UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21301-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 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, ASSET FREEZE, AND OTHER RELIEF

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I. INTRODUCTION

A. General Statement

Following extensive briefing and a two-day evidentiary hearing in which the Securities and Exchange Commission presented 141 exhibits and five witnesses, the unrebutted evidence and the uncontroverted law in this case show Defendant Ariel Quiros was the architect of an enormous, eight-year-long fraudulent scheme in which he systematically stole more than $55 million in funds raised from hundreds of investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program. The evidence furthermore shows Quiros orchestrated the misuse of approximately $200 million of the more than $350 million raised from investors in the seven limited partnership offerings connected to the Jay Peak ski resort.

Quiros' fraud began with his purchase of the Jay Peak resort in June 2008 when he violated the terms of representations to investors by using $21.9 million in Phase I and II investor funds to purchase the resort. It continued through Phases II-VI when, as the control person over all the Jay Peak entities, he repeatedly violated agreements with investors by using their money for other projects, paying margin loan interest, and taking millions more in management fees than he was entitled to, to among other things, buy a luxury condominium and pay taxes. These acts resulted in a $26 million shortfall in Stateside Phase VI.

It culminated with the massive fraud he perpetrated in Phase VII, the Jay Peak Biomedical Research Park project. As one of the principals of the general partner in Biomedical Phase VII, Quiros admitted he had ultimate authority over statements to investors in the offering documents about the status of FDA approval, how the project would use their funds, and limits on how the project could spend investor money. Those statements were false. Quiros misappropriated approximately $30 million in Phase VII investor funds to, among other things, collateralize a personal line of credit, buy another luxury condominium, pay additional income taxes, and buy the Q Burke Resort. This misappropriation and misuse has created such a huge shortfall that the Phase VII project will likely never be built.

The ultimate result of Quiros' fraudulent scheme was nothing less than the "calamity" described by Commission accountant Mark Dee in his preliminary injunction hearing testimony. Contrary to Quiros' unsubstantiated claims, none of the investors in *any* phase got what Quiros and his co-Defendants promised them. Although many investors have received their permanent green cards, many more have not – including dozens of investors in the first five projects. *None*

of the investors received the annual returns the Defendants promised them, and *none* have received the return of all their capital the Defendants promised as part of the offerings.

In addition, as a direct result of Quiros' schematic pilfering and misuse of investor funds, the Jay Peak ski resort and all of the limited partnerships are on the brink of collapse. As demonstrated by the testimony of the Court-appointed Receiver, Michael Goldberg, the entities that comprise the Jay Peak resort have less than $6 million in cash on hand, while facing $11.5 million to $16 million of expenses over the next several months. Worse, the uncontroverted testimony of Dee, Goldberg, and State of Vermont representative Michael Pieciak shows both Stateside Phase VI and Biomedical Phase VII are tens of millions of dollars short of funds needed to construct the projects, with little prospect of obtaining that money.

In sum, Quiros has left the Jay Peak projects in a financial disaster that has hundreds of investors in immigration limbo and possibly facing the loss of their entire $500,000 investment. While the investors suffer, Quiros blindly pretends nothing is wrong. He brazenly asserts in Court papers and argued through counsel at the preliminary injunction hearing that *all* investors got what they were promised, and that all project funds are accounted for. He seeks to trivialize the harm he caused investors by falsely portraying them as rich, sophisticated, and able to afford the $500,000 loss. Quiros further seeks to deepen the wounds he has caused investors by incredibly asking the Court to allow him access to investor funds he stole to pay almost $100,000 a month in living expenses – including for such lavish items as a yacht club membership, five cars, a luxury home, two luxury condominiums, private school tuition for his granddaughter, a restaurant, and expenses for his adult children – and to pay another $400,000 to his lawyers for less than a month's work.

Quiros has provided almost no evidence – only five suspect declarations – to rebut the Commission's mountain of evidence against him. One is his own self-serving declaration about his net worth that the Commission has demonstrated is vastly overstated. The other four declarations are from two former Jay Peak officers and two purported officers in Korean affiliates of Biomedical Phase VII. They concern primarily one issue – the investor funds sent to and disbursed from Jay Construction Management ("JCM") – just one of dozens of acts of misconduct and violations the Commission has alleged and shown that Quiros committed. The Commission has also demonstrated as discussed below those declarations do not prove what Quiros claims they do and do not account for all the money Biomedical Phase VII investors sent

to JCM. Similarly, Quiros blatantly misrepresents what the securities laws require the Commission to prove in this case. The facts and the law as discussed in the rest of these proposed findings of fact and conclusions of law demonstrate the Court should enter a preliminary injunction against Quiros and continue the asset freeze against him.[1]

B. An Overview Of The Proceedings And The Court's Four Questions

1. Overview

Currently before the Court is the Commission's request for the following relief against Quiros – a preliminary injunction to prevent further violations of the anti-fraud provisions of the securities laws, a preliminary conduct-based injunction preventing Quiros from participating in the offering or management of EB-5 projects, and a continuation of the asset freeze the Court previously entered against Quiros. Co-Defendant William Stenger has already consented to preliminary injunctive relief (the Commission did not seek an asset freeze against Stenger). In addition, Goldberg has already consented to preliminary injunctive relief on behalf of all the corporate Defendants.

The Commission has the burden to prove entitlement to the relief we seek by a preponderance of the evidence standard. However, it is important to remember the Court already determined the Commission had presented a *prima facie* case of securities law violations by Quiros, and a reasonable likelihood Quiros would continue to violate the securities laws if not restrained, in entering a temporary restraining order, a temporary asset freeze, and a temporary conduct-based injunction against Quiros ("TRO Order"). DE 11 at 3-4. The Court also set the hearing that took place on May 9 and 10, 2016 as a hearing for Quiros to show cause why the Court should *not* grant the Commission's request for preliminary injunctive relief. *Id.* at 4.

The now-discredited declarations Quiros submitted as so-called evidence are focused on one issue and come nowhere close to showing cause why the Court should not grant the preliminary injunctive relief the Commission seeks. Furthermore, the additional 55 exhibits the Commission filed and introduced after the Court granted the temporary restraining order against Quiros, along with the two days of testimony from our five witnesses, further support this

[1] Earlier today, the Court entered an Order modifying the asset freeze (DE 148), which the Commission respectfully disagrees with, and without waiving any of its positions, the Commission urges the Court to modify the Order to require Quiros to get Court approval of any sale of mortgage of the Setai Condominium to prevent Quiros from selling or encumbering the property at below market rates or engaging in related party transactions.

Court's conclusion in the TRO Order that the Commission has shown a *prima facie* case of securities law violations by Quiros and a reasonable likelihood he will re-offend if he is not preliminarily enjoined.

It is also important to remember that what is *not* before the Court is any fully-briefed motion to dismiss any of the counts of the Amended Complaint against Quiros, or any properly-briefed motion concerning whether the Court has subject matter jurisdiction over the allegations against him. There is no issue at this time as to whether the Court should dismiss any of the allegations about the first five Phases. The fact that the Defendants built the first five projects in the Jay Peak offerings does not mean investors were unharmed, and the Commission still has securities law claims against Quiros for the first five phases.[2] The facts and the law set forth below show Quiros was responsible for material misrepresentations and omissions to investors, engaged in a fraudulent scheme to violate the securities laws, aided and abetted others' violations, and acted as a control person. Therefore the Court should enter a preliminary injunction against Quiros and continue the asset freeze against him.

2. The Court's Questions

In its Endorsed Order of May 11, 2016 (DE 116), the Court asked the parties to address four issues: (1) when and how Quiros made material misrepresentations, (2) whether and to what extent Quiros was involved in the preparation of investor materials for Phases I through V, (3) whether Quiros can be liable under federal securities laws if he had no involvement in preparing the offering documents, and (4) whether Defendants can be held liable under federal securities laws for delays in the realization of revenue.

As to the first question, Quiros made material misrepresentations and omissions in Biomedical Phase VII. Quiros, as a principal in the general partner of Biomedical Phase VII, had ultimate authority over the contents of the offering documents in that project. He admitted in sworn testimony he reviewed and approved the contents of both the Original Offering Memorandum (Ex. 56) and the Revised Offering Memorandum (Ex. 57). *Ex. 13 at 266 L.6-18, 270 L.19 to 271 L.1, and 291 L.13-24.* As discussed in Section IX below, those documents contain materially false statements about the status of the FDA approval process, how

[2] Quiros used a rob Peter to pay Paul scheme to backfill Phases I-V with investor funds from later Phases, which is a major reason why there are shortages in the last two Phases. Also, as further discussed below, Quiros took excess fees out of Phases I, II, IV, and V. Per the offering materials, the Defendants should have returned any funds left over after Phases I-V were completed to investors.

Biomedical Phase VII would use investor proceeds, and about limitations on the use of proceeds by the Phase VII general partner. Both offering memoranda also contain baseless revenue projections. Under the law discussed in Section XVI.B and C, Quiros is liable for making these misrepresentations and material omissions under Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5(b).

The claim by Quiros' lawyer at the preliminary injunction hearing that Quiros can *only* be liable for securities law violations if he personally made material misrepresentations and omissions to investors is a gross misstatement of the law. In fact, we did not charge Quiros with personally making misrepresentations and omissions in Phases I-VI, but that does not preclude a finding that he is liable for securities law violations in those Phases in several ways:

Scheme liability. Under Exchange Act Section 10(b) and Rules 10b5-(a) and (c), and Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), Quiros is liable for engaging in a fraudulent scheme and a fraudulent course of conduct. None of these sections require Quiros to have personally made a misrepresentation or omission. *See, e.g., SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014) ("Monterosso and Vargas are liable under section 17(a), section 10(b), and Rule 10b-5, because they made 'deceptive contributions to an overall fraudulent scheme' . . . The operative language of section 17(a) does not require a defendant to 'make' a statement in order to be liable . . . Likewise, subsections (a) and (c) of Rule 10b-5 'are not so restricted' as subsection (b), because they are not limited to 'the making of an untrue statement of a material fact.'") (citations omitted); *Fried v. Stiefel Laboratories*, 814 F.3d 1288, 1294-95 (11th Cir. 2016) ("Rule 10b-5(a) and (c) 'are not so restricted' as Rule 10b-5(b) because they do not require making statements").[3]

The Commission charged Quiros with violating Exchange Act Rules 10b-5(a) and (c) and Securities Act Sections 17(a)(1) and (3) in all seven Phases in the Amended Complaint. DE 120 at Counts 1-4, 6, 8, 9, 11, 14, 16, 17, 19, 22, 24, 25, 27, 30, 32, 33, 35, 38, 40, 41, 43, 46, 48, 49, and 51. As discussed in Section XVI.F below, Quiros' actions in misappropriating and misusing investor funds in all seven phases in violation of use of proceeds documents and the limited partnership agreements were part of fraudulent schemes and fraudulent courses of conduct, and render him liable for violations of Exchange Act Rules 10b-5(a) and (c) and Securities Act

[3] Ironically, Quiros filed *Fried* as dispositive Eleventh Circuit authority. We agree. It shows precisely what we are saying – he did not personally have to make misrepresentations or omissions to be liable under the anti-fraud provisions of the securities laws.

Sections 17(a)(1) and (3).

Securities Act Section 17(a)(2). The text of Section 17(a)(2) of the Securities Act makes it illegal for "any person in the offer or sale of any securities . . . to obtain money or property *by means of* any untrue statement of a material fact or any omission to state a material fact." 15 U.S.C. §77q(a)(2); *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 796 (11th Cir. 2015) (emphasis in *Big Apple* case). The Eleventh Circuit and numerous other courts have held that the term "by means of" is broader than the term "make" a misrepresentation or omission in Section 10(b) and Rule 10b-5(b), and that under Section 17(a)(2) "it is irrelevant for purposes of liability whether the seller uses his own false statement or one made by another individual." *Big Apple*, 783 F.3d at 797, *quoting SEC v. Tambone*, 550 F.3d 106, 127 (1st Cir. 2008).

The Amended Complaint alleges Quiros violated Section 17(a)(2) in Phases II-VII. DE 120 at Counts 7, 15, 23, 31, 39, and 47. As discussed in Section XVI.E below, Quiros obtained money or property by means of the false statements made in offering documents in Phases II-VII. Therefore, Quiros is liable under Securities Action Section 17(a)(2) even if *he* did not make a misrepresentation or omission.

Aiding and Abetting Liability. An individual can be liable under Exchange Act Section 10(b) for aiding and abetting the violations of others. *Big Apple*, 783 F.3d at 799-801. In the Eleventh Circuit, aiding and abetting liability requires: (1) a primary violation by another party, (2) a general awareness by the accused aider and abettor that his role was part of an overall activity that was improper, and (3) the accused must have knowingly and substantially assisted the violation. *Id.* at 800. Severe recklessness can satisfy the "knowingly" requirement of aiding and abetting liability. *Id.* at 800-801.

The Amended Complaint alleges Quiros is liable for aiding and abetting the primary violations of making material misrepresentations and omissions under Exchange Act Rule 10b-5(b) of Stenger, Jay Peak, the general partners, and the limited partnerships in Phases II-VI. DE 120 at Counts 13, 21, 29, 37, and 45. We explain the facts that give rise to Quiros' aiding and abetting violations in Section XV below.

