

**Addendum Re: Review of the EB-5 Program in Vermont and the Vermont Regional Center – August 21, 2017**

Subsequent to submitting the above Report to the Governor's Office by the Vermont Department of Financial Regulation, the Vermont Agency of Commerce and Community Development (ACCD) received a Notice of Intent to Terminate the Vermont Regional Center (VRC) from the U.S. Citizenship and Immigration Service (USCIS). The Notice, dated August 14, 2017, was received on August 18, 2017 and is attached to this Addendum.

The State will file a timely response to the USCIS, addressing the points made in its Notice. Ultimately, the Notice is aligned with DFR's and ACCD's recommendation to eventually close the VRC, though we do not agree with its determination for immediate termination or its assessment of the program. If USCIS followed through with the termination as proposed, dozens of investors in Jay Peak and non-Jay Peak projects may be adversely impacted as those investors would no longer be eligible to receive an unconditional visa.

The State hopes to work with USCIS to find a path for resolution to the Notice so that the recommendation of the above Report (orderly wind down of the regional center) can occur in a manner that protects investors in VRC related projects and facilitates future economic development in Vermont.

The VRC will communicate with projects related to the VRC to apprise them of the Notice today.



**U.S. Citizenship  
and Immigration  
Services**

**TO:**

Vermont Agency of Commerce and Community  
Development Regional Center  
attn.: Joan Goldstein  
One National Life Dr./Deane C. Davis Bldg./6<sup>th</sup> Floor  
Montpelier, VT 05620

**DATE:** August 14, 2017

**Application:** Form I-924

**A-Number:**

**File:** ID1031910148/RCW1031910148

**NOTICE OF INTENT TO TERMINATE**

This notice is in reference to the approved designation of Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center"), as a regional center in the Immigrant Investor Program (the "Program"). The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services ("USCIS") intends to terminate the participation of the Regional Center in the Program because it no longer serves the purpose of promoting economic growth.

**(SEE ATTACHED)**

Pursuant to 8 C.F.R. 204.6(m)(6), you are provided thirty (30) days from receipt of this notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged.

Failure to respond within the time allotted may result in the termination of your designation for participation as a regional center in the Immigrant Investor Program.

Your deadline for submitting a response is: **September 16, 2017.**

Keep a photocopy of this notice for your records. If you otherwise write to us about your case, please provide a copy of this notice.

You will be notified separately about any other applications or petitions you have filed.

Please send your response to this address:

U.S. Citizenship and Immigration Services  
Immigrant Investor Program Office  
131 M Street, NE  
Mailstop 2235  
Washington, DC 20529

**IMPORTANT: RETURN THIS ORIGINAL NOTICE ON TOP OF YOUR RESPONSE.**

cc: Robert C. Divine  
Baker Donelson Bearman Caldwell & Berkowitz, P.C.  
633 Chestnut Street, 1900 Republic Centre  
Chattanooga, TN 37450

## NOTICE OF INTENT TO TERMINATE

### Form I-924, Application for Regional Center Designation Under the Immigrant Investor Program Vermont Agency of Commerce and Community Development Regional Center

This notice is in reference to the approved designation of Vermont Agency of Commerce and Community Development Regional Center ("VACCD RC" or the "Regional Center"), as a regional center in the Immigrant Investor Program (the "Program").<sup>1</sup> The purpose of this notice is to notify the Regional Center that, pursuant to 8 C.F.R. § 204.6(m)(6), U.S. Citizenship and Immigration Services ("USCIS") intends to terminate the designation of the Regional Center in the Program because:

- USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

The regulation at 8 C.F.R. § 204.6(m)(6) (*Continued participation requirements for regional centers*) provides:

(i) Regional centers approved for participation in the program must:

(A) Continue to meet the requirements of section 610(a) of the Appropriations Act.

(B) Provide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area, using a form designated for this purpose; and

(C) Pay the fee provided by 8 CFR 103.7(b)(1)(i)(XX).

(ii) USCIS will issue a notice of intent to terminate the designation of a regional center in the program if:

(A) A regional center fails to submit the information required in paragraph (m)(6)(i)(B) of this section, or pay the associated fee; or

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<sup>1</sup> Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended (hereinafter "Appropriations Act").

(B) USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(iii) A notice of intent to terminate the designation of a regional center will be sent to the regional center and set forth the reasons for termination.

(iv) The regional center will be provided 30 days from receipt of the notice of intent to terminate to rebut the ground or grounds stated in the notice of intent to terminate.

(v) USCIS will notify the regional center of the final decision. If USCIS determines that the regional center's participation in the program should be terminated, USCIS will state the reasons for termination. The regional center may appeal the final termination decision in accordance with 8 CFR 103.3.

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

## I. Procedural History

### A. Initial Designation

On June 26, 1997, USCIS designated the Regional Center following approval of its application to participate in the Program (RCW1031910148). Based on the initial designation, the Regional Center obtained approval to promote economic growth under the Program in the following geographic regions:

Name of State	Counties
Vermont	Entire state

### B. Amendments

On August 17, 2009, the Regional Center filed an amendment to its designation to expand the list of approved industries, add new economic activities involved in these industry categories, and allow both loans to and equity investments in the Job Creating Enterprises (RCW1031910276). USCIS approved the amendment on October 6, 2009.

On March 16, 2010, the Regional Center filed a second amendment to its designation to add Mixed-use Commercial Development to its list of approved industries (RCW1031910291). USCIS approved the amendment on June 28, 2010.

On August 13, 2010, the Regional Center filed a third amendment to its designation to add Electric Power

Generation (using biomass) to its list of approved industries (RCW1031910255). USCIS approved the amendment on January 20, 2011.

On November 6, 2014, the Regional Center filed a fourth amendment to its designation. This is an exemplar project to construct a new snow-making facility and a ski-lodge at Mount Snow in West Dover, VT. (RCW1431051959). USCIS approved the amendment on May 18, 2016.

On November 6, 2014, the Regional Center filed a fifth amendment to its designation. This is an exemplar project to construct a new snow-making facility and a ski-lodge at Mount Snow in West Dover, VT. (RCW1431051960). USCIS approved the amendment on May 18, 2016.

On December 16, 2014, the Regional Center filed a sixth amendment to its designation. This is an exemplar project to redevelop the Morrisville-Stowe State Airport, construct an aircraft hangar with an aircraft maintenance facility, establish a flight academy, introduce regional charter air transportation services, and build a café. (RCW1435052109). USCIS received VACCD RC's May 8, 2017 request to withdraw this amendment, and USCIS issued an Acknowledgement of Withdrawal of this request on May 23, 2017.

On April 17, 2015, the Regional Center filed a seventh amendment to its designation for an exemplar project. The South Face Village at Okemo Project consists of the development and construction of 14 duplex units, 44 condominium units, 9 single family homes, a base lodge, related infrastructure such as roads, water, and sewer, one ski lift, and trails at Okemo Mountain Resort in Ludlow, Vermont. (RCW1510751763). USCIS denied this amendment on June 14, 2017.

