

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. \_ - \_ - \_ Wnev

VERMONT JOURNALISM TRUST,	)
	)
Plaintiff,	)
	)
v.	)
	)
VERMONT AGENCY OF COMMERCE AND	)
COMMUNITY DEVELOPMENT, and	)
LINDSAY KURLLE, SECRETARY OF THE	)
AGENCY OF COMMERCE AND	)
COMMUNITY DEVELOPMENT,	)
	)
Defendants.	)

**COMPLAINT**

The EB-5 Immigrant Investor Visa Program is a federal program designed to create jobs and stimulate foreign capital investment in low-income regions while providing a path to citizenship for foreign investors. The operators of Jay Peak, a ski resort in the Northeast Kingdom, purportedly planned to use this program to fuel major expansions and facility updates. While Jay Peak owner Ariel Quiros and CEO Bill Stenger promised to bring money and jobs to the Northeast Kingdom, they instead engaged in an eight-year Ponzi-like securities fraud.<sup>1</sup> The two also fraudulently peddled the AnC Bio program, which was supposed to be a state-of-the-art laboratory capable of stem cell research

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<sup>1</sup> Complaint for Injunctive and Other Relief, *SEC v. Quiros*, No. 16-21301, at ¶¶ 1-2 (S.D. Fla. Apr. 12, 2016) (a true and correct copy is attached as Exhibit A).

and manufacturing artificial organs.<sup>2</sup> In reality, the two never even obtained FDA approval for this project.<sup>3</sup> The result was a “fraudulent scheme” involving the misuse of more than \$200 million and Jay Peak’s eventual bankruptcy.<sup>4</sup> Instead of creating jobs and economic development in one of Vermont’s poorest areas, Quiros funneled the program’s money into personal tax payments, margin loans, and a luxury condominium—all unrelated to the EB-5 program.<sup>5</sup> While around 800 foreign investors each contributed \$500,000 and a \$50,000 administrative fee, Quiros and Stenger’s fraud endangered both their investments and path to citizenship.<sup>6</sup> The U.S. Securities and Exchange Commission (“SEC”) ultimately filed an enforcement action in federal court against the two.<sup>7</sup> A federal grand jury later indicted both Quiros and Stenger for their crimes.<sup>8</sup> This summer Quiros pleaded guilty to conspiring in the scheme to defraud immigrant investors seeking green cards.<sup>9</sup>

The Vermont Agency of Commerce and Community Development (“ACCD”) operated the Vermont EB-5 Regional Center that was charged with overseeing the Jay Peak projects. Nonetheless, the State provided little oversight to the program and ignored many warning signs. In fact, the State had been warned on numerous occasions about Jay Peak’s dubious financial practices yet took no action until after the SEC stepped in.<sup>10</sup> For example, the owner of the EB-5 consulting firm Rapid USA Visas raised concerns about Jay Peak’s finances to Commerce Secretary Lawrence Miller in 2012,

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<sup>2</sup> *Id.* at ¶ 116.

<sup>3</sup> *Id.* at ¶ 6.

<sup>4</sup> *See id.* at ¶¶ 2-3.

<sup>5</sup> *Id.* at ¶ 4.

<sup>6</sup> *Id.* at ¶¶ 8, 53.

<sup>7</sup> *See generally id.*

<sup>8</sup> *United States v. Quiros*, No. 5:19-cr-76, Doc. No. 1 (D. Vt. May 21, 2019) (a true and correct copy is attached as Exhibit B).

<sup>9</sup> Press Release, Department of Justice, *Quiros Pleads Guilty to Fraud Charges Related to the Jay Peak EB-5 AnC Vermont Project in Northeast Vermont* (Aug. 14, 2020), <https://www.justice.gov/usao-vt/pr/ariel-quiros-pleads-guilty-fraud-charges-related-jay-peak-eb-5-anc-vermont-project#:~:text=August%2014%2C%202020-,Ariel%20Quiros%20Pleads%20Guilty%20to%20Fraud%20Charges%20Related%20to%20The,before%20Chief%20Judge%20Geoffrey%20W.>

<sup>10</sup> *See, e.g.,* Anne Galloway, *Documents Suggest State Ignored Warnings About Jay Peak in 2012*, VT Digger (July 25, 2016), <https://vtdigger.org/2016/07/25/documents-suggest-state-ignored-warnings-about-jay-peak-in-2012/>.

