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12 Attorneys for Defendants

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 CHINATRUST BANK (U.S.A.), ) Case No. CV-10-5524 HRL  
16 )  
Plaintiff, )  
17 ) **DEFENDANTS' ANSWER TO**  
v. ) **COMPLAINT**  
18 )  
ACLOR, INC., CHICHENG GUNG aka )  
19 CURTIS GUNG, HULIAN CHEN aka HUI )  
LAN CHAN aka JENNIFER CHEN, ACLOR )  
20 SERVICIOS OPERATIVOS, and DOES 1 )  
through 60, inclusive, )  
21 Defendants. )  
\_\_\_\_\_ )

22  
23  
24  
25 CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
DEFENDANTS' ANSWER TO COMPLAINT

1 Defendants Aclor, Inc. (“Aclor-US”), Chicheng Gung aka Curtis Gung (“Curtis Gung”),  
2 Hulian Chen aka Hui Lan Chen aka Jennifer Chen (“Jennifer Chen”), and Aclor Servicios  
3 Operativos (“Aclor-Mexico”) (collectively, “Defendants”) hereby answer the Verified Complaint  
4 for Money (the “Complaint”) filed by Plaintiff Chinatrust Bank (U.S.A.) (“Chinatrust” or  
5 “Plaintiff”) by admitting, denying and asserting the matters set forth below.

6 1. In response to paragraph 1 of the Complaint, Defendants are without knowledge  
7 or information sufficient to form a belief as to whether Plaintiff is now a banking corporation  
8 organized and existing under and by virtue of the laws of the State of California, and at all times  
9 mentioned in the Complaint, was duly licensed to conduct business in the State of California, and  
10 therefore such allegations are denied. Defendants deny the remaining allegations of paragraph 1.  
11

12 2. Defendants are without knowledge or information sufficient to form a belief as to  
13 the truth or falsity of the allegations contained in paragraph 2, and therefore such allegations are  
14 denied.

15 3. Defendants deny the allegations contained in paragraph 3 of the Complaint.

16 4. In response to paragraph 4 of the Complaint, Defendants admit that the Courts of  
17 Santa Clara County are a permissible, though non-exclusive, venue pursuant to the contracts  
18 sued upon. Defendants deny the remaining allegations of paragraph 4.  
19

20 5. Defendants deny the allegations contained in paragraph 5 of the Complaint.

21 6. Defendants admit the allegations contained in paragraph 6 of the Complaint.

22 7. Defendants admit the allegations contained in paragraph 7 of the Complaint.

23 8. Defendants admit the allegations contained in paragraph 8 of the Complaint.  
24

25 CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
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1           9.       In response to paragraph 9 of the Complaint, Defendants admit that Aclor-Mexico  
2 maintains its principal place of business in Mexico. Defendants deny the remaining allegations  
3 of paragraph 9.

4           10.       In response to paragraph 10 of the Complaint, Defendants incorporate by  
5 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

6           11.       Defendants admit the allegations contained in paragraph 11 of the Complaint.

7           12.       Defendants admit the allegations contained in paragraph 12 of the Complaint.

8           13.       Defendants admit the allegations contained in the first two sentences of paragraph  
9 13 of the Complaint. Defendants are without knowledge or information sufficient to form a  
10 belief as to the truth or falsity of the remaining allegations contained in paragraph 13, and  
11 therefore such allegations are denied.  
12

13          14.       Defendants admit the allegations contained in paragraph 14 of the Complaint.

14          15.       In response to paragraph 15 of the Complaint, Defendants admit the terms of the  
15 First Note speak for themselves.

16          16.       In response to paragraph 16 of the Complaint, Defendants admit that Plaintiff has  
17 made demand for payment of the sums due and owing under the terms of the First Note, as  
18 modified. Defendants deny the remaining allegations of paragraph 16.

19          17.       Defendants deny the allegations contained in paragraph 17 of the Complaint.

20          18.       Defendants admit the allegations contained in paragraph 18 of the Complaint.

