

**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., et al.,**

Defendants, and

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

Relief Defendants.

**PLAINTIFF’S MOTION FOR ENTRY OF JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST CORPORATE DEFENDANTS AND RELIEF DEFENDANTS**

Plaintiff Securities and Exchange Commission moves for entry of a Judgment of Permanent Injunction and Other Relief (“Judgment”) against Defendants 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., and AnC Bio Vermont GP Services, LLC (collectively “Corporate Defendants”) and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke

Mountain Resort, LLC (collectively “Relief Defendants”). By the attached Consent, the Court-appointed Receiver has consented to entry of the attached proposed Judgment on behalf of the Corporate Defendants and Relief Defendants. Entry of the Judgment will remove the Receivership entities from the trial docket and leave only the issues of disgorgement and a civil penalty pending against those entities, which the Commission anticipates resolving soon. Accordingly, the Commission requests that the Court enter the attached proposed Judgment.

Respectfully submitted,

December 27, 2016

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 27, 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.

s/Robert K. Levenson
Robert K. Levenson, Esq.

SERVICE LIST

SEC v. Ariel Quiros, et al.
Case No. 16-CV-21301-GAYLES

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

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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.

**CONSENT OF CORPORATE DEFENDANTS AND RELIEF DEFENDANTS
TO JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**

1. Michael I. Goldberg, solely in his capacity as Court-appointed Receiver for Defendants 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., and AnC Bio Vermont GP Services, LLC (collectively “Corporate Defendants”) and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively “Relief Defendants”), acknowledges having been served with the summonses and the Amended Complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over the Corporate Defendants and Relief Defendants and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction, which the Corporate Defendants and Relief Defendants admit), the Corporate Defendants and Relief Defendants hereby consent to the entry of the Judgment of Permanent Injunction and Other Relief Against the Corporate Defendants and Relief Defendants (“Judgment”) in the form attached hereto and incorporated by reference herein, which among other things permanently restrains and enjoins the Corporate Defendants from violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10-5.

3. The Corporate Defendants and Relief Defendants agree that, upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and prejudgment interest against the Corporate Defendants and Relief Defendants, and a civil penalty against the Corporate Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d). The

Corporate Defendants and Relief Defendants further understand that, if disgorgement is ordered, they shall pay prejudgment interest on disgorgement, calculated from no later than November 1, 2012, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). The Corporate Defendants and Relief Defendants further agree that in connection with the Commission's motion for disgorgement and civil penalties, and at any hearing held on such a motion: (a) the Corporate Defendants and Relief Defendants will be precluded from arguing the Corporate Defendants did not violate the federal securities laws as alleged in the Amended Complaint; (b) the Corporate Defendants and Relief Defendants may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Amended Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. The Corporate Defendants and Relief Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. The Corporate Defendants and Relief Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. The Corporate Defendants and Relief Defendants enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the

Commission to the Corporate Defendants and Relief Defendants or to anyone acting on their behalf, to induce them to enter into this Consent.

7. The Corporate Defendants and Relief Defendants agree this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

8. The Corporate Defendants and Relief Defendants will not oppose enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

9. The Corporate Defendants and Relief Defendants waive service of the Judgment and agree that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to them of its terms and conditions.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against the Corporate Defendants and Relief Defendants in this civil proceeding. The Corporate Defendants and Relief Defendants acknowledge no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. The Corporate Defendants and Relief Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein. The Corporate Defendants further acknowledge the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has

consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, the Corporate Defendants and Relief Defendants understand they shall not be permitted to contest the factual allegations of the Amended Complaint in this action.

11. The Corporate Defendants and Relief Defendants understand and agree to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of the Corporate Defendants and Relief Defendants' agreement to comply with the terms of Section 202.5(e), the Corporate Defendants and Relief Defendants: (a) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Amended Complaint or creating the impression that the Amended Complaint is without factual basis; (b) will not make or permit to be made any public statement to the effect that the Corporate Defendants and Relief Defendants do not admit the allegations of the Amended Complaint, or that this Consent contains no admission of the allegations, without also stating they do not deny the allegations; and (c) upon filing of this Consent, the Corporate Defendants and Relief Defendants hereby withdraw any papers filed in this action to the extent they deny any allegation in the Amended Complaint. If the Corporate Defendants and Relief Defendants breach this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects the Corporate Defendants' and Relief Defendants': (i) testimonial obligations; or (ii) the right to take legal or factual positions in litigation or other legal

proceedings in which the Commission is not a party.

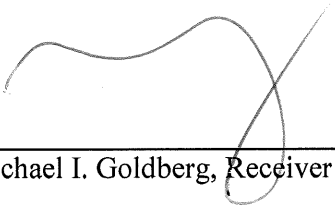
12. The Corporate Defendants and Relief Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorneys' fees or other fees, expenses, or costs expended by the Corporate Defendants and Relief Defendants to defend against this action. For these purposes, the Corporate Defendants and Relief Defendants agree they are not the prevailing party in this action since the parties have reached a good faith settlement.

13. The Corporate Defendants and Relief Defendants agree the Commission may present the Judgment to the Court for signature and entry without further notice.