On August 4, 2015, the Regional Center filed an eighth amendment to its designation. This is an exemplar project amendment to acquire, construct, and operate an expanded brewery and restaurant at the Trapp Family Lodge Resort in Stowe, VT (RCW1521652841). This amendment has yet to be adjudicated.

### **C. Regional Center Projects**

USCIS has received a total of 1,100 Forms I-526, Immigrant Petition by Alien Entrepreneur, filed by petitioners asserting that they have invested capital in 21 new commercial enterprises ("NCEs"), associated with the Regional Center as shown in the table below. USCIS has approved 754 of these Form I-526 petitions.

New Commercial Enterprise	Job-Creating Entity	Number of I-526 Petitions Filed	Number of I-526 Petitions Approved to Date
America-Sugarbush Fund LLP806	Summit Ventures NE LLC	[REDACTED]	[REDACTED]
Carinthia Group 1 LP	West Lake Water Project LLC, Carinthia Ski Lodge LLC	[REDACTED]	[REDACTED]
Carinthia Group 2 LP	West Lake Water Project LLC, Carinthia Ski Lodge LLC	[REDACTED]	[REDACTED]
CHP Opportunity Partners I, LP	Country Home Products Inc.	[REDACTED]	[REDACTED]
EB-5 America Sugarbush LP	N/A	[REDACTED]	[REDACTED]
EB5 America Sugarbush Fund LP	Summit Ventures NE LLC	[REDACTED]	[REDACTED]
Jay Peak Biomedical Research Park LP	N/A	186	83
Jay Peak Golf and Mountain Suites LP	N/A	91	90
Jay Peak Hotel Suites LP	N/A	31	31
Jay Peak Hotel Suites Phase II LP	N/A	151	143
Jay Peak Hotel Suites Stateside LP	N/A	139	133
Jay Peak Lodge and Townhouses LP	N/A	93	89
Jay Peak Penthouse Suites LP	N/A	70	67
Q Burke Mountain Resort, Hotel & Conference Center LP	Q Burke Mountain Resort GP Services LLC	118	47
Burke Mountain Resort, Hotel & Conference Center LP	N/A	1	0
Seldon Clean Water Products (Asia) LP	Seldon Technologies Inc.	10	9
South Face Village Development Fund LP	South Face Village at Okemo Development Company, LLC	[REDACTED]	[REDACTED]
Vermont Opportunity Partners I LP	CHP Holdings Inc.	[REDACTED]	[REDACTED]
Von Trapp Enterprises LP	Trapp Family Lodge Inc.	[REDACTED]	[REDACTED]
Stowe Airport Investment LP	N/A	[REDACTED]	[REDACTED]
Stowe Aviation LLC	N/A	[REDACTED]	[REDACTED]
<b>Totals</b>	-	<b>1,100</b>	<b>754</b>

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed Form I-526 exemplars and related organizational and transactional documents for America-Sugarbush Fund LLP806, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to provide financing for a job creating entity ("JCE") – Summit Ventures NE LLC. The JCE planned to invest these funds in a real estate resort project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for CHP Opportunity Partners I LP, an NCE. The NCE planned to pool \$12 million in capital investments from 24 EB-5 investors to provide financing for a JCE – Country Home Products Inc. The JCE planned to invest these funds in a manufacturing project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Carinthia Group 1 LP and Carinthia Group 2 LP, NCEs. The NCEs planned to pool \$52 million in capital investments from 104 EB-5 investors, and loan the funds to two JCEs – West Lake Water Project LLC and Carinthia Ski Lodge LLC. The JCEs planned to construct a new snow-making facility and ski-lodge at Mount Snow in West Dover, VT.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for EB-5 America Sugarbush LP, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to finance a hospitality development project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for EB5 America Sugarbush Fund LP, an NCE. The NCE planned to pool \$20 million in capital investments from 40 EB-5 investors to provide financing for a JCE – Summit Ventures NE LLC. The JCE planned to invest these funds in a resort construction and expansion project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Biomedical Research Park LP, an NCE. The NCE planned to pool \$110 million in capital investments from 220 EB-5 investors to finance a biomedical project.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Golf and Mountain Suites LP, an NCE. The NCE planned to pool \$45 million in capital investments from 90 EB-5 investors to finance construction of a resort development. The project is completed.



As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites LP, an NCE. The NCE planned to pool \$17.5 million in capital investments from 35 EB-5 investors to finance construction of a ski resort hotel. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites Phase II LP, an NCE. The NCE planned to pool \$75 million in capital investments from 150 EB-5 investors to finance the construction and operation of a ski resort. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Hotel Suites Stateside LP, an NCE. The NCE originally planned to pool \$80 million in capital investments from 160 EB-5 investors to finance the development of ski resorts.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Lodge and Townhouses LP, an NCE. The NCE planned to pool \$45 million in capital investments from 90 EB-5 investors to finance the development of a resort project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Jay Peak Penthouse Suites LP, an NCE. The NCE planned to pool \$35 million in capital investments from 70 EB-5 investors to finance the development of a hotel project. The project is completed.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Q Burke Mountain Resort, Hotel & Conference Center LP, an NCE. The NCE planned to pool an estimated \$98 million in capital investments from 196 EB-5 investors to provide finance for a JCE – Q Burke Mountain Resort GP Services LLC. The JCE planned to develop and operate a ski resort (with other facilities). According to the latest information submitted by VACCD, the hotel had been built, but the aquatic facility, tennis center, and upgraded mountain bike facility had yet to be completed.<sup>2</sup>

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Sheldon Clean Water Products (Asia) LP, an NCE. The NCE originally planned to pool \$20 million in capital investments from 40 EB-5 investors to provide

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<sup>2</sup> See VACCD's August 25, 2016 reply to USCIS's July 8, 2016 Request for Information, p. 11-12.

financing for a JCE – Seldon Technologies Inc. The JCE developed a facility to manufacture water filtration devices. However, Seldon Technologies Inc. ceased its operations in September, 2015.<sup>3</sup>

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for South Face Village Development Fund, LP, an NCE. The NCE planned to pool \$34 million in capital investments from 68 EB-5 investors and loan the funds to a JCE – South Face Village at Okemo Development Company, LLC. The JCE planned to develop and construct the Okemo Mountain Resort in Ludlow, VT. As noted above, USCIS denied the I-924 Amendment (RCW1510751763) associated with this I-526 on June 14, 2017.

As part of USCIS's adjudication of a Form I-526 filing, USCIS reviewed a Form I-526 exemplar and related organizational and transactional documents for Von Trapp Enterprises LP, an NCE. The NCE originally planned to pool \$20 million in capital investments from 40 EB-5 investors, and loan the funds to a JCE – Trapp Family Lodge Inc. The JCE planned to expand an existing brewery and construct and operate a restaurant in Stowe, VT.