21          19.       Defendants deny the allegations contained in paragraph 19 of the Complaint.

22          20.       In response to paragraph 20 of the Complaint, Defendants incorporate by  
23 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.  
24

25                           CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
  DEFENDANTS' ANSWER TO COMPLAINT

1           21.     In response to paragraph 21 of the Complaint, Defendants admit Aclor-US  
2 became indebted to Plaintiff in the principal sum of \$1,833,332.00. Defendants deny the  
3 remaining allegations contained in paragraph 21 of the Complaint.

4           22.     Defendants deny the allegations contained in paragraph 22 of the Complaint.

5           23.     Defendants deny the allegations contained in paragraph 23 of the Complaint.

6           24.     In response to paragraph 24 of the Complaint, Defendants incorporate by  
7 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.  
8

9           25.     In response to paragraph 25 of the Complaint, Defendants admit Aclor-US  
10 became indebted to Plaintiff in the principal sum of \$1,833,332.00. Defendants deny the  
11 remaining allegations contained in paragraph 25 of the Complaint.

12          26.     Defendants deny the allegations contained in paragraph 26 of the Complaint.

13          27.     In response to paragraph 27 of the Complaint, Defendants incorporate by  
14 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

15          28.     In response to paragraph 28 of the Complaint, Defendants admit the terms of the  
16 First Loan Documents speak for themselves.

17          29.     In response to paragraph 29 of the Complaint, Defendants admit that Plaintiff  
18 purports to demand of the Possession Defendants that they deliver possession of the Collateral to  
19 Plaintiff. Defendants deny the remaining allegations of paragraph 29.  
20

21          30.     Defendants are without knowledge or information sufficient to form a belief as to  
22 the truth or falsity of the allegations contained in paragraph 30, and therefore such allegations are  
23 denied.

24          31.     Defendants admit the allegations contained in paragraph 31 of the Complaint.

25  
                  CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
                  DEFENDANTS' ANSWER TO COMPLAINT

1 32. Defendants deny the allegations contained in paragraph 32 of the Complaint.

2 33. In response to paragraph 33 of the Complaint, Defendants incorporate by  
3 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

4 34. Defendants admit the allegations contained in paragraph 34 of the Complaint.

5 35. Defendants admit the allegations contained in paragraph 35 of the Complaint.

6 36. Defendants admit the allegations contained in paragraph 36 of the Complaint.

7 37. Defendants admit the allegations contained in paragraph 37 of the Complaint.

8 38. In response to paragraph 38 of the Complaint, Defendants admit Aclor-US  
9 executed and delivered to Plaintiff a written Change in Terms Agreement, that a true copy is  
10 attached as Exhibit "10" to the Complaint, and that the terms of the agreement speak for  
11 themselves. Defendants deny the remaining allegations contained in paragraph 38 of the  
12 Complaint.  
13

14 39. Defendants admit the allegations contained in paragraph 39 of the Complaint.  
15 In response to paragraph 40 of the Complaint, Defendants admit the terms of the Second Note  
16 speak for themselves.

17 41. In response to paragraph 41 of the Complaint, Defendants admit the terms of the  
18 Second Note speak for themselves and that Plaintiff made demand upon Aclor-US for payment  
19 of the sums purportedly due and owing under the note. Defendants deny the remaining  
20 allegations contained in paragraph 41 of the Complaint.  
21

22 42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

23 43. Defendants admit the allegations contained in paragraph 43 of the Complaint.

24 44. Defendants deny the allegations contained in paragraph 44 of the Complaint.

25 CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
DEFENDANTS' ANSWER TO COMPLAINT

1           45.     In response to paragraph 45 of the Complaint, Defendants incorporate by  
2 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

3           46.     In response to paragraph 46 of the Complaint, Defendants admit Aclor-US  
4 became indebted to Plaintiff in the principal sum of \$2,000,000.00. Defendants deny the  
5 remaining allegations contained in paragraph 46 of the Complaint.