but Miller decided against requiring an independent audit after Stenger asserted that it would be expensive.<sup>11</sup> Furthermore, Alex MacLean, a former aide to Governor Peter Shumlin, told another whistleblower to “lay off” his questions.<sup>12</sup> Due to Vermont’s failure to provide “adequate and proper oversight, monitoring, and management of its projects[.]” the federal government ultimately terminated Vermont’s EB-5 program.<sup>13</sup>

Yet to this day, many questions remain unanswered about Vermont’s involvement with the Jay Peak funding. To uncover details about the State’s inadequate oversight of the EB-5 program, the Vermont Journalism Trust, operator of VTDigger.org (“VTDigger”), made a request in accordance with the Access to Public Records Law (“PRA”)<sup>14</sup> to the ACCD for Miller’s emails between January 1, 2011 and December 31, 2014 (i) pertaining to AnC Bio, Rapid USA Visas, the Hotel Jay and the Jay Peak Penthouse Suites L.P. projects, Bill Stenger, Alex MacLean, or Rapid USA Visas owner Douglas Hulme; and (ii) documenting his communications with Stenger, MacLean, or Hulme (collectively, “the Miller emails”). These documents will shed light on the full extent of the State’s knowledge and lack of oversight over the EB-5 program. Specifically, VTDigger anticipates these documents will shed light on why the State continued to endorse the solicitation of investors for Quiros and Stenger’s EB-5 projects in spite of the increasingly apparent discrepancies.

Since 2012—well before the SEC sued Quiros and Stenger—VTDigger was suspicious of Quiros and Stenger’s massive, seemingly unrealistic, promises for economic growth. Providing near-

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<sup>11</sup> Anne Galloway, *Documents Suggest State Ignored Warnings About Jay Peak in 2012*, VTDigger (July 25, 2016), <https://vtdigger.org/2016/07/25/documents-suggest-state-ignored-warnings-about-jay-peak-in-2012/>; Anne Galloway, *EB-5 Chief Was Repeatedly Shut Down in Efforts to Audit Jay Peak*, VTDigger (Sept. 20, 2018), <https://vtdigger.org/2018/09/20/eb-5-chief-repeatedly-shut-efforts-audit-jay-peak/> (true and accurate copies of all VTDigger articles cited herein are attached in chronological order as Exhibit C).

<sup>12</sup> Anne Galloway, *EB-5 Chief Was Repeatedly Shut Down in Efforts to Audit Jay Peak*, VTDigger (Sept. 20, 2018), <https://vtdigger.org/2018/09/20/eb-5-chief-repeatedly-shut-efforts-audit-jay-peak/>.

<sup>13</sup> Letter from USCIS to Michael Sullivan Pieciak & Joan Goldstein, dated July 3, 2018 (a true and correct copy is attached as Exhibit D).

<sup>14</sup> 1 V.S.A. §§ 315–20.

exclusive news coverage of the EB-5 scandal, VTDigger obtained documents and communications detailing the fraud and broke stories on its progression. VTDigger's coverage has been publicly credited for helping uncover Jay Peak's financial improprieties and for launching the SEC's investigation and enforcement action.<sup>15</sup> VTDigger has received nationwide recognition for its coverage of the EB-5 scandal.<sup>16</sup>

VTDigger seeks to continue this vigorous coverage of the EB-5 scandal with the records request before the Court today. The State denied access to these records under the PRA's litigation exemption, 1 V.S.A. § 317(c)(14). In doing so, the State uses the litigation exemption contrary to the PRA's letter and spirit and seeks to avoid public accountability for years to come.

### **Parties**

1. Vermont Journalism Trust LTD is a nationally recognized nonprofit charitable foundation dedicated to producing rigorous journalism that explains complex issues, holding the government accountable to the public, and engaging Vermonters in the democratic process. It is incorporated in Montpelier, Vermont. It operates VTDigger.org, one of Vermont's major news sources.

2. The ACCD is an agency within the executive branch of State Government as defined by 1 V.S.A. § 317(a)(2).

3. Lindsay Kurrle is the duly appointed Secretary of the ACCD, at whose directions all decisions regarding public records are made.