As part of USCIS's adjudication of a Regional Center amendment, USCIS reviewed organizational and transactional documents for Stowe Airport Investment LP and Stowe Aviation LLC, NCEs. These NCEs originally planned to pool \$20 million in capital investments from 40 EB-5 investors, to finance the re-development of the Morrisville-Stowe State Airport. As noted above, USCIS received VACCD RC's May 8, 2017 request to withdraw this amendment, and USCIS issued an Acknowledgement of Withdrawal of this request on May 23, 2017. (As part of this request, the Regional Center also notified USCIS that Stowe Aviation has terminated its participation in this project with VACCD RC, which the Regional Center accepts.)

The number of approved Form I-526 petitions by Federal fiscal year (October 1 through September 30) is shown below, along with the total number of Form I-526 approvals and EB-5 capital received by each NCE associated with the Regional Center.

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<sup>3</sup> Ibid., p. 16.

New Commercial Enterprise	I-526 Approvals Prior to 2014	2014	2015	2016	2017	Total Form I-526 Approvals	Aggregate EB-5 Capital Received (millions \$)
America-Sugarbush Fund LLP806							
Carinthia Group 1 LP							
Carinthia Group 2 LP							
CHP Opportunity Partners I, LP							
EB-5 America Sugarbush LP							
EB5 America Sugarbush Fund LP							
Jay Peak Biomedical Research Park LP		37	46			83	83
Jay Peak Golf and Mountain Suites LP	79	11				90	45
Jay Peak Hotel Suites LP	31					31	15.5
Jay Peak Hotel Suites Phase II LP	141	2				143	71.5
Jay Peak Hotel Suites Stateside LP	117	14	2			133	67
Jay Peak Lodge and Townhouses LP	79	10				89	45
Jay Peak Penthouse Suites LP	5	62				67	34.5
Q Burke Mountain Resort, Hotel & Conference Center LP			47			47	60.5
Burke Mountain Resort, Hotel & Conference Center LP						0	0.5
Seldon Clean Water Products (Asia) LP	9					9	5
South Face Village Development Fund LP							
Vermont Opportunity Partners I LP							
Von Trapp Enterprises LP							
Stowe Airport Investment LP							
Stowe Aviation LLC							

USCIS has received a total of 630 Forms I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status filed by petitioners associated with the Regional Center.

<b>New Commercial Enterprise</b>	<b>I-829s Denied</b>	<b>I-829s Approved to Date</b>
America-Sugarbush Fund LLP806	0	0
Carinthia Group 1 LP	0	0
Carinthia Group 2 LP	0	0
CHP Opportunity Partners I, LP	0	0
EB-5 America Sugarbush LP	0	0
EB5 America Sugarbush Fund LP	0	0
Jay Peak Biomedical Research Park LP	0	0
Jay Peak Golf and Mountain Suites LP	0	66
Jay Peak Hotel Suites LP	0	11
Jay Peak Hotel Suites Phase II LP	0	118
Jay Peak Hotel Suites Stateside LP	0	1
Jay Peak Lodge and Townhouses LP	0	44
Jay Peak Penthouse Suites LP	0	47
Q Burke Mountain Resort, Hotel & Conference Center LP	0	0
Burke Mountain Resort, Hotel & Conference Center LP	0	0
Seldon Clean Water Products (Asia) LP	0	9
Vermont Opportunity Partners I LP	0	0
Von Trapp Enterprises LP	0	0
Stowe Airport Investment LP	0	0
Stowe Aviation LLC	0	0
<b>Totals</b>	<b>0</b>	<b>337</b>

**D. Annual Reports (Forms I-924A)**

The Regional Center has filed six Forms I-924A, Supplement to Form I-924. The table below summarizes the information that the Regional Center provided to USCIS in those forms regarding the

claimed aggregate amount of capital investment from EB-5 petitioners associated with the Regional Center and the aggregate number of direct and indirect jobs created and maintained as a result of those investments per year/to date.

<b>Fiscal Year</b>	<b>Receipt No.</b>	<b>Date Received</b>	<b>Aggregate EB-5 Capital Investment (millions \$)</b>	<b>Aggregate Direct/ Indirect Job Creation</b>	<b>Aggregate Jobs Maintained</b>
2011	RCW1136450475	12/30/2011	99.5	2,057	384
2012	RCW1236350972	12/28/2012	77	1,805	768
2013	RCW1400251588	12/30/2013	44	3,571	908
2014	RCW1500552393	12/31/2014	58	1,240	789
2015	RCW1536353984	12/24/2015	96.5	1,726	642
2016	RCW1700555430	12/23/2016	23.875	287	621
	<b>TOTAL</b>		<b>\$398.875</b>	<b>10,686</b>	<b>4,112</b>

**E. United States Securities and Exchange Commission Complaint**

On April 12, 2016 the United States Securities and Exchange Commission (“SEC”) brought a civil action (the “SEC complaint”)<sup>4</sup> against 7 EB-5 entities associated with the VACCD RC, among other named Defendants (collectively referred to here as “Defendants”). This complaint notes that the SEC brought this action “to stop an ongoing, massive eight-year fraudulent scheme in which the Miami owner (i.e., Ariel Quiros) and chief executive of a Vermont ski resort (i.e., William Stenger) have systematically looted more than \$50 million of the more than \$350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service’s EB-5 Immigrant Investor Program.”<sup>5</sup> The SEC complaint further alleges that “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

<sup>4</sup> See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

<sup>5</sup> Ibid., p. 1-2.

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.”<sup>6</sup>

The 17 Defendants in the complaint are:

Ariel Quiros; William Stenger; Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, LP; Jay Peak Hotel Suites Phase II, LP; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, LP; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, LP; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, LP; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, LP; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, LP; and ANC Bio Vermont GP Services, LLC.<sup>7</sup>

The Relief Defendants are:

Jay Construction Management, Inc. (i.e., JCM), GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

Ariel Quiros was the sole owner, officer, and director of Q Resorts and the chairman of Jay Peak, Inc. (Jay Peak operates the Jay Peak Resort in Jay, Vermont and six projects for which the Defendants raised money.) “Through those two companies, Quiros controlled each of the Defendant general and limited partnerships.”<sup>8</sup> Quiros’s trial for the SEC charges is scheduled for September, 2018.<sup>9</sup>

William Stenger was the Director, President, and CEO of Jay Peak. He was the hands-on, day-to-day manager of the projects at issue in this complaint. In September, 2016 a federal judge approved a settlement in the SEC complaint’s case against Stenger<sup>10</sup>, full terms of which have not been made public.

