

**CAUSE NO. 2022-70912**

**SAILAWAY INVESTMENTS, LLC,  
DAWEI LIANG and FAN ZHOU,**

*Plaintiffs,*

vs.

**JOHNNY SHI, WENJIE WANG and  
HANXIAO CHEN,**

*Defendants.*

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**55<sup>TH</sup> JUDICIAL DISTRICT**

**PLAINTIFFS/COUNTER-DEFENDANTS' SPECIAL EXCEPTIONS, ORIGINAL  
ANSWER, AFFIRMATIVE DEFENSES, AND DEFENSES TO  
DEFENDANTS/COUNTER-PLAINTIFFS' ORIGINAL COUNTERCLAIMS**

NOW COME Plaintiffs/Counter-Defendants SAILAWAY INVESTMENTS, LLC (“Sailaway”), DAWEI LIANG (“Liang”) and FAN ZHOU (“Zhou”)(collectively, “Counter-Defendants”), who hereby file their exceptions, answer and defenses to Defendants/Counter-Plaintiffs’ counterclaims and would respectfully show unto the Court the following:

**I.  
SPECIAL EXCEPTIONS**

1. Tex. R. Civ. P. 45 and 47 require pleadings to give “fair and adequate notice” of each claim asserted so that the opposing party will have information sufficient to enable him to prepare a defense. *Paramount Pipe & Sup. Co. v. Muhr*, 749 S.W.2d 491, 494-95 (Tex. 1988); *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982); *Murray v. O&A Express, Inc.*, 630 S.W.2d 633, 636 (Tex. 1982). Counter-Defendants file these special exceptions pursuant to Rule 91 of the Texas Rules of Civil Procedure and, in support thereof, respectfully ask this Honorable Court order Counter-Plaintiffs to re-plead and cure the following inadequate pleadings, or dismiss the case with prejudice in the event such pleadings are not amended:

a. Counter-Defendants specifically except to Paragraphs 30 through 39 of Counter-Plaintiffs' original Counterclaim for failure to specifically identify the Counter-Plaintiff(s) asserting each claim and the Counter-Defendants(s) against whom such claim is asserted. Such pleadings do not give Counter-Defendants adequate notice of the legal or factual elements of Counter-Plaintiffs' causes of action and Counter-Plaintiffs should be ordered to re-plead same.

2. Counter-Defendants specially except to the Counterclaim as a whole because Counter-Plaintiff's allegations fail to set forth the maximum amount sought in dollars and cents from Counter-Defendants. Counter-Defendants request, pursuant to TRCP Rule 47(c), that Counter-Plaintiffs be required to re-plead and specify the maximum amount of damages claimed. A party that fails to comply with said rule is prohibited from conducting any discovery until the party's pleading is amended to comply.

## **II.** **GENERAL DENIAL**

3. Subject to such stipulations and admissions as may hereafter be made, Counter-Defendants assert a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure and generally deny each and every, all and singular, allegations in Counter-Plaintiffs' original Counterclaim and demand strict proof thereof. Counter-Defendants respectfully request that Counter-Plaintiffs be required to prove the charges and allegations against each of them by a preponderance of the evidence, as is required by the laws of the State of Texas.

## **III.** **AFFIRMATIVE DEFENSES AND DEFENSES**

4. Counter-Plaintiffs' claim for declaratory relief and associated attorney fees is barred for want of a justiciable controversy between the parties because the claims for declaratory

relief can be resolved in the context of Counter-Plaintiffs and Counter-Defendants' respective breach of contract actions. The Declaratory Judgment Act is not available to settle disputes already pending before the court." *Nat'l Enter., Inc. v. E.N.E. Props.*, 167 S.W.3d 39, 43 (Tex. App.—Waco 2005, no pet.). There is no basis for declaratory relief if the party seeking such relief is already seeking a different, enforceable remedy, and a judicial declaration would add nothing to what would be implicit or express in a final judgment for the enforceable remedy already being sought. *Durham Transp. Co. v. Beettner*, 201 S.W.3d 859, 873 (Tex. App.—Waco 2006, pet. denied) (quoting *Strayhorn v. Raytheon E-Sys., Inc.*, 101 S.W.3d 558, 572 (Tex. App.—Austin 2003, pet. denied)).

5. Additionally or in the alternative, Counter-Plaintiffs' claim for declaratory relief is barred by their prior material breaches of the parties' agreement, as set forth in Counter-Defendants' first amended petition filed with this Court.