Control Person Liability. Section 20(a) of the Exchange Act states that "every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person . . . ." 15 U.S.C. §78t(a); *SEC v. Huff*, 758 F. Supp. 2d 1288,

1343 (S.D. Fla. 2010), *aff'd*, 455 Fed. Appx. 882 (11th Cir. 2012). In this circuit, a defendant is liable as a control person where the "controlled person violated the securities laws, if the defendant 'had the power to control the general affairs of the entity primarily liable at the time the entity violated the securities laws . . . ." *Id.*

The Commission has charged Quiros with control person liability because of the control he exerted over Jay Peak, the general partners, and the limited partnerships in Phases I-VI. Amended Complaint at Counts 5, 12, 20, 28, 36, and 44. As discussed in Section XVI.K below, through his ownership of Jay Peak, his complete control of the accounts in which investor funds were placed in Phases II-VI, and his consequent authority over the limited partnerships, Quiros is liable for the violations of those entities under Section 20(a) of the Exchange Act to the same extent the entities are liable even though he did not make misrepresentations and omissions.

As to the second question, Quiros was not directly involved in preparing the offering materials in Phases I-V. However, he testified he 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.*

Furthermore, as discussed in answer to the first question, the claim of Quiros' lawyer that Quiros was not involved in preparing any of the Phase I-V offering documents is a red herring. Whether Quiros prepared the offering documents or not has no bearing on his liability under all three subsections of Section 17(a) of the Securities Act, Exchange Act Rules 10b-5(a) and (c), aiding and abetting other Defendants' violations of Rule 10b-5(b), and as a control person under Exchange Act Section 20(a). He was aware of the contents of all of the offering documents, and committed deceptive acts in furtherance of a fraudulent scheme, making him liable under Securities Act Sections 17(a)(1) and (3) and Exchange Act Rules 10b-5(a) and (c). He further is liable for obtaining money or property by means of misrepresentations in the offering documents under Section 17(a)(2), regardless of whether he prepared the offering documents.

As to the third question, yes, Quiros can, as described in answer to the first question, be liable under numerous provisions of the securities laws even if he did not prepare the offering documents, including Exchange Act Rules 10b-5(a) and (c) and all three subsections of Securities Act Section 17(a). He also is liable for aiding and abetting and as a control person.

As to the fourth question, the answer is yes, but this is not a case solely about delays in the realization of revenues. The issue in this case is that, in Biomedical Phase VII, Quiros and the other Defendants in that Phase made revenue projections that they knew or were extremely reckless in not knowing were *impossible to achieve at the time the Defendants made the projections.* The Defendants did this in both the Original Biomedical Phase VII Offering Memorandum (Ex. 56), and in the Revised Offering Memorandum (Ex. 57). Quiros, by virtue of his role as principal of the general partner in Biomedical Phase VII, admitted he had ultimate authority for the contents of both offering memoranda, and reviewed and approved both. *Ex. 13 at 266 L.6-18, 270 L.19 to 271 L.1, and 291 L.13-24.* He therefore is liable as the "maker" of the baseless revenue projections under Rule 10b-5(b). *See, e.g., Janus Capital Group, Inc., v. First Derivative Traders,* 131 S.Ct. 2296, 2299-2302 (2011).

Under the securities laws, projections are actionable as misrepresentations if there is no reasonable basis to support them. *SEC v. Kirkland*, 521 F. Supp. 2d 1281, 1298 (M.D. Fla. 2007); *citing SEC v. Merchant Capital, LLC,* 483 F.3d 747, 766-67 (11th Cir. 2007). Furthermore, cautionary language stating that projections are forward looking statements and warning of risks – as Quiros is trying to rely on here – will *never* serve to render projections about future performance immaterial where the maker of the projections is aware of adverse information about past performance but fails to disclose it. *Merchant Capital*, 483 F.3d at 768-69; *SEC v. Carriba Air*, 681 F.2d 1318, 1323-24 (11th Cir. 1982); *Rubenstein v. Collins*, 20 F.3d 160, 171 (5th Cir. 1994) ("[t]o warn that the untoward may occur when the event is contingent is prudent, to caution that it is only possible for the unfavorable events to happen when they already have is deceit").

Here, as discussed in more detail in Section IX below, the unrebutted testimony of Commission financial economist Dr. Jan Jindra shows that at the time they made the revenue projections in both Biomedical Phase VII offering memoranda, Quiros and the other Defendants *knew* they could not achieve the projections. In the Original Offering Memorandum, the projections were based on a starting date for testing and developing the medical products that had already been missed by almost two years. In the Revised Offering Memorandum, Quiros and the other Defendants projected revenues one to two years *before* the products could receive FDA approval and be sold. Thus the Defendants knew or were extremely reckless in not knowing the projections were baseless when they made them. Quiros and the other Defendants

cannot escape liability for their misrepresentations because it was *possible* that at some unnamed date in the future, years later, they *might* realize the forecasted revenues.[4]

Furthermore, the timing of revenue in this case was crucial to the Biomedical Phase VII investors being able to demonstrate the required job creation in the time frames necessary for them to obtain their unconditional green cards. There is no dispute that investors had two years from the time they received their conditional green cards to demonstrate creation of the necessary jobs to receive permanent green cards. Any delay in construction, operations, and realization of revenues was crucial to the investors' ability to demonstrate job creation. As discussed in more detail in Section IX below, the delays in job creation resulting from the Defendants' baseless revenue projections were therefore highly significant and material to investors.

PROPOSED FINDINGS OF FACT

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, 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.* The Phases I through VI offering materials stated that, collectively, Jay Peak was supposed to contribute $58 million to help construct those Phases. However, instead of providing funds to these projects, Jay Peak received a net amount of approximately $15 million more from the projects then it invested into them. *DE 93, April 25, 2016 Pieciak Testimony, at 64 and 76; Ex. 97 (Overview of Developer Contributions as provided in the PPMs).*

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

[4] The Commission also presented undisputed evidence that the Defendants would likely never obtain FDA approval, since they took almost no steps to obtain it.

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 Phase VII the Jay Peak Biomedical limited partnership offering. *Ex. 13, Quiros Testimony Vol. II, at 268 L.18-20.*

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 ("LP") 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 LP 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 ("GP") 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 LP 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 GP 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 LP 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 GP 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 LP 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 GP 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 LP 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 completed 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; DE 124, May 9, 2016 Michael Pieciak Testimony, at 77-85; Exs. 115-16, 119-20, 123, and 125 (Stateside Phase VI pictures and map).* Construction workers stopped working on the Stateside cottages and pulled off the project in early 2016 after not being paid. *DE 93, Pieciak Testimony, at 56-57.* Stateside construction workers are owed between $2 million and $3 million and construction liens have been placed on Jay Peak. *Id; DE 125, May 10, 2016 Michael Goldberg Testimony, at 160.* Stateside Phase VI has less than $60,000 left in its bank accounts. *DE 93, Pieciak Testimony, at 57.* The Stateside Investors face a "bleak" situation as there are not enough funds remaining to finish the project. *DE 125, Goldberg Testimony, at 159-61 and 164.*

Jay Peak GP Services Stateside, Inc. is a Vermont corporation and the GP 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 LP 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, little work has been done on the facility. *Ex. 22 at ¶12; DE 124, Pieciak*

Testimony, at 87-90; Exs. 111 and 113-114 (Biomedical Phase VII pictures and map). 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; DE 125, Goldberg Testimony, at 168.*

AnC Bio Vermont GP Services, LLC ("Biomedical Phase VII General Partner") is a Vermont limited liability company and the GP 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.* JCM is a paper company that Quiros runs and controls. In addition, Quiros controls its bank accounts. *Ex. 10 at 202 L.14 to 203 L.8; Ex. 30 at Ex. TT; DE 124, Pieciak Testimony, at 93-98; Ex. 110, Declaration of George Gulisano, at ¶3.* 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 misused tens of millions of dollars of the funds JCM received**.** *Id. at ¶¶50-51 and 56-58.* Without any legitimate basis, JCM received investors' proceeds emanating from the Defendants' securities fraud, because, among other reasons, JCM's compensation was limited by contract to reimbursement of travel and out-of-pocket expenses, and it misused at least $37 million of Phase VII investor funds. *Ex. 57 at Ex. U; DE 124, Pieciak Testimony, at 98-99 and 105-07.* Quiros did not provide any evidence that JCM had any travel or out-of-pocket expenses.

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.* Without any legitimate basis, GSI received more than $13 million of investor money emanating from Biomedical Phase VII investor funds. *Ex. 30 at ¶¶49, 52-53.*

North East Contract Services, LLC ("Northeast") is a Florida LLC 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, without any legitimate basis Northeast received investor proceeds, as it received construction supervision fees for work that was not performed. *Id. at ¶60 and FN47.*

Q Burke Mountain Resort, LLC ("Q Burke") is a Florida LLC 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.* This EB-5 Offering is now under the control of the Court appointed Receiver and suffers from severe liquidity problems. *Ex. 91, Goldberg Declaration, at ¶23.* As described below, Q Burke, without any legitimate basis, received investors' proceeds as 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.

III. QUIROS' CONTROL

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 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.*

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 routinely hosted events overseas where company representatives, including Stenger, have spoken and met with prospective investors. *Ex. 22 at ¶2.* In addition, Jay Peak sponsored booths and its employees have 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.* The offering materials the Defendants provided to investors 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.* In reality, investors did not receive anywhere close to the returns the offering materials touted. For example, investors in Penthouse Phase III and Golf and Mountain Phase IV received returns of less than two percent after the PPMs promised returns of nearly five percent. *Exs. 5-6; DE 124, Pieciak Testimony, at 120-24.* Also, some of the returns investors received were Ponzi in nature as a portion of the returns the Defendants paid to investors in Phases III and IV came from Biomedical Phase VII investor funds. *DE 124, Pieciak Testimony, at 122-24.* In addition, the Stateside Phase VI offering materials told investors they would get returns of around four to five percent a year (this equates to $20,000 to $25,000 a year on a $500,000 investment). But the investors have received just $3,000 (a mere 0.6 percent return). *DE 124, Felipe Viera Testimony, at 52-53 and 55-56.*

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 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.* Moreover, the offering materials showed affiliates of Jay Peak, such as JCM, could not receive more than the supervision fees and expenses the offering materials disclosed to investors. *Ex. 57 at AnC Bio 006785 (Section 5.07); Ex. 94 (Sources and Uses of Funds for Phases I-VII); DE 124, Pieciak Testimony, at 107-11.*

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 cost overruns, 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.*

The Defendants routinely violated these provisions when they misused, misappropriated, and commingled investor funds from the different projects. Per the use of proceeds documents, investor funds were supposed to flow in a direct linear manner. *DE 93, Pieciak Testimony, at 66; Ex. 95 (Anticipated Flow of Jay Peak Funds).* Instead of using investor funds as described in the use of proceeds documents, the Defendants extensively commingled investors' funds, and they flowed in a circular and roundabout manner among various accounts and entities. *Ex. 30 at ¶8; DE 93, Pieciak Testimony, at 70-72; Ex. 96 (Actual Flow of Funds).*

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.* Quiros and Stenger, 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.*

Also, the Defendants told investors the general partner in each project would consider an exit strategy where investors' interests could be repurchased. *DE 124, Pieciak Testimony, at 124-25.* However, the Defendants have returned only about $3 million of the more than $350 million in capital that investors invested, all to Phase I investors. *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; and (2) an additional $1.5 million Quiros and Jay Peak Management took out of Phase I in purported fees as Phase I was built out. *Ex. 133 (Jay Peak EB-5 Project Fees Overview Table); DE 125, Testimony of Mark Dee, at 73-76.* If there were any funds left over after building Phase I, Quiros and the Defendants could not take them, as any excess funds were go to investors as part of their working capital. *Ex. 3 at JPI 1529.*

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.* As Phase II was built out, Quiros and Jay Peak Management improperly took another more than $9.4 million of investor funds. *DE 125, Dee Testimony, at 76-79; Ex. 133.* Even at the conclusion of Phase II construction, years later, Quiros improperly took out over $6 million more than he should have on the Jay Peak purchase and the project build-out. *DE 125, Dee Testimony, at 76-79*; *Ex. 133.* If there were any funds left over after building Phase II, Quiros and the Defendants could not take them, as any excess funds would go to investors as part of their working capital. *Ex. 4 at JPI 1732.*

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.* Due to this misuse, Quiros used approximately $2.5 million of investor funds to pay margin loan interest. Investors should not have not had to pay any margin loan interest, as the projects were supposed to be fully funded with investor funds and project contributions. *DE 125, Dee Testimony, at 68-70 and 142; Ex. 89 (Supplemental Dee Declaration) at Ex. XX.*

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.* Thus, the argument of Quiros' lawyers at the preliminary injunction hearing that Quiros safely put investors' funds in Treasury bills was a mirage.