#### F. State of Vermont Civil Complaint

On April 14, 2016 the State of Vermont filed a complaint (the “Vermont complaint”) against these same 17 Defendants, regarding activities relating to the Regional Center.<sup>11</sup> The allegations in the SEC and Vermont complaints are similar. (The SEC and Vermont’s Department of Financial Regulation (DFR),

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<sup>6</sup> Ibid., p. 2.

<sup>7</sup> Ibid., p. 1.

<sup>8</sup> Ibid., p. 5.

<sup>9</sup> See <https://vtdigger.org/2017/02/07/quiros-eb-5-fraud-trial-set-september-2018/>.

<sup>10</sup> See <https://vtdigger.org/2016/09/22/federal-judge-approves-stenger-settlement-sec-eb-5-fraud-allegations/>.

<sup>11</sup> See

<http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF> for the amended June, 2016 complaint.

which handled the state's investigation, coordinated their investigations.) The Vermont complaint notes that "since 2008, Defendants Ariel Quiros and William Stenger have orchestrated a large-scale investment scheme to defraud investors participating in the EB-5 Program... Quiros and Stenger used multiple limited partnerships, limited liability companies, and corporate entities they control to assist in carrying out the fraudulent scheme."<sup>12</sup> "As part of the fraudulent scheme, Defendants have solicited and raised at least \$350 million in (EB-5) investment funds through seven limited partnerships. Of that amount, Defendants have misused more than \$200 million and Quiros has misappropriated at least \$50 million."<sup>13</sup> "Defendants treated the (EB-5) investor funds as an unrestricted pool of money that could be transferred between EB-5 Projects indiscriminately, and used for personal benefit."<sup>14</sup> "Throughout the elaborate scheme, Quiros and Stenger employed a complex web of financial accounts to improperly commingle funds, backfill funding gaps from previous projects, and misuse investor funds. Quiros misappropriated millions in investor funds to enrich himself."<sup>15</sup>

The Vermont complaint's lawsuit against Quiros and Stenger is still pending with no date set yet for the trial.<sup>16</sup>

#### **G. EB-5 Investor Civil Complaint**

On June 12, 2017, an EB-5 investor in a Regional Center project brought a class action lawsuit (the "Investor complaint") against the Regional Center, the state of Vermont, the Vermont Department of Financial Regulation, and several other current and former state officials.<sup>17</sup> The complaint alleges the Regional Center failed to exercise oversight over the Jay Peak projects, engaged in misrepresentations to investors, conspired to conceal fraudulent activity in Jay Peak projects, and bears responsibility for misappropriation of funds.

#### **H. Federally Appointed Receiver**

As a result of the SEC complaint and associated legal problems and in order to protect the EB-5 investors in these projects, on April 13, 2016 a Florida U.S. District Court appointed a receiver, Michael Goldberg, to control the assets involved with the projects associated with the following defendants in the SEC complaint:

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<sup>12</sup> Ibid., p. 2.

<sup>13</sup> Ibid., p. 2-3.

<sup>14</sup> Ibid., p. 3.

<sup>15</sup> Ibid., p. 3.

<sup>16</sup> See <https://vtdigger.org/2016/09/22/federal-judge-approves-stenger-settlement-sec-eb-5-fraud-allegations/>.

<sup>17</sup> See <http://mediad.publicbroadcasting.net/p/vpr/files/201706/EB-5-investor-lawsuit-SoV-20170530.pdf>.

Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites, LP; Jay Peak Hotel Suites Phase II, LP; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, LP; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites, LP; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses, LP; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside, LP; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, LP; and ANC Bio Vermont GP Services, LLC.<sup>18</sup> (In addition, this includes the assets formally controlled by the Relief Defendants in the SEC complaint.)

Thus, those formerly running and owning these projects -- i.e., who were originally authorized by VACCD RC to do so -- were rid of that authority. In addition, on April 12, 2016 a Florida U.S. District Court order prohibited Quiros and Stenger from participating (a) in any issuance, sale, or offer of securities associated with the EB-5 Program, or (b) managing, administering, or controlling any commercial enterprise or project issuing securities associated with the EB-5 Program.<sup>19</sup>

A settlement was announced April 13, 2017 between Goldberg and Raymond James & Associates, with the latter to pay the receivership \$150 million.<sup>20</sup> A federal court granted final approval to the settlement on June 30, 2017; this has significant potential to mitigate some of the problems associated with this matter.<sup>21</sup> For instance, this inter alia could help avoid the loss of the \$500,000 investment for numerous EB-5 investors associated with the Jay Peak Biomedical Research Park LP and Q Burke Mountain Resort, Hotel & Conference Center LP projects, pay off some contractor liens for some project work already completed, and allow completion of the construction for the Jay Peak Hotel Suites Stateside LP project.<sup>22</sup> In the Receiver's press statement about the settlement, Goldberg was very thankful of Vermont State government officials' helping to structure the settlement and protect "the defrauded investors and creditors since the very beginning of the case".<sup>23</sup>

## II. Analysis

### A. Failure to Continue to Serve the Purpose of Promoting Economic Growth

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the

<sup>18</sup> See <https://jaypeakreceivership.com/wp-content/uploads/2016/04/DE-13-Order-Granting-Motion-for-Appointment-of-Receiver-3.43.19-PM-2.pdf>, p.1-2.

<sup>19</sup> See <https://jaypeakreceivership.com/wp-content/uploads/2016/04/DE-11-TRO-Order-Signed-Filed-1.pdf>.

<sup>20</sup> For instance, see the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

<sup>21</sup> See <https://vtdigger.org/2017/06/30/judge-gives-final-ok-financial-firms-settlement-eb-5-case/>; *VT Digger*, Alan Keays, "Judge Gives Final OK to Financial Firm's Settlement in EB-5 Case", June 30, 2017.

<sup>22</sup> See the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

<sup>23</sup> *Ibid.*, p.1.



Immigration and Nationality Act (“INA”), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. *See, e.g.*, 8 C.F.R. § 204.6(m)(6)(i)(A). According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) (“USCIS will issue a notice of intent to terminate the designation of a regional center in the program if . . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”).

The reasons why a regional center may no longer serve the purpose of promoting economic growth are varied and “extend beyond inactivity on the part of a regional center.” 75 FR 58962. For example, depending on the facts, a regional center that takes actions that undermine investors’ ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth and may subvert a purpose of Section 610(a)-(b) of the Appropriations Act, which provides for regional centers as a vehicle to concentrate pooled investment in defined economic zones by setting aside visas for aliens classified under INA 203(b)(5). Likewise, a regional center that fails to engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

USCIS has considered all evidence provided “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence,” in determining whether the Regional Center’s continued participation is justified under the regulations by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For the reasons set forth below, USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program’s requirements.