6           47.     Defendants deny the allegations contained in paragraph 47 of the Complaint.

7           48.     Defendants deny the allegations contained in paragraph 48 of the Complaint.

8           49.     In response to paragraph 49 of the Complaint, Defendants incorporate by  
9 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.  
10

11           50.     In response to paragraph 50 of the Complaint, Defendants admit Aclor-US  
12 became indebted to Plaintiff in the principal sum of \$2,000,000.00. Defendants deny the  
13 remaining allegations contained in paragraph 50 of the Complaint.

14           51.     Defendants deny the allegations contained in paragraph 51 of the Complaint.

15           52.     In response to paragraph 52 of the Complaint, Defendants incorporate by  
16 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

17           53.     In response to paragraph 53 of the Complaint, Defendants admit that on or about  
18 September 30, 2009, January 5, 2010 and February 28, 2010, Curtis Gung executed Commercial  
19 Guaranties, that true copies of such guaranties are attached collectively as Exhibit "12" to the  
20 Complaint, and that the terms of the guaranties speak for themselves. Defendants deny the  
21 remaining allegations contained in paragraph 53 of the Complaint.  
22

23           54.     In response to paragraph 54 of the Complaint, Defendants admit the terms of the  
24 guaranties signed by Curtis Gung speak for themselves. Defendants deny the remaining  
25

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1 allegations contained in paragraph 54 of the Complaint.

2 55. Defendants deny the allegations contained in paragraph 55 of the Complaint.

3 56. In response to paragraph 56 of the Complaint, Defendants admit Plaintiff made  
4 demand for payment of the sums purportedly due and owing under the guarantees. Defendants  
5 deny the remaining allegations contained in paragraph 56 of the Complaint.

6 57. Defendants deny the allegations contained in paragraph 57 of the Complaint.

7 58. Defendants admit the allegations contained in paragraph 58 of the Complaint.

8 59. Defendants deny the allegations contained in paragraph 59 of the Complaint.

9 60. In response to paragraph 60 of the Complaint, Defendants incorporate by  
10 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.  
11

12 61. In response to paragraph 61 of the Complaint, Defendants admit Aclor-US  
13 became indebted to Plaintiff in the principal sum of \$3,833,332.00. Defendants deny the  
14 remaining allegations contained in paragraph 61 of the Complaint.

15 62. Defendants deny the allegations contained in paragraph 62 of the Complaint.

16 63. In response to paragraph 63 of the Complaint, Defendants incorporate by  
17 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

18 64. In response to paragraph 64 of the Complaint, Defendants admit that on or about  
19 September 30, 2009, January 5, 2010 and February 28, 2010, Jennifer Chen executed  
20 Commercial Guaranties, that true copies of such guaranties are attached collectively as Exhibit  
21 “13” to the Complaint, and that the terms of the guaranties speak for themselves. Defendants  
22 deny the remaining allegations contained in paragraph 64 of the Complaint.  
23

24  
25 CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
DEFENDANTS' ANSWER TO COMPLAINT

1           65.     In response to paragraph 65 of the Complaint, Defendants admit the terms of the  
2 guaranties signed by Jennifer Chen speak for themselves. Defendants deny the remaining  
3 allegations contained in paragraph 65 of the Complaint.

4           66.     Defendants deny the allegations contained in paragraph 66 of the Complaint.

5           67.     In response to paragraph 67 of the Complaint, Defendants admit Plaintiff made  
6 demand for payment of the sums purportedly due and owing under the guarantees. Defendants  
7 deny the remaining allegations contained in paragraph 67 of the Complaint

8           68.     Defendants deny the allegations contained in paragraph 68 of the Complaint.

9           69.     Defendants admit the allegations contained in paragraph 69 of the Complaint.

10          70.     Defendants deny the allegations contained in paragraph 70 of the Complaint.

11          71.     In response to paragraph 71 of the Complaint, Defendants incorporate by  
12 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

13          72.     In response to paragraph 72 of the Complaint, Defendants admit Aclor-US  
14 became indebted to Plaintiff in the principal sum of \$3,833,332.00. Defendants deny the  
15 remaining allegations contained in paragraph 72 of the Complaint.