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.* 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 to help finance Quiros' and Q Resorts' purchase of Jay Peak. Additionally, as Phase II was built out through early 2013, Quiros and Jay Peak Management through February 2013 improperly took another more than $9.4 million of investor funds. *Ex. 11 at ¶¶19-21 and 24-75 and accompanying exhibits; DE 125, Dee Testimony, at 76-79; Ex. 133.*
- *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 (which there were not), the developer could take up to $900,000 in investor funds. *Id; DE 125, Dee Testimony, at 79-81.* If there were any funds left over after building Phase III, Quiros and the Defendants could not take them, as any excess funds would go to investors as part of their working capital. *Ex. 5 at JPI 1991.*

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: (1) how they would spend investor money; and (2) the amount of money or buildings and infrastructure they would contribute to the project. *Ex. 6 at JPI 30667; Ex. 30 at ¶¶35-37; DE 125, Dee Testimony, at 80-82; Ex. 133; DE 93, Pieciak Testimony, at 84-87; Ex. 101 (Jay Peak Golf & Mountain Suites LP Resort Owner Contribution).* 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.* If there were any funds left over after building Phase IV, Quiros and the Defendants could not take them, as any excess funds would go to investors as part of their working capital. *Ex. 6 at JPI 30635.*

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 when Quiros and Q Resorts used 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.*

In addition, Quiros and these Defendants from September 2011 through January 2012 took more than $12.8 million of investor funds out of the project as fees (over $6.5 million more than they should have taken), and they failed to make at least $3.8 million of the required contributions to the project. *DE 125, Dee Testimony, at. 80-82; Ex. 133; DE 93, Pieciak Testimony, at 84-87; Ex. 101.* Quiros used more than $3.8 million of investor funds he improperly took to purchase a condominium at the Setai Fifth Avenue Hotel and Residences. *DE 125, Dee Testimony, at. 80-82; Ex. 133; DE 93, Pieciak Testimony, at 84-87; Ex. 101; Ex 89 at Ex YY.*

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: (1) how they would spend investor money; and (2) the amount of money or buildings and infrastructure they would contribute to the project. *Ex. 7 at 60 of 310; Ex. 30 at ¶¶38-41; DE 125, Dee Testimony, at 82-84; Ex. 133; DE 93, Pieciak Testimony, at 80-84; DE 124, Pieciak Testimony, at 125-26; Ex. 100 (Jay Peak Lodge and Tounhouses LP Resort Owner Contribution).*

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.* If there were any funds left over after building Phase V, Quiros and the Defendants could not take them, as any excess funds would go to investors as part of their working capital. *Ex. 7 at 25 of 310.*

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 Quiros 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.*

In addition, Quiros and the Defendants from September 2011 through June 2012 took more than $8.6 million of investor funds out of the project in fees (over $1.2 million more than they should have taken) and they failed to make at least $6.6 million of the required contributions to the project. *DE 125, Dee Testimony, at 82-84; Ex. 133; DE 93, Pieciak Testimony, at 80-84; DE 124, Pieciak Testimony, at 125-26; Ex. 100; Ex. 89 at Ex. YY.*

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: (1) how they would spend investor money; and (2) the amount of money or buildings and infrastructure they would contribute to the project.. *Ex. 2 at JPI 4579; Ex. 30 at ¶¶42-45; DE 125, Dee Testimony, at 84-88; Ex. 133; DE 93, Pieciak Testimony, at 78-80; Ex. 98 (Jay Peak Hotel Suites Stateside LP Resort Owner Contribution).*

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.*

In addition, Quiros and the Defendants from March 2012 through November 2013 took more than $10 million of investor funds out of the project in fees (over $3 million more than they should have taken) and they failed to make at least $7.4 million of the required contributions to the project. *DE 125, Dee Testimony, at 84-88; Ex. 133; DE 93, Pieciak Testimony, at 78-80; Ex. 98; Ex. 89 at Ex. YY.*

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 (there were not cost-overruns associated with the hotel), 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; DE 124, Pieciak Testimony, at 151-52.* Based on the amount the Defendants have already spent on building the vacation cottages and the Defendants' own future cost estimates, as of September 30, 2015, they needed at least another $26 million to finish Stateside.[5] *Id.; Ex. 30 at ¶¶62-63; DE 93, Pieciak Testimony, at 57-58.* 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 less than $60,000 left in them. *Ex. 30 at ¶63; Ex. 22 at ¶22; DE 93, Pieciak Testimony, at 57; Ex. 141; DE 125, Goldberg Testimony, at 160.* 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; DE 124, Pieciak Testimony, at 111-17; Ex. 126 (Summary of Investors Immigration Status); DE 124, Viera Testimony, at 65-67.*

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

[5] Goldberg testified the amount was at least $20 million. *DE 125, Goldberg Testimony, at 160-62.*

"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 percent to 100 percent 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.* Quiros and the other Phase VII 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.* The Defendants knew full well that the *only* contact Stenger and Biomedical Phase VII 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, which Quiros acknowledged. *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*; *DE 124, Jindra Testimony, at 178-82 and 187; DE 125, Jindra Testimony, at 5-11 and 23-27.* 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; Ex. 55 at last page of Exhibit C.* That time schedule, which not all investors received, showed that Biomedical Phase VII was basing its statements in the offering materials that it would begin realizing revenues in 2014 on a timetable that had development and testing beginning in January 2011. *Ex. 55 at last Page of Exhibit C; DE 124, Jindra Testimony, at 185-87; DE 125, Jindra Testimony, at 5-6.* However, by the time Biomedical Phase VII began to distribute its offering materials in November 2012, that timetable was already out of date. *DE 125, Jindra Testimony, at 6-8.* Development and testing of the products had not begun in January 2011, almost two years previously. In fact, according to the offering materials Quiros reviewed and approved and Stenger's testimony, would not begin until April 15, 2014. *Id.; Ex. 56 at AnC Bio 69; Ex. 20 at 425 L.17 to 426 L.9.* Thus, the revenue projections in the Biomedical Phase VII Original Offering Memorandum (Ex. 56), were false and baseless *at the time the Defendants made them. DE 125, Jindra Testimony, at 7-8.* Quiros reviewed, approved, and had ultimate authority over the Offering Memorandum. *Ex. 13 at 270 L.23 to 271 L.1.*

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 not in January 2011, and the years needed to get FDA approval, Biomedical Phase VII could only realistically realize 20 to 33 percent of the revenue the Defendants projected to investors in the offering materials. *DE 125, Jindra Testimony, at 9-16.* In addition, 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 and baseless. *Id.*

The Revised Offering Memorandum, distributed to investors starting in January 2015 (which Quiros also reviewed, approved, and had ultimate authority over, *Ex. 13 at 270 L.23 to 271 L.1.*), contained equally baseless projections. *DE 125, Jindra Testimony, at 17-27.* The Revised Offering Memorandum projected Biomedical Phase VII would begin realizing revenues from products requiring FDA approval in 2016 and 2017. *Id.; Ex. 57 at AnC Bio 6762.* However, a letter Stenger sent to the State of Vermont the same month as the Revised Offering Memorandum, January 2015, showed those projections to be baseless. *Ex. 140 (January 8, 2015 Letter To State Of Vermont at Time Schedule – Commercialization).* That letter showed Biomedical Phase VII was projecting revenues in the Revised Offering Memorandum *before* it was telling the State of Vermont it could receive FDA approval. *Id.; DE 125, Jindra Testimony, at 17-27; Ex. 57 at AnC Bio 6762.* The Time Schedule – Commercialization chart in the letter showed Biomedical Phase VII would not receive FDA approval of the products until one to two years after the projected dates for earning revenue. *Ex. 140 (January 8, 2015 Letter To State Of Vermont at Time Schedule – Commercialization); DE 125, Jindra Testimony, at 17-27; Ex. 57 at AnC Bio 6762.* Clearly the products could not start producing revenue without receiving FDA approval; thus the Revised Offering Memorandum's projections were baseless when made, and therefore false. *DE 125, Jindra Testimony, at 17-27.*

Furthermore, the timing of revenues in this case was crucial to the Biomedical Phase VII investors being able to realize promised annual returns, as well as to demonstrate the required job creation in the time frames necessary for them to obtain their unconditional green cards. *DE 125, Jindra Testimony, at 19 and 47.*

As proof that the Defendants recognized the importance of the timing of revenue realization and job creation, they hired an economic research firm to project the *specific number*

of jobs Biomedical Phase VII would create in Vermont and the rest of New England in the first two to four years of Biomedical Phase VII. They included the projections as Exhibit K to both Biomedical Phase VII offering memoranda. *Exhibit 56 at AnC Bio 184-204; Exhibit 57 at AnC Bio 6872-6892.* As stated in the executive summary of Exhibit K to the Original Offering Memorandum: "The purpose of this assessment was to measure the job generating effects (in full-time equivalents, FTEs), from the proposed construction *and subsequent operational phases* of AnC Bio's biotechnology campus in Newport, Vermont." *Ex. 56 at AnC Bio 186 (emphasis added). See also Ex. 56 at AnC Bio 189; Ex. 57 at AnC Bio 6877.*

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: (1) would spend investor money; and (2) the amount of resort projects or money they would contribute to the project. *Ex. 56 at AnC Bio 68; Ex. 57 at AnC Bio 6743*; *Ex. 30 at ¶¶46-59; DE 125, Dee Testimony, at 89-90; Ex. 133; DE 93, Pieciak Testimony, at 74-76; DE 124, Pieciak Testimony, at 136-40; Ex. 97; Ex. 136 (Analysis of Biomedical Phase VII GP Account).* 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 had to 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 failed to contribute more than $6 million they were required to contribute to the project from May 2012 through April 2015 and pilfered tens of millions of dollars of investor funds for a variety of improper expenses *(Ex. 30 at ¶¶48-60 and accompanying exhibits; DE 125, Dee Testimony, at 89-90; Ex. 133; DE 93, Pieciak Testimony, at 74-76, DE 124, Pieciak Testimony, at 136-140; Ex. 97; Ex. 136):*

- $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 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.* As explained in more detail in Section XIII below, the two declarations from the Korean affiliate

Quiros submitted in his defense to try to legitimize the margin loan payoff are shams.

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 as of the date the Commission filed this action, had raised approximately $53 million. *Ex. 22 at ¶¶6-7.* As described above, Quiros improperly used approximately $7 million from Margin Loan IV (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; DE 93, Pieciak Testimony, at 58-62; DE 124, Pieciak Testimony, at 101-104.* 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. *Ex. 22. 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; DE 93, Pieciak Testimony, at 62.* 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; DE 93, Pieciak Testimony, at 60 & 62.*

Biomedical Phase VII documents show the company needs an additional $84 million to complete the project.[6] *Ex. 30 at ¶64.* However, there is only about $200,000 remaining in non-

[6] That figure includes the buildings, and equipment and fixtures. *Id.* Goldberg testified the cost for the buildings alone would be $47 million. *DE 125, Goldberg Testimony, at 166.*

escrow accounts associated with the Biomedical Phase VII project, and the aforementioned $14 million in escrow. *Ex. 30 at ¶¶60-61 and FN5; Ex. 141 (Receiver's Overview Of Jay Peak Accounts); DE 125, Goldberg Testimony, at 166-67.* Furthermore, the Defendants can only raise an additional $27 million from new Biomedical Phase VII investors before the offering is fully subscribed. *Ex. 30 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

As of the date the Commission filed this action, Quiros and the other Defendants continued 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, continued 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 continued 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.*

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. QUIROS' PRESENT FINANCIAL CONDITION

Quiros, who never appeared or provided any testimony at the evidentiary hearings the Court held, claims he has a personal net worth of $200 million. Quiros has filed two sealed documents to support his claim of his personal net worth. However, neither document provides any valid support for this claim, or a basis to value Quiros' present financial condition.

The first document is a Statement of Financial Condition as of September 30, 2014

("Financial Statement") compiled by the South Florida accounting firm of Berkowitz Pollack Brant. *Ex. 102 (Ariel and Okcha Quiros Statement of Financial Condition); DE 64-2 (Berkowitz Declaration)*. Quiros claims Berkowitz Pollack Brant *prepared* the Financial Statement, as if the accounting firm put its imprimatur on the figures in it. *Ex. 2 to DE 39 at ¶11*. However, as the declaration of Richard Berkowitz, the CEO of Berkowitz Pollack Brant, shows, the Financial Statement does not confirm this value. As Berkowitz explains, the Financial Statement is a *compilation*, meaning the accounting firm simply added up the numbers *Quiros* provided, and put them in a specific format. *DE 64-2 at ¶¶5-6*. The accounting firm prepared none of the information in the Financial Statement. *Id. at ¶¶5-7*. Quiros provided every single figure in the Financial Statement, and most of the figures do not have backup.[7]

Berkowitz Pollack Brant did not review, analyze, or audit the figures Quiros provided (because it was not within the scope of the work Quiros hired the firm to perform) to attempt to provide any assurances that they were accurate. *Id. at ¶7*. The accounting firm simply added up what Quiros provided. *Id. at ¶5*.

In addition, the Financial Statement was compiled as of September 30, 2014, almost 19 months ago. It is no longer a valid measure of anything. It was good only as of September 30, 2014. *Id. at ¶4*. The accounting firm specifically stated in its letter the Financial Statement was not to be used by anyone other than Quiros and the broker-dealer for whom the firm compiled the Financial Statement. *Id. at ¶8*. Furthermore, Quiros reported to Berkowitz Pollack Brant that he had cash on hand of approximately $1.7 million in two financial institutions. *Ex. 102*. However, in enforcing the Court's asset freeze order earlier this month, the Commission did not locate any accounts held by Quiros at these two financial institutions and found less than $50,000 of unrestricted liquid funds that belong to Quiros. *Ex. 141*. That is a prime example of why the accounting firm cautioned Quiros that the Financial Statement should not be relied on after September 30, 2014. *DE 64-2 at ¶8*.

Most of Quiros' purported net worth in the Financial Statement came from values he placed on several of the Jay Peak companies, and substantial evidence indicates those values are

[7] The Court asked Quiros counsel whether the valuations Quiros placed on assets are "realistic estimations of market value? They seem to fly in the face of the filings of the Receiver." The Court also asked what to make of accounts that are listed on Quiros' financial statement but were not frozen. The only response Quiros counsel had was "I know what I know, and I know what I don't know, and I don't know, and those were the values Quiros told him." *DE 93, April 25, 2016 Hearing Transcript, at* 141-143.

significantly overstated. For example, as Goldberg noted, the claim in the Financial Statement that Quiros' interest in Biomedical Phase VII is worth $25 million is highly suspect. *DE 64-1 at ¶24*. The project will likely never be built and investors have next to nothing to show for the $69 million that was released to Quiros and other Defendants (of this amount, the Commission has presented unconverted evidence that Quiros misappropriated approximately $30 million of that money). *See* Section IX.C above. There is simply no evidence Quiros' interest in Biomedical Phase VII is worth $25 million. *DE 64-1 at ¶24*.