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<sup>15</sup> ASBPE Staff, *The ASBPE Foundation Announces Plans to Award VTDigger and Its Editor with the 2018 Journalism That Matters Award*, American Society of Business Publication Editors (Mar. 1, 2018), <http://www.asbpe.org/blog/2018/03/01/the-asbpe-foundation-announces-plans-to-award-vtdigger-and-its-editor-with-the-2018-journalism-that-matters-award/>.

<sup>16</sup> See, e.g., *id.* ("This is the kind of consequential reporting that business publications aspire to[.]") (internal quotation marks omitted); Tim Griggs, *VTDigger: A Rising Star in Nonprofit News*, Harvard Kennedy School: Shorenstein Center on Media, Politics and Public Policy (May 21, 2018, 8:45 AM), <https://shorensteincenter.org/vtdigger-case-study/> (describing VTDigger as "a new model for success in the nonprofit news movement" and outlining its involvement in the breaking the EB-5 scandal).



## **Jurisdiction and Venue**

4. The Court’s jurisdiction over this matter arises from 1 V.S.A. § 319. Venue in Washington County Superior Court is established by statute. *Id.*

## **Factual Allegations**

### ***A Short History of the EB-5 Scandal in Vermont***

5. The United States Congress created the federal EB-5 program in 1990. The U.S. program then required, in part, that foreign nationals agree to invest \$500,000 in a company in an underdeveloped rural area that would expand employment in that area. In exchange, the investors receive permanent legal resident visas (“green cards”), which allow them to stay and live indefinitely in the United States.

6. The EB-5 program is operated by the United States Citizen and Immigration Services (“USCIS”).

7. In 1997, the ACCD was designated as an EB-5 regional center to participate in the federal program.<sup>17</sup>

### ***What Could Have Been: The Plan for the Vermont EB-5 Program***

8. From its outset in Vermont, one of the EB-5 program’s goals was to bring jobs and economic development to the Northeast Kingdom—one of Vermont’s poorest regions.<sup>18</sup>

9. Jay Peak, a ski resort located in the Northeast Kingdom, was one of the first companies to take advantage of the program.

10. At the time, Ariel Quiros owned Jay Peak and Bill Stenger was the president and CEO.

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<sup>17</sup> Letter from Michael L. Aytes, Assistant Commissioner for Adjudications, to Howard Dean, Governor of Vermont, dated June 26, 1997 (a true and correct copy is attached as Exhibit E).

<sup>18</sup> Supplemental attachment to letter from Howard Dean, Governor of Vermont, to Michael Aytes, Assistant Commissioner for Adjudications ¶ 7 (June 17, 1997) (a true and correct copy is attached as Exhibit F).

11. Starting in 2006, Quiros and Stegner raised more than \$250 million from 500 investors through the EB-5 program for the Jay Peak expansion.<sup>19</sup> That money was supposed to fund a major expansion of the resort, including hotels, a water park, an ice rink, condo complexes, and a golf club.<sup>20</sup>

12. This expansion was part of a larger scheme that included a project at Burke Mountain and the construction of AnC Bio Vermont: a state-of-the-art stem cell laboratory.<sup>21</sup> The project partnered with a Korean company, AnC Bio (“AnC Bio Korea”).

#### *What Actually Was: The Vermont EB-5 Fraud*

13. The AnC Bio project raised approximately \$85 million.<sup>22</sup> The facility was supposed to be capable of conducting stem cell research and developing, manufacturing, and distributing artificial organs.<sup>23</sup> Instead, the AnC Bio project was “rampant with fraud” with “baseless” revenue projections.<sup>24</sup> Quiros and Stenger never even sought FDA approval for these products.<sup>25</sup>

14. Instead of using the EB-5 program to generate investment and jobs in the Northeast Kingdom, Quiros and Stenger “pilfered tens of millions of dollars of investor funds[.]”<sup>26</sup>

15. Quiros used millions of those funds to purchase a luxury condominium, to pay off personal marginal loans and his own income taxes, and as collateral for personal credit lines.<sup>27</sup>

16. As a result of Quiros and Stenger’s fraud, the SEC filed a 52-count action against the two in 2016, seeking, *inter alia*, an injunction, disgorgement, asset freezing, and civil penalties.<sup>28</sup>

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<sup>19</sup> Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VTDigger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Exhibit B at ¶ 26.