16          73.     Defendants deny the allegations contained in paragraph 73 of the Complaint.

17          74.     In response to paragraph 74 of the Complaint, Defendants incorporate by  
18 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

19          75.     In response to paragraph 75 of the Complaint, Defendants admit that on or about  
20 September 30, 2009, January 5, 2010 and February 28, 2010, Aclor-Mexico executed  
21 Commercial Guaranties, that true copies of such guaranties are attached collectively as Exhibit  
22 “14” to the Complaint, and that the terms of the guaranties speak for themselves. Defendants  
23  
24

25                           CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
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1 deny the remaining allegations contained in paragraph 75 of the Complaint.

2 76. Defendants deny the allegations contained in paragraph 76 of the Complaint.

3 77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

4 78. In response to paragraph 78 of the Complaint, Defendants admit Plaintiff made  
5 demand for payment of the sums purportedly due and owing under the guarantees. Defendants  
6 deny the remaining allegations contained in paragraph 78 of the Complaint

7 79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

8 80. Defendants admit the allegations contained in paragraph 80 of the Complaint.

9 81. Defendants deny the allegations contained in paragraph 81 of the Complaint.

10 82. In response to paragraph 82 of the Complaint, Defendants incorporate by  
11 reference their responses to the preceding paragraphs of this Answer as if fully rewritten.

12 83. In response to paragraph 83 of the Complaint, Defendants admit Aclor-US  
13 became indebted to Plaintiff in the principal sum of \$3,833,332.00. Defendants deny the  
14 remaining allegations contained in paragraph 83 of the Complaint.

15 84. Defendants deny the allegations contained in paragraph 84 of the Complaint.

16 Defendants deny that Plaintiff is entitled to the relief sought on any and all causes of action in the  
17 Complaint.  
18

19 **AFFIRMATIVE DEFENSES**

20 Defendants plead the following affirmative defenses to the Complaint:

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff is barred from asserting all or part of the asserted claims set forth in the  
23 Complaint under the legal and equitable doctrines of waiver and estoppel.  
24

25 CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
DEFENDANTS' ANSWER TO COMPLAINT

**SECOND AFFIRMATIVE DEFENSE**

1  
2 Plaintiff is barred from asserting all or part of the asserted claims set forth in the  
3 Complaint by a failure to mitigate damages.

**THIRD AFFIRMATIVE DEFENSE**

4  
5 Plaintiff is barred from asserting all or part of the asserted claims set forth in the  
6 Complaint by the failure of a condition precedent.

**FOURTH AFFIRMATIVE DEFENSE**

7  
8 Plaintiff is barred from asserting all or part of the asserted claims set forth in the  
9 Complaint by its own prior breach of the Agreement.

10  
11 In addition to the foregoing affirmative defenses, Defendants reserve the right to plead any  
12 additional affirmative defenses which are uncovered throughout the course of this litigation.

13 WHEREFORE, Defendants Aclor, Inc., Chicheng Gung aka Curtis Gung, Hulian Chen aka Hui  
14 Lan Chen aka Jennifer Chen, and Aclor Servicios Operativos pray for judgment as follows:

- 15 1. That Plaintiff take nothing by its Complaint;
- 16 2. For costs and attorneys' fees incurred in this action; and
- 17 3. For such other and further relief, at law or in equity, as the Court may deem just and  
18 proper.

19 //  
20 //  
21 //  
22 //

Respectfully submitted,

DATED: December 13, 2010

SIMMONDS & NARITA LLP  
JEFFREY A. TOPOR

MILLER, EGAN, MOLTER & NELSON LLP  
MARGARITA COALE  
MATTHEW D. RINALDI

By: s/Jeffrey A. Topor  
Jeffrey A. Topor  
Attorney for Defendants

CHINA TRUST BANK (U.S.A.) V. ACLOR, INC. ET AL.  
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