Equally unlikely is the notion that Quiros has an interest in Q Burke worth $28 million. As shown Goldberg's declaration and recent motion seeking to borrow funds from the Jay Peak entities to pay Q Burke expenses, that resort is in financial shambles, and needed an emergency loan from other entities just to keep the lights on. *DE 64-1 at ¶23*. The hotel is not even open yet, the contractor claims it is owed $3.9 million, and the frozen Q Burke accounts did not have sufficient funds to pay expenses to keep the hotel from "going dark." *Id; see also Ex. A to DE 50 at ¶10.* In addition, from any sale proceeds, Q Burke would need to pay approximately $3 million to extinguish a bond liability. *DE 93, Pieciak Testimony, at 89-90*.

The appraisal Quiros previously submitted to the Court of the Jay Peak Resort as of July 2, 2015, is similarly suspect. *Ex. 103 (Restricted Use Appraisal).*[8] The appraisal is incomplete, 10 months old, and does not account for the truth of the Resort's financial condition exposed in the last few weeks and the performance of the resort over the last ten months. The picture the appraisal paints of a thriving resort is completely at odds with the financial problems Goldberg encountered at the Resort after the Court appointed him as Receiver. *DE 64-1 at ¶¶10-17.*

In addition, as Goldberg notes and Dr. Jindra testified, the appraisal is based primarily on a discounted cash flow model that uses projected future revenues and income. *DE 64-1 at ¶25; DE 125, Jindra testimony, at 29 and 31-35.* The appraisal's stated value of Jay Peak at $87 million was based in part on a projection that Jay Peak's revenues would increase by about five percent from 2014-15 to 2015-16. *DE 125, Jindra Testimony, at 33-34.* In reality, through the first 10 months of fiscal year 2015-16, Jay Peak's revenues *declined* by five percent. *Id. at 34-35.* That fact alone caused Dr. Jindra, the Commission's valuation expert, to revise the resort's

[8] Quiros did provide any testimony from the appraiser or anyone to explain how the appraisal was calculated and did not even submit the entire appraisal as an exhibit. He only submitted the first 88 pages of a 118-page document. *Ex. 103.*

current value to about $44 million. *Id. at 35-39.*[9] Accordingly, just as with the Financial Statement, there is no basis to give any weight to the appraisal, and therefore it is not a reliable basis for Quiros to claim Jay Peak is worth anywhere close to $87 million.[10]

Moreover, Jay Peak has substantial debts and liabilities. In total, Jay Peak owes at least $60 million to investors and third parties, that is broken down as follows: (1) Jay Peak owes to Phase I investors more than $14 million (*DE 93, Pieciak Testimony, at 87-89*); (2) Jay Peak owes another $7 million in promissory notes to third-parties (*Id.*); (3) Jay Peak as the project sponsor owes more than $20 million to the Stateside Phase VI investors and construction companies, since these funds are needed to complete the fully subscribed Stateside Project; and (4) Jay Peak owes at least $20 million to Phases IV through VI for capital contributions that it failed to make. *Id. at 76-87; 97-98, and 100-101.* Since Dr. Jindra's analysis shows Jay Peak is worth only about $41.6 million and has debts of more than $60 million, the net realizable value of this asset that could be used to satisfy Quiros' substantial equitable liabilities is zero.

Moreover, even though the Court is not required to trace assets to Quiros' fraud to hold them as part of the asset freeze, Quiros appears to have relatively few untainted assets. At the time, Quiros purchased Jay Peak he listed his net worth outside of Jay Peak (which he used $21.9 million of investor funds to buy) at only $3.8 million. *DE 124, Pieciak Testimony, at 129-30; Ex. 137 (VEDA Business Certification and Board Recommendation).* Most of this net worth came from Quiros' personal residence. *Ex. 137.* In addition, Quiros has not identified any significant amount of liquid assets (tainted or untainted) that could be released from the freeze, and the only hard asset that counsel for Quiros identified (a condominium at the Setai Fifth Avenue Hotel and Residences) as being untainted, in is fact, tainted. Quiros used more than $3.8 million of investor funds he improperly took to purchase the Setai Condominium. *DE 125, Dee Testimony, at 80-82; Ex. 133; DE 93, Pieciak Testimony, at 84-87; Ex. 101.*

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[9] Dr. Jindra further reduced the value of the resort to about $41.6 million because the appraisal did not account for the $4.5 million in repairs the gondola needs. *Id. at 36-39.*

[10] In addition, the appraisal fails to account for the fact that Quiros obtained Jay Peak originally by fraud. As set forth above, Quiros improperly used $21.9 million of Suites Phase I and Hotel Phase II investor funds to purchase Jay Peak from its prior owners. This is highly significant to Quiros' claim that he has an interest in Jay Peak. He apparently takes the position, which the Court should not credit, that he is entitled to profit from his fraud.

XII. A RECEIVER IS NEEDED

The services of Michael Goldberg as the Court appointed Receiver are strongly needed. There is substantial evidence that Quiros and the other Defendants mismanaged the Jay Peak entities, and that Quiros diverted significant portions of their funds to himself. There are a number of investor lawsuits and complaints and many of the investors were not wealthy. *DE 125, Goldberg Testimony, at 170-76; Exs. 105, 130 and 134 (Investor Letters); DE 124, Viera Testimony, at 42-44.* Goldberg testified he inherited a "disaster" and that he is doing much more good than harm. *DE 125, Goldberg Testimony, at 170-78.*

XIII. LACK OF REBUTTAL EVIDENCE

Quiros has provided almost no evidence – no live testimony and only five declarations – to show cause why the Court should not enter the Preliminary Injunction Requested by the Commission. One of the declarations is Quiros' statement of his net worth that the Commission has demonstrated is vastly overstated (*See* Section XI above) and does not speak to whether he committed the massive securities fraud alleged by the Commission. The other four declarations are from two former Jay Peak officers and two purported officers in Korean affiliates of Biomedical Phase VII. They concern primarily one issue – the investor funds sent to and disbursed from JCM – just one of dozens of acts of misconduct and violations the Commission has alleged and shown that Quiros committed. Hence, an overwhelming majority of the Commission's evidence is unconverted.

In addition to the findings above regarding JCM, the company was not involved in the first three phases. *DE 124, Pieciak Testimony, at 92.* JCM was the construction manager for Phases IV through VI, but its involvement was not disclosed to investors. *Id.* Quiros and the other Defendants did not disclose JCM's involvement with Biomedical Phase VII in the Original Offering Memorandum, which was used to raise the money the Defendants had released to them from the project. *Id. at 92 and 147-49.* They only disclosed JCM's involvement in the Revised Biomedical Phase VII Offering Memorandum, where they attached a contract between JCM and the project as an exhibit. *Id at 92.*[11] This contract strictly limits JCM's compensation and did not allow JCM to simply take any Biomedical Phase VII investor funds it pleased. *Id. at 98-99 and 105-07.*

[11] Quiros is the only individual linked to Biomedical Phase VII as one of its general partners, JCM as its principal and controller of its bank accounts, and AnC Bio Korea as one of its founders (AnC Bio Korea was supposed to receive the investor funds that JCM received). *Id. at 93-98.*

One of the declarations submitted by Quiros regarding JCM is the Declaration of George Gulisano, Jay Peak's former CFO. The declaration primarily deals with the amount of Biomedical Phase VII investor funds that went to JCM. *DE 99.* He agrees with Dee, the Commission's accounting expert, that approximately $47 million of Biomedical Phase VII investor funds went to JCM. *DE 125, Dee Testimony, at 97.* However, the Commission submitted another Declaration of Gulisano, where he admits that he does not know what JCM did with the investor funds it received. *Ex. 110.* He also states Quiros controlled what JCM did with the money it received. *Id.* The Commission, on the other hand, analyzed what JCM did with the approximately $47 million of Biomedical Phase VII investor funds it received, and found only $10 million total (from all sources not just JCM) was paid to legitimate vendors. *DE 125, Dee Testimony, at 97-98.* Dee further found Quiros misused and misappropriated most of the remaining funds by spending them to buy Q Burke, pay off Margin Loan IV, pay JCM's taxes, pay investors in prior phases, and pay Stateside Phase VI construction vendors. *Id.*

Two of the other declarations are from Dr. Jang and Mr. Kim, two purported officers in Korean affiliates of Biomedical Phase VII. Their nearly identical declarations state that they directed Quiros to pay approximately $21 million owed to AnC Bio Korea to pay off Margin Loan IV. They also state AnC Bio Korea gave credit to Biomedical Phase VII for this payment, even though AnC Bio Korea did not receive the funds. There are several issues that should cause the Court to give little weight to these declarations. First, these declarations were only submitted two months *after* Quiros paid off Margin Loan IV, and *after* the Commission asked Quiros about the payoff in sworn testimony. Second, the Korean declarants came into the United States and signed the declarations that Quiros came up with, and then apparently left the United States and have not made themselves available to questioning from the Commission. *Ex. 138, Declaration of Trisha Sindler, at ¶¶8-11 and 14.*

Third, Quiros' own testimony contradicts key parts of these declarations. *DE 124, Pieciak Testimony, at 147 and 159-60; DE 125, Dee Testimony, at 100.* For example, AnC Biopharm's agreement to regard the approximately $21 million JCM used to pay off the margin loan as if it was paid to AnC Biopharm was only entered into after Quiros paid off Margin Loan IV. *Ex. 13 at 438 L.25 to 439 L.6; 441 L.11-17; and 442 L.23 to 443 L.21: Ex. 138.* In addition, Quiros acknowledged that there was a verbal agreement he would repay AnC Biopharm the $21 million at a later date. *Ex. 13 at 447 L.6-22; 448 L.13 to 449 L.25.*

The last declaration submitted by Quiros regarding JCM is the Declaration of William Kelly, Jay Peak's former CEO and a principal in Northeast. This also primarily concerns the amount of Biomedical Phase VII investor funds that went to JCM. *DE 100 (Kelly Declaration).* Kelley accounts for approximately $26 million of the investor funds that went to JCM by giving credit to the Korean Declarations that JCM paid $21 million to AnC Bio Korea by paying off Margin Loan IV, and gives credit to another approximately $5 million that JCM paid to AnC Bio Korea. *Id.; DE 125, Dee Testimony, at 100.* Hence, even if the Court were to credit Kelly's accounting, which the substantial weight of the evidence contradicts, Kelly does not account for more than $20 million of the $47 million of investor funds that went to JCM. *DE 125, Dee Testimony, at 98-100.*

PROPOSED CONCLUSIONS OF LAW

XIV. STANDARD FOR OBTAINING A PRELIMINARY INJUNCTION

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).[12]

The Commission is entitled to a preliminary injunction if it establishes (1) a prima facie case showing the Defendant has violated the securities laws, and (2) a reasonable likelihood he will re-offend if not enjoined. *Shiner*, 268 F. Supp. 2d at 1340; *SEC v. Torchia*, __ F.Supp. 3d __, 2016 WL 1650779 * 15 (N.D.Ga. April 25, 2016). 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 at *24 (S.D. Fla. Sept. 24, 2008) *aff'd*, 478 Fed. Appx. 550 (11th Cir. 2012). The Commission

[12] Quiros has cited to a non-binding 2nd Circuit case, *SEC v. Unifund SAL*, 910 F.2d 1028,1039 (2d Cir. 1990) for the premise that the Commission must make a "substantial showing" to obtain injunctive relief. However, this case is not binding on this Court, and even if the Court were inclined to follow *Unifund* the Commission has made a "substantial showing" through the extensive and uncontroverted evidence it has provided to the Court that Quiros was engaged in the violations of the anti-fraud provisions of the federal securities laws as alleged by 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 at *22 (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 against Quiros on all applicable grounds. The witness testimony and 141 exhibits attached both to the Commission's TRO Motion and that were admitted at the preliminary injunction hearing demonstrate Quiros was repeatedly violating the anti-fraud provision of the federal securities laws, and will continue to violate the law if the Court does not enter a preliminary injunction and continue the asset freeze against him.

XV. THE OFFERED INVESTMENTS ARE SECURITIES

The Commission has met its burden of establishing Quiros' *prima facie* violations of the securities laws as alleged in the Complaint, the TRO Motion, and this submission.

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, a common enterprise, is 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, 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.[13] The Eleventh Circuit traditionally looks at "the amount of control that investors retain[ed over their 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 they used investors' funds. Investors had no control over how the Defendants developed the projects or 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 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. Under similar circumstances, numerous courts have held that limited partnership interests such as Quiros and the other Defendants sold are securities. *Merchant Capital*, 483 F.3d at 756 (noting that limited partnership interests "are routinely treated as investment contracts"); *Williamson v. Tucker*, 645 F.2d 404, 423 (5th Cir. 1981) (noting that a limited partnership interest "has long been held to be an investment contract"); *Mayer v. Oil Fields Sys.*

[13] 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.*

Co., 721 F.2d 59, 65 (2nd Cir. 1983) (limited partnership interest was a security because owner of limited partnership interest (i.e., investor) exercises no managerial role); *SEC v. Global Telecom Servs., LLC*, 325 F. Supp. 2d 94, 113 (D. Conn. 2004) (partnership interest was a security because "the role of the investors was merely to provide investment funds"); *SEC v. Saltzpan*, 127 F. Supp. 2d 660, 667 (E.D. Pa. 2000) (denying motion to dismiss enforcement action relating to limited partnership interests); *Miltland Raleigh- Durham v. Myers*, 807 F. Supp. 1025, 1057 (S.D.N.Y. 1992) (limited partnership interest was security).

XVI. QUIROS VIOLATED SECTION 17(a) OF THE SECURITIES ACT AND SECTION 10(b) AND RULE 10b-5 OF THE EXCHANGE ACT

A. The Elements Of Sections 17(a) And 10(b) And Rule 10b-5

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).[14]

Section 10(b) of the Exchange Act and Rule 10b-5 contain similar provisions, rendering 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.

