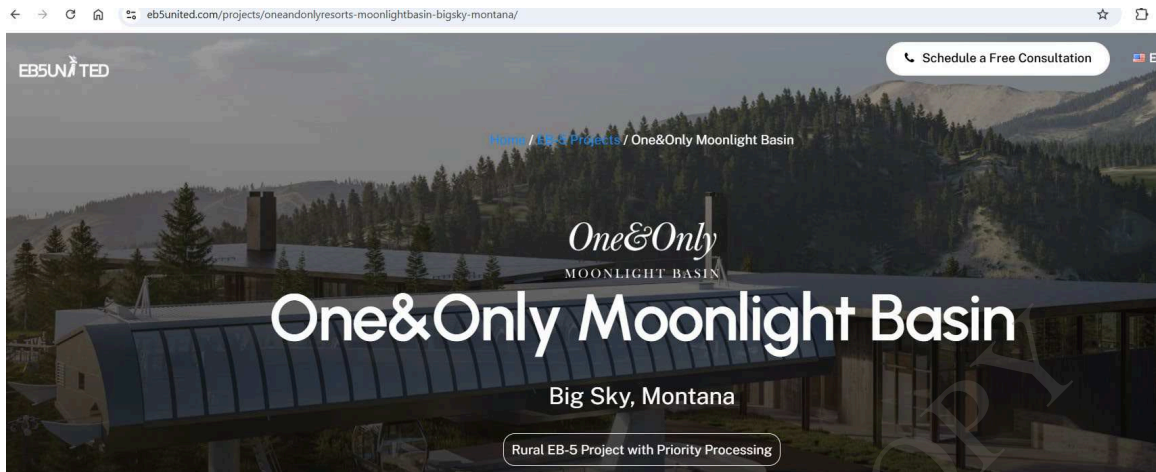
Big Sky, Montana

[Under Construction](#)



11. Big Sky also shares the same website as Florida-based EB5 United, namely, eb5united.com (the “Commonly Shared Website”), on which their projects are prominently featured, as reflected by the above photos as well as these:





12. The omission of the Big Sky corporate name from the Commonly Shared Website is further proof that any separate corporate status is formal only and without any semblance of individual identity, that Big Sky is merely an agent through which Counter-Defendant EB5 United, a Florida company, conducts business, and that EB5 United acts on behalf of Big Sky.

13. Counter-Defendants' social media also reflects a unity of identities between EB5 United and Big Sky. For example, Duncan Fuller, a Global Sales Associate of EB5

United and CEO Scott Fuller's son (and who published the Fuller Message about EB5AN, discussed below), proudly posted on LinkedIn, signing the post from "EB5 United #realestate," that Big Sky's One&Only is a project "we launched:"



14. Moreover, because of the identity of Counter-Defendants' Common Executive Team, the decision to create, publish, and become unlawfully enriched by the tortiously False Advertisement of EB5AN's Twin Lakes Project, discussed below, was directly made by each of the Counter-Defendants, including Big Sky.

15. Likewise, activities promoting and advertising the Commonly Shared Website were created, devised, directed, and implemented by the Common Executive Team on behalf of each Counter-Defendant, including Big Sky, including search engine optimization efforts to drive traffic to the Commonly Shared Website, the selection and purchase of keywords on the Google search platform, and the selection and purchase of Google sponsored advertisements, including without limitation, the False Advertisement.

16. The March 2024 Video and Fuller Message were similarly published by the Common Executive (and Operations) Team in furtherance, on behalf and for the benefit of, all Counter-Defendants, including Big Sky, which directly benefited from EB5 United's wrongful attacks on EB5AN.

17. In fact, as explained below in ¶ 105, at least one investor who signed a subscription agreement and wired funds to EB5AN withdrew his investment after viewing the March 2024 Video and is believed to have instead invested in Big Sky's Yellowstone Phase III Project.

18. Moreover, because Counter-Defendants' False Advertisement linked directly to Counter-Defendants' Commonly Shared Website, Big Sky directly benefited and was unfairly and unduly enriched from and by the infringing activities described herein.

19. Big Sky is further subject to the jurisdiction of this Court because its tortious acts, described above, deliberately damaged EB5AN, LLC in Florida, as stated below.

