UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. – MIAMI

CASE NO. 16-21301 Cr-Gayles

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.
_______________________________________/

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S EMERGENCY MOTION AND MEMORANDUM OF LAW FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, AND OTHER RELIEF

I. INTRODUCTION

This is an emergency action the Commission is bringing to stop an ongoing, massive eight-year fraudulent scheme in which the Miami owner and the chief executive of a Vermont

ski resort have systematically looted at least $50 million of the more than $350 million the Defendants have raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program. The fraudulent scheme spans seven limited partnership securities offerings all connected to Jay Peak, Inc., a Vermont ski resort that is wholly owned by Miami-based Q Resorts, Inc., which in turn is owned by Miami businessman Ariel Quiros. Quiros and William Stenger, the president and CEO of Jay Peak, are primarily responsible for the fraudulent scheme.

Among other things, Quiros, Stenger, and the companies they run that have overseen the development and construction of the Jay Peak resort have misused more than $200 million – more than half of all money raised from investors. Quiros orchestrated and Stenger facilitated an intricate web of transfers between the various Defendants and Relief Defendants to disguise the fact that the majority of the seven projects were either over budget or experiencing shortfalls. These shortfalls were due in large part to Quiros pilfering tens of millions of dollars of investor money for his own use.

Since 2008, Quiros has misappropriated more than $50 million in investor money to, among other things: (1) finance his purchase of the Jay Peak resort; (2) back a personal line of credit to pay his income taxes; (3) purchase a luxury condominium; (4) pay taxes of a company he owns; and (5) buy an unrelated resort. He improperly used additional investor funds to pay down and pay off margin loans, including paying nearly $2.5 million of margin interest, he set up in the name of the Defendant companies through the Coral Gables office of a brokerage firm.

The EB-5 investment program gives foreign investors the chance to earn permanent residence in the United States through investing in U.S. projects that create a certain number of jobs. Quiros, Stenger, and the other Defendants made and continue to make numerous misrepresentations and material omissions to these foreign investors. Among them are telling investors the Defendants will only use investor money to finance the specific project to which each investor contributes. The Defendants have further assured investors that Stenger, the *de facto* general partner for the first six projects, had control of investor funds. In reality, Stenger extremely recklessly has ceded control of investor funds to Quiros. He has done almost nothing to manage investor money, even when confronted with red flags of Quiros' misuse.

The first six projects for which the Defendants raised money are all part of a ski resort and accompanying facilities located near Jay, Vermont. The most recent project, for which the

Defendants continue to raise money from unwitting investors, purports to be for a nearby $110 million biomedical research center that the Defendants have operated as nearly a complete fraud. The offering documents the Defendants are providing to investors in that project are rife with material misstatements and omissions. These include bogus claims that the Defendants are in the process of obtaining Food and Drug Administration approval for the research center's products. In reality, the Defendants have not undertaken the necessary steps to begin the lengthy and cumbersome process of getting FDA approval. Further exacerbating their misstatements, the Defendants have baselessly projected hundreds of millions of dollars in revenue from the research center – projections based on FDA approval they have done virtually nothing to obtain and on developing products at facilities that are nowhere close to being built.

As a result, although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site preparation and ground-breaking, and are years behind their original construction and revenue schedule. Quiros has secretly used most of the money raised for the research facility's construction to pay off and pay down a margin loan and to misappropriate approximately $30 million for his own use. As a consequence of the Defendants' systematic misuse of investor funds from the various Jay Peak projects, there is little money left in any of the research facility's accounts to pay for its construction. Similarly the sixth project, part of the ski resort, is nowhere near completion and out of money. Investors in both projects, who contributed $500,000 each, are in grave danger of losing their investments and having their immigration petitions denied.

The Defendants apparently are hoping to fund remaining construction of the sixth and seventh projects by siphoning anticipated profits from the ski resort – which properly belong to earlier investors – and through ongoing efforts to raise money from new investors. This includes seeking investors in the biomedical research facility, in an eighth EB-5 offering at the nearby Q Burke Mountain Resort, and in still additional EB-5 projects Quiros is attempting to start. The Defendants continue to travel to Asia and South America, among other overseas destinations, to attempt to raise funds.

Through their conduct, the Defendants have each violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"). In addition, Quiros violated Section 20(a) of the Exchange Act and he and Q Resorts aided and abetted violations of Section 10(b) and Rule 10b-5(b) of the

Exchange Act. The Commission brings this motion to seek the specific emergency relief set forth in Section XII below, including temporary restraining orders and asset freezes against certain Defendants and Relief Defendants. Simultaneously, we are bringing a separate motion seeking appointment of a Receiver to further protect investors.

II. DEFENDANTS AND RELIEF DEFENDANTS

A. Defendants

Jay Peak is a Vermont corporation with its principal place of business in Jay, Vermont. *Ex. 1, Jay Peak Vermont Corporate Filing.* Jay Peak operates the Jay Peak Resort in Jay, Vermont, which encompasses the first six projects for which the Defendants raised money. *Ex. 2, Stateside Phase VI Private Placement Memorandum ("PPM"), at, e.g., JPI 4530, 4543-44.* Jay Peak, in conjunction with others, has served as the manager or developer of the projects. *Id.*; *Ex. 3, Suites Phase I PPM, at JPI 1587 and 1597; Ex. 4, Hotel Phase II PPM, at JPI 1776; Ex. 5, Penthouse Phase III PPM, at JPI 1977-1979 and 2046; Ex. 6; Golf and Mountain Phase IV PPM, at JPI 30623 and 30689; Ex. 7, Lodge and Townhouses Phase V PPM, at Pages 13, 31, 81, and 86 of 310.*

Q Resorts is a Delaware corporation with its offices in Miami, Florida. *Ex. 8, Q Resorts Delaware Corporate Filing; Ex. 9, Q Resorts Vermont Corporate Filing.* Q Resorts is the 100 percent owner of Jay Peak, and Quiros is the sole owner, officer and director of Q Resorts. *Ex. 10, Quiros Testimony, Vol. I at 70 L.14 to 71 L.3; Ex. 9.* Q Resorts acquired Jay Peak from a Canadian firm in 2008, and Quiros has since overseen the various Jay Peak projects through Q Resorts. *Ex. 11, Lama Dec. at ¶9 and Ex. A; Ex. 10 at Ex. 10 at 53 L.9 to 55 L.2, 57 L.20 to 59 L.15, 60 L.16 to 61 L.1, 70 L.14 to 73 L.21, 108 L.12 to 109 L.21, 128 L.9-23, and 70 L.14 to 71 L.3; Ex. 65, Carpenter Declaration, at ¶¶6-8 and 15; Ex. 86, Nov. 11, 2013 email from Kelly to Quiros; Ex. 87, Dec. 3, 2015 email from Quiros to Kelly; Ex. 88, Composite emails between Kelly and Quiros.*

Quiros, 58, resides in Key Biscayne, Florida. *Ex. 12, Quiros Background Questionnaire, at ¶8.* In addition to being the sole owner, officer and director of Q Resorts, he is chairman of Jay Peak. *Ex. 10 at 70 L.14 to 71 L.3; Ex. 30, Dee Declaration, at Ex. TT at RJA-Quiros-3306-07.* Through those two companies, Quiros controlled each of the Defendant general and limited partnerships. *Ex. 10 at 53 L.9 to 55 L.2, 57 L.20 to 59 L.15, 60 L.16 to 61 L.1, 70 L.14 to 73 L.21, 108 L.12 to 109 L.21, and 128 L.9-23.* He is a principal of the general partner of the Jay

Peak Biomedical limited partnership offering, which is the seventh and most recent project offering. *Ex. 13, Quiros Testimony Vol. II, at 268 L.18-20.* Between February and April 2011, Quiros served on the board of directors of Bioheart, Inc., a publicly-traded company. *Ex. 82, Feb. 9, 2011 8-K for Bioheart; Ex. 83, April 18, 2011 8-K for Bioheart.*

Stenger, 66, resides in Newport, Vermont. *Ex. 14, Stenger Background Questionnaire, at 2.* Stenger is the Director, President, and CEO of Jay Peak. *Ex. 1; Ex. 32, Stenger Testimony Vol. I, at 18 L.2-4.* He is the president and director of the general partner of the first Jay Peak project offering, and is the sole officer or director of the general partner of the second through sixth offerings. *Ex. 15, Jay Peak Management Vermont Corporate Filing; Ex. 16 Jay Peak GP Services Vermont Corporate Filing; Ex. 17; Jay Peak GP Services Golf Vermont Corporate Filing; Ex. 18, Jay Peak GP Services Lodge Vermont Corporate Filing; Ex. 19, Jay Peak GP Services Stateside Vermont Corporate Filing.* All six offerings were set up as limited partnerships. *Exs. 15-19.* Stenger is, along with Quiros, a principal in the Jay Peak Biomedical general partner. *Ex. 20, Stenger Testimony Vol. II, at 410 L.7-15.*

Jay Peak Hotel Suites L.P. ("Suites Phase I") is a Vermont limited partnership with its principal place of business in Jay, Vermont. *Ex. 21, Suites Phase I Vermont Corporate Filing.* Between December 2006 and May 2008, Suites Phase I raised $17.5 million from 35 investors through an EB-5 offering of limited partnership interests to build a hotel. *Ex. 3 at JPI 1517; Ex. 22, Pieciak Declaration, at ¶6.* The hotel is completed and operating. *Ex. 20 at 280 L.20-22.*

Jay Peak Hotel Suites Phase II L.P. ("Hotel Phase II") is a Vermont limited partnership with its principal place of business in Jay, Vermont. *Ex. 23, Hotel Phase II Vermont Corporate Filing.* Between March 2008 and January 2011, Hotel Phase II raised $75 million from 150 investors through an EB-5 offering of limited partnership interests to build a hotel, an indoor water park, an ice rink, and a golf club house. *Ex. 22 at ¶6; Ex. 4 at JPI 1718-19 and 1730.* Construction on all is complete and they are operating. *Ex. 20 at 285 L.11-17.*

Jay Peak Management, Inc. is a Vermont corporation which is the general partner of Suites Phase I and Hotel Phase II. *Exs.21 and 23; Ex. 24, Jay Peak Management Vermont Corporate Filing.* It is also a wholly-owned subsidiary of Jay Peak. *Ex. 3 at JPI 1528.* Stenger is the company's president. *Ex. 24.*

Jay Peak Penthouse Suites L.P. ("Penthouse Phase III") is a Vermont limited partnership with its principal place of business in Jay, Vermont. *Ex. 25, Penthouse Phase III*

Vermont Corporate Filing. Between July 2010 and October 2012, Penthouse Phase III raised $32.5 million from 65 investors through an EB-5 offering of limited partnership interests to build a 55-unit "penthouse suites" hotel and an activities center, including a bar and restaurant. *Ex. 22 at ¶6; Ex. 5 at JPI 1977 and 1989-1990.* Construction is complete and the facilities are operating. *Ex. 20 at 314 L.22 to 315 L.1.*

Jay Peak GP Services, Inc. is a Vermont corporation and the general partner of Penthouse Phase III. *Ex. 16.* Stenger, listed as the director, is its only principal. *Id.*

Jay Peak Golf and Mountain Suites L.P. ("Golf and Mountain Phase IV") is a Vermont limited partnership with its principal place of business in Jay, Vermont. *Ex. 26, Golf and Mountain Phase IV Vermont Corporate Filing.* Between December 2010 and November 2011, Golf and Mountain Phase IV raised $45 million from 90 investors through an EB-5 offering of limited partnership interests to build "golf cottage" duplexes, a wedding chapel, and other facilities. *Ex. 22 at ¶6; Ex. 6 at JPI 30621 and 30633-34.* Construction is complete, and the facilities are operating. *Ex. 20 at 329 L.24 to 330 L. 7.*

Jay Peak GP Services Golf, Inc. is a Vermont corporation and the general partner of Golf and Mountain Phase IV. *Ex. 17.* Stenger, listed as the director, is its only principal. *Id.*

Jay Peak Lodge and Townhouses L.P. ("Lodge and Townhouses Phase V") is a Vermont limited partnership with its principal place of business in Jay Vermont. *Ex. 27, Lodge and Townhouses Phase V Vermont Corporate Filing.* Between May 2011 and November 2012, Lodge and Townhouses Phase V raised $45 million from 90 investors through an EB-5 offering of limited partnership interests to build 30 vacation rental townhouses, 90 vacation rental cottages, a café, and a parking garage. *Ex. 22 at ¶6; Ex.7 at 11 and 22-24 of 310.* Construction is complete and the facilities are operating. *Ex. 20 at 337 L.11 to 338 L.3.*

Jay Peak GP Services Lodge, Inc. is a Vermont corporation and the general partner of Lodge and Townhouses Phase V. *Ex. 18.* Stenger, listed as the director, is its only principal. *Id.*

Jay Peak Hotel Suites Stateside L.P. ("Stateside Phase VI") is a Vermont limited partnership with its principal place of business in Jay, Vermont. *Ex. 28, Stateside Phase VI Vermont Corporate Filing.* Between October 2011 and December 2012, Stateside Phase VI raised $67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. *Ex. 22 at ¶¶6 and 14.* Although the Stateside Phase VI offering was fully subscribed, the

Defendants have only built the hotel. *Id.* at ¶*19.* A small amount of work has been done on building the cottages and work has not yet begun on the recreation and medical centers. *Id.* at ¶¶*20-21.*

Jay Peak GP Services Stateside, Inc. is a Vermont corporation and the general partner of Stateside. *Ex. 19.* Stenger, listed as the director, is its only principal. *Id.*

Jay Peak Biomedical Research Park L.P. ("Biomedical Phase VII") is a Vermont limited partnership with its principal place of business in Newport, Vermont. *Ex. 29, Biomedical Phase VII Vermont Corporate Filing.* Since November 2012, Biomedical Phase VII has raised approximately $83 million from 166 investors through an EB-5 offering of limited partnership interests to construct a biomedical research facility. *Ex. 22 at ¶6; Ex. 30 at ¶13.* Other than site preparation and groundbreaking, no work has been done on the facility. *Ex. 22 at ¶12.* The Defendants seek to raise approximately another $27 million from 54 investors, which, because of the misuse and misappropriation of funds, will not be enough to finance construction of the research facility. *Ex. 30 at ¶64; Ex. 22 at ¶32.*

AnC Bio Vermont GP Services, LLC is a Vermont limited liability company and the general partner of Biomedical Phase VII. *Ex. 31, AnC Bio Vermont GP Services Vermont Corporate Filing.* Its managing members are Quiros and Stenger. *Ex. 13 at 268 L.18-20; Ex. 20 at 410 L.7-15.*

B. Relief Defendants

Jay Construction Management, Inc. ("JCM") is a Vermont corporation with its offices in Miami, Florida, at the same address as Q Resorts. *Ex. 33, JCM Vermont Corporate Filing; Ex. 34, JCM 2015 Annual Report, at 1.* As of March 16, 2016, its status is listed as terminated. *Ex. 35, JCM Updated Vermont Corporate Filing.* Quiros is the sole officer and director of JCM. *Exs. 33 and 34, Ex. 10 at 202 L.14 to 203 L.8.* Quiros funneled more than $160 million of investor funds from several projects through JCM and its bank accounts, and entered into contracts with outside vendors for construction of some of the Jay Peak projects. *Ex. 30 at ¶¶37, 39, 45, and 59.* He also used misused tens of millions of dollars of the funds JCM received. *Id. at ¶¶50-51 and 56-58.* Quiros controlled JCM's bank accounts. *Ex. 10 at 202 L.14 to 203 L.8; Ex. 30 at Ex. TT.* Without any legitimate basis, JCM received investors' proceeds emanating from the Defendants' securities fraud.

GSI of Dade County, Inc. ("GSI") is a Florida corporation with its offices in Miami at

the same address as Q Resorts and JCM. *Ex. 36, GSI Florida Corporate Filing.* Quiros is the owner and sole officer and director of GSI. *Ex. 35; Ex. 12 at ¶18; Ex. 37, Kelly Testimony, at 52 L.22-25.* GSI received more than $13 million of investor money emanating from Biomedical Phase VII investor funds. *Ex. 30 at ¶¶49, 52-53.* Without any legitimate basis, GSI received investors' proceeds emanating from the Defendants' securities fraud.

North East Contract Services, LLC ("Northeast") is a Florida limited liability company formed in February 2013 and headquartered in Weston, Florida. *Ex. 38, Northeast Florida Corporate Filing.* Northeast acts as project manager for Biomedical Phase VII. *Ex. 39, Agreement with Northeast.* William Kelly, who is Jay Peak's COO and a longtime business associate of Quiros, is the managing principal of Northeast. *Ex. 37 at 53 L.1-5; Ex. 40, Kelly Background Questionnaire, at ¶16.* Northeast received at least $7.9 million of Biomedical Phase VII investor funds (in turn, Northeast paid approximately $5.5 million of these funds to GSI) for purported supervision fees on approximately $47 million of expenses that JCM purportedly was going to pay on behalf of Biomedical Phase VII. *Ex. 30 at ¶52; Ex. 71, Invoices from JCM; Ex. 75, Invoices from Northeast.* In reality, the Defendants paid less than $10 million of Biomedical Phase VII expenses with the approximately $47 million JCM received from Biomedical Phase VII. *Ex. 30 at ¶¶59-60.* Quiros misused and misappropriated the vast majority of the remaining more than $37 million of Biomedical Phase VII investor funds that JCM received. *Ex. 30 at ¶¶59-60.* Hence, Northeast received construction supervision fees for work that was not performed. *Id. at ¶60 and FN47.* Without any legitimate basis, Northeast received investors' proceeds emanating from the Defendants' securities fraud.