14. The Corporate Defendants and Relief Defendants agree the Court shall retain jurisdiction over them and over this matter for the purpose of enforcing the terms of the Judgment.

I, Michael I. Goldberg, solely in my capacity as Court-appointed Receiver for Defendants 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., and AnC Bio Vermont GP Services, LLC, and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC, hereby consent to the Court's Entry of Judgment of Permanent Injunction and Other Relief.

Dated: December 23rd 2016



By: Michael I. Goldberg, Receiver

STATE OF FLORIDA)
)
) ss:
COUNTY OF Broward)

On this 23rd day of December 2016, before me personally appeared Michael I. Goldberg who ✓ is personally known to me or _____ produced a driver's license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.

Ruby J. Reid
Notary Public



RUBY J. REID
MY COMMISSION # EE 870261
EXPIRES: April 19, 2017
Bonded Thru Budget Notary Service

Commission Expires:

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Defendants, and

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

Relief Defendants.

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST THE CORPORATE DEFENDANTS AND RELIEF DEFENDANTS**

THIS MATTER is before the Court upon the Motion by Plaintiff Securities and Exchange Commission for a Judgment of Permanent Injunction and Other Relief (“Judgment”) against Defendants 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., and AnC Bio Vermont GP Services, LLC (collectively “Corporate Defendants”) and Relief Defendants Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively “Relief Defendants”). By the Consent of the Corporate Defendants and Relief Defendants to Judgment of Permanent Injunction and Other Relief (“Consent”) annexed hereto, without admitting or denying the allegations of the Amended Complaint (except that the Corporate Defendants and Relief Defendants admit the jurisdiction of this Court over them and over the subject matter of this action), the Corporate Defendants and Relief Defendants have entered a general appearance, agreed to entry of this Judgment, waived findings of fact and conclusions of law, and waived any right to appeal from this Judgment. The Court finds that good cause exists for entry of the Judgment. Accordingly, the Commission’s Motion is **GRANTED**. The Court further orders as follows:

I.

PERMANENT INJUNCTION

A. Section 17(a)(1) and (3) of the Securities Act of 1933

IT IS ORDERED AND ADJUDGED that the Corporate Defendants are permanently restrained and enjoined from violating Section 17(a)(1) and (3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)(1) and (3)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (1) to employ any device, scheme, or artifice to defraud; or
- (2) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor; about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of Corporate Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) any other persons in active concert or participation with the Corporate Defendants or with any of the persons identified in Section (a) of this Paragraph.

B. Section 17(a)(2) of the Securities Act of 1933

IT IS FURTHER ORDERED AND ADJUDGED that all Corporate Defendants **except** Jay Peak Hotel Suites L.P. are permanently restrained and enjoined from violating Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the

statements made, in light of the circumstances under which they were made, not misleading; by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor; about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of Corporate Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) any other persons in active concert or participation with the Corporate Defendants or with any of the persons identified in Section (a) of this Paragraph.

C. Section 10(b) and Rule 10b-5(a) and (c) of the Securities Exchange Act of 1934

IT IS FURTHER ORDERED AND ADJUDGED that the Corporate Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [(15 U.S.C. § 78j(b) and Rule 10b-5(a) and (c) promulgated thereunder [17 C.F.R. § 240.10b-5(a) and (c)], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud; or
- (b) to engage in any act, practice, or course of business which operates or would

operate as a fraud or deceit upon any person;

by (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the Corporate Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) any other persons in active concert or participation with the Corporate Defendants or any of the persons listed in Section (a) of this Paragraph.

D. Section 10(b) and Rule 10b-5(b) of the Securities Exchange Act of 1934

IT IS FURTHER ORDERED AND ADJUDGED that all Corporate Defendants **except** Jay Peak Hotel Suites L.P. are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [(15 U.S.C. § 78j(b) and Rule 10b-5(b) promulgated thereunder [17 C.F.R. § 240.10b-5(b)], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security: to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

by (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false

or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the Corporate Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) any other persons in active concert or participation with the Corporate Defendants or any of the persons listed in Section (a) of this Paragraph.

II.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and prejudgment interest on disgorgement against the Corporate Defendants and Relief Defendants, and a civil penalty against the Corporate Defendants pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and, if so, the amount(s) of the disgorgement and civil penalties. If disgorgement is ordered, the Corporate Defendants and Relief Defendants shall pay prejudgment interest on disgorgement, calculated from November 1, 2012, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and civil penalties,

and at any hearing held on such a motion: (i) the Corporate Defendants and Relief Defendants will be precluded from arguing the Corporate Defendants did not violate the federal securities laws as alleged in the Amended Complaint; (ii) the Corporate Defendants and Relief Defendants may not challenge the validity of the Consent or this Judgment; (iii) solely for the purposes of such motion, the allegations of the Amended Complaint shall be accepted as and deemed true by the Court; and (iv) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and the Corporate Defendants and Relief Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for purposes of enforcing the terms of this Judgment.

V.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED this ____ day of _____, 201__, at Miami, Florida.

**THE HON. DARRIN GAYLES
UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel and Parties of Record