20. Venue is in accordance with the filing of the Complaint in this case.

The Parties

21. EB5AN is a government-authorized EB-5 regional center operator.

22. Founded in 2013, EB5AN is also a global investment fund manager with offices in the United States and abroad.³

23. EB5AN is one of a select few in the EB-5 industry to have successfully closed and funded over 25 EB-5 transactions representing billions in project development.

³ <https://eb5visainvestments.com/overview-history/>

24. In fact, EB5AN proudly maintains a 100% USCIS project approval rate, which means that all the adjudicated EB-5 regional center project investment funds it sponsors and for which it serves as manager have received project approval from United States Citizenship and Immigration Services.⁴

25. Counterclaim-Defendant EB5 United purports to be a financial services company that helps people obtain US Green Cards through EB-5 visa investments.

26. Counterclaim-Defendant EB5 United Okeechobee purports to have been organized to provide a loan to the developer of the Lakefront Estates and Villas project.

27. Counterclaim-Defendant EB5U FL purports to administer EB5 United Okeechobee.

28. Additional Counterclaim-Defendant Big Sky is an entity in unity of identification with EB5 United and through which EB5 United acts, engaged in raising capital for the Yellowstone Phase III project in Montana, and, upon information and belief, for Counter-Defendants' One&Only Moonlight Basin and The Montage Hotel & Residences projects, also in Montana.

29. Together, Counterclaim-Defendants purport to have been granted sponsorship from regional centers qualified by the U.S. Citizenship and Immigration Services, and the right to use the EB-5 Program to raise capital for the development and construction of residential and commercial projects.

30. Counterclaim-Defendants, including Big Sky, act in concert. As explained above, they operate the Commonly Shared Website, share the Common Executive (and Operations) Team, and operate as a single, integrated company.

⁴ *Id.*

31. As such, EB5AN, on the one hand, and Counterclaim-Defendants, on the other hand, are direct competitors in the EB-5 investment business.

Counterclaim-Defendants' False Advertising and False Association with EB5AN

32. One of EB5AN's many prominent, proprietary, and highly successful EB-5 investment projects is called Twin Lakes (also referred to as Twin Lakes Georgia).

33. The Twin Lakes project is being developed by a third-party development company and non-party to this action.

34. The Twin Lakes project is a single-family home community development with amenities in Hoschton, Georgia.

35. The Twin Lakes project has already achieved substantial success, with over 700 of 1,300 homes sold to date.

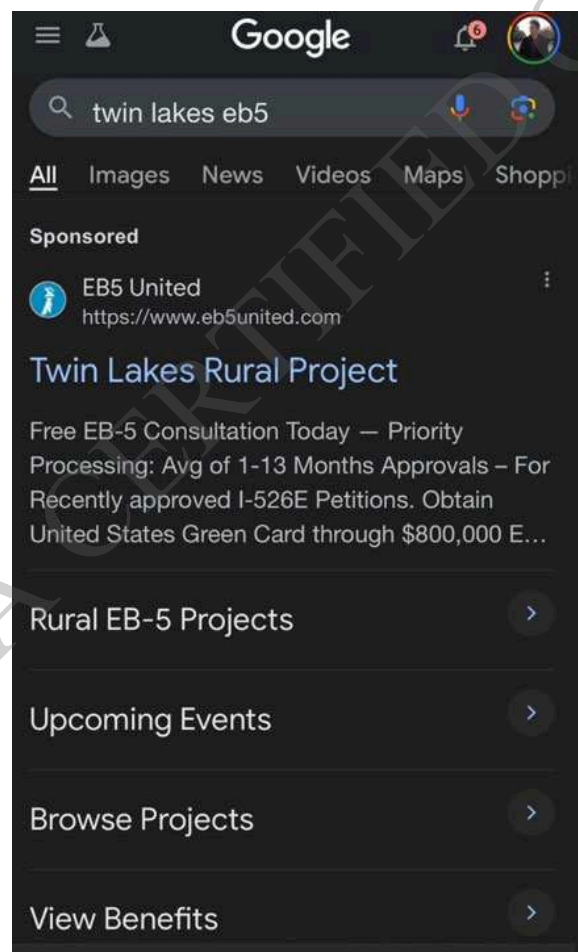
36. The Twin Lakes project received the prestigious 2023 55+ Housing Community of the Year award at the 43rd Annual OBIE Awards event.

37. The EB-5 investment opportunity offered by EB5AN for the Twin Lakes project is one of the most successful investment offerings in the history of the EB-5 immigrant investor program; EB5AN has subscribed 400+ EB-5 investors since March, 2022.