Q Burke Mountain Resort, LLC ("Q Burke") is a Florida limited liability company formed in April 2012 and headquartered in Miami at the same address as Q Resorts. *Ex. 41, Q Burke Florida Corporate Filing.* Quiros is the managing principal of Q Burke. *Id.* Q Burke is also the owner of the Burke Mountain Resort located in East Burke, Vermont, which is the site of another EB-5 offering that Quiros is promoting called Q Burke Mountain Resort. *Ex. 39; Ex. 73, Q Burke Annual Report at 1; Ex. 74, Q Burke EB-5 Offering PPM; Ex. 22 at ¶¶6-8.* As described below, Quiros improperly used approximately $7 million from a margin loan backed by investor funds to purchase Q Burke. *Ex. 30 at ¶48.* He subsequently used approximately $18.2 million of Biomedical Phase VII investor funds as part of the $19 million pay off of this margin loan. *Id.* at *¶56.* Without any legitimate basis, Q Burke received investors' proceeds

emanating from the Defendants' securities fraud.

III. CONNECTIONS TO SOUTH FLORIDA

This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida for several reasons. Q Resorts, which owns Jay Peak and as a result oversees the Jay Peak projects, is located in Miami. *Ex. 9; Ex. 10 at 70 L.14 to 71 L.3.* Quiros, who orchestrated the fraudulent scheme and through Q Resorts controls the general partner and limited partnerships in all Jay Peak offerings, resides and works in the Miami area. *Ex. 12 at ¶8; Ex. 10 at 53 L.9 to 55 L.2, 57 L.20 to 59 L.15, 60 L.16 to 61 L.1, 70 L.14 to 73 L.21, 108 L.12 to 109 L.21, and 128 L.9-23; Ex. 42, Burstein Testimony, at 22, 71, 91-93, and 105; Ex. 13 at 203.* Stenger and the other Jay Peak employees all take direction from Quiros. *Exs. 86-88; Ex. 10 at 53 L.9 to 55 L.2, 57 L.20 to 59 L.15, 60 L.16 to 61 L.1, 70 L.14 to 73 L.21, 108 L.12 to 109 L.21, and 128 L.9-23; Ex. 42 at 22, 71, 91-93, and 105.* Several of the companies through which Quiros orchestrated the fraud and through which he funneled money, including JCM, GSI, Northeast, and Q Burke, are located in South Florida. *Exs. 33-34, 36-38, and 39-41.*

In addition, the Raymond James & Associates, Inc. ("Raymond James") account executive and brokerage office through which Quiros opened the Raymond James accounts used to perpetrate the fraud were located in Coral Gables, Florida. *Ex. 42 at 13 L.21-24 and 16 L.11-23.* While investor money was first deposited in an escrow account for each project at a Vermont bank, it was soon after transferred to a corresponding Raymond James account through the brokerage office located in Coral Gables. *Ex. 11 at ¶¶14-79; Ex. 30 at ¶66.* Quiros and Stenger had numerous communications with the Raymond James broker located in Coral Gables, including emails, letters, wires, and telephone calls. *Ex. 11 at ¶¶14-79 and accompanying Exhibits.*

Furthermore, Kelly, Jay Peak's COO, is located in South Florida. *Ex. 37 at 11 L.23 to 12 L.21.* Other key Jay Peak employees spent significant time in South Florida during the time period alleged in this Complaint. *Ex. 37 at 12 L.10-21, 97 L.7 to 98 L.7, 124 L.1 to 125 L.21, and 128 L.2-15; Ex. 32 at 237 L.20 to 238 L.10 and 247 L.10-14; Ex. 42 at 23 L.18 to 25 L.25 and 39 L.23 to 40 L.5.* A number of investors who received green cards also have settled in the Southern District, including at least 22 investors in Hotel Phase II, eight in Penthouse Phase III, 19 in Golf and Mountain Phase IV, 11 in Lodge and Townhouses Phase V, 17 in Stateside Phase VI, and seven in Biomedical Phase VII. *Composite Exhibit 81, Jay Peak Investor Lists.*

IV. THE EB-5 PROGRAM

Congress created the EB-5 Immigrant Investor Program in 1990 in an effort to boost the U.S. economy. *Ex. 3 at JPI 1532.* The Program provides a prospective immigrant with the opportunity to become a permanent resident by investing in the U.S. *Id.* To qualify for an EB-5 visa, a foreign applicant must invest $500,000 or $1 million (depending on the type of investment) in a commercial enterprise approved by the U.S. Citizenship and Immigration Service ("Immigration Service"). *Id.* Once he or she has invested, the foreign applicant may apply for a conditional green card, which is good for two years. *Id. at JPI 1533.* If the investment creates or preserves at least ten jobs during those two years, the foreign applicant may apply to have the conditions removed from his or her green card. *Id. at JPI 1538.* The applicant can then live and work in the U.S. permanently. *Id.*

A certain number of EB-5 visas are set aside for prospective immigrants who invest through what is known as a Regional Center. An applicant only has to invest $500,000 if he or she invests through a Regional Center. *Ex. 3 at JPI 1532.* The State of Vermont EB-5 Regional Center has been a federally-designated Regional Center since 1997. *Ex. 22 at ¶3; Ex. 3 at JPI 1533.* Prospective immigrants investing through the Vermont Regional Center only have to invest $500,000. *Ex. 22 at ¶4; Ex. 3 at JPI 1582.* As the Regional Center, the state has approved all EB-5 projects within the state and has entered into a memorandum of understanding with the issuers of EB-5 projects, including Jay Peak. *Ex. 22 at ¶4.* The Vermont Agency of Commerce and Community Development has, until recently, administered the state's EB-5 program. *Id. at ¶3.* The Vermont Division of Financial Regulation now shares that responsibility with the Agency. *Id.*

V. THE JAY PEAK EB-5 OFFERINGS

Jay Peak began offering and selling securities in the form of limited partnership interests in December 2006. *Ex. 22 at ¶6.* Since that time it has raised more than $350 million from more than 700 investors from at least 74 countries in seven separate offerings. *Id.; Ex. 30 at ¶11.* The individual offerings are set forth in Section II above. While Biomedical Phase VII involves construction of the biomedical research facility, the first six limited partnership offerings have centered around a ski resort and related facilities, such as hotels, lodges, condominiums, recreation and meeting facilities, and restaurants and cafes. *Id.*

Jay Peak has marketed its EB-5 limited partnership interests and solicited investors in a

variety of ways – through its website, intermediaries who have promoted the investments, immigration attorneys with interested clients, and overseas meetings and seminars with prospective investors. *Ex. 22 at ¶10; Ex. 43, Ledezma Declaration, at ¶¶3 and 5; Ex.44, Solarte Declaration, at ¶2; Ex. 45, Wattanamano Declaration, at ¶2; Ex. 46, Champion Declaration, at ¶2; Ex. 47, Figueiredo Declaration, at ¶¶2-3; Ex. 48, Hinestrosa Declaration, at ¶2; Ex. 49, Mackechine Declaration, at ¶2; Ex. 50, Frazer Declaration, at ¶¶2-3; Ex. 51, Daccache Declaration, at ¶2; Ex. 52, Silva Declaration, at ¶¶2-3; Ex. 53, LeQuerica Declaration, at ¶2.*

For example, Jay Peak has routinely attended events overseas where company representatives, including Stenger, have spoken and met with prospective investors. *Ex. 22 at ¶2;* In addition, Jay Peak has sponsored booths and spoken at immigration-related conferences and events, both in the U.S. and abroad. *Ex. 22 at ¶11; Ex. 20 at 406 L. 16 to 407 L.2.* Stenger has met in person with about 95 percent of the investors in the Jay Peak projects, and Quiros in recent years also has attended Jay Peak meetings with investors and answered their questions. *Ex. 20 at 316 L.22 to 317 L. 1 and 319 L 10 to 16*; *Ex. 13 at 271 L.7 to 275 L.3.*

While foreign residents are interested in investing to obtain their permanent green cards, they also are interested in achieving a return on their investment. *Ex. 46 at ¶¶6-7; Ex. 50 at ¶9.* Stenger has told investors he anticipated the individual projects would each make a two to six percent annual return once they were each complete and operating. *Ex. 50 at ¶9.* In addition, the offering materials the Defendants provided to investors have touted their potential returns. *Ex. 54, Patel Declaration, at Ex. A; Ex. 55, Nesbitt Declaration, at Ex. B (74).* For example, one Stateside investor received information from Jay Peak in the Stateside Phase VI offering materials stating that once the project is complete, investors will realize up to a six percent annual return. *Ex. 54 at Ex. A.* A Biomedical Phase VII investor received materials stating a five percent annual return is expected. *Ex. 55 at Ex. B.* Other Biomedical Phase VII investors also received offering documents touting a four to six percent annual return once the project is built. *Ex. 55 at Ex. A (456); Ex.44 at ¶10.*

Interested investors in each of the partnerships generally put down a $10,000 deposit, which goes towards their $500,000 investment. *Ex. 43 at ¶5; Ex. 45 at ¶7; Ex. 55 at ¶6; Ex. 54 at ¶7; Ex. 52 at ¶4.* The investors then normally receive from Jay Peak, and often from Stenger, offering materials that consist of a private placement memorandum, a business plan, and a limited partnership agreement. *Exs. 2-7; Ex. 56, Biomedical Phase VII PPM; Ex. 57, Biomedical*

Phase VII Revised PPM.

Among the documents included in each business plan is one showing the cost of each project and the use of investor funds. *Ex. 3 at JPI 1579; Ex. 4 at JPI 1762; Ex. 5 at JPI 2023; Ex. 6 at JPI 30667; Ex. 7 at 60 of 310; Ex. 2 at JPI 4579; Ex. 56 at AnC Bio 68; Ex. 57 at AnC Bio 6743.* Given different titles, such as "Source and Use of Investor Funds" (Suites Phase I), "Projected Sources and Uses of Funds" (Biomedical Phase VII), or "Investor Funds Source and Application" (Penthouse Phase III), this use of proceeds document lists in great detail exactly how Jay Peak and/or the limited partnership intend to spend all investor funds raised, including on land acquisition, site preparation, and construction. *Id.* The use of proceeds document also lists the management contribution in each offering, and how Jay Peak or the limited partnership will spend that money. *Id.* The document also spells out exactly how much in construction, management, land, or other fees Jay Peak and the general partner are entitled to take from investor money in each offering. *Id.*

So, for example, in Suites Phase I, the document entitled "Source and Use of Investor Funds" shows the project raising $17.5 million from investors to pay for the project. *Ex. 3 at JPI 1579.* The costs are then broken down as $10.4 million for construction, $1.6 million for operating systems and equipment, $800,000 for utilities and common areas, $1.8 million for purchase of the land, approximately $600,000 for contingencies, and approximately $400,000 for working capital. *Id.* Upon completion of the project, Jay Peak is entitled to take $1.9 million in developer fees, for a total of $17.5 million. *Id.*

An additional part of the offering materials is the limited partnership agreement in each project, which spells out the rights, obligations and responsibilities of the general partner for each project as well as the limited partners (investors). *Ex. 3 at JPI 1638-1673; Ex. 4 at JPI 1793-1829; Ex. 5 at JPI 2069-2103; Ex. 6 at JPI 30727-30763; Ex. 7 at 115-148 of 310; Ex. 2 at JPI 4634-4668; Ex. 56 at AnC Bio 87-119*; *Ex. 57 at AnC Bio 6768-6800.* In each project through Stateside Phase VI, the general partner is an entity in which Stenger is the sole principal. *Exs. 15-19.* In Biomedical Phase VII, Stenger and Quiros are both principals in the general partner. *Ex. 13 at 268 L.18-20; Ex. 20 at 410 L.7-15.*

Among other key provisions, each limited partnership agreement – which all investors either signed or adopted – contains several provisions regarding how Jay Peak and the general partner can use investor money. Generally, each limited partnership agreement prevents the

general partner from, without consent of the limited partners: (1) borrowing from or commingling investor funds; (2) acquiring any property with investor funds that does not belong to the limited partnership; or (3) mortgaging, conveying or encumbering partnership property that was not real property. *Ex. 3 at JPI 1655-56 (Section 5.02); Ex. 4 at JPI 1811 (Section 5.02); Ex. 5 at JPI 2084-85 (Section 5.02); Ex. 6 at JPI 30744-45 (Section 5.02); Ex. 7 at 131 of 310 (Section 5.02); Ex. 2 at JPI 4650-51 (Section 5.02); Ex. 56 at AnC Bio 101-102 (Sec. 5.02)*; *Ex. 57at AnC Bio 6782-83 (Sec. 5.02). Ex. 76, MacCordy Declaration, at ¶¶9-10, 12-19, and 24-25.*

As described in detail throughout the rest of this motion, the Defendants routinely violated these provisions when they misused, misappropriated, and commingled investor funds from the different projects. Instead of using investor funds as described in the use of proceeds documents, the Defendants frequently had investor funds flowing in a circular and roundabout manner among various accounts and entities, which allowed them to misuse and misappropriate investor funds. *Ex. 30 at ¶8.*

Stenger reviewed, was responsible for, and had authority over, the contents of the offering documents in Phases I-VI, including the limited partnership agreements and the use of proceeds documents. *Ex 20 at 472 L.4 to 473 L.4, 474 L.10-19, 475 L.8-18, 475 L.23 to 476 L.4, 477 L.13 to 478 L.4, and 478 L.16 to 479 L.1.* Moreover, Quiros reviewed the contents of the Phase I-VI offering documents, was familiar with them, and understood he had to abide by them. *Ex. 13 at 342 L.1 to 343 L.16 and 420 L.17 to 421 L.2.* He also approved the use of proceeds document in Phases III-VI. *Id. at 342 L.1 to 343 L.16, 344 L.25 to 345 L.3, 408 L.2-4 and L.19-24, and 410 L.1.* Both Stenger and Quiros, as principals of the general partner for Biomedical Phase VII, reviewed and approved the contents of that project's offering documents, including the limited partnership agreement and the use of proceeds document. *Ex. 13 at 266 L.6-18, 207 L.19 to 271 L.1, and 291 L.13-24; Ex. 20 at 445 L.5-9, 447 L.9-19, 448 L.8-11, 448 L.13 to 449 L.20, 451 L.22 to 453 L.10, and 453 L.17 to 455 L.2.*

Interested investors made a $500,000 investment in a particular project, as well as paid an additional $50,000 administrative fee that Jay Peak and the other Defendants used for expenses associated with the investment, including fees to intermediaries. *Ex. 32 at 84 L.6-17; Ex. 3 at JPI 1517-18.* Each project had an escrow account at People's United Bank in Vermont (formerly known as the Chittenden Trust Company). *Ex. 32 at 79 L.18 to 81 L.6 and 86 L.8-19; Ex. 10 at 55 L.8 to 57 L.18; Ex. 3 at JPI 1531.* Stenger was a signatory on all of the People's Bank

accounts and routinely authorized the transfer of funds into and out of those accounts. *Ex. 10 at 56 L.9 to 57 L.18, 60 L.8-16, and 62 L.2 to 63 L.1; Ex. 32 at 33 L.14 to 34 L.21 and 90 L.17-22.*

The initial $500,000 investment normally was deposited into the People's Bank account for the specific project in which the investor was participating. *Ex. 10 at 55 L.8 to 57 L.18; Ex. 32 at 79 L.8 to 81 L.6, 86 L.8-19, and 88 L.25 to 89 L.25.* Once the Immigration Service approved the investor's initial, or provisional, green card, Stenger typically had the $500,000 transferred to a Raymond James account that was set up in the name of the particular project through Raymond James' Coral Gables office. *Ex. 32 at 79 L.18 to 92 L.13; Ex. 10 at 55 L.8 to 57 L.18.* Stenger had no signatory or other authority over the Raymond James accounts. *Ex. 32 at 33 L.14 to 34 L.21 and 62 L.14-16.* Rather, Quiros opened all of the Raymond James accounts, and had sole authority over them. *Ex. 32 at 60 L.18 to 61 L.9.* The Raymond James broker listed on the accounts was Quiros' former son-in-law. *Ex. 42 at 31 L.17-24.* Once the Raymond James accounts received transfers from the People's Bank accounts, it was solely Quiros who directed use of the funds. *Ex. 32 at 60 L.18 to 61 L.9.* Quiros, Stenger, and other officers of Jay Peak and the Defendants oversaw and directed use of all investor funds and the development and construction of all projects. *Ex. 3 at JPI 1581.* Investors played no role in the development, construction, or operation of the facilities. *Id.*

VI. THE DEFENDANTS FRAUDULENTLY USED INVESTOR FUNDS TO FINANCE QUIROS' PURCHASE OF JAY PEAK

Jay Peak was originally owned by a Canadian firm, Mont Saint-Sauveur International, Inc. ("MSSI"), that oversaw the Phase I securities offering. *Ex. 58, Saint-Sauveur Valley Resorts Declaration, at ¶¶2-4.* Stenger worked for MSSI at the time, and also oversaw the offering as the principal of Jay Peak Management, the general partner of Defendants Suites Phase I and Hotel Phase II. *Ex. 32 at 30 L.6-19, 37 L.4-12, and 42 L.1 to 43 L.9; Ex. 11 at ¶¶14-16.* Suites Phase I raised $17.5 million from 35 investors from December 2006 through May 2008. *Ex. 3 at JPI 1517; Ex. 22 at ¶6.* From January through June 2008, Quiros negotiated and finalized a stock transfer agreement between MSSI and Q Resorts in which MSSI agreed to transfer the real estate and other assets of Jay Peak to Q Resorts. *Ex. 32 at 42 L.21 to 43 L.8; Ex. 11 at ¶9 and Ex. A; Ex. 10 at 39 L.11-20.* The agreement was signed on June 13, 2008, and the parties closed on the deal 10 days later, June 23, 2008, for a price of $25.7 million. *Ex. 11 at ¶9 and Ex. A.*

Jay Peak owned Suites Phase I. *Ex. 3 at JPI 1528.* During the time when Quiros and

MSSI were negotiating the stock transfer agreement, Suites Phase I was raising funds from investors. *Ex. 10 at 39 L.11-20; Ex. 11 at ¶¶14-16 and Exs. B-3 and J-1.* Approximately eight people invested in the Suites Phase I limited partnership between January and May 2008. *Ex. 11 at ¶¶14-16 and Exs. B-3 and J-1.* Hotel Phase II began raising money in March 2008, and that limited partnership received $500,000 investments from 15 investors between March and June 2008 (a total of $7.5 million). *Ex. 11 at ¶22 and Ex. J-2; Ex. 4 at JPI 1720.* From July through September 2008, Hotel Phase II received $500,000 apiece from another 15 investors (a total of $7.5 million). *Ex. 11 at ¶79 and Exs. F-2 and J-2.*