Misrepresentations and omissions under either Section 10(b) or 17(a) must be material. The Commission must also establish scienter – knowing or extremely reckless misconduct – for all three provisions of Rule 10b-5 and Section 17(a)(1). *SEC v. Corporate Relations Group*, No. 6:99-cv-1222, 2003 WL 25570113 at *7 (M.D. Fla. March 28, 2003). Only a showing of negligence is required to show violations of Sections 17(a)(2) and 17(a)(3). *Aaron v. SEC*, 446 U.S. 680, 697 (1980). The Commission must show that violations were made using any means

[14] In Commission enforcement actions under the antifraud provisions of the federal securities laws the standard of proof is preponderance of the evidence. *Torchia*, 2016 WL 1650779 at * 17 (citations omitted).

or instrumentality of interstate commerce. *Corporate Relations Group*, 2003 WL 25570113 at *7. 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).

Thus, the express language of both Section 17(a) and Rule 10b-5 encompasses three distinct types of violative conduct – misrepresentations and omissions (Section 17(a)(2) and Rule 10b-5(b)), fraudulent schemes (Section 17(a)(1) and Rule 10b-5(a)), and fraudulent courses of conduct (Section 17(a)(3) and Rule 10b-5(c)). Only two of the six provisions directly address misrepresentations and omissions, and only one – Rule 10b-5(b) – requires that a person personally make or be responsible for a misrepresentation of omission to be liable. *Janus*, 131 S.Ct. at 2299-2302.

Although the three subsections of Section 10(b) and Rule 10b-5 prohibit different conduct, courts have regularly held the same misconduct can give rise to violations of all three subsections. *VanCook v. SEC*, 653 F.3d 130, 138 (2nd Cir. 2011) (late trading scheme constituted "a device, scheme, or artifice to defraud" in violation of Rule 10b-5(a), Defendant made material, untrue statements and omissions in violation of Rule 10b-5(b), and Defendant's actions "operate[d] . . . as a fraud or deceit on any person" in violation of Rule 10b-5(c)); *SEC v. Simpson Capital Management, Inc.*, 586 F. Supp. 2d 196, 208 (S.D.N.Y. 2008) (denying motion to dismiss because Commission had alleged that defendants were the "architects" or "creators" of a fraudulent scheme but *others* in the scheme made misstatements to third parties). *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 Section 17(a), should be considered "mutually supporting" rather than mutually exclusive).

B. Quiros' Misrepresentations And Omissions And Liability Under Exchange Act Rule 10b-5(b)

With those standards in mind, we now turn to Quiros' liability under the separate provisions of Sections 10(b) and 17(a), which goes to answering the Court's first three questions. Under Exchange Act Section 10(b) and Rule 10b-5(b), a person is liable if he makes a material misrepresentation or materially misleading omission in connection with the purchase or sale of securities with scienter. *Monterosso*, 756 F.3d at 1333-34. Under Rule 10b-5(b), the "maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus*, 131 S.Ct. at 2302. 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); *In re Pfizer Inc. Sec. Lite*., 936 F. Supp. 2d 252, 268–69 (S.D.N.Y. 2013) (multiple individual defendants had ultimate authority over company press releases and thus could be considered "makers" of statements under *Janus*).

The Commission alleges Quiros directly made misrepresentations and omissions only in Biomedical Phase VII. Amended Complaint (DE 120) at Count 50. As discussed in Section IX above, both the Original Offering Memorandum (Ex. 56) and the Revised Offering Memorandum (Ex. 57) in Biomedical Phase VII contain several misrepresentations and omissions:

- The Original Offering Memorandum misrepresented the status of the FDA approval documents by stating the FDA approval for certain products was "in progress" or "in process." Section IX.A. This is highly significant because products requiring FDA approval accounted for 67 percent to 100 percent of the research facility's projected annual revenues in both offering memoranda. *Id.*

- Both offering memoranda also misrepresented in the use of proceeds document how Biomedical Phase VII would spend investor funds on the project as well as the amount of resort improvements or money the general partner would contribute to the project. Section IX.C.

- The Biomedical Phase VII limited partnership agreement falsely represented restrictions on the general partner's use of investor funds. The limited partnership agreement stated the general partner could not commingle investor funds; nor could it borrow, collateralize, or pledge investor funds to non-approved uses without the consent of the investors. *Id.*

- The Revised Offering Memorandum omitted disclosing Quiros' massive misuse and misappropriation of virtually all Biomedical Phase VII's investor funds in the revised offering materials. *Id.*

Quiros, along with the other Phase VII Defendants, regularly violated the use of proceeds document and the limited partnership agreement, when they failed to contribute more than the required $6 million to the project, and misappropriated tens of millions of dollars of investor funds for a variety of improper expenses set forth in detail above. Furthermore, as discussed in

Section IX.A above, Jay Peak Biomedical had not submitted *any* application to the FDA for *any* product approval at the time Quiros and Stenger reviewed and approved the Original Offering Memorandum. Therefore, the statements in that document that FDA approval for various products was "in progress" and "in process" were patently false.

Quiros, as one of the principals of the Biomedical Phase VII general partner, reviewed and approved the contents of both offering memoranda, and agreed he had ultimate authority over the statements in both memoranda. *See* Section V above. Thus, he is liable as a "maker" of the false statements and omissions in both offering memoranda under *Janus*. 131 S.Ct. at 2299-2302. The fact that Stenger was the other principal of the general partner and also had ultimate authority over the contents of both offering memoranda, or the fact that the Phase VII corporate defendants were also the "makers" of statements in both documents, does not absolve Quiros of liability. As set forth above, there can be multiple "makers" of false statements and omissions in corporate documents.

Thus, Quiros is liable for violations of Section 10(b) and Rule 10b-5(b) as the "maker" of false statements and omissions in Biomedical Phase VII. As discussed in Section XIII above, none of Quiros' evidence contradicts any of the facts showing Quiros made misrepresentations and omissions through the Biomedical Phase VII offering documents.

C. Quiros' Liability for Baseless Revenue Projections

Quiros, as the admitted "maker" of statements in the Biomedical Phase VII offering memoranda, is also liable under Rule 10b-5(b) for the baseless revenue projections in both the Biomedical Phase VII Original and Revised Offering Memoranda. *Ex. 13 at 266 L.6-18, 270 L.19 to 271 L.1, and 291 L.13-24.* As discussed in Sections I.B.2 and IX.B above, this case does not concern delays in revenue projections. The issue is that Quiros and the other Defendants in Phase VII made revenue projections that they knew or were extremely reckless in not knowing were *impossible to achieve at the time the Defendants made the projections.*

Under the securities laws, projections are actionable as misrepresentations if there is no reasonable basis to support them. *Kirkland*, 521 F. Supp. 2d at 1298-1300 (finding statements about occupancy rates in letters to investors were baseless and violated Rule 10b-5(b) because defendant was in possession of regular reports showing occupancy rates were far less than his letters stated); *citing Merchant Capital*, 483 F.3d at 766-69 (finding company's statements about projected returns were materially misleading because company was aware its business was not

generating revenues sufficient to pay those returns).

In questioning witnesses at the hearing, Quiros' lawyers pointed to cautionary language in the Biomedical Phase VII offering documents noting that the memoranda contained forward looking statements and that the investment was risky. However, Quiros may not rely on those statements to absolve him of liability here because general cautionary statements may *never* serve to render projections about future performance immaterial where the maker of the projections is aware of adverse information about past performance but fails to disclose it. *Merchant Capital*, 483 F.3d at 768-69; *Carriba Air*, 681 F.2d at 1323-24; *Rubenstein*, 20 F.3d at 171 ("[t]o warn that the untoward may occur when the event is contingent is prudent, to caution that it is only possible for the unfavorable events to happen when they already have it deceit").

As discussed in more detail in Section IX.B above, the unrebutted testimony of Commission financial economist Dr. Jan Jindra shows that at the time they made the revenue projections in both Biomedical Phase VII offering memoranda, Quiros and the other Defendants *knew* they could not achieve the projections. The Original Offering Memorandum projected Biomedical Phase VII would begin realizing revenues from the various products requiring FDA approval in 2014 or 2015. However, this was based on the company starting to develop and test the products in January 2011. Section IX.B. But by the time Quiros and the other Phase VII defendants began distributing the Phase VII Original Offering Memorandum in November 2012 – almost *two years* later, they *knew* product development and testing had not started. *Id.* Furthermore, the Original Offering Memorandum flat out stated the Vermont facilities were not going to be operational – i.e., ready to begin developing and testing the products – until April 2014, two years and three months after the January 2011 start date in Biomedical Phase VII business plan documents.[15] *Id.*

Thus, the evidence shows unequivocally that at the time Quiros and the other Defendants distributed the Original Offering Memorandum, they *knew* they could not meet their starting dates for realizing revenues. Hence, their projections were false and baseless when made, and Quiros is liable for these material false statements under Rule 10b-5(b).

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[15] As discussed in Section IX.B above, Stenger testified unequivocally that development and testing of the products was *only* going to occur at the Biomedical Phase VII facilities in Vermont. There is no *evidence* in the record to the contrary. The questioning from Quiros' lawyers to Commission witnesses at the preliminary injunction hearing about whether they were aware if any product development had taken place or was going to take place in Korea is not *evidence*.

Similarly, in the Revised Offering Memorandum, Jindra's testimony showed Quiros and the other Defendants projected revenues one to two years *before* the products could receive FDA approval and be sold. Section IX.B. The Revised Offering Memorandum showed the Defendants realizing revenues from the products requiring FDA approval in 2016. *Id.* However, the same month as the Defendants began distributing the Revised Offering Memorandum, January 2015, they sent a letter to the State of Vermont showing they would not receive FDA approval for these very products until 2017 or 2018. *Id.* Thus the Defendants knew they could not begin realizing revenue from the products when the Revised Offering Memorandum said they could.

This is not a situation where the Defendants simply guessed wrong or were overly optimistic in how quickly they could realize their business model, then earned the projected revenues later. Rather, the Defendants *knew* when they made glowing statements about the Biomedical Phase VII project's future revenues in both offering memoranda that it was *impossible* for them to realize those projections. This is, as *Rubenstein* states, deceit. *Rubenstein*, 20 F.3d at 171.

Furthermore, the timing of revenues in this case was crucial to the Biomedical Phase VII investors being able to realize promised annual returns, as well as to demonstrate the required job creation in the time frames necessary for them to obtain their unconditional green cards. There is no dispute that investors had two years from the time they received their conditional green cards to demonstrate creation of the necessary jobs to receive permanent green cards. A delay in construction, operations, and realization of revenues could stymie the investors' ability to demonstrate job creation.

As proof that the Defendants recognized the importance of the timing of revenue realization and job creation, they hired an economic research firm to project the *specific number of jobs* Biomedical Phase VII would create in Vermont and the rest of New England in the first two to four years of Biomedical Phase VII. They included the projections as Exhibit K to both Biomedical Phase VII offering memoranda. Exhibit 56 at AnC Bio 184-204; Exhibit 57 at AnC Bio 6872-6892. As stated in the executive summary of Exhibit K to the Original Offering Memorandum: "The purpose of this assessment was to measure the job generating effects (in full-time equivalents, FTEs), from the proposed construction *and subsequent operational phases* of AnC Bio's biotechnology campus in Newport, Vermont." Ex. 56 at AnC Bio 186 (emphasis

added). *See also* Ex. 56 at AnC Bio 189; Ex. 57 at AnC Bio 6877.

Quiros and the other Biomedical Phase VII Defendants were thus obviously aware that their revenue projections were significant to Phase VII investors because of their impact on job creation and investors' ultimate ability to obtain their permanent green cards.[16] The revenue projections were also significant to the investors' ability to realize promised annual returns. The Defendants made demonstrably false projections about future revenues, and as a person with ultimate authority over the Offering Memoranda, Quiros is liable for those misrepresentations under Rule 10b-5(b).

D. 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." *Merchant Capital*, 483 F.3d at 766. 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, Quiros' false statements and omissions in the Biomedical Phase VII offering documents are clearly material. As discussed in Section IX.A above, the statements about the status of FDA approval were plainly material because the vast majority of the revenues the Phase VII Defendants were projecting for the project came from products requiring FDA approval. Any reasonable investor would want to know that, in fact, none of the products were anywhere close to being submitted to the FDA for review and approval, because that fact could delay the operation of the biomedical research park for years. That would, in turn, jeopardize investors' ability to obtain their permanent green cards and to realize the annual returns the Defendants were promising.

[16] Also, Quiros obviously knew, or was extremely reckless in not knowing, that Phase VII would never generate the projected revenues, since he stole nearly $30 million of Phase VII investor funds. Hence, Phase VII could not generate any revenues, because it lacks enough funds to be built.

The remainder of Quiros' misrepresentations and omissions in Phase VII concerned the use of investors' funds as set forth in the use of proceeds document and the limited partnership agreement. Misrepresentations regarding the use of investors' funds are material. *SEC v. Cochran*, 214 F.3d 1261, 1268 (10th Cir. 2000); *SEC v. Merrill Scott & Assocs., Ltd*., Case No. 02-cv-39-TC, 2011 WL 5834271 at *11 (D. Utah Nov. 21, 2011) (a reasonable investor "would consider it important to know [his] funds were being misappropriated and used for purposes other than those stated when solicited"); *SEC v. Holschuh* 694 F.2d 130, 144 (7th Cir. 1982) (failure to use proceeds for promised mining operations was material); *SEC v. Fitzgerald*, 135 F. Supp. 2d 992, 1022 (N.D. Cal. 2001) (failure to use proceeds for real estate development costs was material); *SEC v. Benson*, 657 F. Supp. 1122, 1130-31 (S.D.N.Y. 1997) (misuse of proceeds for undisclosed compensation was material); *SEC v. Research Automation Corp.*, 585 F.2d 31, 35-36 (2nd Cir. 1978) (misleading statements and omissions about the use of investor funds were material as a matter of law); *SEC v. Smith*, Case No. C2-CV-04-739, 2005 WL 2373849 at *5 (S.D. Ohio, Sept. 27, 2005) ("Certainly a reasonable investor would consider how the Defendants would actually spend his money were he to invest to be an important factor when determining whether to invest in the offering.").