38. As a result of EB5AN's robust promotion of the Twin Lakes project EB-5 investment offering and the prominence it has achieved, investors, marketing agents, attorneys, EB-5 industry participants, and the public at large associate the name and term "Twin Lakes" exclusively with EB5AN as the manager of this highly renowned and successful EB-5 investment opportunity.

39. Counterclaim-Defendants, apparently facing internal turmoil and investor frustration over their troubled Lakefront project, turned to unlawful and unethical measures to try to improve their reputation and competitive position in the marketplace.

40. Specifically, in an attempt to capitalize off EB5AN's excellent name and the reputation of its best-in-class Twin Lakes project, Counterclaim-Defendants created the following online advertisement falsely associating themselves with EB5AN's Twin Lakes project (the "False Advertisement"):



41. Counterclaim-Defendants generated the False Advertisement by using Google Ads, an online advertising platform, to bid on keywords associated specifically and directly with EB5AN, including, "Twin Lakes," as shown above.

42. In other words, Counterclaim-Defendants paid to place the False Advertisement in Google search results to falsely advertise *themselves* as the EB-5 fund manager for the investment vehicles raising EB-5 capital for the Twin Lakes project and to falsely associate *themselves* with EB5AN, the real manager overseeing all EB-5 investment into the Twin Lakes project.

43. Counterclaim-Defendants' advertising campaign was deliberately deceptive, which is evident from the appearance of the False Advertisement they created.

44. For example, Counterclaim-Defendants placed their own name, "EB5 United," along with a link to their own website, www.eb5united.com, above "Twin Lakes Rural Project." But Counterclaim-Defendants have no such project, and none of their projects could ever reasonably be identified by that name.

45. Counterclaim-Defendants also created their False Advertisement so that "Twin Lakes Rural Project" appears above their own website menus that investors, marketing agents, and consumers would reasonably associate with EB5AN's Twin Lakes project.

46. These include menus labeled, "Rural EB-5 Projects" and "View Benefits," both of which suggest that Counterclaim-Defendants are managing the EB-5 investment for the Twin Lakes project, a rural EB-5 project, and that the benefits of the Twin Lakes project are available for viewing on Counterclaim-Defendants' commonly shared website.

47. Counterclaim-Defendants used the False Advertisement to divert investors, marketing agents, consumers, and the public at large to their own website, www.eb5united.com, a link to which appears therein, so that those lured individuals would

market, invest, or otherwise generate interest in Counterclaim-Defendants' projects instead of EB5AN's Twin Lakes project.

Damage Inflicted on EB5AN by Counterclaim-Defendants' False Advertisement

48. Counterclaim-Defendants' False Advertisement bearing EB5AN's "Twin Lakes" name and trademark is deliberately misleading and intended to cause investor, marketing agent, and consumer confusion concerning the source of the Twin Lakes project, the source of the services associated with the Twin Lakes project, and the identity of the manager of the EB-5 investment funding vehicle.

49. Counterclaim-Defendants are not authorized to promote EB5AN's Twin Lakes project or use its "Twin Lakes" mark.

50. In an effort to trade on EB5AN's excellent reputation and valuable goodwill, Counterclaim-Defendants have set out on a deliberate course of conduct to deceive consumers into believing that they or their projects or services are connected, associated, or affiliated with EB5AN.

51. Counterclaim-Defendants' publication and use of the False Advertisement enables them to trade on and receive the benefit and goodwill built up at great labor and expense over many years by EB5AN, and to gain acceptance for their business not on their own merits, but on the reputation and goodwill of EB5AN and its marks and services.

52. Counterclaim-Defendants' publication and use of the False Advertisement enables them to palm off their services on the unsuspecting public as those meeting EB5AN's quality standards.

53. Counterclaim-Defendants' publication and use of the False Advertisement removes from EB5AN the ability to control the nature and quality of services provided

under the EB5AN and “Twin Lakes” marks and places the valuable reputation and goodwill of EB5AN in the hands of Counterclaim-Defendants, over whom EB5AN has no control.

54. Each of the Counter-Defendants, all of whom share the website to which the False Advertisement linked, directly benefited from the infringing activity.

55. As a proximate result of the acts of Counterclaim-Defendants as alleged herein, EB5AN has suffered and will continue to suffer great damage to its trademarks, business, goodwill, reputation, and profits.