In the five months before closing on the purchase of Jay Peak, Quiros was heavily involved in all aspects of the Jay Peak project, including understanding how the project raised money and managing the nascent Suites Phase I construction. *Ex. 10 at 39 L.11-20.* He knew Suites Phase I was raising money and investigated how that was being done before he bought Jay Peak. *Id.* In preparation for the closing, Quiros asked MSSI representatives to open brokerage accounts at Raymond James with his former son-in-law in the names of the Suites Phase I and Hotel Phase II limited partnerships. *Ex. 58 at ¶7; Ex. 10 at 50 L.20 to 54 L.5.* MSSI representatives agreed, and Stenger opened a Suites Phase I account at Raymond James on May 20, 2008. *Ex. 58 at ¶7; Ex. 11 at ¶17 and Ex. D-1.* A month later, on June 20, 2008, he opened a Hotel Phase II account at Raymond James. *Ex. 11 at ¶23 and Ex. G-1.*

Both the Suites Phase I and Hotel Phase II limited partnership agreements provided that the general partners could only put investor money in FDIC-insured bank accounts. *Ex. 3 at JPI 1667 (Section 13.01); Ex. 4 at JPI 1823 (Section 13.01).* As a brokerage firm, Raymond James was not a bank and not FDIC-insured. *Ex. 76, at ¶¶11 and 20-23.* On May 12, 2008, eight days before he opened the Suites Phase I Raymond James account, Stenger signed an amendment on behalf of the general partner removing the requirement of an FDIC-insured bank account from the Suites Phase I limited partnership agreement. *Ex. 77, Amendment to Suites Phase I Limited Partnership Agreement.* This cleared the way for the transfer of investor funds to Raymond James accounts. *Id.* No such amendment was ever signed for the Hotel Phase II limited partnership agreement. Thus, Stenger's subsequent transfer of the $75 million raised from 150 Hotel Phase II investors in 2008, 2009, and 2010 from People's Bank to Raymond James and Quiros' control violated the Hotel Phase II limited partnership agreement. *Ex. 4 at JPI 1823; Ex. 11 at ¶¶22-26; Ex. 10 at 50 L.20 to 57 L.18; Ex. 32 at 38 L.12 to 40 L.10.*

On June 16 and 17, 2008, in preparation for closing, MSSI transferred $11 million in Suites Phase I investor funds from People's Bank to Raymond James. *Ex. 11 at ¶17 and Exs. C-4, D-2, and D-3.* Three days later, on June 20, MSSI transferred $7 million in Hotel Phase II investor funds from People's Bank to Raymond James. *Ex. 11 at ¶23 and Exs. G-1 and G-2.* Stenger signed the wire transfer request for this $7 million. *Ex. 11 at ¶23 and Ex. F-3.* There was no money in either the Suites Phase I or Hotel Phase II Raymond James account before the three transfers described in this Paragraph. *Ex. 11 at ¶¶17 and 23 and Exs. D-2 and G-2.*

In conjunction with those transfers, MSSI representatives on June 18 wrote a letter to the Raymond James broker, with copies to Quiros and Stenger, among others, explaining that the funds in the MSSI Raymond James Suites Phase I account were investor funds. *Ex. 11 at ¶18 and Ex. D-4.* The letter further stated the investor money could only be used in the manner specified in the Suites Phase I limited partnership agreement, and could not be used in any way to pay for Q Resorts' purchase of Jay Peak. *Id.; Ex. 32 at 74 L.15-21.* The letter went on to state that any money transferred to the Raymond James Hotel Phase II account similarly consisted of investor funds, and that no one could use that money to finance Q Resorts' purchase of Jay Peak. *Id.; Ex. 32 at 78 L.1-7.*

Despite the fact that MSSI clearly explained to Quiros and Stenger they could not use investor money to purchase Jay Peak, Quiros – aided by transfers that Stenger made – did exactly that. *Ex. 11 at ¶¶17 and 19-79.* Over the next two months Quiros, through Q Resorts, used $21.9 million of investor funds – $12.4 million from Suites Phase I and $9.5 million from Hotel Phase II – to fund the vast majority of his purchase of Jay Peak. *Id.*

Quiros began his fraudulent use of investor funds on June 17, the day before the MSSI letter, when he opened two accounts at Raymond James under his name and control, one each for Suites Phase I and Hotel Phase II. *Ex. 11 at ¶¶19 and 24 and Exs. E-1 and H-1.* On the day of closing, June 23, MSSI transferred the $11 million in its Suites Phase I account at Raymond James to Quiros' new Suites Phase I account. *Ex. 11 at ¶19 and Ex. E-3.* The same day, MSSI transferred the $7 million in its Hotel Phase II account at Raymond James to Quiros' new Hotel Phase II account. *Ex. 11 at ¶24 and Exs. G-2 and H-2.* MSSI closed the two Raymond James accounts within days, leaving Quiros in total control of investor money. *Ex. 11 at ¶¶19 and 24 and Ex. G-1.* Stenger, as the sole principal of the Suites Phase I and Hotel Phase II general partners, knew he was supposed to control investor funds. *Ex. 32 at 27 L.19 to 28 L.1, 29 L.12-*

25, 30 L.6-10, 32 L.14-22, and 115 L. 20 to 117 L.6. Yet he willingly allowed Quiros to take control of the funds, abdicating the responsibilities clearly laid out for him in the limited partnership agreements. *Ex. 32 at 34 L.3-10, 39 L.3-5, 53 L.9-20, 54 L.15 to 55 L.21, 60 L.18 to 61 L.9, 62 L.14-16, and 114 L.14-17; Ex. 3 at JPI 1652-55 and 1667; Ex. 4 at JPI 1808-10 and 1823.*

Also on the day of closing, June 23, Quiros transferred $7.6 million of Suites Phase I investor funds from his Suites Phase I Raymond James account and $6 million of Hotel Phase II investor funds from his Hotel Phase II Raymond James account to another account (previously empty) that he had just opened at Raymond James in the name of Q Resorts. *Ex. 11 at ¶¶20 and 25 and Exs. I-1, I-2, and I-3.* He completed his first fraudulent transfer the same day when he wired $13.544 million from the Q Resorts account to the law firm representing MSSI as partial payment for the Jay Peak purchase. *Ex. 11 at ¶¶21 and 26 and I-2 and I-4.*

Over the next three months, Quiros made four additional payments totaling $5.5 million from the Q Resorts account to the same law firm as continued payment for the Jay Peak purchase. *Ex. 11 at ¶¶43-54 and 60-75 and accompanying exhibits.* The specific payments were $1.5 million on July 1, 2008; $1 million on August 29, 2008; $500,000 on September 5, 2008; and $2.5 million on September 26, 2008. *Id.* Quiros made three additional transfers from the Q Resorts account totaling $2.9 million – $2 million on June 25, 2008; $628,684 on June 26, 2008; and $263,000 on September 3, 2008 – all to the law firm that had represented Q Resorts in the purchase. *Ex. 11 at ¶¶27-42 and 55-59 and accompanying exhibits.*

Quiros and Q Resorts made all of these payments improperly using investor funds. *Ex. 11 at ¶¶27-75 and accompanying exhibits.* For example, to fund the $2 million June 25 payment to Q Resorts' law firm, Quiros transferred $2 million derived from Suites Phase I investor funds from his Suites Phase I Raymond James account to the Q Resorts account, then immediately wired that $2 million to the Q Resorts law firm. *Ex. 11 at ¶¶31-33 and Exs. E-3, I-2, I-5, and I-6.* The next day he arranged the transfer of just under $300,000 each from the Suites Phase I and Hotel Phase II Raymond James accounts in his name to the Q Resorts account, which he used to send $628,684 to the law firm. *Ex. 11 at ¶¶36 and 40-42 and Exs. E-3, H-2, I-2, I-7, and I-8.*

Stenger facilitated many of these payments by transferring additional money to the Raymond James accounts. *See, e.g., Exs. 11 at ¶¶44-50, 63, and 69-71 and accompanying exhibits.* For example, on July 1, 2008, Stenger authorized the transfer of $1 million of Suites

Phase I investor funds from a Suites Phase I account at People's Bank to the Q Resorts account at Raymond James. *Ex. 11 at ¶46 and Exs. C-3 and I-2.* The same day he authorized the transfer of $600,000 in Hotel Phase II investor funds from the Hotel Phase II account at People's Bank to the Q Resorts account. *Ex. 11 at ¶44 and Exs. F-1, F-4, and I-2.* Quiros turned right around and wired $1.5 million of that money to the law firm representing MSSI. *Ex. 11 at ¶47 and Exs. I-2 and I-10.* Subsequent transactions followed a similar pattern – Stenger transferring Suites Phase I or Hotel Phase II money from People's Bank either to Quiros' Suites Phase I and Hotel Phase II accounts or the Q Resorts account at Raymond James, and Quiros using that money to pay either the Q Resorts or MSSI law firm. *Ex. 11 at ¶¶48-54 and 60-75 and accompanying exhibits.* In addition, to facilitate some of these payments, Quiros transferred Phase I and II investor funds between the Suites Phase I and Hotel Phase II accounts at Raymond James. *Ex. 11 at ¶¶62, 70, and 72 and Exs. E-3 and H-2.*

The limited partnership agreements and the use of proceeds documents for Phases I and II, all provided to investors before they invested, prohibited this use of investor funds. *Ex. 3 at JPI 1579 and 1655-56; Ex. 4 at JPI 1762 and 1811.* As noted above, in Suites Phase I, the document entitled "Source and Use of Investor Funds" showed the use of the investors' $17.5 million specifically for $10.4 million for construction, $1.6 million for operating systems and equipment, $800,000 for utilities and common areas, $1.8 million to Jay Peak for purchase of the land, approximately $600,000 to Jay Peak if there were cost overruns, about $400,000 for working capital, and $1.9 million to Jay Peak for developer fees. *Ex. 3 at JPI 1579.* There was nothing in the use of proceeds document allowing Quiros or Suites Phase I to use $12.4 million of Phase I investor money to purchase Jay Peak. *Id.; Ex. 32 at 59 L.24 to 60 L.11.* At the time of the transfers of the $12.4 million, Jay Peak had barely begun construction and had not paid for the project property. *Ex. 30 at ¶24.* Therefore, it was only entitled to take about $60,000 of the $17.5 million of investor money in developer, contingent, and land fees. *Id.* Even at the conclusion of Suites Phase I construction, years later, at most Jay Peak was only entitled to take $4.3 million of investor money broken down this way: $1.8 million after the land sale was completed, 15 percent in construction costs as construction was completed up to $1.9 million as a maximum, and $600,000 in contingency fees if there were cost overruns. *Id.* This is far short of the $12.4 million of investor money Quiros improperly used on the Jay Peak purchase. *Id.*

Likewise, the Hotel Phase II use of proceeds document given to investors, entitled

Estimated and Projected Cost of Development, showed a detailed breakdown of how Jay Peak would spend the $75 million it raised from investors. *Ex. 4 at JPI 1762.* This included $37 million for hotel construction, $23 million for the other parts of Phase II, and additional money for utilities, land, cost overruns, and construction supervision fees. *Id.* There was nothing in this document that allowed Quiros or Hotel Phase II to use $9.5 million of Phase II investor funds to buy Jay Peak in 2008 – particularly because at the time of the transfers, construction on Hotel Phase II had not started and the land sale had not occurred. *Id.; Ex. 30 at ¶27; Ex. 32 at 59 L.24 to 60 L.11.* Therefore, Jay Peak was not entitled to take any investor money as fees for itself at that time. *Ex. 30 at ¶27.* In addition, after misusing Hotel Phase II investor funds, the relevant Defendants – Stenger, Quiros, Jay Peak, Hotel Phase II, and Jay Peak Management – did not change the use of proceeds document they gave to future investors to show they had used $9.5 million of investor funds to purchase Jay Peak. *Ex. 4 at JPI 1762.*

The use of investor funds to purchase Jay Peak also contravened prohibitions in the Phase I and II limited partnership agreements. *Ex. 3 at JPI 1655-56; Ex. 4 at JPI 1811.* Each agreement contained a Section 5.02, entitled "Limitations on the Authority of the General Partner." *Id.* That section in each agreement prevented the general partner from borrowing or commingling investor funds and from making the type of purchase Quiros and Q Resorts made of Jay Peak without investor consent. *Id; Ex. 76 at ¶¶12 and 24-25.*

VII. IMPROPER USE OF INVESTOR FUNDS FOR MARGIN LOANS

Quiros, through Q Resorts, JCM, Jay Peak and the limited partnerships, also misused investor funds from all seven limited partnership offerings by pledging them as collateral for margin loans in his Raymond James accounts, and eventually using funds from the limited partnerships to pay down and pay off the margin loans. *Ex. 11 at ¶¶28-79 and accompanying exhibits; Ex. 30 at ¶¶15-22 and accompanying exhibits.*

Quiros' use of margin loans began in June 2008. *Ex. 11 at ¶¶28-32 and Exs. E-2, E-3, I-2, and I-5.* When he opened his Raymond James Suites Phase I and Hotel Phase II accounts, Quiros signed a credit agreement with Raymond James to allow both accounts to hold margin balances – meaning the accounts could borrow money (which would have to be paid back with interest) and hold negative cash balances. *Ex. 11 at ¶28 and Ex. E-2.* Put another way, the accounts went into debt to Raymond James when they incurred margin balances. *Id.*

The credit agreement Quiros signed pledged amounts in both Suites Phase I and Hotel

Phase II accounts, as well as all of the assets of the Suites Phase I limited partnership, as collateral for any margin loans the accounts incurred. *Ex. 11 at ¶28 and Ex. E-2.* As Jay Peak began new offerings, Quiros opened new accounts at Raymond James in the name of each new limited partnership, to which Stenger transferred investor funds from the corresponding account at People's Bank where investors deposited their money. *Ex. 30 at ¶66(b)-(q)*; *Ex. 32 at 79 L.24 to 81 L.6, 90 L.17-22, and 91 L.24 to 92 L.13.*

So, for example, investors in Penthouse Phase III sent their investments to an escrow account at People's Bank in the name of Penthouse Phase III. *Ex. 10 at 56 L.9 to 57 L.18; Ex. 32 at 79 L.24 to 81 L.6 and 91 L.24 to 92 L.13.* Stenger had signatory authority and control over that account. *Ex. 79, Penthouse Phase III Account Signature Card. Ex. 10 at 56 L.9 to 57 L.18 and 60 L.8-16; Ex. 32 at 33 L.14 to 34 L.21.* When the offering began, Quiros opened an account at Raymond James in the name of Penthouse Phase III, over which only he had signatory authority and control. *Ex. 32 at 33 L.14 to 34 L.21; Ex. 10 at 55 L.8 to 57 L.18; Ex. 80, Penthouse Phase III Raymond James Account Information and Client Agreement.* Once Penthouse Phase III investors had their conditional green cards approved, Stenger approved the transfer of those investors' $500,000 deposits to the Penthouse Phase III Raymond James account, thereby giving up control over that money to Quiros. *Ex. 10 at 55 L.8 to 57 L.18, 60 L.18 to 61 L.9, and 62 L.14-16; Ex. 32 at 79 L.18 to 92 L.13.* Each time this happened, Stenger violated terms of the limited partnership agreements. *Ex. 3 at JPI 1652-55 and 1667; Ex. 4 at JPI 1808-10 and 1823; Ex. 5 at JPI 2081-84 and 2097; Ex. 6 at JPI 30741-44 and 30757; Ex. 7 at 128-131 of 310 and 143 of 310; Ex. 2 at JPI 4647-50 and 4662; Ex. 56 at AnC Bio 98-101 and 114.* Stenger, as the principal of the general partner in Phases I-VI, always had ultimate responsibility for the overall management and control of the business assets and the affairs of the six limited partnerships, and the obligation to place partnership funds in accounts in the names of the partnerships. *Id; Ex. 32 at 115 L.20 to 117 L.1; Ex. 10 at 62 L.2-14.* Stenger abdicated these responsibilities by giving Quiros complete control of the partnerships' funds and by placing investor funds in accounts to which he did not have access. *Ex. 3 at JPI 1652-55 and 1667; Ex. 4 at JPI 1808-10 and 1823; Ex. 5 at JPI 2081-84 and 2097; Ex. 6 at JPI 30741-44 and 30757; Ex. 7 at 128-131 of 310 and 143 of 310; Ex. 2 at JPI 4647-50 and 4662; Ex. 56 at AnC Bio 98-101 and 114.*

The process in Phases II and IV-VII worked the same way. *Ex. 10 at 55 L.8 to 57 L.18;*

Ex. 32 at 79 L.18 to 92 L.13. Furthermore, each time he opened a new Raymond James account, Quiros signed a new credit agreement pledging the assets of that account – in each case comprised of or derived from investor funds – as collateral for the margin loans he continued to hold at Raymond James. *Ex. 30 at ¶¶15-22 and accompanying exhibits; Exs. 59-64.* Quiros signed a credit agreement on February 6, 2009, pledging investor funds in the Suites Phase I and Hotel Phase II Raymond James accounts as collateral for the margin loans. *Ex. 59, February 6, 2009 Credit Agreement.* He signed one on October 1, 2010, expanding the list of accounts to Penthouse Phase III and Q Resorts. *Ex. 60, October 1, 2010 Credit Agreement.* Quiros signed a credit agreement on February 10, 2011, adding the account for Golf and Mountain Phase IV. *Ex. 61, February 10, 2011 Credit Agreement.* He signed the next one on August 25, 2011, adding the account for Lodge and Townhouses Phase V. *Ex. 62, August 25, 2011 Credit Agreement.* On February 28, 2012, he signed a credit agreement adding the account for Stateside Phase VI as collateral for the margin loans. *Ex. 63, February 28, 2012 Credit Agreement.* And on August 5, 2013, Quiros signed a credit agreement adding the accounts for Biomedical Phase VII and JCM (which as described above and below held investor funds). *Ex. 64, August 5, 2013 Credit Agreement.*

Thus, in every offering, Quiros put investor funds at risk by pledging them as collateral for the margin loans. *Ex. 30 at ¶¶15-22 and accompanying exhibits*; *Ex. 11 at ¶¶28-79.* Raymond James could have insisted on payment of the margin loans, and Quiros would have had no choice but to pay them off with investor funds slated for use to construct the various projects unless he could come up with a replacement source of funding. *Ex. 30 at ¶¶15-22 and accompanying exhibits; Ex. 11 at ¶¶28-79.* And, as described below, Quiros eventually paid off the margin loans using investor funds.