As in those cases, any reasonable investor would want to know Quiros was not using his or her money to build Biomedical Phase VII as represented in the offering documents, but rather for his personal 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. For similar reasons, as discussed above, a reasonable investor would want to know it was impossible for Biomedical Phase VII to realize revenues in anywhere near the time frames the offering memoranda stated, and that Quiros and the other Defendants knew that when they made the revenue projections.

E. Quiros' Liability Under Securities Act Section 17(a)(2)

Securities Act Section 17(a)(2) makes it illegal for "any person in the offer or sale of any securities . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact." 15 U.S.C. §77q(a)(2); *Big Apple*, 783 F.3d at 796. The Eleventh Circuit and numerous other courts have held that the term "by means of" in Section 17(a)(2) is broader than the term "make" a misrepresentation or omission in Exchange Act Section 10(b) and Rule 10b-5(b), and that under Section 17(a)(2) "it is irrelevant for purposes of

liability whether the seller uses his own false statement or one made by another individual." *Big Apple*, 783 F.3d at 797-98 (jury instruction stating that Section 17(a)(2) language of obtaining money or property by means of any untrue statement encompasses a broader range of misconduct than making a misstatement as defined in Exchange Act Rule 10b-5(b)). *See also Tambone*, 550 F.3d at 127, and *en banc* at 597 F.3d 436, 450 (1st Cir. 2010) (irrelevant for liability under Section 17(a)(2) whether seller uses his misstatement or misstatements of others).

The Amended Complaint alleges Quiros violated Section 17(a)(2) in Biomedical Phase VII. DE 120 at Count 47. For identical reasons as described in Sections B and C immediately above, Quiros' material misrepresentations and omissions in the Biomedical Phase VII offering documents constitute violations of Section 17(a)(2). Quiros obtained money by means of his own material untrue statements to investors about how Biomedical Phase VII would use investor funds and material untrue statements about purported restrictions on how the general partner could use investor funds. By means of these statements to induce investors to invest, Quiros obtained approximately $30 million of investor funds for his own use as described in detail in Section IX.C above.

However, Quiros' liability for Section 17(a)(2) violations goes beyond his own untrue statements of material fact in Phase VII. The Commission has also alleged Section 17(a)(2) liability against Quiros in Phases II-VI. DE 120 at Counts 7, 15, 23, 31, and 39. Liability attaches because Quiros obtained money and property by means of other Defendants' material misrepresentations and omissions in each of those Phases. *Big Apple*, 783 F.3d at 797-98; *Tambone*, 597 F.3d at 450.

As discussed in Section VIII above, the Defendants in Phases II-VI made material misrepresentations and omissions in offering documents to investors concerning how they would use investor funds in the use of proceeds documents for each Phase, and restrictions on the general partner's use of funds in the limited partnership agreements. Quiros obtained money or property by means of those misstatements as discussed in those same sections by:

- Using $9.5 million in Phase II investor funds to purchase Jay Peak. Section VI.
- Using investor funds in Phases II-VI to pay off or pay down Margin Loans Three and Four, including paying Margin Loan interest. Section VIII.
- Commingling the funds improperly into his Q Resorts account at Raymond James. Sections VI and VII.

- Using Phase IV investor funds to buy the luxury Setai Condominium for his personal and family use in New York City. Section VIII.

Quiros has not presented evidence showing that the statements in the Phase II through VI offering documents were not material misrepresentations and omissions. He has pointed to one section of the limited partnership agreement in each offering allowing the general partner to sign agreements with affiliates, but as Pieciak testified at the hearing, the fees available to any affiliate through that section were specifically capped at the amount of management and other construction fees set forth in the use of proceeds document in each offering. Section VIII. Quiros has not provided any *evidence* to contradict Pieciak's testimony. Questions and arguments from counsel about whether something is true do not constitute evidence.[17]

Quiros' primary argument regarding the misrepresentations and omissions in Phases II through VI are that he did not make them and did not prepare the offering documents. While Quiros did admit he reviewed the offering memoranda in Phases II-VI and approved the use of proceeds document in Phases III-VI (see Section V above), the more salient point is that under the express language of Securities Act Section 17(a)(2), *Tambone*, and *Big Apple*, it does not matter that *other* Defendants made the material misrepresentations and omissions.[18] Those material misstatements enabled Quiros to obtain money and property improperly in each Phase.[19] Therefore, Quiros violated Section 17(a)(2) in Phases II-VI.

F. Quiros' Scheme Liability

Exchange Act Section 10(b) and Securities Act Section 17(a) reach beyond

[17] As discussed above, the declarations from former Jay Peak officers Kelly and Gulisano and the two purported Korean affiliates only address money going to JCM in Biomedical Phase VII, and thus are irrelevant to allegations against Quiros in Phases II-VI.

[18] *See also SEC v. Daifotis*, Case No. C11-00137, 2011 WL 3295139 at *5-6 (N.D. Cal. Aug. 1, 2011) (requirements of *Janus* that defendant be the "maker of a misstatement or omission not applicable to Section 17(a) claims); *SEC v. Benger*, 931 F. Supp. 2d 904, 906-07 (N.D. Ill. 2013) (same); *SEC v. Stoker*, 865 F. Supp. 2d 457, 465 (S.D.N.Y. 2012) (same); *SEC v. Sentinel Management Group, Inc.*, No. 07C 4684, 2012 WL 1079961 at *15 (N.D. Ill. March 30, 2012) (same).

[19] For the same reasons described in Section D above relating to Biomedical Phase VII, the misrepresentations and use of investors' money in Phases II-VI were material. As described in more detail in that Section, any reasonable investor would want to know the Defendants were not telling the truth about how they were spending investor money.

misrepresentations or omissions to 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). A defendant engages in a fraudulent scheme in violation of the antifraud provisions of the securities laws and violates Securities Act Sections 17(a)(1) and (3) and Exchange Act Rules 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. 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.[20] *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)).

A Defendant engages in a fraudulent scheme in violation of Sections 17(a)(1) and (3) and Rules 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; *SEC v. Fraser*, Case No. CV-09-00443, 2010 WL 5776401 at *7 (D. Ariz. Jan. 28, 2010) (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").

None of the Securities Act sections or Exchange Act rules at issue require Quiros to have personally made a misrepresentation or omission. *Monterosso*, 756 F.3d at 1334 ("Monterosso and Vargas are liable under section 17(a), section 10(b), and Rule 10b-5, because they made 'deceptive contributions to an overall fraudulent scheme' . . . The operative language of section 17(a) does not require a defendant to 'make' a statement in order to be liable . . . Likewise, subsections (a) and (c) of Rule 10b-5 'are not so restricted' as subsection (b), because they are not limited to 'the making of an untrue statement of a material fact.'") (citations omitted); *Fried*, 814 F.3d at 1294-95 ("Rule 10b-5(a) and (c) 'are not so restricted' as Rule 10b-5(b) because they do not require making statements").

In *Monterosso*, two executives of a subsidiary of a telecommunications company were found liable on summary judgment for their role in submitting fake invoices and other records to the company's accounting department as part of a fraudulent revenue scheme. 756 F.3d at 1329-32. On appeal, the two executives challenged their liability on the grounds that they had nothing

[20] Section 17(a)(3) requires only a showing of negligence. *Aaron*, 446 U.S. at 697.

to do with the misrepresentations about revenues in the telecommunications company's public filings. *Id.* at 1333. This is the same argument Quiros makes here – that he cannot be liable unless he personally made a misrepresentation or omission.

The Eleventh Circuit rejected that challenge and held, as set forth above, that the Defendants "are liable under section 17(a), section 10(b), and Rule 10b-5, because they made 'deceptive contributions to an overall fraudulent scheme.'" *Id.* at 1334 (quoting District Court summary judgment order). The appellate court went on to state "[t]he case against [the Defendants] did not rely on their 'making' false statements, but instead concerned their commission of deceptive acts as part of a scheme to generate fictitious revenue for GlobeTel. Therefore, *Janus* has no bearing on this case." *Id.*

The Commission charged Quiros with violating Exchange Act Rules 10b-5(a) and (c) and Securities Act Sections 17(a)(1) and (3) in all seven Phases in the Amended Complaint. DE 120 at Counts 1-4, 6, 8, 9, 11, 14, 16, 17, 19, 22, 24, 25, 27, 30, 32, 33, 35, 38, 40, 41, 43, 46, 48, 49, and 51. Just as in *Monterosso*, there was no requirement that Quiros make material false statements or omissions in any of the Phases for him to be liable under any of those provisions.[21] *See also 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 across all seven Phases. He misappropriated $21.9 million from Phase I and II investor funds to purchase Jay Peak in violation of the use of proceeds documents and limited partnership agreements in both Phases. Under *Monterosso*, *Fried*, and the other cases cited above, Quiros' argument that he cannot be liable because the offering documents were completed and distributed before he took over as the owner of Jay Peak is a red herring.[22] It was Quiros' deceptive acts in misappropriating the Phase I and II investor

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[21] *See also SEC v. Sells*, Case No. C11-4941, 2012 WL 3242551 at *7 (N.D. Cal. Aug. 10, 2012) (*Janus* does not apply to Rule 10b-5(a) and (c) or to Section 17(a)(1) and (3)); *SEC v. Geswein*, Case No. 5:10CV1235, 2011 WL 4565861 at *2 (N.D. Ohio Sept. 29, 2011) (same); *SEC v. Mercury Interactive, LLC*, 5:07-cv-02822, 2011 WL 5871020 at *3 (N.D. Cal. Nov. 22, 2011) (*Janus* does not apply to rule 10b-5(a) and (c)).

[22] These arguments are also factually incorrect. Although Quiros did not finalize his purchase of Jay Peak until June 2008, shortly after the Phase I offering ended, he admitted in testimony the prior owners of the resort, MSSI, gave him complete control over it starting in January 2008, so he could observe and

funds that made this a fraudulent scheme to misuse and steal investor funds. Whether he made misrepresentations or omissions has no bearing on his liability under Sections 17(a)(1) and (3) and Rules 10b-5(a) and (c) for his deceptive acts. Furthermore, as described in Section VI above, Quiros was well aware he could not use investor funds to finance his purchase of Jay Peak, because the sellers of the resort expressly told him so in a letter.

Quiros committed numerous other deceptive acts in all Seven Phases:

- He took another $1.5 million more of investor funds than the Phase I corporate Defendants were entitled to in management and other fees from Phase I. Section VI.
- Quiros took another $9.4 million in investor funds as management and other fees from Phase II. Section VIII.
- He commingled and misused more than $200 million of investor funds across all seven Phases to pay off and pay down Margin Loans III and IV, including paying more than $2.5 million of margin loan interest with investor funds. Section VII.
- He improperly collateralized all four margin loans with investor funds from all seven Phases. *Id.*
- He improperly used a net amount of $4.7 million of Phase II investor funds for Phase I project costs. Section VIII.
- He improperly used a net amount of $3 million in Phase II investor funds on Phase III project costs. *Id.*
- Quiros took $6.5 million more in management and other fees than the Phase IV corporate Defendants were entitled to in Phase IV investor funds; $3.8 million of which he used to buy the luxury Setai Condominium in New York. *Id.*
- Quiros took approximately $1.2 million more in management and other fees than the Phase V corporate Defendants were entitled to in Phase V investor funds. *Id.*
- Quiros directed that Stateside Phase VI spend its funds to cover a shortfall in Phase II project costs. *Ex. 78.*
- Quiros took $3 million more in management and other fees than the Phase VI corporate Defendants should have in investor funds. Section VIII.

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learn the resort's business and familiarize himself with the EB-5 offering process. During this period of Quiros' control, the Phase I Defendants offered and sold eight limited partnership interests. Section VI above. Second, after Quiros bought Jay Peak, he oversaw the offer and sale of approximately *90 percent* of the Phase II investments. Approximately 135 of the 150 Phase II investors invested *after* June 2008, while Quiros was committing his deceptive acts of misappropriating Phase II investor funds.

- Quiros used more than $18.2 million in Phase VII investor funds to pay off Margin Loan IV at Raymond James. Section IX.C.

- Quiros used $4.2 million in Phase VII investor funds to pay corporate taxes to the IRS and the State of Vermont. *Id.*

- Quiros used $10.7 million in Phase VII investor funds to back his personal line of credit at Citibank, out of which he used $6 million for personal income taxes, $1.4 million to pay returns to investor in earlier projects, and $3.5 million to pay Stateside construction vendors. *Id.*

- Quiros used $2.2 million in Phase VII investor funds to buy another luxury condominium at Trump Place in New York. *Id.*

- Quiros used $7 million from Margin Loan IV to purchase the Q Burke resort. *Id.*

- Quiros arranged the sale of the land for Biomedical Phase VII from GSI of Dade County to the limited partnership for the exorbitantly marked up price of $6 million. *Id.*

- Quiros arranged the payment of approximately $8 million in Phase VII investor funds to Korean affiliates, purportedly for patents, equipment, and distribution rights, none of which the Phase VII limited partnership ever received. *Id.*

All of these actions constituted deceptive acts that were part of a fraudulent scheme and fraudulent course of conduct that: (1) violated the terms of the offering documents and the limited partnership agreements; and (2) caused shortfalls in several of the projects that ultimately led to insufficient funds to pay annual returns to all investors and woefully insufficient funds to complete Stateside Phase VI and build Biomedical Phase VII. As described throughout the proposed findings of fact and conclusions of law, the fraudulent scheme resulted in many investors not receiving their permanent green cards and none of the investors receiving the promised annual returns and return of their capital.