56. EB5AN has no adequate remedy at law for the infringement of its trademarks and for Counterclaim-Defendants’ publication and use of the False Advertisement alleged herein.

57. Unless Counterclaim-Defendants are permanently enjoined by this Court, EB5AN will continue to be damaged by their unlawful acts and will suffer irreparable harm.

58. Counterclaim-Defendants have taken steps to exacerbate the damage they have inflicted upon EB5AN.

59. In or about March 2024, Counterclaim-Defendants published a video in which Scott Fuller, speaking to the EB5 United Defendants’ “partners, attorneys, investors, and networks” falsely and maliciously accused EB5AN and its principals, Mr. Silverman and Mr. Schoenfeld, of “circulating” and “using against” them a “document that ... has now traveled the world over that contains numerous false accusations.” (the “March 2024 Video”).

60. EB5AN and its principals did no such thing.

61. The statements in the March 2024 Video were false.

62. EB5AN did not “circulate,” “use against” Counterclaim-Defendants, or otherwise publish the Lakefront Project Summary Comments and certainly never caused that document to “travel the world over.”

63. Rather, the Summary Comments is a report prepared as part of EB5AN’s corporate due diligence activities of summarizing, critiquing, backgrounding, and/or commenting upon projects undertaken by, and to keep itself abreast of, other EB-5 regional centers.

64. Scott Fuller’s statements on behalf of Counterclaim-Defendants were made with the knowledge and intent that they would reach a broad audience, including EB5AN’s customers and business relationships, and damage those relationships.

65. Duncan Fuller, on behalf of Counterclaim-Defendants, followed up his father’s smear video with the following hateful and spiteful message (the “Fuller Message”) sent to thousands of people in the EB-5 investment community, falsely accusing EB5AN of, among other things, “circulating a document knowingly full of false information to deter investors” and “unscrupulous business practices”:

EB5AN circulated a document knowingly full of false information to deter potential investors from Lakefront Estates project. EB5U was forwarded EB5AN's sheet of falsehoods, and we decided to take immediate action to protect our investors, and importantly, the integrity of the EB-5 industry. EB5U welcomes healthy competition, but we draw the line when a competitor uses unscrupulous business practices to spread falsehoods and outright lies. As such, we filed a lawsuit in order to hold EB5AN accountable for their actions. We want to reiterate that

66. The actual and potential EB-5 investment community subscribes to messaging from numerous EB-5 investment-related companies. Accordingly, when Counterclaim-Defendants deliberately circulated the March 2024 Video and the Fuller Message to thousands of members of the EB-5 investment community, it knew or should have known that the March 2024 Video and the Fuller Message would reach EB5AN's customers and business relationships.

67. Counterclaim-Defendants intended that the March 2024 Video and the Fuller Message would influence EB-5 investors and potential investors not to invest their money with EB5AN.

68. In fact, the March 2024 Video and the Fuller Statement reached a broad audience, which did in fact include EB5AN's customers and business relationships.

69. Upon information and belief, at least four investors who were prepared to invest in EB5AN projects but who then viewed the March 2024 Video and/or received the Fuller Message were unlawfully diverted away from the Twin Lakes Project. Those investors' identities will be made available to Counterclaim-Defendants other than in a

public filing. They include at least the following investors, identified here by their initials:
(i) M.G.; (ii) R.M.; (iii) R.K.K.; and (iv) P.C.R.

70. Further, at least one of EB5AN's investors, A.G., transferred funds to EB5AN's Twin Lakes Project escrow account prior to publication of the March 2024 Video. After viewing the March 2024 Video, however, A.G. divested from that investment and based on information and belief, invested instead in Counterclaim-Defendants' Yellowstone Phase III Project, through Big Sky.

Willful Nature of Counterclaim-Defendants' Wrongful Acts

71. Counterclaim-Defendants' acts of false advertising, false designation of origin, misleading advertising, unfair competition, unjust enrichment, and tortious interference with contract and with business relationships have been malicious, fraudulent, deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of EB5AN's rights.

72. Indeed, Counterclaim-Defendants were previously sued for false advertising by developer and active EB-5 investment fund manager American Life, Inc. ("ALI") in federal court in the Western District of Washington, Case No. 2:2014cv01268, in connection with one of ALI's hotel projects and are thus "repeat offenders" who willingly elected, again, to break the law, this time trading off the reputation of EB5AN.