Quiros' establishment of the margin loans violated the terms of each of the limited partnership agreements (which the Defendants provided to all investors). *Ex. 3 at JPI 1655-56; Ex. 4 at JPI 1811; Ex. 5 at JPI 2084-85; Ex. 6 at JPI 30744-45; Ex. 7 at 131 of 310; Ex. 2 at JPI 4650-51; Ex. 56 at AnC Bio 101-102*; *Ex. 57 at AnC Bio 6782-83.* Those agreements specifically prohibited the projects' general partners from encumbering or pledging investor funds as collateral without the express approval of the investors. *Ex. 3 at JPI 1655-56; Ex. 4 at JPI 1811; Ex. 5 at JPI 2084-85; Ex. 6 at JPI 30744-45; Ex. 7 at 131 of 310; Ex. 2 at JPI 4650-51; Ex. 56 at AnC Bio 101-102*; *Ex. 57 at AnC Bio 6782-83.* Furthermore, none of the offering documents the

Defendants provided to investors said that any of the limited partnerships, general partners, Quiros, Stenger, Q Resorts, or Jay Peak could pledge investor funds as collateral for loans. *Ex. 3 at JPI 1579; Ex. 4 at JPI 1762; Ex. 5 at JPI 2023; Ex. 6 at JPI 30667; Ex. 7 at 60 of 310; Ex. 2 at JPI 4579; Ex. 56 at AnC Bio 68; Ex. 57 at AnC Bio 6743*; *Ex. 32 at 67 L.5-10.* In fact, the use of proceeds document in every offering, which set forth exactly how the Defendants would spend investors' money, did not provide for use of investor funds as collateral for or to pay off margin loans. *Ex. 3 at JPI 1579; Ex. 4 at JPI 1762; Ex. 5 at JPI 2023; Ex. 6 at JPI 30667; Ex. 7 at 60 of 310; Ex. 2 at JPI 4579; Ex. 56 at AnC Bio 68; Ex. 57 at AnC Bio 6743.* Neither Stenger nor Quiros ever told any investors the companies in which they were investing could use or were using their money in this fashion. *Ex. 32 at 59 L.24 to 60 L.11 and 67 L.5-10.*

Quiros began incurring margin loan debt in the Suites Phase I and Hotel Phase II accounts almost immediately after closing on the purchase of Jay Peak. *Ex. 11 at ¶¶28-29 and Exs. E-2 and E-3.* On June 25, 2008, in an apparent attempt to give the appearance that investor funds remained in the Suites Phase I account at Raymond James, Quiros directed the purchase of $11 million in Treasury Bills. *Ex. 11 at ¶29 and Ex. E-3.* That $11 million purchase matched the $11 million of Suites Phase I investor funds MSSI had transferred to Quiros' Suites Phase I account. *Id. and at FN6.* But, as described in Paragraph 69, by this time Quiros had transferred $7.6 million of the $11 million out of the account to pay for the purchase of Jay Peak. *Id.* There was only $3.4 million in investor funds left in the Suites Phase I account. *Ex. 11 at ¶30 and Ex. E-3.* Therefore, Quiros' Suites Phase I account had to incur a margin loan balance of $7.6 million to buy Treasury Bills (the difference between the $3.4 million in the account and the full $11 million purchase). *Id. at ¶¶29-30, FN 6, and Ex. E-3.* Under terms of the credit agreement Quiros had signed, that $7.6 million was actually a debt to Raymond James. *Id.* Thus, Suites Phase I investors did not have a claim to the $11 million in Treasury Bills, and the $3.4 million in investor funds still in the Suites Phase I account was at risk of being forfeited to Raymond James if there was a margin call. *Id.*

Quiros undertook the same acts in the Hotel Phase II account at Raymond James. *Ex. 11 at ¶¶38-39, FN7, and Ex. H-2.* On June 25, 2008, he ordered the purchase of $7 million in Treasury Bills in that account. *Id.* Again, this amount matched the $7 million of Hotel Phase II investor funds MSSI had transferred to Quiros' Hotel Phase II account. *Id.* But again, Quiros had already transferred $6 million of that amount out of the account to pay for Q Resorts'

purchase of Jay Peak. *Id; see also* Paragraph 69. There was only $1 million in investor funds left in the Hotel Phase II account. *Ex. 11 at ¶¶38-39, FN7, and Ex. H-2.* Therefore, Quiros' Hotel Phase II account had to incur a margin loan balance of $6 million to buy Treasury Bills (the difference between the $1 million in the account and the $7 million purchase). *Id.* Under terms of the credit agreement Quiros had signed, that $6 million was actually a debt to Raymond James. *Id.* Hotel Phase II investors did not have a claim to the full $7 million in Treasury Bills, and the $1 million in investor funds still in the Hotel Phase II account was at risk of being forfeited to Raymond James if there was a margin call. *Id.*

Quiros continued to make use of the margin loans in the Suites Phase I and Hotel Phase II accounts at Raymond James to pay the remainder of the purchase price for Jay Peak between June and September 2008. *Ex. 11 at ¶¶31-32, 36, 40-41, 52-53, 56-57, and 65, and accompanying exhibits.* When he transferred funds out of the accounts to pay either Q Resorts' or MSSI's law firm as described in the preceding section, that often increased the margin loan balance in the accounts, putting investor funds further at risk. *Id.* Furthermore, on at least one other occasion during that time period, Quiros directed the purchase of an additional $1.5 million in Treasury Bills in the Suites Phase I account at Raymond James to match an amount of Suites Phase I investor funds the account had received from People's Bank. *Ex. 11 at ¶56 and Ex. E-3.* Stenger had authorized transfer of the funds from People's Bank. *Ex. 11 at ¶¶49-51 and accompanying exhibits.* Again, the purchase was a ruse, as Quiros had already transferred $1 million of the $1.5 million out of the account to pay for the purchase of Jay Peak, leaving the Treasury Bills not as belonging to investors, but as collateral for the margin loan balance to Raymond James. *Ex. 11 at ¶52 and Exs. E-3, I-2, and I-11.*

From October 2008 until February 2009, Quiros continued to maintain the margin loan balances in his Suites Phase I and Hotel Phase II accounts at Raymond James, with investor funds pledged as collateral in violation of the Phase I and II use of proceeds documents and the limited partnership agreements (as described above). *Ex. 30 at ¶16.* By February 2009, the combined margin loan balances of the two accounts had reached $23.8 million. *Id. at ¶17.* Stenger had continued to authorize transfers of investor funds from the People's Bank Phase I and II accounts to the Raymond James accounts, which then became collateral for the margin loans. *Ex. 10 at 56 L.9 to 57 L.18, 60 L.8-16, and 62 L.2 to 63 L.1; Ex. 32 at 33 L.14 to 34 L.21 and 90 L.17-22.*

That month, Quiros consolidated the two margin loans into one (Margin Loan III), and signed a new credit agreement that continued to pledge Phase I and II investor funds to back the margin loan balance. *Ex. 30 at ¶17.* Over the next three years, Quiros signed the aforementioned credit agreements pledging investor funds from Phases III-VI as collateral. *Id.; Exs. 59-64.* He also used more than $105 million of investor funds from Phases I-V towards paying down Margin Loan III, breaking down as follows: approximately $2.2 million from Suites Phase I, approximately $51.6 million from Hotel Phase II, approximately $32.5 million from Penthouse Phase III, approximately a net amount of $15.8 million from Golf and Mountain Phase IV, and approximately $5.6 million from Lodge and Townhouses Phase V. *Ex. 30 at ¶¶18, 25, 28, 33, 36, and FN26, and Exs. B, D, E, I, K, and O.*

Margin Loan III continued to be backed by Suites Phase I and Hotel Phase II investor funds, putting them at risk, until February 2012. *Ex. 30 at ¶19.* In addition, during this same time, the Defendants commingled Suites Phase I investor funds with other projects. *Id. at ¶25.* For example, on October 3, 2011, Stenger authorized a transfer of $49,000 from the Penthouse Phase III account at People's Bank to the People's Bank Suites Phase I account. *Ex. 84, Suites Phase I Account Statement; Ex. 85, Penthouse Phase III Account Statement; Ex. 10 at 56 L.9 to 57 L.18, 60 L.8-16, and 62 L.2 to 63 L.1; Ex. 32 at 33 L.14 to 34 L.21 and 90 L.17-22.* And on February 23, 2012, Stenger authorized a transfer of almost $62,000 from the Suites Phase I account to the Hotel Phase II account, both at People's Bank. *Id.*

Because Quiros continued spending money from the margin loan account at Raymond James, the Margin Loan III balance remained at approximately $23 million in February 2012. *Ex. 30 at ¶18.* On February 24, 2012, Quiros transferred approximately $22.4 million of investor funds from the Q Resorts account at Raymond James to pay off the $23.4 million balance. *Ex. 30 at ¶19.* The $22.4 million of investor funds breaks down as follows: approximately $5.8 million came from Stateside Phase VI, and approximately $16.6 million came from Lodge and Townhouses Phase V. *Ex. 30 at ¶¶19, 39, FN26, and FN44.*

However, just four days after paying off Margin Loan III, on February 28, 2012, Quiros opened yet another margin loan account in the name of Jay Peak at Raymond James (Margin Loan IV). *Ex. 30 at ¶20.* This time he signed a credit agreement pledging investor funds in accounts from Lodge and Townhouses Phase V and Stateside Phase VI as collateral for the margin loan balances. *Id.* In August 2013, he added the accounts of JCM and Biomedical Phase

VII, and reconfirmed the account of Q Resorts, to a new credit agreement. *Id.* From February 2012 through March 2014, Quiros used more than $6.5 million of investor funds from Phases V and VI towards paying down Margin Loan IV. *Ex. 30 at ¶21.* However, because Quiros spent approximately $25.5 million in the new margin loan account on various project-related and non-project expenses, the Margin Loan IV balance was approximately $19.4 million in February 2014. *Ex. 30 at ¶21.*

Raymond James then demanded that Quiros pay off Margin Loan IV. *Ex. 42 at 43 L.18 to 44 L.17.* In response, on March 5, 2014, Quiros transferred approximately $18.2 million of investor funds derived from a Biomedical Phase VII account at People's Bank, which he used as part of a $19 million pay off of this margin loan. *Ex. 13 at 438 L.25 to 440 L.3; Ex. 42 at 49 L.11 to 50 L.21; Ex. 30 at ¶22.* The pay down and pay off of this margin loan was a major contributor to Biomedical Phase VII project shortfalls. *Ex. 30 at ¶¶62 and 64.*

VIII. MISREPRESENTATIONS AND OMISSIONS IN PHASES II-VI

A. Hotel Phase II

Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Hotel Phase II use of proceeds document how they would spend investor money. *Ex. 4 at JPI 1762; Ex. 30 at ¶¶26-31.* As discussed above, the Hotel Phase II use of proceeds document set forth how these Defendants would spend investors' money, down to the dollar. *Ex. 4 at JPI 1762.* The Defendants used Hotel Phase II investor funds in four ways that were different than specifically set forth in the use of proceeds document:

- *First*, they used $9.5 million of Hotel Phase II investor money between June and September 2008 to help finance Quiros' and Q Resorts' purchase of Jay Peak. *Ex. 11 at ¶¶19-21 and 24-75 and accompanying exhibits.*
- *Second*, Quiros and Q Resorts used Hotel Phase II investor funds as collateral for Margin Loan III until February 2012, and used more than $50 million of investor funds to pay down this margin loan at Raymond James between February 2009 and January 2011. *Ex. 11 at ¶¶28-32, 26, 38-41, 49-51, 52-53, 56-57, and 65; Ex. 30 at ¶¶16-19 and 28.*
- *Third*, Quiros and Q Resort used a net amount of $4.7 million of Hotel Phase II investor funds for Suites Phase I project costs. *Ex. 30 at ¶29.*
- *Fourth*, Quiros and Q Resorts used a net amount of $3 million of Hotel Phase II investor

funds on Penthouse Phase III project costs. *Ex. 30 at ¶30.*

The Phase II Defendants also misrepresented in the Hotel Phase II limited partnership agreement certain restrictions on the general partner's use of investor funds. *Ex. 4 at JPI 1811.* As set forth above, the limited partnership agreement prohibited the Hotel Phase II general partner – Jay Peak Management and Stenger – from commingling investor funds, borrowing them, using them as collateral, or using them to buy property not part of the limited partnership, without the consent of the investors. *Id; Ex. 76 at ¶¶9-10, 12-19, and 24-25.* Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) violated those provisions in four ways:

- *First*, Quiros and Q Resorts used Hotel Phase II investor funds as collateral for Margin Loan III until February 2012, and used more than $50 million of investor funds to pay down this margin loan at Raymond James between February 2009 and January 2011. *Ex. 11 at ¶¶28-32, 26, 38-41, 49-51, 52-53, 56-57, and 65; Ex. 30 at ¶¶16-19 and 28, and Ex. D.*
- *Second*, between October 2010 and January 2011, Quiros and Q Resorts transferred a net amount of $4.7 million of Hotel Phase II investor funds from the Phase II account at Raymond James to the Suites Phase I account at Raymond James for Phase I project costs. *Ex. 30 at ¶29.*
- *Third*, Quiros and Q Resorts used a net amount of $3 million of Hotel Phase II investor funds on Penthouse Phase III project costs. *Ex. 30 at ¶30.*
- *Fourth,* the Phase II Defendants violated the commingling provision of the limited partnership agreement by putting a net amount of $11.2 million of Phase II investor funds into Q Resorts' Raymond James account between June 2008 and April 28, 2011, where they were mixed with funds from Penthouse Phase III. *Ex. 30 at ¶31 and Ex. H.* This included an April 28, 2011, $500,000 transfer from a Phase II account into Q Resorts' Raymond James account. *Id.*

Stenger was on notice as early as 2010 that Quiros was improperly using investor funds. *Ex. 65 at ¶12.* The former controller of Jay Peak voiced concerns to Stenger on several occasions that year that he could not get statements from the Raymond James accounts from Quiros to determine how he was using investor funds. *Id. at ¶¶6-7.* The controller also told Stenger in conversations and in writing that his analysis of Suites Phase I and Hotel Phase II

records showed Jay Peak had already used a minimum of $8.4 million of Hotel Phase II money to pay Suites Phase I construction costs. *Id. at ¶¶12-13 and Ex A.* Stenger falsely told the controller there were sufficient funds either from Hotel Phase II investor money or future project management fees to cover Hotel Phase II construction costs. *Id. at ¶15.*

B. Penthouse Phase III

Penthouse Phase III, Jay Peak GP Services, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Penthouse Phase III use of proceeds document how they would spend investor money. *Ex. 5 at JPI 2023; Ex. 30 at ¶¶32-34.* Penthouse Phase III raised $32.5 million from 65 investors. *Ex. 22 at ¶6; Ex. 30 at ¶13.* The Penthouse Phase III use of proceeds document, found under the term "Investor Funds Source and Application" in the business plan given to investors, stated Jay Peak would spend almost $28.1 million of that $32.5 million on construction of the Penthouse Suites hotel. *Ex. 5 at JPI 2023.* Included in this amount was approximately $900,000 for cost overruns and approximately $2.8 million for construction supervision fees. *Id.* The remaining $4.4 million was for the accompanying recreation and learning centers and a café and bar (Jay Peak was to contribute another $5 million). *Id.* At most Jay Peak and the other Defendants could receive approximately $3.7 million of that $32.5 million for their own use, which is broken down as follows: (a) as construction costs were paid, the project developer could add 15 percent to construction-related costs as a developer fee up to a maximum of $2.8 million; and (b) if there were cost overruns, the developer could take up to $900,000 in investor funds. *Id.*

Yet the Defendants violated the use of proceeds document when Quiros and Q Resorts misused almost all of the $32.5 million raised from Penthouse Phase III investors to pay down Margin Loan III at Raymond James. *Ex. 30 at ¶33.* There was nothing in the use of proceeds document indicating the Defendants could spend investor funds on paying down a margin loan. *Id.; Ex. 5 at JPI 2023.*

The Phase III Defendants also misrepresented in the Penthouse Phase III limited partnership agreement certain restrictions on the general partner's use of investor funds. *Ex. 5 at JPI 2084-85.* The limited partnership agreement prohibited the Penthouse Phase III general partner – Jay Peak GP Services and Stenger – from commingling investor funds, borrowing or pledging them, or using them as collateral, without the consent of the investors. *Id; Ex. 76 at ¶¶9-10, 12-19, and 24-25.*. The Defendants violated those provisions in two ways:

- *First*, Quiros and Q Resorts used Penthouse Phase III investor funds as collateral for Margin Loan III and used almost all of the $32.5 million of investor funds on paying down that margin loan between December 2010 and August 2011. *Ex. 30 at ¶33.*
- *Second,* Quiros and Q Resorts violated the commingling provision of the limited partnership agreement by putting a net amount of $4.5 million of Penthouse Phase III investor funds into Q Resorts' Raymond James account, where they were mixed with funds from Hotel Phase II. *Ex. 30 at ¶34.*

C. Golf And Mountain Phase IV

Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Golf and Mountain Phase IV use of proceeds document how they would spend investor money. *Ex. 6 at JPI 30667; Ex. 30 at ¶¶35-37.* Golf and Mountain Phase IV raised $45 million from 90 investors. *Ex. 22 at ¶6; Ex. 30 at ¶13.* The Golf and Mountain Phase IV use of proceeds document in the business plan given to investors stated Jay Peak would spend the $45 million raised from investors this way: $22.8 million on the honeymoon cottages, $5.4 million on a retail center, almost $2.7 million on a wedding chapel, $4 million on a café, $3.8 million on parking, $1.8 million for land, approximately $3.4 million for supervision fees, and approximately $1.1 million for supervision expenses. *Ex. 6 at JPI 30667.* Therefore, at most Jay Peak and the other Defendants could receive approximately $6.3 million of the $45 million, which is broken down as follows: (a) after the land sale was completed, Jay Peak (as the project developer) could charge $1.8 million; (b) as construction costs were paid, the project developer could add 15 percent to construction-related costs as supervision fees up to a maximum of $3.4 million; and (c) if the project developer incurred construction expenses, it could take a maximum of $1.1 million in supervision expenses. *Id.*