G. Quiros' 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 *Carriba Air, Inc.*, 681 F.2d at 1324).

Quiros acted knowingly, or at a minimum severely recklessly, while making the

misrepresentations and omissions in Biomedical Phase VII discussed in Sections B and C, and committing the deceptive acts described in Section F. 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 statements about restrictions on the general partner's authority, how Biomedical Phase VII would use investor money, and about the FDA approval process.

Quiros also knew or was extremely reckless in not knowing the Phase VII revenue projections in the Original Offering Memorandum were based on a product development and testing schedule that was impossible to meet at the time the offering memorandum was distributed to investors. He furthermore knew or was extremely reckless in not knowing the revenue projections in the Revised Offering Memorandum were based on receiving FDA approval one to two years before Jay Peak told the State of Vermont it would receive FDA approval.

H. The "In Connection With" Requirement

Quiros' misrepresentations and omissions and deceptive conduct all related directly to the misuse and misappropriation of investor funds. Virtually all of the misrepresentations and omissions the Commission alleged Quiros and the other Defendants made in Phases II-VII occurred in the offering documents the Defendants used to solicit investments in the limited partnerships. Furthermore, Quiros' misappropriation and misuse was of investor funds solicited through the offering documents. Accordingly, Quiros' misconduct occurred "in connection with" the purchase

or sale of securities as is required by Exchange Act 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*, No. 11-23585-CIV, 2012 WL 5245561 at *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 (2nd Cir.1968)).

This is true even in Phase I, where Quiros and the other Defendants are only charged with engaging in a fraudulent scheme and a fraudulent course of conduct under Exchange Act Rules 10b-5(a) and (c) and Exchange Act Section 17(a)(1) and (3). Quiros committed his deceptive acts in misappropriating approximately $12.4 million in Phase I investor funds to purchase Jay Peak in violation of the offering documents and the Phase I limited partnership agreement. Section VI. This occurred in connection with the Phase I investors' purchase of the limited partnership agreements; it was that money that Quiros misappropriated.

Thus, as in *Zandford*, "[t]he securities sales and respondent's fraudulent practices were not independent events." *Zandford*, 535 U.S. at 820. *Zandford* concerned the case of a broker stealing the proceeds of securities sales. The broker argued the securities sales were legal, and the resulting misappropriation of the proceeds, though fraudulent, were not in connection with the securities sales. *Id.* The Supreme Court, however, rejected that theory, ruling that the theft of the proceeds were "properly viewed as a 'course of business' that operated as a fraud or deceit on a stockbroker's customer." *Id.* at 821.

Similarly in this case, Quiros' misappropriation of Phase I investor funds (as well as his subsequent misappropriation and misuse of Phase II-VII investor funds) is not an act independent of the securities sales. The two are connected, and Quiros' misappropriation of Phase I funds is, as in *Zandford*, properly viewed as a fraudulent course of conduct on Phase I investors.

I. Interstate Commerce

Quiros and the other Defendants offered and sold 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.[23]

J. Quiros' Aiding And Abetting Violations

Quiros aided and abetted the other Defendants' violations of Section 10(b) and Rule 10b-5(b) in connection with the offerings, misrepresentations, and omissions in Phases II-VI. Amended Complaint, DE 120, at Counts 13, 21, 29, 37, and 45. To establish aiding and abetting liability, the Commission must show: (1) a primary violation by another party; (2) a general awareness by the aider and abettor that his role was part of an overall activity that is improper; and (3) the aider and abettor provided "substantial assistance" to the violator. *Big Apple*, 783 F.3d at 800, *citing Woods v. Barnett Bank of Ft. Lauderdale*, 765 F.2d 1004, 1009-10 (11th Cir. 1985). The scienter requirement can be satisfied by extreme recklessness, *Big Apple*, 783 F.3d at 801, which can be shown by "red flags," "suspicious events 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).

The three components of the aiding and abetting test "cannot be considered in isolation from one another." *SEC v. Apuzzo*, 689 F.3d 204, 214 (2nd Cir. 2012), *quoting SEC v. DiBella*, 587 F.3d 553, 566 (2nd Cir. 2009). More specifically, a high degree of actual knowledge of the primary violation may lessen the burden the Commission must meet in demonstrating substantial assistance, just as a high degree of substantial assistance may lessen the Commission's burden for proving scienter. *Apuzzo*, 689 F.3d at 214.

The "substantial assistance" prong of the aiding and abetting test can be proved by demonstrating the accused aider and abetter "in some sort associated himself with the venture" (i.e., the primary violation), "that he participated in it as something that he wished to bring about," and that he sought by his actions to make it succeed. *Id.* at 206. *See also SEC v. China Northeast Petroleum Holdings Ltd.*, 27 F.3d 379, 395 (S.D.N.Y. 2014) (allegations that vice president disbursed corporate funds to his father (who committed the primary violation of signing and filing misleading corporate documents) without disclosure satisfied substantial assistance requirement of aiding and abetting liability); *SEC v. Jackson*, 908 F. Supp. 2d 834, 863-64 (S.D. Tex. 2012) (allegations that corporate officer repeatedly approved "special handling" fees to customs agent, despite knowing fees were associated with false paperwork,

[23] *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).

satisfied "substantial assistance" requirement).

As discussed in Section E above, Stenger, Jay Peak, and the other corporate defendants committed primary violations by making material misrepresentations and omissions in Phases II-VI. Second, the facts listed in Section F above show Quiros committed numerous acts that substantially assisted those primary violations by, in effect, making the statements in the offering documents about use of proceeds and restrictions on the general partner's use of investor funds false:

- Quiros misappropriated $21.9 million in Phase I and II investor funds to purchase Jay Peak.
- He took another $1.5 million more of investor funds than the Phase I corporate Defendants were entitled to in management and other fees from Phase I.
- Quiros took another $9.4 million in investor funds as management and other fees from Phase II.
- He commingled and misused more than $200 million of investor funds across all seven Phases to pay off and pay down Margin Loans III and IV, including paying more than $2.5 million of margin loan interest with investor funds.
- He improperly collateralized all four margin loans with investor funds from all seven Phases.
- He improperly used a net amount of $4.7 million of Phase II investor funds for Phase I project costs.
- He improperly used a net amount of $3 million in Phase II investor funds on Phase III project costs.
- He misappropriated Phase IV investor funds to buy the Setai Condominium.
- Quiros took $6.5 million more in management and other fees than the Phase IV corporate Defendants were entitled to in Phase IV investor funds; $3.8 million of which he used to buy the luxury Setai Condominium in New York.
- Quiros took approximately $1.2 million more in management and other fees than the Phase V corporate Defendants were entitled to in Phase V investor funds.
- Quiros directed that Stateside Phase VI spend its funds to cover a shortfall in Phase II project costs.
- Quiros took $3 million more in management and other fees than the Phase VI corporate Defendants should have in investor funds.

As discussed in Section G above, Quiros committed all of these acts knowingly or extremely recklessly. MSSI told him he could not use Phase I and II investor funds to purchase Jay Peak, but he did it anyway. Quiros admitted knowing what the offering documents said about use of proceeds, but used them in contrary fashion for his personal gain anyway. 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.

K. 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." *Huff*, 758 F. Supp. 2d at 1343; *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 control over Jay Peak and 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. He controlled the accounts with the margin loans. Plus, he was the sole Jay Peak link to the Korean entities. He also was the principal of JCM, which received significant investor funds in the Stateside Phase VI and Biomedical Phase VII accounts. Thus, Quiros alone controlled the finances and operations of each limited partnership, including how investor money ultimately was used.

XVII. QUIROS IS LIKELY TO CONTINUE TO VIOLATE THE SECURITIES LAWS

To obtain a preliminary injunction, the Commission must: (1) make a *prima facie* showing Quiros has violated the securities laws; and (2) show a reasonable likelihood of future violations. *Calvo*, 378 F.3d 1211, 1216 (11th Cir. 2004). The evidence above demonstrates Quiros 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 Defendant's 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, Quiros' conduct is egregious. He systematically misappropriated and misused $200 million – more than half of all investor money raised – for a variety of improper purposes. In particular, Quiros has absconded with more than *$55 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 caused Phases VI and VII to run out of money, and endangered the $500,000 investments of hundreds of potential victims. In addition, Quiros was responsible for offering documents that blatantly misrepresented how Phase VII was going to use investor funds and misstated the status of the FDA approval process. Even the documents drafted last year continued to omit disclosing that Phase VII was 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, until the day the Commission filed this action, Quiros' misconduct was ongoing, as he was continuing to solicit investments in Biomedical Phase VII, using offering documents that contained material misrepresentations and omissions. Moreover, Quiros and Stenger were continuing to solicit investors in another EB-5 offering, Q Burke, and they were planning future EB-5 limited partnership offerings.

Third, Quiros has demonstrated a high degree of scienter. From the outset, his conduct demonstrated a determined, focused scheme to control and use investor funds as he saw fit – including to purchase a ski resort and luxury condominium for himself. Fourth, as demonstrated by his investigative testimony in this case and by his Court filings, Quiros continues to deny wrongdoing, and maintains there is money to finish Phases VI and VII in the face of overwhelming evidence to the contrary. Thus, fifth, he has given no assurances against future misconduct.

Goldberg's testimony at the hearing demonstrates further that not entering a preliminary injunction against Quiros and giving him a chance to take back the reins of power over the Jay Peak entities would be a disaster. Goldberg detailed how Quiros' misappropriation and misuse of investor money had resulted in significant harm to investors as well as left the ski resort on the brink of financial collapse.

Accordingly, all six factors weigh in favor of a reasonable likelihood of future violations if Quiros is not preliminarily enjoined.

XVIII. RELIEF REQUESTED

The Commission is requesting a preliminary injunction against Quiros to prevent him from (a) further violating, directly or indirectly, Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act; and (b) further violating Section 20(a) of the Exchange Act as a control person. The Commission also requests a preliminary conduct-based injunction against Quiros to prohibit him 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. The Commission further requests a continuation of the asset freeze against Quiros, and an Order Prohibiting Destruction of Documents.

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 a preliminary injunction against Quiros.

In addition, we ask the Court to issue a preliminary conduct-based injunction against Quiros that will prevent him 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.

Based on the facts and legal arguments set forth above, the Commission has met its burden of showing that the Court should enter a preliminary conduct-based injunction against Quiros, prohibiting him 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 him 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 an order preliminarily enjoining Quiros 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.

XIX. THE COURT SHOULD CONTINUE THE ASSET FREEZE AGAINST QUIROS AND NOT RELEASE FUNDS TO LIVING EXPENSES AND ATTORNEYS' FEES

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).

The Court need only find some basis for inferring a violation of the federal securities laws to impose an asset freeze. *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 . . . .").

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.

Quiros has moved three times to lift or modify the asset freeze for payment of living expenses and attorneys' fees. DE 39 (modify or lift freeze), DE 83-85 (living expenses), and DE 109 and 118 (attorneys' fees). The Commission has responded each time, and discussed extensively the reasons this Court should not modify the freeze to permit Quiros to receive the outrageously high living expenses and attorneys' fees he requests (DE 64, DE 101, and DE 117). The Commission incorporates each of those responses into these proposed findings of fact and conclusions of law as if repeated herein. In summary, there are several reasons the Court should not modify the freeze.

Tainted Assets. The Commission is not required to demonstrate whether Quiros' assets are "tainted" by tracing them to the fraud. The Court can freeze *all* of a Defendant's assets up to the amount of potential disgorgement and prejudgment interest to preserve them for those equitable remedies. *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 987 (11th Cir.

1995) ("district court may exercise its full range of equitable powers, including a preliminary asset freeze, to ensure that permanent equitable relief will be possible"). *See also SEC v. Spear & Jackson, et al.*, Case No. 04-80354-CIV, Slip Op. at 3 (S.D. Fla. Aug. 19, 2004) ("there is no requirement that frozen assets be traceable to the fraudulent activity underlying a lawsuit") (attached as Exhibit D); *SEC v. A.B. Financing and Investment, Inc.*, Case No. 02-23487-CIV, Slip. Op. at 2 (S.D. Fla. Feb. 10, 2003) ("a district court may freeze assets not specifically traced to illegal activity") (attached as Ex. E); *SEC v. Current Fin. Servs.*, 62 F. Supp. 2d 66, 68 (D.D.C. 1999) (refusing to release personal funds not traceable to the fraud because Defendant's liability exceeded total funds frozen); *SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995) ("It is irrelevant whether the funds affected by the Asset Freeze are traceable to the illegal activity") *SEC v. Glauberman*, 1992 WL 175270 at *2 (S.D.N.Y. July 16, 1992) (rejecting defendant's argument that funds subject to disgorgement must be traced "dollar for dollar" to the illegal activity).

Quiros' Potential Disgorgement. Quiros has wrongly claimed the maximum amount of disgorgement the Commission can seek from him is the more than $50 million we have demonstrated he personally pocketed through his misappropriation. However, this argument represents a fundamental misunderstanding of the scope of potential disgorgement. In addition to the more than $50 million, Quiros is also potentially liable for additional amounts out of which he defrauded investors, both individually and on a joint and several basis with the corporate Defendants in this case. That additional amount is at least another $106 million (for a total of $156 million), representing the amounts out of which he defrauded Stateside Phase VI and Biomedical Phase VII investors.