6. Counter-Plaintiffs' claims for breach of contract are barred by ratification.

7. Counter-Plaintiffs' claims for breach of contract are barred by waiver and/or release of any duty allegedly owed to Counter-Plaintiffs and/or estoppel.

8. Additionally or in the alternative, Counter-Plaintiffs have suffered no compensable damage or injury or, in the alternative, the actions and omissions of the Counter-Plaintiffs, their agent(s), representative(s), and consultant(s) and/or other various third parties were the sole proximate cause of the alleged injuries and damages, if any, allegedly sustained by Counter-Plaintiffs.

9. Additionally and/or in the alternative, Counter-Plaintiffs have been unjustly enriched by Counter-Defendants' investment.

10. Additionally and/or in the alternative, Counter-Defendants assert the defense of money had and received.

11. Additionally and/or in the alternative, Counter-Defendants assert the affirmative defense of the right to an offset.

12. Additionally and/or in the alternative, Counter-Defendants are not responsible for any loss caused by Counter-Plaintiffs' own negligence, failure to perform, intentional misconduct, or other act or omission.

13. Counter-Plaintiffs cannot prove that Counter-Defendants imprisoned the Counter-Plaintiff(s); that Counter-Defendants intended to confine the Counter-Plaintiff(s); and/or that the alleged false imprisonment proximately caused any injury whatsoever to Counter-Plaintiff(s).

14. In the alternative, Counter-Plaintiffs' pleaded allegations show that Counter-Plaintiffs consented to any alleged confinement.

15. Counter-Plaintiffs' claim for intentional infliction of emotional distress is barred because the claims can be resolved in the context of Counter-Plaintiffs' false imprisonment cause of action, whereby the alleged victim has another recognized theory of redress.

16. Additionally and/or in the alternative, Counter-Plaintiffs' claims are barred by the doctrines of unclean hands.

17. Additionally and/or in the alternative, Counter-Plaintiffs' claims are barred by their own fraud.

18. Additionally and/or in the alternative, the parties lacked a meeting of the minds regarding essential terms of the agreement.

19. Additionally and/or in the alternative, Counter-Defendants assert proportionate responsibility.

20. Counter-Plaintiffs have failed to take adequate steps to mitigate their alleged damages, if any.

21. Counter-Plaintiffs are not entitled to attorney's fees.

Counter-Defendant reserves the right to amend and/or supplement these affirmative defenses and defenses pursuant to the Texas Rules of Civil Procedure.

#### IV.

#### **PRAYER**

The above answer is respectfully submitted to the Court by Counter-Defendants and, upon final hearing of this matter, Counter-Defendants pray that Counter-Plaintiffs take nothing; that Counter-Defendants be allowed to recover the costs and reasonable attorney fees that have been incurred by reason of the charges and allegations of Counter-Plaintiffs against Counter-Defendants; that the Court enter a judgment declaring the rights of the parties in favor of Counter-Defendants; and that the Court grant Counter-Defendants such other and further relief in law and in equity to which Counter-Defendants may show themselves to be justly entitled.

Respectfully submitted,

**MOSAIC Paradigm Law Group PC**

*/s/ Henna Ghafoor* \_\_\_\_\_

Henna Ghafoor

State Bar No. 24079867

E-mail: hghafoor@mp-lg.com

10370 Richmond Avenue, Suite 850

Houston, Texas 77042

Phone: (281) 805-7169

Fax: (281) 805-7172

***Counsel for Plaintiffs/Counter-Defendants,  
Sailaway Investments, LLC, Dawei Liang  
and Fan Zhou***

**CERTIFICATE OF SERVICE**

I hereby certify that, on December 28, 2022, a true and correct copy of the above and foregoing was served upon all parties and/or counsel of record in accordance with TRCP Rules 21 and 21a.

*/s/Henna Ghafoor* \_\_\_\_\_  
Henna Ghafoor

### Automated Certificate of eService

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Melissa Samples on behalf of Henna Ghafoor  
Bar No. 24079867  
msamples@mp-lg.com  
Envelope ID: 71327211  
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#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Henna Ghafoor		hghafoor@mp-lg.com	12/28/2022 1:18:23 PM	SENT
Melissa Samples		msamples@mp-lg.com	12/28/2022 1:18:23 PM	SENT
Melissa Samples		service@mp-lg.com	12/28/2022 1:18:23 PM	SENT