The Phase IV Defendants violated the use of proceeds document when Quiros and Q Resorts used a net amount of $15.8 million of investor money to pay down Margin Loan III at Raymond James between May and November 2011. *Ex. 30 at ¶36.* There was nothing in the use of proceeds document stating the Defendants could use investor funds to pay down a margin loan. *Id.; Ex. 6 at JPI 30667.*

These same Defendants also misrepresented in the Golf and Mountain Phase IV limited partnership agreement the restrictions on the general partner's use of investor funds. *Ex. 6 at JPI*

30744-45; Ex. 30 at ¶¶35-37. The limited partnership agreement prohibited the Golf and Mountain Phase IV general partner – Jay Peak JP Services Golf and Stenger – from commingling investor funds, borrowing or pledging them, or using them as collateral, without the consent of the investors. *Ex. 6 at JPI 30744-45; Ex. 76 at ¶¶9-10, 12-19, and 24-25.* Yet the Defendants violated these provisions by Quiros and Q Resorts using the funds as collateral for, and to pay down, Margin Loan III. *Ex. 30 at ¶36.* They also commingled $34.3 million of Golf and Mountain Phase IV funds by putting them into a JCM account at Raymond James where investor funds from Phases IV through VII were deposited. *Ex. 30 at ¶37.*

D. Lodge and Townhouses Phase V

Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Lodge and Townhouses Phase V use of proceeds document how they would spend investor money. *Ex. 7 at 60 of 310; Ex. 30 at ¶¶38-41.* Lodge and Townhouses Phase V raised $45 million from 90 investors. *Ex. 22 at ¶6; Ex. 30 at ¶13.* The Lodge and Townhouses Phase V use of proceeds document in the business plan given to investors stated Jay Peak would spend the $45 million raised from investors this way: $10.8 million on the vacation rental townhouses; $18.6 million on vacation rental cottages, $7.2 million on ancillary facilities (a café, parking garage, tennis courts, and an auditorium), about $1 million on parking, pathways, and working capital, $2.4 million for the land sale, $3.5 million of management and supervision fees, and $1.5 million for supervision expenses. *Ex. 7 at 60 of 310.* At most, Jay Peak and the other Defendants as the project developer could take approximately $7.4 million of the $45 million, which is broken down as follows: (a) after the land sale was completed, the project developer could charge approximately $2.4 million; (b) as construction costs were paid, the project developer could add from 10 to 15 percent to construction-related costs as management and supervision fees up to a maximum of $3.5 million; and (c) if the project developer incurred expenses, it could charge investors up to approximately $1.5 million for miscellaneous expenses. *Id.*

The Phase V Defendants violated the use of proceeds document when Quiros and Q Resorts used at least $25.2 million of investor money to pay down Margin Loans III and IV at Raymond James and to pay off Margin Loan III. *Ex. 30 at ¶39 and FN26.* There was nothing in the use of proceeds document stating the Defendants could use investor money to pay down and pay off margin loans. *Ex. 30 at ¶¶39-40; Ex. 7 at 60 of 310.*

These same Defendants also misrepresented in the Lodge and Townhouses Phase V limited partnership agreement the restrictions on the general partner's use of investor funds. The limited partnership agreement prohibited the Lodge and Townhouses Phase V general partner – Jay Peak JP Services Lodge and Stenger – from commingling investor funds, borrowing or pledging them, or using them as collateral, without the consent of the investors. *Ex. 7 at 131 of 310.* Yet the Phase V Defendants violated these provisions when Quiros and Q Resorts pledged partnership assets as collateral and when he paid down the two margin loans at Raymond James and paid off Margin Loan III. *Ex. 30 at ¶¶38-40; Ex. 76 at ¶¶9-10, 12-19, and 24-25.* They also commingled $36 million of Phase V funds by putting them into a JCM account at Raymond James where investor funds from Phases IV through VII were deposited. *Id. at ¶41.*

E. Stateside Phase VI

Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Stateside Phase VI use of proceeds document how they would spend investor money. *Ex. 2 at JPI 4579; Ex. 30 at ¶¶42-45.* Stateside Phase VI raised $67 million from 134 investors. *Ex. 22 at ¶6; Ex. 30 at ¶13.* The Stateside Phase VI use of proceeds document in the business plan given to investors stated Jay Peak would spend the $67 million raised from investors this way: approximately $22.5 million on the vacation rental cottages; about $20.8 million on the Stateside hotel suites; $2.3 million on the medical center; $7.3 million on the recreation center; about $4.2 million on miscellaneous other expenses; $2.5 million for land; approximately $5.4 million in supervision fees; and $2.2 million in supervision expenses. *Ex. 2 at JPI 4579.* In addition, the project sponsor had to contribute $20 million to the project. *Id.* Upon completing construction, at most Jay Peak and the other Defendants as the project developer could take $10.1 million of the $67 million, broken down as follows: (a) after the land sale was completed, the project developer could charge approximately $2.5 million; (b) as construction costs were paid, the project developer could add 10 to 15 percent to construction-related costs as supervision fees up to a maximum of $5.4 million; and (c) if the project developer incurred expenses, it could take $2.2 million in investor funds as supervision expenses. *Id.*

The Phase VI Defendants violated the use of proceeds document when Quiros and Q Resorts used $5.8 million of investor money to pay off Margin Loan III, and up to $2.5 million to pay down Margin Loan IV. *Ex. 30 at ¶¶43-44.* There was nothing in the use of proceeds

document indicating the Defendants could spend investor money on paying down or paying off margin loans. *Id.; Ex. 2 at JPI 4579.*

These same Defendants also misrepresented in the Stateside Phase VI limited partnership agreement the restrictions on the general partner's use of investor funds. *Ex. 2 at JPI 4650-51.* The limited partnership agreement prohibited the Stateside Phase VI general partner – Jay Peak JP Services Stateside and Stenger – from commingling investor funds, borrowing or pledging them, or using them as collateral, without the consent of the investors. *Id.* Yet these Defendants violated these provisions by Quiros and Q Resorts pledging partnership assets as collateral and by using investor funds to pay down and pay off margin loans. *Ex. 30 at ¶¶20 and 43-44; Ex. 76 at ¶¶ 9-10, 12-19, and 24-25.* They also commingled $63 million of Phase VI funds – almost all of the money raised from investors for this project – by putting them into a JCM account at Raymond James where investor funds from Phases IV through VII were deposited. *Id. at ¶45.*

Quiros' and the other Defendants' misuse and looting of investor funds have finally caught up with them. The Defendants have run out of investor money to complete the Stateside project due to their misappropriation and misuse of that money. *Ex. 22 at ¶¶14-23; Ex. 30 at ¶¶62-63.* The Defendants built the Stateside hotel in 2013, but are not anywhere close to completing the remainder of the project – the vacation cottages, the medical center, and the recreation center. *Ex. 22 at ¶¶14-23.* Based on the amount the Defendants have already spent on building the vacation cottages, the medical center, and the recreation center and the Defendants' own future cost estimates, they need at least another $26 million to finish Stateside. *Id.; Ex. 30 at ¶¶62-63.* With all the commingling of funds and use of money for improper purposes, including paying off the margin loan, as of September 30, 2015, the Stateside accounts had only approximately $58,000 left in them. *Ex. 30 at ¶63; Ex. 22 at ¶22.* If the project is not completed, investors cannot realize their promised return, and likely will lose a portion of their principal and their opportunity to obtain permanent green cards. *Ex. 30 at ¶65.*

IX. MISREPRESENTATIONS AND OMISSIONS IN BIOMEDICAL PHASE VII

A. Misrepresentations And Omissions About The FDA Approval Process

Quiros, Stenger, Jay Peak, Biomedical Phase VII, and AnC Bio Vermont GP Services began offering the Biomedical Phase VII investment in November 2012. *Ex. 56 at AnC Bio 11.* It purportedly involves the construction of the biomedical research facility the Defendants will use for several purposes. *Id. at AnC Bio 20, 63, and 65-69.* These include operating and leasing

"clean rooms" – facilities in pristine condition for medical research – conducting stem cell research, and developing, manufacturing, and distributing certain artificial organs. *Id. at AnC Bio 20, 63, and 65-69.* Among the artificial organs are a heart-lung machine called T-PLS, an artificial kidney called C-PAK, and a liver replacement device called E-LIVER. *Id. at AnC Bio 20, 63, and 65-69.*

From the start, the Biomedical Phase VII offering has been rampant with fraud. The original offering materials projected the facility would be complete and operating in 2014. *Ex. 56 at AnC Bio 69.* They forecasted the project would create 3,000 jobs and achieve more than $306 million in annual revenue by 2018. *Id. at AnC Bio 63, 81.* However, the revenue projections were baseless as discussed below, and the Biomedical Phase VII offering documents made significant misrepresentations and material omissions regarding FDA approval of the products the facility was to develop and manufacture. *Ex. 66, Jindra Report, at ¶¶11-41 and accompanying exhibits.* Moreover, practically from the beginning, Quiros started siphoning tens of millions of dollars from this project. *Ex. 30 at ¶¶46-59 and accompanying exhibits.*

The success of the biomedical research facility was highly dependent on FDA approval of the products, as the products requiring FDA approval accounted for 67% to 100% of the facility's projected annual revenue from 2014 through 2018. *Ex. 66 at ¶19.* Without FDA approval, Biomedical Phase VII could not market and sell the vast majority of the products it proposed to develop and manufacture in the United States. *Id. at ¶¶19-34.* Thus, any delay or failure to obtain FDA approval would dramatically reduce the scope of the research center and the projected revenues. *Id.*

The Phase VII Defendants knew their products required FDA approval. *Ex. 66 at ¶19; Ex. 56 at AnC Bio 80-81, 249, and 251; Ex. 32 at 181 L.22 to 182 L.25.* The offering materials indicated the project "plans on developing, producing, and marketing the products . . . once FDA approval is obtained." *Ex.56 at AnC Bio 80.* The FDA review and approval process depends on the type of medical device, but generally the process can take years between pre-submission steps such as development of the product, clinical studies and testing, and discussions with the FDA. *Ex. 66 at ¶¶14-18.* The Defendants were aware of this fact also. *Ex. 32 at 181 L.22 to 182 L.25 and 184 L.18-21; Ex. 13 at 461 L.5-13.* For example, the business plan in the Biomedical Phase VII offering materials indicated its development, testing, and other pre-submission steps for the stem cell products alone would take 3½ years. *Ex. 66 at ¶15 and FN12.*

Despite the Defendants' knowledge of the lengthy FDA process, the Biomedical Phase VII offering documents misrepresented the status of the process. *Ex. 66 at ¶¶19-25.* In an information sheet attached to the PPM, the Defendants stated that the T-PLS device was "currently under process of US FDA approval." *Ex. 56 at AnC Bio 249.* In the same document, the offering materials indicated the C-PAK system was "currently under progress of US FDA approval (2013)." *Id. at AnC Bio 251.*

These statements were patently false, as when the Defendants made them, they had not submitted the T-PLS device, the C-PAK system, or *any* Biomedical Phase VII product to the FDA for approval. *Ex. 32 at 184 L.18 to 186 L.11, 213 L.10 to 214 L.22, 220 L.15 to 221 L.16, and 230 L.4-15; Ex. 20 at 417 L.22 to 418 L.1.* Stenger and Quiros were fully aware of this fact. *Ex. 32 at 184 L.18 to 186 L.11, 213 L.10 to 214 L.22, 220 L.15 to 221 L.16, and 230 L.4-15; Ex. 20 at 417 L.22 to 418 L.1; Ex. 13 at 461 L.5-13 and 462 L.5-12.* At the time the Defendants distributed the Biomedical Phase VII offering materials in 2012 and 2013, Stenger was heading up the company's FDA approval efforts. *Ex. 32 at 184 L.18 to 186 L.11, 213 L.10 to 214 L.22, 220 L.15 to 221 L.16, and 230 L.4-15; Ex. 20 at 417 L.22 to 418 L.1.* Stenger knew full well that the *only* contact he had had with the FDA prior to 2012 consisted of two isolated email exchanges in June 2010 and February 2011, and a telephone call in 2010. *Ex. 66 at ¶¶22-23 and accompanying exhibits; Ex. 67, June 2010 emails.* These exchanges were about Biomedical Phase VII contacting the FDA only to get more information on and discuss the review and approval process. *Ex. 66 at ¶¶22-23 and accompanying exhibits; Ex. 67.*

Thus, there was no truth to the statements that the Biomedical Phase VII products had been submitted to the FDA. *Ex. 32 at 184 L.18 to 186 L.11, 213 L.10 to 214 L.22, 220 L.15 to 221 L.16, and 230 L.4-15; Ex. 20 at 417 L.22 to 418 L.1; Ex. 13 at 461 L.5-13 and 462 L.5-12.* In fact, to date, more than three years after that misrepresentation, the company has *still* not submitted any products to the FDA for its review and approval. *Ex. 20 at 417 L.22 to 418 L.1; Ex. 13 at 461 L.5-13 and 462 L.5-12.* Even Stenger has acknowledged the statements in the offering materials were misleading. *Ex. 32 at 221 L.5-16 and 229 L.14 to 230 L.3.*

In addition to overseeing Biomedical Phase VII's FDA efforts, Stenger, in his role as principal of the Biomedical Phase VII general partner, had ultimate authority over the contents of the Phase VII offering materials, and reviewed and approved them. *Ex. 32 at 191 L.11-17, 200 L.24 to 201 L.13, and 221 L.20-23, Ex. 20 at 444 L.18-20 and 447 L.12-14.* Quiros, as the other

principal of Biomedical Phase VII's general partner, also reviewed and approved the Phase VII offering materials, and had ultimate authority over them. *Ex. 13 at 270 L.23 to 271 L.1.*

B. Baseless Revenue Projections

The Biomedical Phase VII offering materials also contained revenue projections that were baseless because, among other things, they contemplated the company realizing revenue from its products before its facilities were operational and before the company received FDA approval. *Ex. 66 at ¶¶27-34 and 43-51 and accompanying exhibits.* The offering documents, dated November 2012, included a business plan that stated operations at the Vermont facilities – where the company said all its research and product development would take place – would begin by April 15, 2014. *Ex. 66 at ¶28; Ex. 56 at AnC Bio 69*; *Ex. 20 at 425 L.17 to 426 L.9.* In other words, that was the date by which Biomedical would *begin* developing and testing its products. *Ex. 66 at ¶28; Ex. 56 at AnC Bio 69*; *Ex. 20 at 425 L.17 to 426 L.9.* Despite that, Biomedical Phase VII's offering materials stated the company would begin realizing product revenue the very same year, and almost $660 million in revenue from 2015-2018. *Ex. 66 at ¶¶12, 19 and 29*; *Ex. 56 at AnC Bio 81.*

However, a separate schedule contained in the business plan shows those projections to be without any basis. *Ex. 66 at ¶¶30-32.* The September 2011 schedule, which not all investors received, showed a much longer timetable for revenue realization. *Id.* Taking into account that Biomedical Phase VII could not start developing and testing its products until April 2014 when its facilities would be operational, and the years needed to get FDA approval, the September 2011 schedule showed Phase VII could only realistically realize 20 to 33 percent of the revenue the Defendants projected to investors in the offering materials. *Id.* The schedule also showed Biomedical Phase VII could not begin realizing revenues on its products until much later than its offering documents showed – in some cases as late as 2018 instead of 2014 or 2015. *Id.* Thus, Biomedical Phase VII's own documents show its revenue projections were wildly overstated. *Id.*

C. Further Misrepresentations And Misappropriation Of Phase VII Investor Money

The Biomedical Phase VII use of proceeds document given to investors also misrepresented how Jay Peak, the general partner of Phase VII (AnC Bio Vermont GP Services), Stenger, Quiros, and Q Resorts would spend investor money. *Ex. 56 at AnC Bio 68; Ex. 57 at AnC Bio 6743*; *Ex. 30 at ¶¶46-59.* Furthermore, as with the previous Phases, the Phase VII limited partnership agreement misrepresented the restrictions on how the same Defendants could

use investor money. *Ex. 56 at AnC Bio 101-102*; *Ex. 57 at AnC Bio 6782-83; Ex. 30 at ¶¶46-59.*

The use of proceeds document, contained in the Biomedical Phase VII business plan, spelled out how the Defendants would use Phase VII investor funds: $63.2 million on construction of the clean rooms, $10 million on distribution and marketing rights for the medical devices, $15.6 million on working capital, $400,000 on parking and access roads, $2.1 million on design, architecture, and engineering, $6 million for land, approximately $9.5 million in supervision fees, and approximately $3.2 million in supervision expenses. *Ex. 56 at AnC Bio 68.* In addition, the project sponsor must contribute $8 million to the project. *Id.* Upon the project being fully funded and completed, at most Jay Peak and the other Defendants as project developer could take approximately $18.7 million of the $110 million, broken down as follows: (a) after the land sale was completed, the project developer could charge $6 million; (b) as construction costs were paid, the project developer could add 15 percent to construction-related costs as supervision fees up to a maximum of $9.5 million; and (c) if the project developer incurred expenses, it could take up to approximately $3.2 million for supervision expenses. *Id.* The Defendants cannot charge construction supervision fees on any other category of costs besides construction of the clean rooms. *Id.; Ex. 30 at FN41.* As of September 30, 2015, at best only approximately $2 million of these construction supervision fees had been earned. *Ex. 30 at ¶¶55 and 60.*