***1. Administrative Oversight (8 CFR 204.6(m)(6)):***

Monitoring and Oversight is a critical responsibility of the Regional Center. As provided in 8 CFR 204.6(m)(6), to ensure that the Regional Center continues to meet the requirements of section 610(a) of the Appropriations Act, a Regional Center must provide USCIS with updated information to demonstrate the Regional Center is continuing to promote economic growth, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area. A Regional Center must continue to demonstrate ongoing active engagement in monitoring, oversight and due diligence of all investment activities under its sponsorship. This is essential for USCIS to determine that the Regional Center is in compliance with 8 CFR 204.6.

The Form I-924 Instructions state that, “The approval notice will provide information about the responsibilities and obligations of your USCIS designated regional center. It will also list the evidence to submit in support of regional center-associated individual EB-5 petitions, as well as details on the reporting and oversight requirements for regional centers.” The Regional Center’s letter reaffirming its designation, dated June 11, 2007, specifically stated:

“In order for USCIS to determine whether your regional center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated regional center, your administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center and to maintain records, data and information on a quarterly basis in order to report to USCIS upon request the following year to date” information . . .

Specifically, that letter states that the Regional Center must be prepared to explain

“How the VACCD-RC is administering its regional center and is actively engaged in supporting a due diligence screening of its alien investors’ lawful source of capital and the alien investor’s ability to fully invest the requisite amount of capital”, and

“How the VACCD-RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont.”

Similarly, the USCIS amendment approval letters dated October 6, 2009 and August 12, 2010 convey VACCD-RC’s administration, oversight, and management responsibilities, as described immediately above.

Yet the allegations noted in the SEC, Vermont, and Investor complaints, plus other information detailed below, indicate serious problems with various VACCD RC projects, suggesting inadequate monitoring, oversight, and management by the Regional Center.

As mentioned above, the SEC complaint alleges that over \$200 million of EB-5 investor funds overall were misused, including at least \$50 million being misappropriated by Quiros for unpermitted purposes, including personal use. All in all, the SEC complaint filed 52 counts against Quiros, Stenger and 7 NCEs associated with the VACCD RC. According to the SEC and VT complaints, the alleged malfeasance went on from 2008 through the filing of the complaints in April, 2016 – *a total of 8 years.*<sup>24</sup> Eight NCEs were involved in the alleged far-ranging impropriety mentioned in

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<sup>24</sup> This is detailed throughout the SEC and Vermont complaints.

the SEC and Vermont complaints.<sup>25</sup> However, USCIS notes that not all of the Regional Center's projects are associated with the SEC and Vermont complaints – only a subset of them are – and that the alleged problems therein with the projects were not perpetrated by any Vermont State or VACCD RC employee; instead, the main defendants in the SEC and Vermont complaints are Ariel Quiros and William Stenger. Nonetheless, evidence in the record indicates that the Regional Center's failure to provide adequate oversight and monitoring of its projects allowed the alleged malfeasance by Quiros and Stenger to occur and jeopardize the Regional Center's ability to promote economic growth within EB-5 Program requirements, as well as the EB-5 investors' investments.

For instance, in terms of insufficient regional center monitoring and oversight, a November, 2016 Vermont press article notes that despite a former business partner and others raising questions about financial irregularities at Jay Peak in 2012, various high level officials, including Governor Peter Shumlin, went on to promote Jay Peak projects overseas and at press events in Vermont in 2013.<sup>26</sup> The article indicates that “during this period regional center staff did not require the Jay Peak developers to submit quarterly reports (to the State) as mandated under agreements with the State”.<sup>27</sup> As for these agreements, the Jay Peak developers signed Memoranda of Understanding (MOUs) with VACCD to obtain State approval for each project. These MOUs contain provisions that the developers would provide VACCD quarterly status reports on their projects.<sup>28</sup> If this article is correct, then VACCD RC fell short in fulfilling its monitoring and oversight responsibilities.

Further, these MOUs mainly discuss the role of the project managers from the private sector (e.g., William Stenger) in performing project monitoring, oversight, and management functions to assist VACCD in this regard. That is, the MOUs do *not* focus on the role of VACCD or the Regional Center to carry out these duties.<sup>29</sup> As seen above and in the SEC and Vermont complaints, it appears that for years

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<sup>25</sup> These were the Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, Jay Peak Hotel Suites Stateside LP, Jay Peak Biomedical Research Park LP, and Q Burke Mountain Resort, Hotel & Conference Center LP.

<sup>26</sup> See [http://www.stowetoday.com/stowe\\_reporter/news/state\\_news/judge-jay-peak-developer-was-architect-of-fraud/article\\_fa189328-b1ba-11e6-b6f4-5bfb172cda73.html](http://www.stowetoday.com/stowe_reporter/news/state_news/judge-jay-peak-developer-was-architect-of-fraud/article_fa189328-b1ba-11e6-b6f4-5bfb172cda73.html); *Stowe Reporter*, Anne Galloway and Alan Keays,

“Judge: Jay Peak developer was architect of fraud”, November 23, 2016.

<sup>27</sup> *Ibid.*, p. 2.

<sup>28</sup> For example, see page 2 of the MOU between (1) the State of Vermont, and (2) Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, and Jay Peak Hotel Suites Stateside LP, signed on November 22 and 24, 2010. It inter alia notes “Jay Peak will further support (V)ACCD's compliance with regional center requirements by providing on a quarterly basis reports on its activities, overseas meetings and other relevant efforts within and outside the United States to promote investment in the Jay Peak project through the EB-5 Alien Investor Entrepreneur Regional Center Pilot Program”.

<sup>29</sup> The MOUs focus on the project managers supporting VACCD in its compliance responsibilities. For instance, as stated on page 2 of the MOU cited in the previous footnote, “(V)ACCD desires to obtain assistance in the oversight and management of the related, intertwined and successive Jay Peak EB-5 Entrepreneur Investment projects within (V)ACCD's Regional Center and to assure these projects' compliance with U.S. immigration law and regulations

VACCD RC relied excessively – if not primarily – on the third-party project managers to perform oversight functions, rather than taking on those responsibilities itself. Even where a regional center has an outside party providing management services – as occurred here – the ultimate responsibility for compliance with the relevant statutes and regulations, remains with the regional center itself. Even though the VACCD had MOUs with their associated NCEs, VACCD RC retained ultimate responsibility for monitoring the NCEs’ fulfillment of those contracts and ensuring the NCEs and their associated projects operated in accordance with the regulations and statutes governing the Program.