73. In view of the egregious nature of Counterclaim-Defendants' actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

COUNT I
False Advertising (15 U.S.C. § 1125(a)(1)(B))

74. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.

75. This is an action for false advertising under the Lanham Trademark Act, 15 U.S.C. § 1125(a)(1)(B).

76. Counterclaim-Defendants created the False Advertisement and published it as early as July 2024 by utilizing Google Ads, including through use of the key words, “Twin Lakes.”

77. Counterclaim-Defendants used the False Advertisement in a commercial advertisement or promotion.

78. The False Advertisement materially deceived and is likely to deceive prospective EB-5 investors and other stakeholders in the EB-5 industry.

79. Counterclaim-Defendants used the False Advertisement in interstate commerce.

80. As a result, EB5AN incurred competitive and commercial injury.

81. The acts of Counterclaim-Defendants complained of herein constitute false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

COUNT II
False Designation of Origin (15 U.S.C. § 1125(a)(1)(A))

82. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.

83. This is an action for false designation of origin under the Lanham Trademark Act, 15 U.S.C. § 1125(a)(1)(A).

84. Counterclaim-Defendants used EB5AN's name in its False Advertisement.
85. Counterclaim-Defendants' actions caused damage to EB5AN's business and reputation.
86. Counterclaim-Defendants' actions were intentional or reckless.
87. EB5AN has the right to use its name and the name of its Twin Lakes project.
88. Counterclaim-Defendants' actions caused actual harm to EB5AN.
89. EB5AN has not condoned or allowed Counterclaim-Defendants' actions.
90. EB5AN is entitled to recover damages based on this wrongdoing.
91. The acts of Counterclaim-Defendants complained of herein constitute false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

COUNT III
Misleading Advertising (Fla. Stat. § 817.41)

92. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.
93. Counterclaim-Defendants disseminated the False Advertisement, which is a misleading advertisement violative Fla. Stat. § 817.41(1).
94. Counterclaim-Defendants' making or dissemination of the False Advertisement constitutes fraudulent and unlawful activity, designed and intended for obtaining money or property under false pretenses in violation of Fla. Stat. § 817.41(1).
95. As a result, EB5AN incurred damages.
96. Under Fla. Stat. § 817.41(6), Counterclaim-Defendants are liable to EB5AN for costs, including reasonable attorney's fees.

COUNT IV
Unfair Competition under Florida Law

97. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.

98. At all relevant times, EB5AN was the owner of the EB5AN and Twin Lakes marks.

99. The subject marks are arbitrary, suggestive, and have acquired secondary meaning.

100. Counterclaim-Defendants, through the False Advertisement, used and are using confusingly similar trade names and service mark to indicate or identify similar goods and services, which it is marketing in competition with EB5AN in the same market where EB5AN has already established its trade name and service marks.

101. As a result of Counterclaim-Defendants' actions, consumer confusion as to the source or sponsorship of EB5AN's goods is likely.

102. Consequently, EB5AN incurred damages.

COUNT V
Tortious Interference with Contract and Business Relationships

103. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.

104. EB5AN has contractual and/or advantageous business relationships with investors and prospective investors in EB-5 investments.

105. EB5AN's contractual relationships included, among others, a relationship with A.G., an investor who signed a subscription agreement and wired funds to EB5AN, but who then withdrew his investment after viewing the March 2024 Video and is believed

to have instead invested in Counterclaim-Defendants' Yellowstone Phase III Project, through Big Sky.

106. EB5AN's advantageous business relationships included relationships with M.G., R.L., R.K.K. and P.C.R., among others, all of whom had contact with EB5AN, were considering an investment in an EB-5 investment through EB5AN and were dissuaded from making an investment through EB5AN as a result of the March 2024 Video and/or the Fuller Message.

107. Counterclaim-Defendants intentionally circulated the March 2024 Video and the Fuller Message to the community of existing and potential EB-5 investors, with the knowledge and intent that it would reach the existing and potential customers and business relationships of EB5AN and influence them not to invest their funds in EB5AN investments, or to actually withdraw their commitments to invest funds with EB5AN.

108. Counterclaim-Defendants had direct contact with A.G., who had invested funds with EB5AN.

109. Counterclaim-Defendants, through the March 2024 Video, the Fuller Message, and other direct contacts, have interfered with EB5AN's contractual relationships and business relationships, by soliciting them to breach their agreements with EB5AN and/or to cease their communications with EB5AN relating to prospective investments with EB5AN.