The Phase VII limited partnership agreement contained nearly identical restrictions on the general partner's use of funds as the limited partnership agreements in earlier phases. *Ex. 56 at AnC Bio 101-102*; *Ex. 57 at AnC Bio 6782-83.* Quiros and Stenger, and principals of AnC Bio Vermont GP Services, could not commingle investor funds, and could not borrow, collateralize, or pledge investor funds to non-approved uses without the consent of the investors. *Id; Ex. 76 at ¶¶ 9-10, 12-19, and 24-25.* Biomedical Phase VII, Jay Peak, Stenger, Quiros, Q Resorts, and AnC Bio Vermont GP Services regularly violated the use of proceeds document and limited partnership agreements when they pilfered tens of millions of dollars of investor funds for a variety of improper expenses: *(Ex. 30 at ¶¶48-60)*

- $18.2 million towards paying off Margin Loan IV at Raymond James, which the brokerage firm had called due; *(Ex. 30 at ¶56)*
- $4.2 million for corporate taxes to the IRS and State of Vermont; *(Id. at ¶51)*
- $10.7 million to back Quiros' personal line of credit, out of which he used $6 million

more for personal income taxes, $1.4 million to pay purported returns to investors in earlier projects, and $3.5 million to pay Stateside construction vendors; *Id. at ¶¶50 and 57-58)*

- $2.2 million to purchase a Trump Place condominium for Quiros in New York; *(Id. at ¶49)*
- $7 million to purchase Q Burke resort; *(Id. at 48)*
- $7.9 million to Northeast for purported construction supervision fees when little construction has taken place; *(Id. at ¶¶52, 55, and 60)* and
- $6 million for the sale of seven acres of land for the research facility from GSI to Biomedical Phase VII in December 2012. *Id. at ¶53; Ex. 68, Land Appraisal; Ex. 69, Purchase and Sale Agreement between GSI and Biomedical Phase VII; and Ex. 70, Purchase by GSI.* This $6 million price represents a huge markup on the land from the price at which Quiros (through GSI) purchased it just 18 months earlier; in fact Quiros bought a 25-acre tract (of which the seven acres were a part) for $3.15 million in July 2011. *Id.* The seven-acre parcel Quiros sold (through) GSI to Biomedical Phase VII for $6 million was appraised as of December 2012 at only $620,000. Furthermore, the property deed showing transfer of ownership to Biomedical Phase VII has not been recorded. *Id.*

1. Paying Off Margin Loan IV

As discussed above, Raymond James insisted that Quiros pay off the $19 million balance of Margin Loan IV. *Ex. 42 at 43 L.18 to 44 L.17; Ex. 13 at 438 L.25 to 440 L.3.* In response, in March 2014, Quiros paid off Margin Loan IV using more than $18 million of Biomedical Phase VII funds. *Ex. 13 at 438 L.25 to 440 L.3; Ex. 42 at 49 L.3 to 50 L.21; Ex. 30 Ex. 30 at ¶¶22 and 56.* At that time, Biomedical Phase VII had an agreement with an affiliated Korean firm, AnC BioPharm, to provide equipment and engineering services as part of $63.2 million category of costs called Biomedical Research Clean Rooms. *Ex. 30 at FN41 and Ex. OO.* As the Clean Rooms were paid for and constructed, the Phase VII project manager (Northeast) could charge a fee of 15 percent of the "construction supervision costs" plus five percent for "supervision expenses." *Ex. 30 at FN41 and Ex. OO; Ex. 56 at AnC Bio 68; and Ex. 57 at AnC Bio 6743.*

Accordingly, from approximately February 2013 through approximately October 2014, JCM submitted a series of false invoices for Clean Room and other costs. *Ex. 71.* JCM received

$47 million of Biomedical Phase VII investor funds in return. *Ex. 30 at ¶59.* Quiros did not use a vast majority of the investor funds JCM received for their intended purpose (construction costs). *Ex. 30 at ¶59 and FN47.* Instead, he used the money to pay $4.2 million in JCM taxes and another $10.7 million as part of the collateral for a personal line of credit at Citibank. *Ex. 30 at ¶¶50-51 and 57-58.* Out of this line of credit, Quiros paid approximately $6 million of his personal taxes (this payment went through GSI), approximately $3.5 million for Stateside Phase VI construction vendors, and approximately $1.4 million of alleged returns to investors in Phases III-VI. *Id. at ¶¶50 and 57-58.*

To mask this misuse of investor funds as well as his use of $7 million from Margin Loan IV to purchase Q Burke, Quiros had JCM pay off the margin loan in March 2014 using $18.2 million of the Biomedical Phase VII investor funds JCM had received through the fraudulent invoices. *Ex. 13 at 438 L.25 to 440 L.3; Ex. 42 at 49 L.3 to 50 L.21; Ex. 30 at ¶¶ 48 and 56.*

2. Taxes To The IRS And The State Of Vermont

Quiros used $4.2 million in Biomedical Phase VII investor funds to pay a portion of JCM's income taxes to the IRS and the State of Vermont in 2013. *Ex. 30 at ¶51.*

3. The Citibank Line Of Credit

In 2015, Quiros secured a more than $15 million personal line of credit with Citibank, which he then backed with more than $10.7 million of Biomedical Phase VII investor funds he had sent from Phase VII to JCM. *Ex. 22 at ¶¶33-37; Ex. 30 at ¶¶50 and 57-58.* For each dollar of the line of credit Quiros used, Citibank held a corresponding amount of the investor funds. *Ex. 13 at 376 L.3 to 377 L.11.* Therefore the investor funds were not available to JCM or any entity to use on Biomedical Phase VII construction costs until Quiros paid down the loan. *Id.* Quiros had falsely claimed to Citibank that none of the funds backing the account belonged to JCM's customers, such as Biomedical Phase VII. *Ex. 72, JCM Business Deposit Account Application to Citibank, at 21.*

Around April 2015, Quiros transferred approximately $10.7 million of Biomedical Phase VII investor funds as collateral for the personal line of credit. *Ex. 22 at ¶¶33-37; Ex. 30 at ¶¶50 and 57-58.* He subsequently used the line to pay approximately $6 million of his personal taxes (he funneled the payment through GSI), approximately $3.5 million to Stateside Phase VI construction vendors, and approximately $1.4 million of purported returns to investors in Phases III-VI. *Ex. 30 at ¶¶50-51 and 57-58.* As a result, Quiros used nearly all of the $10.7 million in

Biomedical Phase VII investor funds he transferred to back the line of credit. *Ex. 30 at ¶¶50-51 and 57-58.* These funds are therefore not available for use on the Biomedical Phase VII project unless Quiros comes up with $10.7 million to pay down the line of credit. *Ex. 13 at 376 L.3 to 377 L.11.*

4. The Trump Place Luxury Condominium

On April 12, 2013, Quiros transferred $3 million in Biomedical Phase VII investor funds to GSI. *Ex. 30 at ¶49.* Six weeks later, on May 30, 2013, he used $2.2 million of that money to buy a luxury condominium at Trump Place in New York City. *Id.*

5. Q Burke Mountain Resort

Q Burke is the owner of the Burke Mountain Resort, a ski resort in East Burke, Vermont, which is the site of another EB-5 offering that Quiros is promoting called Q Burke Mountain Resort. *Ex. 39; Ex. 73 at 1; Ex. 74; Ex. 22 at ¶¶6-8.* Quiros and Stenger are trying to raise $98 million from the Q Burke EB-5 offering, and to date have raised approximately $53 million. *Ex. 22 at ¶¶6-7.* As described above, Quiros improperly used approximately $7 million from the last margin loan (collateralized by investor funds) to purchase Q Burke. *Ex. 30 at ¶48.* He subsequently used approximately $18.2 million of Biomedical Phase VII investor funds as part of the $19 million pay off of this margin loan (to replace in part the funds he had spent to buy Q Burke). *Id. at ¶56.*

6. Misrepresentations To The State Of Vermont

To attempt to cover up their extensive misappropriation and misuse of investor funds, the Biomedical Phase VII Defendants have misrepresented to State of Vermont regulators how they have been spending investor funds. *Ex. 22 at ¶¶24-32.* In documents they provided to state officials in March 2015, the Defendants claim they have sent $24.5 million to an affiliated Korean firm for equipment, distribution, and marketing rights. *Id. at ¶25.* Those same documents further state that Biomedical Phase VII has $21 million of investor funds in operating accounts. *Id. at ¶26.* However, financial records for JCM, Biomedical Phase VII, AnC Bio Vermont GP Services, and the project sponsor show the Defendants have at most sent $8 million to the Korean firm and have nowhere near $21 million in Phase VII accounts. *Id. at ¶¶27-32.*

D. The Status Of Biomedical Phase VII

As of September 30, 2015, Quiros, Stenger, Biomedical Phase VII, Jay Peak, and Q Resorts had raised at least $83 million from Biomedical Phase VII investors. *Ex. 30 at ¶13.* Of

this amount, the Defendants have taken $69 million, while the remaining $14 million remains in escrow. *Ex. 30 at ¶60 and FN5; Ex. 22 at ¶42.* However, they have done very little work on the project – just site preparation and minimal groundbreaking. *Ex. 22 at ¶12.* In total, they have spent only approximately $10 million of the $69 million on Biomedical Phase VII vendors and related project costs. *Ex. 30 at ¶60 and FN47.*

Biomedical Phase VII documents show the company needs an additional $84 million to complete the project. *Ex. 30 at ¶64.* However, there is only about $5.2 million remaining in non-escrow accounts associated with the Biomedical Phase VII project, and the aforementioned $14 million in escrow. *Ex. 30 at ¶¶60-61 and FN5.* Furthermore, the Defendants can only raise an additional $27 million from new Biomedical Phase VII investors before the offering is fully subscribed. *Id. at ¶14.* Hence, with only $41 million in available funds but at least $84 million in expenses remaining, the Defendants are at least $43 million short of the funds needed to complete the research facility. *Id. at ¶64.* As with the Stateside Phase VI project, if Biomedical Phase VII is not completed – and the project appears in grave danger of not being built – the 166 investors who have already made their investment will not realize their promised return, will likely lose their investments, and will likely lose their opportunity to obtain permanent green cards. *Id. at ¶65.*

X. THE DEFENDANTS' CONTINUED FUNDRAISING

The Defendants continue to raise money through additional EB-5 projects and Biomedical Phase VII. *Ex. 13 at 271 L.7 to 272 L.5; Ex. 20 at 400 L.20-22, 406 L.1-15, 408 L.4-7, and 431 L.21 to 432 L.11.* As discussed above, Quiros, with Stenger's assistance, continues to solicit investors for the $98 million Q Burke project. *Ex. 13 at 271 L.23 to 272 L.3; Ex. 20 at 406 L.1-15 and 431 L.21 to 432 L.11.* The Defendants also continue to solicit new investors for the remaining subscriptions available in Biomedical Phase VII. *Ex. 13 at 271 L.7 to 272 L.5; Ex. 20 at 400 L.20-22, 406 L.1-15, 408 L.4-7, and 431 L.21 to 432 L.11; Ex. 22 at ¶¶8-9.*

To that end, Stenger and the other members of the Jay Peak organization regularly travel around the world in search of new investors. *Ex. 22 at ¶¶8-9; Ex. 20 at 403 L.19 to 405 L.17 and 406 L.1-15; Ex. 13 at 271 L.14 to 272 L.8.* In the last few months, Stenger and others (including Quiros on occasion), have traveled to Vietnam, Dubai, Istanbul, Hong Kong, Singapore, and South America. *Id.* The Defendants also make presentations in this country, including at recent immigration conferences and events in Las Vegas and Dallas. *Ex. 22 at ¶11;*

Ex. 20 at 402 L.18 to 403 L.18.

At these events and in other solicitations, the Defendants continue to make misrepresentations and omissions to investors. *Ex. 57.* The State of Vermont directed Biomedical Phase VII to stop raising money in June 2014 due to questions over its offering materials. *Ex. 22 at ¶6.* Ultimately, the Biomedical Phase VII defendants began soliciting new investors with revised offering materials in 2015, but were not allowed to have new invested funds released from escrow until they completed a financial review, which they have not completed. *Id at ¶¶6 and 41-42.* Those revised offering materials still contain misrepresentations and omissions. *Ex. 57 at AnC Bio 6743-44, 6762, and 6782-83; Ex. 66 at ¶¶43-51.*

The most glaring example is the fact that the revised offering materials do not mention the significant shortfall in funds needed to complete the biomedical research facility, as well as the misuse and misappropriation of investor funds detailed in this Complaint. *Ex. 57.* In addition, the revised offering documents continue to project that Biomedical Phase VII will start realizing revenue as soon as this year for some of its products, and will realize more than $600 million in revenues by 2020 – even though Biomedical Phase VII is years away both from obtaining FDA approval for its products and completing the research facility (and in fact does not currently have the money to build the facility). *Ex. 57 at AnC Bio 6743-44, 6762, and 6782-83; Ex. 66 at ¶¶43-51.* Thus, Quiros, Stenger, and the other Phase VII Defendants continue to put new investor money as well as existing investor funds at risk.

Moreover, Quiros wants to raise at least another $400 million from investors through future EB-5 offerings and is planning on using funds from these new offerings to help complete Phases VI and VII. *Ex. 13 at 307 L.22 to 308 L.9, 311 L.13-20, and 312 L.6 to 314 L.10; Ex. 78, Jan. 2, 2014 email from Kelly to Quiros at JPI 110359 (stating $23 million for Stateside Phase VI completion to come from new project).*

XI. MEMORANDUM OF LAW

A. Standard for Obtaining a Temporary Restraining Order

Section 20(b) of the Securities Act, 15 U.S.C. § 77t, and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), provide that in Commission actions the Court shall grant injunctive relief upon a proper showing. *SEC v. Shiner*, 268 F. Supp. 2d 1333, 1340 (S.D. Fla. 2003). This "proper showing" has been described as "a justifiable basis for believing, derived from

reasonable inquiry or other credible information, that such a state of facts probably existed as reasonably would lead the SEC to believe that the defendants were engaged in violations of the statutes involved." *SEC v. Gen. Int'l Loan Network, Inc.*, 770 F. Supp. 678, 688 (D.D.C. 1991).

The Commission is entitled to a temporary restraining order if it establishes (1) a prima facie case showing the Defendants have violated the securities laws, and (2) a reasonable likelihood they will repeat the wrong. *Shiner,* 268 F. Supp. 2d at 1340. The Commission appears "not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws." *SEC v. Lauer,* 03-80612-CIV-MARRA, 2008 WL 4372896 (S.D. Fla. Sept. 24, 2008) *aff'd,* 478 Fed. Appx. 550 (11th Cir. 2012). The Commission therefore faces a lower burden than a private litigant when seeking an injunction, and need not meet the requirements for an injunction imposed by traditional equity jurisprudence. *Hecht Co. v. Bowles,* 321 U.S. 321, 331 (1944); *SEC v. J.W. Korth & Co.*, 991 F. Supp. 1468, 1472 (S.D. Fla. 1998). Unlike private litigants, the Commission need not demonstrate irreparable harm or the unavailability of an adequate remedy at law. *Hecht*, 321 U.S. at 331; *J.W. Korth,* 991 F. Supp. at 1473. Nor is it required to show a balance of equities in its favor. *SEC v. U.S. Pension Trust Corp.,* 07-22570-CIV-MARTINEZ, 2010 WL 3894082 (S.D. Fla. Sept. 30, 2010) *aff'd sub nom.; SEC v. U.S. Pension Trust Corp.,* 444 Fed. Appx. 435 (11th Cir. 2011).

The Commission's evidence in this case warrants entry of the requested injunctive relief on all applicable grounds. The declarations, testimony transcripts, bank and brokerage records, private placement memoranda, and other exhibits attached to this motion demonstrate that the defendants are violating the antifraud provisions of the federal securities laws, and will continue to violate them if the Court does not immediately restrain and enjoin them.

B. <u>The Commission Has Established Prima Facie Violations Of The Securities Laws</u>

The Commission has met its burden of establishing a prima facie showing of violations of the securities laws as alleged in the Complaint and this motion.

<u>1. The Offered Investments are Securities</u>

The offering materials the Defendants provided to investors identify the limited partnership interests as investments and securities. *See, e.g., Ex. 3 at JPI 1517-24; Ex. 4 at JPI 1729; Ex. 5 at JPI 1971 and 1988; Ex. 6 at JPI 30615 and 30612.* Their own characterization of these investments as subject to the federal securities laws is sufficient to characterize them as

securities where, as here, there are "no countervailing factors that would [lead] a reasonable person to question this characterization." *Diaz Vicente v. Obenauer,* 736 F. Supp. 679, 693 (E.D. Va. 1990) (quoting *Reves v. Ernst & Young*, 494 U.S. 56, 68 (1990)).

Moreover, the limited partnership interests are investment contracts and therefore securities covered under the federal securities laws. Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define "security" to include, among other things, "investment contracts." Although the term "investment contract" is not defined in these statutes, the Supreme Court has defined the term to mean: (1) an investment of money; (2) in a common enterprise; (3) with the expectation of profits to come solely from the efforts of others. *SEC v. W. J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

Here, the investments satisfy all three elements of the *Howey* test. First, money was invested. The second element, common enterprise, is also satisfied by the existence of either horizontal commonality (a pooling of investor funds and interests) or vertical commonality (the fortunes of the investor are linked with those of the promoter). The Eleventh Circuit requires only a showing of "broad vertical commonality." *SEC v. Unique Financial Concepts*, 196 F.3d at 1195, 1199-1200 (11th Cir. 1999). Here, a common enterprise exists under both horizontal and vertical commonality. Horizontal commonality is met because investor funds were pooled. Even though each project was a separate offering, within each offering the Defendants pooled all funds from investors in that offering, purportedly to build each project. Thus, the fortunes of the investors in each EB-5 project were joined by combining their money and sharing profits generated from the underlying EB-5 projects. Broad vertical commonality exists because the investors were dependent for their profits on the efforts and expertise of Stenger, Quiros, and the Defendant companies to build and operate the projects.