In addition, the Regional Center further demonstrated inadequacy in overseeing and managing its projects when it allowed marketing of at least the Jay Peak Biomedical project to proceed when it strongly suspected problems existed with that. According to VACCD’s August 25, 2016 reply to USCIS’s July 8, 2016 Request for Information, VACCD’s concerns with the Jay Peak Biomedical project “evolved over time, beginning in late 2013 until the SEC and Vermont fraud actions were filed in April, 2016”.<sup>30</sup> They also note they evaluated information on the Jay Peak projects brought to them by 3<sup>rd</sup> parties before late 2013, but “the (V)ACCD did not believe that there was at that time a basis to suspend or take other actions with respect to these projects”.<sup>31</sup> Around or after June, 2014 “(V)ACCD then froze all future solicitations (by the project managers) of investors for the Jay Peak Biomedical project”, but then later allowed fundraising for the project to resume in April, 2015.<sup>32</sup> As a result of the DFR and SEC investigations, VACCD “became aware in the Fall of 2015 of the likelihood that funds raised for the various Jay Peak projects (other than Burke) were diverted”.<sup>33</sup>

Even though VACCD required any EB-5 funds invested in this project as of April, 2015 and thereafter to be put in an escrow fund – only to be released for project use pending a satisfactory financial review (which has not yet occurred)<sup>34</sup> – this still allowed the project to continue to collect funds that they knew, suspected, or should have known were in jeopardy of not being used in compliance with EB-5 Program requirements. For instance, in terms of the timing, according to USCIS records, three Form I-526 petitions for Jay Peak Biomedical were submitted between January and April, 2016, after VACCD and DFR knew of or suspected the (alleged) problems with this project. (Further, USCIS has no record that the Regional Center informed USCIS of these concerns on any of its annual filings or in any other correspondence.) Thus, VACCD may have allowed marketing to occur for a project suspected of serious malfeasance. This also allowed these funds to be invested, even though (1) they may not have been able to be used for their intended purpose for some time, due to legal concerns and other problems, and (2) it

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concerning investments within a regional center in the EB-5 visa preference category and, thereby, to have greater assurance of its compliance with regional center requirements”. Thus, while the MOUs focus on the role of the project managers, they do acknowledge VACCD’s compliance responsibilities within the EB-5 Program.

<sup>30</sup> See p. 19 of the reply.

<sup>31</sup> *Ibid.*, p. 19. Some 3<sup>rd</sup> parties either made public statements through the media or alleged to the State about malfeasance associated with the Jay Peak projects before then.

<sup>32</sup> *Ibid.*, p. 19.

<sup>33</sup> *Ibid.*, p. 21.

<sup>34</sup> *Ibid.*, p. 19.

might jeopardize and at minimum delay investors' goal of attaining U.S. permanent residency, in line with EB-5 Program requirements.

Also, between April 21 and June 13, 2016, 3 Form I-526 petitions were submitted for the Burke Mountain Resort project, which again seems improper (and late), because the SEC and Vermont complaints allege that Quiros wrongly used about \$7 million from a margin loan backed by EB-5 investor funds to purchase Q Burke Mountain Resort, LLC.<sup>35</sup> (Quiros was the Managing Principal and sole member of Q Burke Mountain Resort, LLC, which owned the Burke hotel.) In fact, 2 of these 3 I-526s were submitted 1-2 months *after* the SEC and Vermont complaints were made public. This pattern of (in)action by the Regional Center, is contrary to the intent of the Program, as it undermined investors' ability to comply with EB-5 statutory and regulatory requirements and jeopardized their eligibility for EB-5 classification.

However, USCIS acknowledges that the Vermont State government has taken actions to improve their monitoring and oversight of the VACCD RC projects. Since the MOU was signed by the VACCD and DFR in December, 2014, the DFR has been involved in what appears to be a rigorous compliance program for all Regional Center projects. This includes the DFR apparently setting robust standards that new EB-5 projects must comply with before associating with VACCD RC, and performing comprehensive monitoring and oversight activities for current projects (such as physically visiting and inspecting all EB-5 projects in active construction, requiring annual certified project audits by independent accountants that are to be given to DFR, enacting stricter requirements surrounding the existence of escrow and the release of escrowed funds, and much more).

Nonetheless, based on the totality of the evidence detailed above, it appears that the Regional Center failed to properly engage in management, monitoring and oversight for many years, as required by the Program. Thus, USCIS has determined, by a preponderance of the evidence, that the Regional Center no longer serves the purpose of promoting economic growth.

## ***2. Diversion of EB-5 funds***

The allegations in the SEC and Vermont complaints indicate that EB-5 funds were used for purposes that are inconsistent with the business plans and Private Placement Memoranda (PPMs) submitted to USCIS by the Regional Center and in furtherance of job creation. According to the Vermont complaint, EB-5 "investors were not informed through the (PPMs') Source and Use of Investor Funds or in any other part of any offering document that their funds would be used in any other way than for the purposes specifically identified in the PPMs, including, for example, that their funds would be:

- (a) Misused to purchase T-bills;
- (b) Pledged as collateral for loans for non-project purposes;
- (c) Misappropriated for the personal benefit of Quiros;

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<sup>35</sup> For example, see page 43 of the SEC complaint.

- (d) Misused to pay for other EB-5 Projects' costs or other non-disclosed costs; or
- (e) Commingled with funds invested in other projects."<sup>36</sup>

As for further specifics regarding the diversion and misuse of EB-5 funds, the Vermont complaint also notes that "since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts".<sup>37</sup>

As detailed to USCIS in the PPMs submitted by the Regional Center and petitioners it sponsors, the use of investors' funds and resulting job creation did not occur as originally intended or promised to the EB-5 investors for 7 projects. These projects are: Jay Peak Hotel Suites, LP, Jay Peak Hotel Suites Phase II, LP, Jay Peak Penthouse Suites, LP, Jay Peak Golf and Mountain Suites, LP, Jay Peak Lodge and Townhouses, LP, Jay Peak Hotel Suites Stateside LP, and Jay Peak Biomedical Research Park, LP.<sup>38</sup>

For instance, the job creation for the Jay Peak Hotel Suites (or Phase I) project, was based on spending \$10.4 million on construction costs, \$1.6 million for furnishings and equipment, \$0.8 million for utilities and common areas, \$0.6 million for contingencies, and \$0.35 million for pre-opening expenses and working capital<sup>39</sup>. (Other intended spending listed in the PPM included \$1.9 million for developer fees and \$1.8 million to purchase the land.<sup>40</sup>)

Instead, the amended Vermont complaint notes that "defendants used investor money in ways that materially differed from the representations contained in the Phase I PPM, including the Source and Use of Investor Funds, and routinely exceeded their authority by borrowing and comingling partnership funds without the consent of investors. For example:

1. Quiros misappropriated \$12.4 million in Phase I investor funds to finance the Acquisition of Jay Peak Resort through Q Resorts;
2. Quiros and Phases I and II General Partner improperly took more than \$1.5 million of Phase I investor funds during the build out of Phase I; and

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<sup>36</sup> See p. 27 of the amended Vermont complaint, <http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>.

<sup>37</sup> Ibid., p. 3-4.

<sup>38</sup> Note: these are respectively the Phase I-VII Jay Peak projects.

<sup>39</sup> See p. 27 of the amended Vermont complaint,

<http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>

<sup>40</sup> Ibid., p. 27.