<sup>23</sup> Exhibit A at ¶ 116.

<sup>24</sup> *Id.* at ¶ 117.

<sup>25</sup> *Id.* at ¶¶ 118-122.

<sup>26</sup> *Id.* at ¶ 130.

<sup>27</sup> *Id.*

<sup>28</sup> *See generally id.*

17. The SEC described Quiros and Stenger’s scheme as “nearly a complete fraud” that “baselessly projected hundreds of millions of dollars in revenue[.]”<sup>29</sup>

18. Quiros settled with the SEC for nearly \$84 million. Stenger settled for \$75,000.<sup>30</sup>

19. A federal grand jury also indicted Quiros and Stenger, among others.

20. Quiros was indicted on twelve counts including, *inter alia*, wire fraud and money laundering.<sup>31</sup> He ultimately pleaded guilty to three felony charges.<sup>32</sup> Stenger was indicted on ten counts including, *inter alia*, wire fraud and making false statements.<sup>33</sup>

21. The charges against Stenger are still pending, and VTDigger has continued to follow these cases as the public seeks accountability for this fraud.

#### *The Warning Signs: Vermont’s Failure to Oversee the EB-5 Program*

22. As a result of Vermont’s complete failure to provide “oversight, monitoring, and management of” the EB-5 projects, the USCIS terminated Vermont’s EB-5 program.<sup>34</sup>

23. Vermont appealed this determination to USCIS’s Administrative Appeals Office, which rejected the appeal because the State sponsored projects that “allowed Mr. Quiros and Mr. Stenger to engage in ‘an ongoing, massive eight-year fraudulent scheme,’” and the State engaged in an “insufficient level of oversight.”<sup>35</sup> According to the Administrative Appeals Office, the State’s failure

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<sup>29</sup> *Id.* at ¶ 6.

<sup>30</sup> Pl.’s Unopposed Mot. for Entry of Final Judgments Against Quiros and Stenger 2, *SEC v. Quiros*, No. 16-CV-21301, Doc. No. 447 (S.D. Fla. Feb. 2, 2018) (a true and correct copy is attached as Exhibit G).

<sup>31</sup> See Exhibit B.

<sup>32</sup> Press Release, Department of Justice, *Quiros Pleads Guilty to Fraud Charges Related to the Jay Peak EB-5 AnC Vermont Project in Northeast Vermont* (Aug. 14, 2020), <https://www.justice.gov/usao-vt/pr/ariel-quiros-pleads-guilty-fraud-charges-related-jay-peak-eb-5-anc-vermont-project#:~:text=August%2014%2C%202020-,Ariel%20Quiros%20Pleads%20Guilty%20to%20Fraud%20Charges%20Related%20to%20The,before%20Chief%20Judge%20Geoffrey%20W>.

<sup>33</sup> See Exhibit B.

<sup>34</sup> Exhibit D.

<sup>35</sup> *Matter of V-A-O-C-A-C-D-R-C*, ID# 1982072, at 1, 6–9 (AAO Sept. 25, 2019) (a true and correct copy is attached as Exhibit H).

to communicate evidence of the fraud to the federal government until after the SEC initiated its own enforcement action caused the USCIS to erroneously approve Jay Peak filings.<sup>36</sup>

24. There is ample evidence to support the Administrative Appeals Office's finding that the State failed to communicate evidence of Quiros and Stenger's fraud.

25. Douglas Hulme, who owned the EB-5 consulting firm Rapid USA Visas, warned Vermont officials in 2012 about Jay Peak's business practices. The state failed to act on his warnings until three years later.<sup>37</sup>

26. State officials retaliated against Hulme by telling him he could no longer use the Vermont state logo on his website and threatening to notify the Vermont Attorney General that he allegedly marketed an EB-5 program that the State had not yet approved.<sup>38</sup>

27. Jay Peak, on the other hand, continued to use the Vermont state logo and also marketed an office building in Newport without approval for months without the State's objection.<sup>39</sup>

28. After Hulme sent a letter in February 2012 to 100 EB-5 immigration attorneys indicating that he no longer had faith in Jay Peak's financials, EB-5 Regional Center Director James Candido conducted a daylong audit of Jay Peak and declared that there were "no issues" with the project.<sup>40</sup> According to the plaintiffs in a civil suit against Candido, he "spent 'an extravagant weekend'" at the resort prior to declaring that the project's finances were in order.<sup>41</sup>

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<sup>36</sup> *Id.* at 8–9.