The final element of the *Howey* test requires that the investors' returns be derived solely from the entrepreneurial or managerial efforts of others. *Howey,* 328 U.S. at 298.[1] The Eleventh Circuit traditionally looks at "the amount of control that investors retain[ed over their

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[1] Rejecting a "literal application" of the third element, "solely from the efforts of others," the Fifth Circuit, in *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 477 (5th Cir. 1974), adopted the standard established in *SEC v. Turner*, 474 F.2d 476, 482 (9th Cir. 1973): "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." *Id.*

investment] under their written agreements," as well as the actual ability of the investors to manage their investments, in determining whether the investment meets the third prong of the *Howey* test. *Unique Financial Concepts*, 196 F.3d at 1201. Here, the Defendants had exclusive control over how the investors' funds were used. Investors had no control over how the projects were developed or how the Defendants spent the money they had invested. Nor did investors have any role in managing the ski resort, conference and recreation centers, lodging, and amenities that constituted the underlying EB-5 projects. Finally, although investors participate in the EB-5 program to obtain a green card, they also expect to receive returns on their investments. *See* Section V above. In fact, the Defendants touted projected returns to investors. *Id.* Therefore, this element of the *Howey* test is met. Because these investments satisfy the elements of an investment contract, they are securities.

2. The Defendants Have Violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act

Section 10(b) of the Exchange Act and Rule 10b-5 render it unlawful, in connection with the purchase or sale or securities, to: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement or omission of material fact; or (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the purchase or sale of any security. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. The Commission must also establish scienter and that the violations were made while using any means or instrumentality of interstate commerce. *SEC v. Corporate Relations Group*, No. 6:99-cv-1222, 2003 WL 25570113 at *7 (M.D. Fla. March 28, 2003). For the Commission's case, reliance, damages, and loss causation are not required elements. *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1244 (11th Cir. 2012).

Section 17(a) of the Securities Act makes it unlawful to engage in certain conduct "directly or indirectly" in "the offer or sale of securities." 15 U.S.C. § 77q(a). Specifically, Section 17(a)(1) prohibits "employ[ing] any device, scheme, or artifice to defraud; Section 17(a)(2) prohibits "obtain[ing] money or property by means of any untrue statement of a material fact or any [material] omission;" and Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(1)-(3). A showing of scienter is required under Section 17(a)(1), but Sections 17(a)(2) and (a)(3) only require a showing of negligence. *Aaron v. SEC*, 446 U.S.

680, 697 (1980).

The antifraud provisions also reach beyond misrepresentations or omissions and encompass any wrongdoing by any person that rises to the level of a deceptive practice. *Superintendent of Insurance v. Bankers Life and Casualty Co.*, 404 U.S. 6, 10 (1971); *see also In the Matter of Cady, Roberts & Co.,* 40 S.E.C. 907, 913 (1961) (the Commission has held that the subdivisions of Rule 10b-5, as well as Securities Act §17(a), should be considered "mutually supporting"). A defendant engages in a fraudulent scheme in violation of the antifraud provisions of the securities laws and violates Section 17(a)(1) and (3) and Rule 10b-5(a) and (c) when he commits any manipulative or deceptive act or acts that are part of a fraudulent or deceptive course of conduct, or are in furtherance of a scheme to defraud. *SEC v. Huff,* 758 F. Supp. 2d 1288, 1347-48 (S.D. Fla. 2010). To state a claim based on conduct violating these provisions, the Commission must establish: (1) the defendant committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter. *In re Alstom SA Securities Litigation,* 406 F. Supp. 2d 433, 474 (S.D.N.Y. 2005) (citing *In re Global Crossing*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004)).

(i) Misrepresentations and Omissions

As discussed above, the Defendants in Phases II-VII have made numerous material misrepresentations and omissions to investors, including: (i) misrepresenting how they would spend investor funds in Phases II through VII while in fact spending them: to pay off, pay down, and collateralize margin loans; on commingling money with other projects;, and on Quiros' misappropriation;[2] (ii) omitting in Hotel Phase II offering materials distributed after September 2008 to disclose to investors that they had improperly spent investor funds on Quiros' acquisition of Jay Peak;[3] (iii) misrepresenting that Stenger (the sole member of the general partners for the first six Jay Peak offerings) had control over investor funds when, in fact, he violated the limited partnership agreements by letting Quiros have exclusive authority over investor funds;[4] (iv) misrepresenting the status of FDA approval process for Biomedical Phase VII's medical

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[2] *See* Sections VII, VIII, and IX above.

[3] *See* Section VI above.

[4] *See* Sections VI, VIII, and IX above.

devices;[5] (v) making baseless revenue and income projections for Biomedical Phase VII;[6] and (vi) omitting to disclose their massive misuse and misappropriation of virtually all Biomedical Phase VII's investor funds in the revised offering materials.[7]

As discussed in detail above, there is no doubt that each of the statements set forth in the preceding paragraph was an untrue statement or an omission of material fact. Each offering document stated specifically in the source and use of funds document how the Defendants in that offering intended to spend investor money. *Exs. 2, 3, 4, 5, 6, 7, 56, and 57.* As further set forth above, the Defendants did not spend the money in the manner in which they represented. For example, Quiros, Q Resorts, Jay Peak, Stenger, Hotel Phase II, and Jay Peak Management all participated in spending investor funds improperly on Quiros' purchase of Jay Peak from MSSI.

Furthermore, the Defendants in each of the individual offerings as set forth in the individual counts in Section XII of the Complaint participated in spending investor funds on the margin loans in Phases II-VI, and on the margin loans and Quiros' misappropriation in Biomedical Phase VII. The Biomedical Phase VII defendants blatantly misrepresented that the FDA approval process was "in process" or "in progress," when they had made no submission to the FDA. *See* Section IX above. All of the Defendants in Phases II-VI misstated that Stenger, as the principal of the general partner in each offering, had control over investor funds, when the facts show that he gave Quiros total control over investor funds in each offering by transferring them to Raymond James' accounts under Quiros' sole control. *See* Sections VI-IX above. For the same reasons, the statements by the Defendants in each offering's limited partnership agreement were false. *Exs. 2, 3, 4, 5, 6, 7, 56, and 57.* The restrictions on the general partner's authority in each of those agreements simply did not exist, as demonstrated by the Defendants' actions.

All of these actions, and all of the Defendants in Phases II-VII, violated Section 17(a)(2) of the Securities Act in that they "obtain[ed] money or property by means of any untrue statement of a material fact or any [material] omission." 15 U.S.C. § 77q(a)(2). The misrepresentations and omissions listed above each enabled the Defendants to fraudulently

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[5] *See* Section IX above.

[6] *See* Section IX above.

[7] *See* Section X above.

persuade investors to invest in Phases II-VII. Furthermore, the six misstatements and omissions listed above violated Section 10(b) and Rule 10b-5(b) of the Exchange Act in that they constituted untrue statements or omissions of material fact or material omissions.[8]

Under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011), only the "maker" of a misstatement is may be directly liable under Section 10(b) and Rule 10b-5(b).[9] "The maker" is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* More than one person or entity may have authority over a statement and therefore may be considered the maker of a false statement or responsible for a material omission. *City of Pontiac Gen. Employees' Retirement Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 374 (S.D.N.Y. 2012) (*Janus* "has no bearing on how corporate officers who work together in the same entity can be held jointly responsible on a theory of primary liability. It is not inconsistent with *Janus* to presume that multiple people in a single corporation have the joint authority" to "make" a misstatement). *See also In re Pfizer Inc. Secs. Litig.*, 936 F. Supp.2d 252, 268–69 (S.D.N.Y. 2013).

In Phases II-VI, Stenger, Jay Peak, and the respective limited partnership and general partner were the makers of the false statements and omissions. Stenger, who was the principal of the general partners for all five of those offerings, had ultimate authority over the misstatements and omissions contained in the offering documents. *See* Section V above. Furthermore, in each offering, Jay Peak, as well as the limited partnership and general partner, was responsible for drafting and distributing the offering materials to investors. *Exs. 2, 4, 5, 6, and 7.* Therefore, each is liable for the misrepresentations and omissions in the offering documents.

In Biomedical Phase VII, Quiros, along with Stenger, Jay Peak, and the Phase VII corporate entities, were the makers" of the material misstatements in the offering materials. Quiros and Stenger were both principals of the Biomedical Phase VII general partner, and both

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[8] Stenger, Jay Peak, and the limited and general partners are directly liable for Rule 10b-5(b) violations in Phases II-VII. As discussed below, Quiros and Q Resorts aided and abetted Rule 10b-5(b) violations in those offerings. Quiros is also directly liable for the misrepresentations and omissions charged under Rule 10b-5(b) in Biomedical Phase VII, and liable for the misrepresentations and omissions in Phases II-VI and for the fraudulent scheme in Phases I-VI as a control person.

[9] *Janus* does not apply to Section 17(a)(2) of the Securities Act, which merely requires that a person use a misstatement or omission to obtain money or property, not make it. *SEC v. Big Apple Consulting USA, Inc.,* 783 F.3d 786, 795–98 (11th Cir. 2015); *SEC v. Monterosso,* 756 F.3d 1326, 1334 (11th Cir. 2014).

acknowledged they had ultimate authority over the misstatements and omissions contained in its offering materials. *See* Section V above.

(ii) Materiality

A false statement or omission must be material for a Defendant to be liable for it. The test for materiality is "whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *SEC v. Merchant Capital, LLC,* 483 F.3d 747, 766 (11th Cir. 2007) (citation omitted). Put another way, information is material if a reasonable investor would consider it significant to making an investment decision. *Basic v. Levinson,* 485 U.S. 224, 230 (1988). A false statement or omission need not be outcome determinative for it to be considered material; rather it simply must be significant to the investor's decision. *SEC v. City of Miami,* 988 F. Supp. 2d 1343, 1357 (S.D. Fla. 2013) ("to be material, a fact need not be outcome-determinative, that is, it need not be important enough that it would necessarily cause a reasonable investor to change his investment decision") (quoting *SEC v. Meltzer,* 440 F. Supp. 2d 179, 190 (E.D.N.Y. 2006)).

Under this standard, the Defendants' false statements and omissions are clearly material. Almost all of the Defendants' misrepresentations and omissions concerned the use of investors' funds. Clearly, any reasonable investor would want to know that a Defendant was not using his or her money in the way the Defendant promised – to invest in and build a specific project – but instead for the Defendant's own financial gain. This is particularly true in an EB-5 offering, where proper use of the investor's money on the promised project is crucial to creating the required number of jobs for an investor to obtain a permanent green card and achieve a rate of return.

Furthermore, the misuse of investors' money in each offering – and especially the statements about FDA approval and revenues in Biomedical Phase VII – directly affected the investors' potential profits. Without FDA approval, Biomedical's medical products could not be manufactured or sold and, consequently, the project would have no revenue or income. Any reasonable investor would want to know that a Defendant was lying about the use of his or her money under those circumstances. *U.S. v. Lochmiller*, 521 Fed. Appx. 687, 691-92 (10th Cir. April 15, 2013) (upholding conspiracy to commit securities fraud conviction because, among other things, Defendant made material misrepresentations when he told investors he would use money for low-income housing but instead used it for personal gain).

(iii) Scheme Liability

All of the Defendants violated Sections 17(a)(1) and (3) of the Securities Act, and Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c), by participating in a scheme to defraud and engaging in a fraudulent course of conduct. As discussed above, to state a claim based on conduct violating these provisions, the Commission must establish: (1) the Defendant committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter (except as to Section 17(a)(3), which requires only a showing of negligence). *Alstom,* 406 F. Supp. 2d at 474. We already discussed above the scienter of Stenger and Quiros (and therefore the corporate Defendants) in each offering.

A Defendant engages in a fraudulent scheme in violation of Section 17(a)(1) and (3) and Rule 10b-5(a) and (c) when he commits any manipulative or deceptive act or acts that are part of a fraudulent or deceptive course of conduct, or are in furtherance of a scheme to defraud. *Huff,* 758 F. Supp. 2d at 1347-48. *See also SEC v. Fraser*, 2010 U.S. Dist. LEXIS 7038 at *23 (D. Ariz. Jan. 28, 2010), quoting *Cooper v. Pickett*, 137 F.3d 616, 624 (9th Cir. 1997). The Defendant "must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *Fraser*, 2010 U.S. Dist. LEXIS 7038 at *23.

The false statements and omissions described above alone provide a basis for scheme liability under Sections 17(a)(1) and (3), and Rules 10b-5(a) and (c). *Affiliated Ute Citizens of Utah v. U.S.* 406 U.S. 128, 153 (1972) (liability under Rule 10b-5(a) and (c) established even though the case was one "involving primarily a failure to disclose" to investors); *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 158-59 (2008) (defendants' "deceptive acts" and "course of conduct included both oral and written statements, such as the backdated contracts").

However, in this instance, the Defendants committed numerous deceptive and fraudulent acts beyond making misrepresentations and omissions, which can also give rise to scheme liability. *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 111-12 (2nd Cir. 1998) ("a primary violator is one who participated in the fraudulent scheme"); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1471-72 (2nd Cir. 1996) (scheme liability extends to those "who had knowledge of the fraud and assisted in its perpetration"); *SEC v. Lee*, 720 F. Supp. 2d 305, 334 (S.D.N.Y. 2010).

Quiros committed numerous deceptive acts. He misappropriated more than $50 million

of investor funds from Phases I, II, and VII as described above to purchase Jay Peak, to back his personal line of credit, to pay income taxes, to buy a condominium, and to purchase Q Burke, among other things. In addition, he improperly used investor money to pay off, pay down, pay interest on, and collateralize the four margin loans, and regularly commingled investor funds between projects. These activities created shortfalls in numerous projects. All of these actions were in violation of the use of funds documents and the limited partnership agreements in each offering.

Quiros could not have accomplished his fraud without Stenger's involvement. Stenger made the fraud possible by routinely transferring investor funds from the People's Bank accounts to Quiros' control at Raymond James, enabling Quiros to carry out his fraudulent scheme. Stenger turned a blind eye to the fraudulent conduct, and therefore perpetuated it, when he dismissed the red flags raised by the former Jay Peak controller. Stenger himself commingled funds between projects in the People's Bank accounts in violation of the limited partnership agreements.

All of these actions constitute manipulative or deceptive acts that are part of a fraudulent or deceptive course of conduct, or are in furtherance of a scheme to defraud. As discussed above, because Stenger and Quiros' actions can be imputed to the general and limited partnerships in each offering, as well as Jay Peak and, in Quiros' case, Q Resorts, those entities along with Quiros and Stenger are liable for violations of Sections 17(a)(1) and (3) of the Securities Act and Rules 10b-5(a) and (c).

(iv) Scienter

Courts have defined scienter as a state of mind embracing intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 193 (1976). The Commission may establish scienter for violations of Sections 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act by "a showing of knowing misconduct or severe recklessness." *Monterosso*, 756 F.3d at 1335 (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982)).

As demonstrated above, Quiros and Stenger acted knowingly, or at a minimum recklessly, while making the misrepresentations and omissions discussed above. Quiros was the architect of the fraudulent scheme. He approved and decided what payments would be made and to whom, and he maneuvered a complicated series of often circuitous transfers of investor funds between various accounts. Quiros knew, or was severely reckless in not knowing, that he was

using investor funds in a manner that was inconsistent with the limited partnership offering materials.

For example, MSSI expressly told him he would violate the terms of the Suites Phase I and Hotel Phase II offering materials if he used investor funds to purchase Jay Peak. Yet he did so anyway. *See* Section VI above. Furthermore, Quiros reviewed and was aware of the Phase II-VI offering materials, including the source and use of funds documents that described specifically how the Defendants would spend investor money. *See* Section V above. He knew it was improper to use investor funds to collateralize, pay down and pay off margin loans, yet did so for years. Quiros also reviewed and approved Biomedical Phase VII's offering materials before they were distributed to investors. Therefore, Quiros knew, or was severely reckless in not knowing, that those materials contained false statements about restrictions on the general partner's authority, how Biomedical Phase VII would use investor money, and about the FDA approval process.

Stenger similarly engaged in knowing misconduct. As the sole member of the general partners for the first six Jay Peak limited partnerships, Stenger knew the offering materials contained statements about the general partner overseeing investor funds. At a minimum, given that knowledge, he acted extremely recklessly in abdicating control of the limited partnerships' money accounts to Quiros. Moreover, Stenger reviewed and approved the offering materials for all of the limited partnerships before they were distributed to investors, including the use of funds section contained those materials. He therefore was, at a minimum, extremely reckless in letting Quiros oversee investor money and either not knowing or turning a blind eye to how Quiros was misusing investor funds. For example, the evidence shows Jay Peak's former controller alerted him that that Hotel Phase II partnership funds were being improperly commingled and used to fund construction cost overruns from Suites Phase I. Yet he did nothing to stop this. *See* Section VI above.

Stenger also knew, or was severely reckless in not knowing, that Biomedical Phase VII's offering materials contained material misstatements and omissions. For example, Stenger knew or was severely reckless in not knowing that those materials contained false statements regarding the status of the FDA approval process for Biomedical Phase VII's medical devices. He knew Biomedical Phase VII was nowhere close to submitting any product for FDA review and approval, in contrast to the statements in the offering documents.

The entity defendants also acted with scienter because Quiros' and/or Stenger's conduct may be imputed to them. *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1340 (S.D. Fla. 1999) (the scienter of corporate officers is properly imputed to the corporation).

(v) The "In Connection With" Requirement

Because the Defendants in Phases I-VII made their misrepresentations and omissions or participated in a fraudulent scheme in connection with in the offer, purchase, and sale of their limited partnership interests, their acts meet the "in connection with" requirement of Section 10(b) and Rule 10b-5. *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (courts should interpret the "in connection with" requirement broadly to effectuate the remedial purpose of the federal securities laws); *SEC v. Merkin,* 2012 WL 5245561 *8 (S.D. Fla. Oct. 3, 2012) (the "in connection with" requirement is satisfied if the SEC shows that the material misrepresentations were relayed to the public in a way that a reasonable investor would rely on them) (citing *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 860-62 (2d Cir.1968)).

(vi) Interstate Commerce

The Defendants have been offering and selling securities using the means and instrumentalities of interstate commerce. They have attracted investors worldwide through Jay Peak's website and have made use of the telephone and emails in connection with the sale of the various Jay Peak limited partnership interests. In total, the Defendants have raised more than $350 million from hundreds of investors worldwide, and they used wire transfers to receive investor funds.[10] For all of the foregoing reasons, the Commission has established a prima facie case the defendants have violated and continue to violate Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.