3. Quiros, assisted by Stenger, pledged Phase I funds as collateral for margin loans and used Phase I investor funds to pay off margin loan debt and interest. For example, in a series of transactions between June 23, 2008 and April 23, 2009, \$181,747 of Phase I investor funds were used to pay Phase I margin account interest, and on September 3, 2008, approximately \$160,000 of Phase I investor funds were used to pay down the Phase II margin account.

Defendants did not obtain the prior consent of the investors for any of the actions described above.”<sup>41</sup>

Likewise, the SEC and Vermont complaints’ descriptions of the diversion of funds problems involving the 6 other projects are replete with detail similar to that just given for the Jay Peak Hotel Suites project.<sup>42</sup> For example, for the Jay Peak Penthouse Suites project, “Quiros, assisted by Stenger and Q Resorts, misused \$32.5 million in Penthouse Suites (EB-5) investor funds (i.e., 100% of the EB-5 investments)... by using that money to pay down margin loan debt accumulated in...(Quiros’s) Third Margin Account”.<sup>43</sup> Similarly, for the Jay Peak Hotel Suites Stateside project, “Quiros, assisted by Stenger, transferred approximately \$42.3 million in Stateside (EB-5) investor funds... to a Quiros-controlled Raymond James account, which Quiros had pledged as collateral for margin loans”.<sup>44</sup> Further, for the Jay Peak Biomedical project – where the greatest abuse allegedly occurred for any project – “Quiros, assisted by Stenger, transferred at least \$62 million in AnC Bio (EB-5) investor funds to a Quiros-controlled Raymond James account, which Quiros had pledged as collateral for (personal) margin loans”.<sup>45</sup> In addition, for that same project, “Quiros, assisted by Stenger, misused \$18.2 million in AnC Bio (EB-5) investor funds ... to pay off” one of Quiros’s personal margin loan accounts.<sup>46</sup> The total diversion and misuse of EB-5 funds for this project alone was over \$80 million.<sup>47</sup> In each instance, the defendants in the complaints did not obtain the prior consent of the EB-5 investors for these actions, and none of these uses was allowed in the job creation activities detailed in the PPMs associated with each project.

These diversions of funds for the Jay Peak Hotel Suites Stateside and Jay Peak Biomedical projects helped create budget shortfalls for and an inability to complete the intended project work. According to the SEC complaint, “between October 2011 and December 2012, (Jay Peak Hotel Suites) Stateside... 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. Although the Stateside... offering was fully subscribed, the Defendants have only built the hotel. A small amount of

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<sup>41</sup> Ibid., p. 27.

<sup>42</sup> For example, see pages 28-43 of the amended Vermont complaint. Given that (1) these complaints provide a very similar analysis to that just described for the Jay Peak Hotel Suites project, and (2) the VACCD RC is quite familiar with the Vermont complaint since it was issued by the State’s DFR and Attorney General, only some of the more salient examples of diverted funds for the other projects will be discussed here.

<sup>43</sup> See p. 31 of the amended Vermont complaint.

<sup>44</sup> Ibid., p. 37.

<sup>45</sup> Ibid., p. 39.

<sup>46</sup> Ibid., p. 39.

<sup>47</sup> Ibid., p. 39.

work has been done on building the cottages and work has not yet begun on the recreation and medical centers".<sup>48</sup> VACCD estimated that the budget shortfall to complete the project is \$17.5 million.<sup>49</sup> According to a press report, the \$150 million settlement between the Receiver and Raymond James & Associates may result in this project finally being completed.<sup>50</sup> However, even if this happens, long delays have occurred with the project work and job creation. As a result of the alleged fraud involved with these projects at issue in these two complaints, 42 contractors and 513 trade creditors have not yet been fully paid for their work or for outstanding debt.<sup>51</sup> Some layoffs with contractors and creditors may have thus resulted from this unpaid work. This clearly hindered the economic growth process, in contravention to Program objectives. Also, this jeopardized the ability of the EB-5 investors to gain permanent U.S. residency in accord with the regulatory requirements of the Program.

Likewise, for the Jay Peak Biomedical project, the SEC complaint alleges that "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".<sup>52</sup> However, the Receiver's plans are that this project will never be completed, as his intention is to refund \$67 million to most, but not all, of the EB-5 investors in this project.<sup>53</sup> In addition, the settlement reportedly does not cover the contractors owed for previously completed work on this project.<sup>54</sup> This minimal project progress, including that the project will never be consummated, obviously obviates the Program's economic growth goal and requirement. Further, while the settlement will repay some of the EB-5 investors in this project, it will not cover them all. Moreover, for those it will cover, they will still be unable to achieve U.S. permanent residency in accordance with EB-5 regulations.

The scenario is also similar for the Q Burke Mountain Resort project, for which the hotel has been built, but the aquatic facility, tennis center, and upgraded mountain bike facility need to be completed. VACCD noted that the Receiver intended to complete the project with additional EB-5 funds.<sup>55</sup> In addition, \$6.6 million from the settlement would be used to satisfy customer claims against this project and to repay other debt on the Burke Hotel.<sup>56</sup> But, even if these two events occur, the same problems as discussed above have existed – i.e., a delay in job creation and thus a hampering of economic growth,

<sup>48</sup> See the SEC complaint, p. 7.

<sup>49</sup> See page 8 of VACCD's August 25, 2016 Reply to USCIS's July 8, 2016 Request for Information.

<sup>50</sup> See [http://www.stowetoday.com/news\\_and\\_citizen/news/local\\_news/better-late-than-never-percy-gets-eb-pay/article\\_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html](http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-eb-pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html) -- Andrew Martin, *News and Citizen*, "Better late than never – Percy gets EB-5 pay", May 18, 2017.

<sup>51</sup> *Ibid.*, p.1.

<sup>52</sup> See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>, p. 3.

<sup>53</sup> See [http://www.stowetoday.com/news\\_and\\_citizen/news/local\\_news/better-late-than-never-percy-gets-eb-pay/article\\_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html](http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-eb-pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html) -- Andrew Martin, *News and Citizen*, "Better late than never – Percy gets EB-5 pay", May 18, 2017, and the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

<sup>54</sup> *Ibid.*

<sup>55</sup> See pages 7-8 of VACCD's August 25, 2016 reply to USCIS's July 8, 2016 Request for Information.

<sup>56</sup> See the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).



possible past job layoffs with contractors and creditors, and jeopardizing the ability of some EB-5 investors to attain permanent residency in accord with Program regulations.

Employing EB-5 funds for purposes unrelated to the proposed job creating activities, not only casts doubt on the legitimacy of the projects' representations on the use of EB-5 funds in furtherance of job creation, but may also potentially impact the Regional Center's investors whose petitions rely on the job creation for Program eligibility.