As discussed in Section XVI.K above Quiros controlled the operations of the Defendant entities that raised money from investors. Quiros owned Q Resorts, and through it purchased and owned the Jay Peak Resort. Therefore, he is potentially jointly and severally liable along with the corporate Defendants – Jay Peak, Q Resorts, the Relief Defendants, and the limited partnerships – for their prospective disgorgement. *Calvo*, 378 F.3d at 1215 ("it is a well settled principal that joint and several liability is appropriate in securities law cases where two or more individuals or entities have close relationships engaging in illegal conduct" and finding founder and owner of partnership was jointly and severally liable for all of partnership's gains where he was a "substantial factor" in illegal securities sales); *SEC v. JT Wallenbrock & Assoc.*, 440 F.3d

1109, 1117 (9th Cir. 2006) (holding architect of fraud and his associated companies jointly and severally liable for all amounts fraudulently raised from investors); *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1474-75 (2nd Cir. 1996) (owner of securities firm was jointly and severally liable for firm's profits, not just his own ill-gotten gains, where he participated in and profited from illegal conduct).

Here, Stateside Phase VI and Biomedical Phase VII fraudulently raised funds from investors with the promise to use investor funds in very specific ways. In Stateside Phase VI, it was to build a hotel, 84 cottages, a recreation center, and a medical center. Section VIII. The Defendants also promised investors returns. Section V. However, Stateside Phase VI did not deliver on its promises. Some 134 investors contributed $67 million, but the limited partnership did not build the promised project, only one part of it (the hotel). Section VIII. There is almost no money to build the remainder of the promised project, and no prospect for returns promised to investors. *Id.*

Quiros was a substantial participant in the fraud perpetrated on the Stateside Phase VI investors. He controlled the investor funds and determined how to spend them after Stenger transferred them to Raymond James accounts. Section V. He had reviewed the Stateside Phase VI offering materials, and was familiar with them. *Id.* He was responsible for commingling and misusing almost all of the Stateside Phase VI money to pay down and pay off margin loans, and for the shortfalls he created through his misappropriation and misuse of investor funds in prior projects. Sections VII and VIII.

Thus, under the case law, Quiros is jointly and severally liable along with the Stateside Phase VI corporate defendants for the $67 million out of which they defrauded investors. *Wallenbrock*, 440 F.3d at 1113-14 (District Court has broad discretion in calculating disgorgement, which "should include 'all gains flowing from the illegal activities'") (citation omitted); *SEC v. United Monetary Servs., Inc.*, 1990 WL 91812 at *9 (S.D. Fla. May 18, 1990) (courts "have routinely required wrongdoers in securities frauds to disgorge the gross sums received from investors"); *SEC v. Robinson*, 2002 WL 1552049 at *6-*9 (S.D.N.Y. July 16, 2002) (appropriate to order disgorgement of the entire proceeds received in connection with the offering); *SEC v. Friendly Power Co., LLC*, 49 F. Supp. 2d 1363, 1374 (S.D. Fla. 1999) (defendants ordered to disgorge the total value of funds received from the investing public).

The situation is identical in Biomedical Phase VII. The corporate Defendants in this

Phase raised at least $83 million from 166 investors by promising them a $110 million biomedical research center and returns. Section IX. As a co-principal in the general partner of Biomedical Phase VII, Quiros had ultimate authority over the misrepresentations and omissions in the offering memoranda and participated in raising money for this project. *Id.* And, as is well documented, Quiros misappropriated nearly $30 million of investor money for his own use. *Id.*

So far, only minimal site preparation work has been done and possibly the small warehouse facility has been built, and there is not nearly sufficient money to continue construction. *Id.* Thus, appears the Biomedical Phase VII investors will lose at least $69 million *Id.* We already alleged Quiros diverted nearly $30 million of the $69 million for his own use, leaving an additional $39 million he likely could be liable for in disgorgement under the cases cited above.

Thus, a reasonable approximation of Quiros' disgorgement at this stage of the case is the more than $50 million he personally pocketed, and an additional $106 million ($67 million from Stateside Phase VI and $39 million from Biomedical Phase VII) for which he may be jointly and severally liable with the Phase VI and VII corporate Defendants – a total of at least $156 million. The Commission has also produced evidence that Quiros should disgorge another $20 million, because he and the other Defendants failed to make approximately $20 million of capital contributions to Phases IV-VII.

Nor does Quiros' potential liability stop there. A District Court should also freeze assets to cover an award of prejudgment interest on disgorgement. *Unifund SAL*, 910 F.2d at 1041-42. Quiros' prejudgment interest on his fraud is approximately another $15.8 million, meaning that, at a minimum, his potential disgorgement and prejudgment interest liability is $191.8 million, more than three times the $50 million Quiros has claimed is the maximum. Under the prevailing case law, the Commission has provided more than a reasonable approximation of Quiros' ill-gotten gains from the fraud, and the burden now shifts to him to demonstrate it is not reasonable to freeze assets of up to $191.8 million to cover his potential disgorgement and prejudgment interest liability. *Robinson*, 2002 WL 1552049 at *5-*6.

Quiros' Alleged Net Worth. Quiros has claimed his net worth is close to $200 million, which as we discussed extensively in Section XIII is preposterous. He falsely claimed that a prominent accounting firm had determined his net worth to be $178 million in 2014, which we explained was a lie because all the accounting firm did was add up figures that Quiros himself

provided. Section XIII.

In addition, substantial additional evidence has cast doubt on the figures Quiros provided. First, as Pieciak testified, Quiros reported his net worth in 2008 as only $3.8 million. *Id.* In addition, there was only approximately $366,000 in accounts belonging to Quiros that were frozen at the outset of this case. *Ex. 141*.

Furthermore, it is crucial to note that of Quiros' purported $178 million net worth as of September 30, 2014, only approximately $1.8 million was liquid – i.e., cash. The rest of it was approximately $27 million he claims in personal real estate holdings (for which he has provided no appraisals), and a purported $152 million in "other partnership interests," which included the alleged values of $87 million for Jay Peak, $25 million for Biomedical Phase VII, $28 million for Q Burke, $2.1 million for a company called Q Development,[24] $1.34 million for an entity called Q Family Farm,[25] and $7.8 million for GSI.[26] Ex. I to DE 39. None of those assets would be readily available to satisfy a disgorgement judgment against Quiros – they would have to be seized (if that were legally possible) and sold (if that were practical under the circumstances). The reality is that as of September 30, 2014, Quiros only had $1.7 million in liquid assets to satisfy a disgorgement judgment of $169.8 million, and he appears to have even less than that today.

Furthermore, Dr. Jindra testified at the preliminary injunction hearing that the appraisal of Jay Peak at $87 million was no longer a valid figure based on updated Jay Peak financial statements. Section XI. Rather, the resort today is worth only about $41.6 million, and has at least $60 million in debt. *Id.* In addition, the appraisal fails to account for the fact that Quiros obtained Jay Peak originally by fraud. *Id.* As set forth above, Quiros improperly used $21.9 million of Suites Phase I and Hotel Phase II investor funds to purchase Jay Peak from its prior owners. Section VI. This is highly significant to Quiros' claim that he has an interest in Jay Peak. He apparently takes the position that he is entitled to profit from his fraud by claiming whatever Jay Peak is worth now as a personal asset.

However, that position is contrary to law. *SEC v. Lauer*, 2009 WL 812719 at *3 (S.D.

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[24] Q Development now only has $42,549 in the bank.

[25] Q Family Farm now only has $10,204 in the bank.

[26] GSI has only $277,555.90 in the bank.

Fla. March 26, 2009). In *Lauer*, a defendant seeking to modify an asset freeze claimed he was entitled to unfreeze the value of property that had appreciated in value over time, even if he had obtained it through fraud. *Id.* at 2. He argued that money was "untainted." *Id.* But the *Lauer* Court denied that claim, holding that because the defendant had obtained the property with fraudulently obtained funds, the entire value of the property was "tainted" and the Defendant was not entitled to profit off his fraud. *Id.* at 3. This Court should reach the same conclusion. To the extent Jay Peak has any value, Quiros is not entitled to claim it for himself because but for having fraudulently obtained the Resort, he would have no interest in it.

As a result of all these facts, the Court should discount and discredit Quiros' claims that he is worth $200 million.[27]

Entitlement to Attorneys' Fees. Quiros has no Fifth or Sixth Amendment Constitutional right to pay for counsel of his choice in a civil case. *SEC v. Comcoa*, 887 F. Supp. 1521, 1524-25 (S.D. Fla. 1995) (citing cases) ("in all of [those] cases, the court have essentially held that a defendant has no right to spend another's money for services rendered by an attorney, even if those funds are the only way the defendant will be able to retain counsel of his choice" and denying motion to release frozen funds to pay attorneys' fees); *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993) ("just as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims' assets to hire counsel who will help him retain the gleanings of crime"); *SEC v. Roor*, 1999 WL 553823 at *2 (S.D.N.Y. July 29, 1999) (defendant "may not use income derived from alleged violations of the securities laws to pay for legal counsel"); *SEC v. Coates*, 1994 WL 455558 at *3 (S.D.N.Y. Aug. 23, 1994) ("defendant is not entitled to foot his legal bill with funds that are tainted by his fraud").

Roor, in particular, is instructive here. In that case, the court refused to release even funds not directly attributable to the fraud to pay attorneys' fees, explaining that "while money

[27] On May 26, 2016, the Eleventh Circuit decided the appeal in *SEC v. Graham*, and held that disgorgement is subject to the five-year statute of limitations in 28 U.S.C. §2462 (as Quiros has claimed). The only portion of the Commission's claims for disgorgement that decision *potentially* affects is the net amount of approximately $14 million he improperly took more from Phases I and II than five years before the Commission filed suit. We dispute this because, among other reasons, his fraudulent scheme relating to Phases I and III continued through at least February 2012, within the five year statute of limitations. However, the Court does not have to decide that issue at this point, because even if the Commission is time-barred from seeking that amount in disgorgement, our potential disgorgement and prejudgment interest claims against Quiros add up to more than $176 million (at least) far more than Quiros has available to satisfy a disgorgement judgment against him. Therefore, the recent *Graham* opinion does not provide any new reason for the Court to lift or modify the asset freeze.

borrowed against the equity in [defendant's] home may not be the proceeds of fraud, there exists a likelihood that [defendant] will soon have significant personal liabilities to the government and to the victims of fraud he is alleged to have perpetuated." *Roor*, 1999 WL 553823 at *3.

Under the circumstances, it would not be fair for the Court to release any frozen assets to pay Quiros' attorneys' fees. Furthermore, given the very limited amount of Quiros' liquid assets, and the fact that he is facing a potential disgorgement and prejudgment interest judgment more than *400 times* the amount of those liquid assets, it would significantly harm already defrauded investors to allow Quiros to use what limited liquid funds are available for a potential judgment to pay attorneys' fees.

Living Expenses. As set forth in our response to Quiros' outrageous demands for living expenses approaching $100,000 per month, the Court should only release to Quiros necessary and reasonable living expenses and it should not release to Quiros any funds for luxuries. Numerous courts have denied living expenses, when as Quiros has done here, the defendant has requested living expenses for luxuries and not limited the request to necessary and reasonable living expenses. *SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D.Penn. 2009) (court entirely denied release of funds and was "astonish[ed] and disturb[ed] that the Defendant" had included non-necessary living expenses totaling approximately $6,000); *SEC v. Dobbins*, 2004 WL 95771 * 3 (N.D.Tex. April 14, 2004) (refusing to unfreeze funds to pay approximately $11,000 a month in living expenses, where the items included cable television and automobile financing); *SEC v. Private Equity Group, Inc.*, 2009 WL 2058247 (C.D.CA. July 9, 2009) (court denied request for $27,000 of living expenses because, among other reasons, the request was "facially unreasonable" as the defendant was asking the court "to release funds that he can use to fund a lavish lifestyle that includes owning multiple homes and cars" and "by no stretch of the imagination can [$27,0000 a month] be considered reasonable.").

Quiros has requested luxury expenses as set forth in DE 101, most of which he has not provided the proper support for. Furthermore, as Goldberg set forth in his recent response to Quiros' motion for attorneys' fees, the Receivership estate does not have the funds to afford Quiros' outrageous demands for living expenses and attorneys' fees. The Court should not modify the asset freeze.

XX. THE STANDARD FOR CONTINUED APPOINTMENT OF THE RECEIVER

Quiros has cited inapposite law on the standard for appointment of a Receiver. In

Commission actions, appointment of a Receiver is not an extraordinary remedy as Quiros claims. Rather, "[t]he appointment of a receiver is a well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief." *Torchia*, 2016 WL 1650779 at *22, *citing SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. Unit A May 1981).

Both the *Torchia* and *First Financial* courts went on to note that:

> The district court's exercise of its equity power in this respect is particularly necessary in instances in which the corporate defendant, through its management, has defrauded members of the investing public; in such cases, it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme and for whose benefit, in some measure, the SEC injunctive measure was brought.

Torchia, 2016 WL 1650779 at *22, *quoting First Financial*, 645 F.2d at 438.

Those words could easily have been written about this case. The facts and law demonstrate overwhelmingly that Quiros was the architect of a fraudulent scheme that diverted significant Jay Peak assets into his own pocket. His corporate malfeasance has jeopardized, at a minimum, the entire investments of investors in Stateside Phase VI and Biomedical Phase VII, and likely investors in all phases. As *Torchia* further stated: "It is hardly conceivable that the trial court should have permitted those who were enjoined from fraudulent misconduct to continue in control of (the corporate defendant's) affairs for the benefit of those show to have been defrauded." *Id.*

Goldberg's testimony and the other extensive evidence the Commission has presented demonstrates the need for his continued appointment as Receiver in this case. The Court should let him continue his work to attempt to unravel the fraud Quiros has committed and marshal assets for the benefit of investors.

XXI. CONCLUSION

For the foregoing reasons, the Court should grant the Commission's Motion for a preliminary injunction and continue the asset freeze against Quiros, and issue the accompanying proposed Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 25, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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