(vii) Q Resorts and Quiros' Aiding and Abetting Violations

Q Resorts and Quiros aided and abetted violations of Section 10(b) and Rule 10b-5(b) in connection with the offerings in Phases II-VI. To establish aiding and abetting liability, the Commission must show: (1) a primary violation; (2) the aider and abettor provided "substantial assistance" to the violator; and (3) the aider and abettor acted with scienter. *SEC v. BIH Corp.*, 2011 U.S. Dist. LEXIS 97821 (S.D. Fla., Aug. 31, 2011). The scienter requirement can be satisfied by extreme recklessness, which can be shown by "red flags," "suspicious events

[10] *See* 15 U.S.C. §§ 77b(a)(7), 78c(a)(17) ("interstate" defined to include commerce and communications between a state and a foreign country).

creating reasons for doubt," or "a danger . . . so obvious that the actor must have been aware of" the danger of violations. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2008).

Here, Quiros and Q Resorts aided and abetted the misrepresentations and omissions made by Stenger, Jay Peak, and the general partner and limited partnerships in Phases II-VI, and described in Section (i) above. That section demonstrates the primary violations of the Defendants in question. Second, the facts above demonstrate Quiros' substantial role in the violations. Quiros' actions of: misappropriating Phase I and II investor funds to buy Jay Peak; misappropriating Phase VII investor funds to back the line of credit, purchase Q Burke, pay income taxes, and buy a condominium (among other things); commingling investor funds; and misusing investor funds to collateralize and pay down, pay off, and pay interest on the margin loans, all had the effect of rendering false the Defendants' statements in the offering documents about use of investor money and restrictions on the general partner's use of investor funds. Thus, he played a substantial role in making the other Defendants' statements to investors false and misleading.

As discussed in Section (iii) above, Quiros acted knowingly or extremely recklessly in all of his actions. Therefore, he satisfies the knowledge requirement for aiding and abetting, and the Commission has demonstrated he aided and abetted the misrepresentations and omissions the other Defendants made in Phases II through VI. Because Quiros acted through Q Resorts in all the financial transactions described above, Q Resorts also aided and abetted the other Defendants' securities law violations.

(viii) Quiros is Liable as a Control Person

To establish Quiros' liability as a control person under Section 20(a) of the Exchange Act, the Commission must show: (i) a primary violation of the securities laws, and (ii) that Quiros had 'control' over the primary violator. *Financial Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 288 (5th Cir. 2006). Section 20(a) requires only "some indirect means of discipline or influence short of actual direction." *Lane v. Page*, 649 F. Supp.2d 1256, 1306 (D.N.M. 2009) (quoting *Richardson v. Macarthur*, 451 F.2d 35, 41 (10th Cir. 1971)).

In the Eleventh Circuit, a Defendant is liable as a control person where the Defendant "had the power to control the general affairs of the entity primarily liable at the time the entity violated the securities laws ... [and] had the requisite power to directly or indirectly control or

influence the specific corporate policy which resulted in the primary liability." *Brown v. The Enstar Group, Inc.*, 84 F.3d 393, 397 (11th Cir.1996) (citation and quotation marks omitted). The Eleventh Circuit has held that neither Section 20(a) nor the SEC regulation defining "control" as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person," 17 C.F.R. § 230.405 (1995), appears to require participation in the wrongful transaction to establish liability. *Brown,* 84 F.3d at 397 n.5.

The evidence amply establishes that Quiros exercised, and continues to exercise, control over each of the general partners and limited partnerships in Phases I-VI. Among other things, Quiros is the sole owner, officer, and director of Q Resorts, which wholly owns Jay Peak. Quiros is the Chairman of the Board of Jay Peak, which is the umbrella entity that is the project sponsor for all of the projects, and manages and operates all of the completed projects. Furthermore, Quiros had sole control over the Raymond James accounts where Stenger transferred each limited partnership's investor funds. Thus, Quiros controlled the finances and operations of each limited partnership, including how investor money ultimately was used.

C. The Defendants Are Likely to Continue to Violate the Securities Laws

To obtain a temporary restraining order, the Commission must: (1) make a *prima facie* showing the Defendants have violated the securities laws; and (2) show a reasonable likelihood of future violations. *Calvo,* 378 F.3d at 1216. The evidence above demonstrates the Defendants violated the securities laws.

In assessing whether there is a reasonable likelihood of future violations, courts look to the following factors: (1) the egregiousness of the Defendants' actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of a Defendant's assurances against future violations; (5) the Defendant's recognition of the wrongful nature of the conduct: and (6) likelihood of opportunities for future violations. *Id.* Past illegal conduct is highly suggestive of the likelihood of future violations. *Id; CFTC v. Matrix Trading Group,* Case No. 00-8880-CIV, 2002 WL 31936799 at *12 (S.D. Fla. Oct. 3, 2002).

In this case, each of the factors set forth above weighs in favor of the Court entering a temporary restraining order. First, the Defendants' conduct is egregious. They have systematically misappropriated and misused $200 million – more than half of all investor money they have raised – for a variety of improper purposes. In particular, Quiros has absconded with more than *$50 million* in investor funds for his *personal* use, including buying a luxury

condominium, paying income taxes, and funding his purchases of other resorts. His looting of investor money has caused the Phases VI and VII to run out of money, and endangered the $500,000 investments of hundreds of potential victims. In addition, Quiros and Stenger have blatantly misrepresented how the projects were going to use investor funds, and have completely misstated the status of the FDA approval process for Biomedical Phase VII. They continue to omit disclosing that they are years away from obtaining FDA approval and developing the Phase VII products – without which the project will founder and fail. It is hard to imagine more egregious and brazen misconduct.

Second, the conduct is far from isolated. It has been going on for more than eight years, and involved seven separate offerings, more than $350 million dollars and more than 700 investors. More importantly, the Defendants' conduct is ongoing, as they are continuing to solicit investments in Biomedical Phase VII, using offering documents that contain material misrepresentations and omissions. Moreover, Quiros and Stenger are continuing to solicit investors in another EB-5 offering, Q Burke, and they are planning future EB-5 limited partnership offerings.

Third, the Defendants have demonstrated a high degree of scienter. From the outset, Quiros'conduct has demonstrated a determined, focused scheme to control and use investor funds as he sees fit – including to purchase a ski resort and luxury condominium for himself. Moreover, Stenger abdicated his duties to manage investor assets even after he learned that Phase I and Phase II investor funds had been commingled and been alerted that Quiros might be misusing investor funds. Fourth, as demonstrated by their investigative testimony in this case, Quiros and Stenger continue to deny any wrongdoing, and maintain they have money to finish Phases VI and VII in the face of overwhelming evidence to the contrary. Thus, fifth, they have given no assurances against future misconduct.

Given that they want to raise at least another $400 million in future EB-5 projects – in addition to what they are trying to raise in Q Burke and Biomedical Phase VII – the Defendants are in a position to re-offend if this Court does not immediately stop their activity by issuing a temporary restraining order. Quiros and Stenger's past conduct and current position shows a reasonable likelihood of future violations. Unless this Court restrains and enjoins them, they will continue to defraud investors.

XII. RELIEF REQUESTED

The Commission is requesting the following *ex parte* relief:

(1) A Temporary Restraining Order against Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services to prevent: (a) them from further violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act; and (b) Quiros from further violating Section 20(a) of the Exchange Act as a control person;

(2) A temporary conduct-based injunction against Quiros and Stenger prohibiting them from participating in any EB-5 offering or sale, and from holding management positions or controlling any enterprise that has issued or is issuing EB-5 securities;

(3) An Order Freezing the Assets of Defendants Quiros, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, AnC Bio Vermont GP Services, and Relief Defendants JCM, GSI, Northeast, and Q Burke;

(4) an Order Prohibiting Destruction of Documents against Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services and Relief Defendants JCM, GSI, Northeast, and Q Burke; and

(5) An Order to Show Cause: why a preliminary injunction should not be granted against Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services to prevent: (a) them from further violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act; and (b) Quiros from further violating Section 20(a) of the Exchange Act as a control person; why a preliminary conduct-based injunction against Quiros and Stenger should not be granted; why the asset freeze should not be continued against Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services, and Relief Defendants JCM, GSI, Northeast, and Q Burke; and why the order against destruction of records against Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services and the Relief Defendants should not continue.

A. An *Ex Parte* Temporary Restraining Order is Necessary

Based on the facts and legal arguments set forth above, the Commission has met its burden of showing: (1) there is *prima facie* evidence the Defendants are violating the securities laws; and

(2) there is a reasonable likelihood they will continue to violate the law unless the Court immediately issues an *ex parte* temporary restraining order against Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services. As our accompanying Certification Under Rule 65 as to why we are not providing the Defendants notice explains in more detail, we have grave concerns the Defendants will dissipate investor assets if we do. They have already misappropriated more than $50 million for personal use, and misused more than $200 million of the money they have raised from investors. Given the overseas connections of both Quiros and Stenger, and the ongoing fraud both men are committing, we ask the Court to enter the attached proposed order granting this temporary restraining order and entering the asset freeze without notice to the Defendants to prevent them from further pilfering investor funds. We will immediately serve the Defendants with the pleadings and orders, and the attached proposed order asks the Court to set a show cause hearing at which time the Defendants can appear and argue why the Court should not enter a preliminary injunction and further extend the asset freeze.

B. Temporary Conduct-Based Injunctions Against Quiros and Stenger Are Necessary

In addition to the temporary restraining order enjoining Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services from continuing to violate the anti-fraud provisions of the securities laws, we also ask the Court to enter temporary conduct-based injunctions against Quiros and Stenger that will prevent them from participating in the issuance, offer or sale of any securities issued through the EB-5 Program and participating in the management, administration, or supervision of, or otherwise exercising any control over, any commercial enterprise or project that has issued or is issuing any securities through the EB-5 program.. Entry of the temporary restraining order, while necessary, will not *per se* stop Quiros and Stenger from attempting to raise funds from investors in the Q Burke and additional EB-5 offerings they want to conduct. The additional layer of protection offered by the attached conduct-based restraining order will prevent Quiros and Stenger from defrauding investors in those additional projects as they have defrauded investors in the Jay Peak offerings.

Based on the facts and legal arguments set forth above, the Commission has met its burden of showing that the Court should enter temporary conduct-based injunctions against Quiros and Stenger, prohibiting them from: (1) participating in the issuance, offer or sale of any securities

issued through the EB-5 Immigrant Investor Program (provided, however, that such injunction would not prevent them from purchasing or selling securities for their own accounts); and (2) participating in the management, administration, or supervision of, or otherwise exercising any control over, any commercial enterprise or project that has issued or is issuing any securities through the EB-5 Immigrant Investor program. Accordingly, the Commission requests pursuant to Section 21(d)(5) of the Exchange Act, Section 305(b)(5) of the Sarbanes-Oxley Act of 2002, and the Court's equitable powers, that this Court enter the attached Order temporarily enjoining Quiros and Stenger from participating in any EB-5 issuance, offering or sale and from holding management positions or controlling any enterprise that has issued or is issuing EB-5 securities.

C. An *Ex Parte* Freeze of Assets Is Necessary

Pursuant to their general equity powers, federal courts may order ancillary relief to effectuate the purposes of the federal securities laws, both to preserve Defendants' assets and ensure that wrongdoers do not profit from their unlawful conduct. *See, e.g., Levi Strauss & Co. v. Sunrise Int'l Trading Co.,* 51 F.3d 982, 987 (11th Cir. 1995); *SEC v. Solow*, 682 F. Supp. 2d 1312, 1325 (S.D. Fla. 2010). An asset freeze is appropriate "as a means of preserving funds for the equitable remedy of disgorgement." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005).

When there are concerns that Defendants might dissipate assets or transfer or secret assets beyond the jurisdiction of the District Court, this Court need only find some basis for inferring a violation of the federal securities laws to impose an asset freeze. *SEC v. Unifund SAL*, 910 F.2d 1028, 1037 (2nd Cir. 1990); *SEC v. Comcoa, Ltd.*, 887 F. Supp. 1521, 1524 (S.D. Fla. 1995); *SEC v. Aragon Capital Advisors, LLC,* 07 CIV.919 FM, 2011 WL 3278642 *6 (S.D.N.Y. July 26, 2011). The Commission's "burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze is light: a reasonable approximation of a defendant's ill-gotten gains" is all that is required. "Exactitude is not a requirement . . . ." *ETS Payphones*, 408 F.3d at 735 (citation and quotation omitted); *FTC v. IAB Marketing Associates, LP,* 746 F.3d 1228, 1234 (11th Cir. 2014). The Commission's burden to demonstrate the potential for dissipation of funds is even lighter. *FTC v. IAB Marketing Associates, LP,* 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013) ("There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze") (citing *ETS Payphones*, 408 F.3d at 734, and *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1367-70 (S.D. Fla. 2006)); *SEC v. Gonzalez de*

Castilla, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("the SEC must demonstrate only . . . a concern that defendants will dissipate their assets . . . .").

As demonstrated throughout this memorandum, the Defendants have violated the securities laws and are reasonably likely to continue to do so. Through these violations, the Defendants – and Quiros in particular – have misappropriated and misused $200 million. The evidence set forth above shows the Commission is likely to succeed in disgorging the amounts the Defendants have misused and Quiros has misappropriated, as disgorgement is an equitable remedy intended to prevent unjust enrichment. *Monterosso*, 756 F.3d at 1337. Therefore, a freeze over the bank and other financial accounts, and any other assets they possess, of Defendants Quiros, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services is necessary to preserve those funds for disgorgement. The freeze will also prevent additional dissipation of assets and aid in the recovery of funds for defrauded investors.[11]

The Court's power to freeze assets extends to Relief Defendants. *CFTC v. Walsh*, 618 F.3d 218, 225 (2nd Cir. 2010); *CFTC v. International Berkshire Group Holdings, Inc.*, 2006 WL 3716390 *10 (S.D. Fla. Nov. 3, 2006). A Relief Defendant is a party not charged with wrongdoing who nevertheless "possesses illegally obtained profits but has no legitimate claim to them." *Huff*, 758 F. Supp. 2d at 1362. To obtain a freeze of a Relief Defendant's assets, the Commission "must demonstrate only that [it] is likely ultimately to succeed in disgorging the frozen funds." *Walsh*, 618 F.3d at 225.

Here, the Court should freeze the assets of Relief Defendants JCM, GSI, Northeast and Q Burke, because they received proceeds from the Jay Peak limited partnership offerings that they were not entitled to receive. They thus will likely be subject to a disgorgement order as well because they lack any legitimate claim to the funds they received. *Walsh*, 618 F.3d at 226; *SEC v. George,* 426 F.3d 786, 798 (6th Cir. 2005). A contrary conclusion "would allow almost any defendant to circumvent the SEC's power to recapture fraud proceeds, by the simple procedure of giving [assets] to friends and relatives." *SEC v. Cavanagh*, 155 F.3d 129, 137 (2nd Cir. 1998).

The Commission need not trace a defendant's ill-gotten gains to assets currently possessed.

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[11] The Commission is not requesting an asset freeze as to the first five limited partnerships (along with their general partners) and Jay Peak, the company that manages them. These projects are all fully subscribed and are now up and running businesses with employees and customers. The Commission seeks to minimize as much as possible the potential impact of this action on those businesses.

FTC v. Leshin, 719 F.3d 1227, 1234 (11th Cir. 2013) ("A disgorgement order establishes a personal liability, which the defendant must satisfy regardless whether he retains the proceeds of his wrongdoing") (citation and quotation omitted); *Lauer*, 445 F. Supp. 2d at 1369 ("disgorgement is an equitable obligation to return a sum equal to the amount wrongfully obtained, rather than a requirement to replevy a specific asset . . . .") (citation and internal quotation omitted). This is true as to Relief Defendants also. *CFTC v. Gresham*, 2012 WL 1606037 *3 (N.D. Ga. May 7, 2012) ("An individual may be a proper relief defendant even if she does not possess the actual ill-gotten gains if she previously received benefits that were derived from another person's unlawful conduct").

The recent Supreme Court decision of *Luis v. United States*, __ S. Ct. __, 2016 WL 1228690 (March 30, 2016), does not change this analysis., In that case, the Supreme Court held that, in a criminal case, the government could not freeze a defendant's assets unconnected to her illegal activity to the extent the defendant required those funds to pay for counsel. However, *Luis* was grounded in a criminal defendant's Sixth Amendment right to counsel – a right that does not apply in civil cases. *Id.* Furthermore, *Luis* also concerned a specific forfeiture statute, whereas here, controlling Eleventh Circuit case law makes clear that all of a Defendant's assets may be subject to a disgorgement order, and therefore to an asset freeze.

Accordingly, the Commission requests that this Court enter an Order granting an immediate asset freeze over the assets of Defendants Quiros, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services, and Relief Defendants JCM, GSI, Northeast and Q Burke.

D. An Order Prohibiting Destruction of Records

An Order prohibiting the destruction of records is appropriate to prevent the destruction of documents before this Court can adjudicate the Commission's claims, and to ensure that whatever equitable relief might ultimately be appropriate is available. *Shiner,* 268 F. Supp. 2d at 1345-46. Consequently, we ask that the Court order Defendants Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services and the Relief Defendants not to alter or destroy relevant documents.

XIII. CONCLUSION

For the foregoing reasons, the Court should grant the Commission's Motion for Temporary Restraining Order and Other Emergency Relief and issue the accompanying

proposed Order.

Respectfully submitted,

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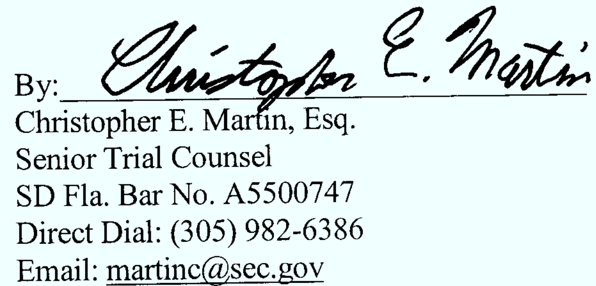
By: 
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