A core requirement of the Program is that EB-5 capital must be placed at risk for the purpose of generating a return. In situations where the NCE is not the job-creating entity, *Matter of Izummi* as well as USCIS policy, requires that, in order to be considered at-risk, the full amount of EB-5 capital "must be made available to the business(es) most closely responsible for creating the jobs upon which EB-5 eligibility is based."<sup>57</sup> For example, the use of EB-5 capital for paying down personal margin loan debt, paying off state and federal taxes for non-project entities, and purchasing luxury condominiums for Quiros in New York City, violates this requirement because those funds are not going to the job creating activity upon which EB-5 eligibility is predicated and, consequently, the full amount of capital will not be made available to the businesses most closely related to job creation.

Furthermore, the use of EB-5 investor funds to pay for the activities noted above contradicts the terms of the project PPMs submitted to USCIS by the Regional Center. The PPMs indicate that EB-5 capital would be used for valid job creation expenses associated with the projects. The uses of the EB-5 capital indicated in the PPMs and business plans provide the basis for the economic impact analysis submitted by the petitioners or Regional Center to show how the projects will create jobs and benefit the economy.

Based on the evidence detailed above, it appears that the Regional Center's project managers used EB-5 funds for purposes unrelated to the job creating business activities of the NCEs and JCEs. Certainly, better Regional Center oversight of the projects may have prevented this. Based on this apparent diversion and the seriousness of its consequences, USCIS has determined by a preponderance of the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

### ***3. Further Misrepresentations Involving the Projects***

In addition to the diversion of funds noted above that misled EB-5 investors and USCIS, there were other material misrepresentations involving these projects. Court documents indicate that several PPMs were allegedly contravened, in that some contributions Quiros and Stenger were supposed to make to various

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<sup>57</sup> *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998). See also USCIS Memorandum, "EB-5 Adjudications Policy", PM-602-0083, p. 16 (May 30, 2013); and USCIS Policy Manual, Volume 6, Part G, Chapter 2 on "Capital, Made Available" available online at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartG-Chapter2.html>.

projects, were in fact never made. According to the amended Vermont complaint, Quiros and Stenger, through either Jay Peak, Inc. or the AnC Bio Sponsor, were supposed to contribute a total of over \$23.8 million to 4 projects, but in fact did not.<sup>58</sup> This included not contributing:

- at least \$3.8 million of the \$10 million they were required to contribute to the Jay Peak Golf and Mountain Suites project;<sup>59</sup>
- over \$6.6 million of the \$15 million they were required to contribute to the Jay Peak Lodge and Townhouses project;<sup>60</sup>
- at least \$7.4 million of the \$20 million they were required to contribute to the Jay Peak Stateside Suites project;<sup>61</sup> and
- more than \$6 million of the \$8 million they were required to contribute to the Jay Peak Biomedical project”.<sup>62</sup>

This violated the terms of the PPMs which were provided to the EB-5 investors and USCIS. Not only did this mislead these two sets of parties, but it also contributed to the budget shortfalls for the Jay Peak Biomedical and Jay Peak Stateside projects, thus harming their ability to create jobs and promote economic growth. It also risked the chances of some EB-5 investors to obtain approval of their I-526 and I-829 petitions, in accordance with Program regulations.

The Jay Peak Biomedical project incurred even further misrepresentations to the EB-5 investors and USCIS. The PPM for this project states that a “certain ANC Bio Product was ‘currently in the process of FDA approval’ but that, in reality, Defendants had not and upon information and belief, have never applied for FDA approval for the ANC Bio Products despite stating the project was set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products”.<sup>63</sup> This was a very material misrepresentation which made the project’s prospects appear much more favorable than warranted by the facts. As above, this clearly jeopardized the EB-5 investors’ likelihood of attaining U.S. permanent residency in line with Program requirements. It also exacerbated USCIS’s ability to adjudicate EB-5 investors’ petitions associated with this project. Again, with more and better oversight from the Regional Center, this all might have been avoided.

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<sup>58</sup> See

<http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF>, p. 31-39.

<sup>59</sup> Ibid., p. 33.

<sup>60</sup> Ibid., p. 35.

<sup>61</sup> Ibid., p. 38.

<sup>62</sup> Ibid., p. 39.

<sup>63</sup> Ibid., p. 39-40.

#### 4. *Adverse Effects on Future Projects and Job Creation*

USCIS recognizes that VACCD RC has completed a number of projects in the past and in the process has created many jobs. Furthermore, some of these projects are ongoing, such as the Mount Snow project, and will likely create additional jobs in the future. However, it appears that the SEC and Vermont complaints and the resulting extensive adverse publicity have negatively affected the VACCD RC's ability in the future to sponsor projects and create new jobs. For example, two NCEs which have participated in projects with the VACCD RC have recently said they will not be doing so in the future.

First, and as noted above, Stowe Aviation has ended its relationship with the VACCD RC to carry out a project expanding the Morrisville-Stowe State Airport. Russell Barr, Stowe Aviation's owner, said that marketing for the project was hampered by allegations of fraud at Jay Peak Resort.<sup>64</sup> Second, Peak Resorts Inc. has partnered with the VACCD RC to develop the Mount Snow project, which will expand its snow-making capacity and build a new Carinthia ski lodge. However, Peak Resorts's next EB-5 project will build new residential units at Mount Snow, but it will not work with the VACCD RC, but instead will form its own regional center for this.<sup>65</sup> Peak Resorts Executive, Dick Deutsch, reportedly "told investors that he wanted to divorce Mount Snow's projects from the state's EB-5 troubles", which he thought led to a delay in getting their EB-5 funds released for the first phase of the Mount Snow project.<sup>66</sup> Thus, the SEC and Vermont complaints and the resultant publicity appear to have dampened the future ability of the VACCD RC to sponsor projects and promote economic growth.

### III. Conclusion

USCIS has determined by a preponderance of the evidence that the Regional Center does not serve the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. Therefore, USCIS intends to terminate the designation of the Regional Center in the Program.

In accordance with 8 C.F.R. § 204.6(m)(6)(iv), the Regional Center will be provided 30 days from receipt of this notice to rebut the grounds alleged above. Failure to respond to this notice of intent to terminate will result in termination of the regional center designation based on the above stated reasons.

Please mail any evidence you wish to provide in opposition to the grounds alleged in this notice of intent to terminate to the address noted below and include a copy of this letter on top of your submission.

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<sup>64</sup> See <https://vtdigger.org/2017/04/03/stowe-aviation-withdraws-vermont-eb-5-regional-center/>; *VT Digger*, Anne Galloway, "Stowe Aviation Withdraws from Vermont EB-5 Regional Center", April 3, 2017, p. 2.

<sup>65</sup> See <https://vtdigger.org/2017/03/10/mount-snow-split-state-plans-eb-5-fueled-expansion/>; *VT Digger*, Mike Faher, "Mount Snow to Split with State, Plans EB-5-Fueled Expansion", March 10, 2017.

<sup>66</sup> *Ibid.*, p. 4-5.

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