110. Counterclaim-Defendants' willful interference has caused (and continues to cause) harm to EB5AN's contracts and relationships with its customers and potential customers and harmed EB5AN's reputation in the industry and the marketplace.

111. As a result of Counterclaim-Defendants' tortious interference, EB5AN has suffered damages in an amount to be determined at trial.

COUNT VI
Unjust Enrichment

112. EB5AN realleges the allegations set forth in paragraphs 1-73, above, as if fully set forth herein.

113. As set forth in detail above, EB5AN has long-established rights in "Twin Lakes" and has made substantial investments in establishing and promoting its project by that name.

114. Counterclaim-Defendants' use of "Twin Lakes" and wrongful association with EB5AN enabled them to trade on and receive the benefit of goodwill built up at great labor and expense over many years by EB5AN, and to gain acceptance for its business and services on the reputation and goodwill of EB5AN and its services.

115. Counterclaim-Defendants accepted and used the benefits conferred upon them by EB5AN and have been unjustly enriched at EB5AN's expense by their use of "Twin Lakes" and wrongful association with EB5AN.

116. Inequities have resulted from Counterclaim-Defendants' unauthorized use of "Twin Lakes."

117. The acts of Counterclaim-Defendants complained of herein constitute unjust enrichment at EB5AN's expense in violation of the common law of Florida.

Prayer for Relief

WHEREFORE, as to all causes of action in this Counterclaim, EB5AN demands:

- a) A Final Judgment finding that Counterclaim-Defendants have:
 - i) engaged in false advertising under 15 U.S.C. § 1125(a)(1)(B);
 - ii) engaged in false designation of origin under 15 U.S.C. § 1125(a)(1)(A);
 - iii) engaged in misleading advertising under Fla. Stat. § 817.41;
 - iv) engaged in unfair competition under Florida law;
 - v) engaged in tortious interference with business and/or contractual relationships; and
 - vi) been unjustly enriched under Florida law.
- b) A permanent injunction under 15 U.S.C. § 1116 and Florida law prohibiting and restraining Counterclaim-Defendants, their agents, servants, employees, attorneys, related companies, and all those persons in active concert or participation with them, from using or infringing “Twin Lakes” or “EB5AN,” including using any element thereof, and any other mark or designation confusingly similar thereto, whether in Google Ads, Sponsored Ads, Search Engine Optimization, metatags, or any other form of advertising, marketing, or promotion;
- c) an Order requiring Counterclaim-Defendants to file with this Court and to serve upon EB5AN, within thirty (30) days after the entry and service on Counterclaim-Defendants of an injunction, a report in writing and under oath setting forth in detail the manner and form in which they have complied with the injunction;
- d) an award of compensatory damages and special damages as a result of Counterclaim-Defendants’ false advertising, false designations of origin, misleading

advertising, unfair competition, tortious interference, and unjust enrichment, and that said damages be trebled;

- e) an award of punitive damages under Fla. Stat. § 817.41(6) and Florida law;
- f) disgorgement of Counterclaim-Defendants' profits plus actual damages to EB5AN and costs, increased by an amount equal to three times such damages because of Counterclaim-Defendants' willful violations under 15 U.S.C. § 1117(a);
- g) an Order requiring Counterclaim-Defendants to file with this Court and to serve upon EB5AN an accounting to determine Counterclaim-Defendants' profits resulting from their wrongful activities, and that such profits be paid over to EB5AN, increased as the Court finds to be just under the circumstances of this case;
- i) an Order requiring Counterclaim-Defendants to retract the March 24 Video and Fuller Message, or the contents thereof, and publish an apology to EB5AN;
- j) an award of attorneys' fees, costs, and pre- and post-judgment interest under 15 U.S.C. § 1117, Fla. Stat. § 817.41, and as otherwise permitted under the law; and
- k) such other and further relief as this Court deems just and proper.

Jury Demand

EB5AN demands a trial by jury on all issues triable of right on its Counterclaims.

JOHNSON & MARTIN, P.A.

/s/ Matthew S. Nelles

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September 2025, a true and correct copy of the foregoing was filed with the Clerk of Court, which will serve a copy on all counsel of record on the below service list.

/s/ Matthew S. Nelles
Matthew S. Nelles

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