<sup>37</sup> Anne Galloway, *Documents Suggest State Ignored Warnings About Jay Peak in 2012*, VTDigger (July 25, 2016), <https://vtdigger.org/2016/07/25/documents-suggest-state-ignored-warnings-about-jay-peak-in-2012/>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Anne Galloway, *UPDATED: Jay Peak Investor Sues State*, VTDigger (Jun. 14, 2017), <https://vtdigger.org/2017/06/14/jay-peak-investor-sues-vermont-cb-5-regional-center/>.

<sup>41</sup> *Sutton v. Vt. Reg'l Ctr.*, 2019 VT 71A, ¶ 11.

29. Candido was supposed to review Jay Peak activities at least four times a year. In fact, Governor Shumlin touted the State's auditing of the projects in a 2013 promotional video.<sup>42</sup> The State later admitted this auditing never took place.<sup>43</sup>

30. EB-5 Regional Center Director Brent Raymond also testified under oath that he requested that the State perform a forensic audit into Jay Peak in 2012, but state officials repeatedly rebuffed him.<sup>44</sup>

31. Alex MacLean, a former aide to Governor Shumlin who was hired to oversee investor recruitment and relations for the Jay Peak EB-5 project,<sup>45</sup> instructed Raymond to stop asking questions about AnC Bio Vermont and to "[l]ay off."<sup>46</sup>

32. Raymond also repeatedly asked his superior, then-Commerce Secretary Lawrence Miller, to require audits for the project.<sup>47</sup> Miller refused the request after Stenger asserted that a private audit would be very expensive. Miller also rebuffed Hulme's concerns about Jay Peak.<sup>48</sup>

33. Raymond also raised concerns about AnC Bio Korea's financial dealings. When he could not get answers, he suspended the AnC Bio projects in Vermont and began a probe into the company. Nonetheless, Governor Shumlin still pushed for the projects to have partial approval in 2015 so more investors could be solicited.<sup>49</sup>

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<sup>42</sup> Anne Galloway, *EB-5 Chief Was Repeatedly Shut Down in Efforts to Audit Jay Peak*, VTDigger (Sept. 20, 2018), <https://vtdigger.org/2018/09/20/eb-5-chief-repeatedly-shut-efforts-audit-jay-peak>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Anne Galloway, *Stenger Hires MacLean to Oversee Investor Recruitment and Relations for Northeast Kingdom EB-5 Projects*, VTDigger (Jan. 7, 2013), <https://vtdigger.org/2013/01/07/stenger-hires-maclean-to-oversee-investor-recruitment-and-relations-for-northeast-kingdom-eb-5-projects/>.

<sup>46</sup> Anne Galloway, *EB-5 Chief Was Repeatedly Shut Down in Efforts to Audit Jay Peak*, VTDigger (Sept. 20, 2018), <https://vtdigger.org/2018/09/20/eb-5-chief-repeatedly-shut-efforts-audit-jay-peak/>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*; Anne Galloway, *Documents Suggest State Ignored Warnings About Jay Peak in 2012*, VTDigger (July 25, 2016), <https://vtdigger.org/2016/07/25/documents-suggest-state-ignored-warnings-about-jay-peak-in-2012/>.

<sup>49</sup> Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VTDigger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.

34. Investors also complained to Raymond in 2014 that Quiros and Stenger were committing fraud and turning their investments into unsecured loans.<sup>50</sup>

35. In spite of these warning signs, the State was still allowing Quiros and Stenger to solicit more investors for additional projects shortly before the SEC filed its enforcement action in 2016.<sup>51</sup> Only after the SEC filed its enforcement action did the State bring its own enforcement action to provide restitution to the defrauded investors and disgorge Quiros's and Stenger's gains.<sup>52</sup>

36. Quiros and Stenger reached monetary settlements to resolve the State and the SEC enforcement actions.<sup>53</sup> The Vermont Supreme Court later rejected investors' attempt to intervene in the state enforcement action.<sup>54</sup>

### ***VTDigger Raising Concerns and Breaking the Story of the EB-5 Scandal***

37. Anne Galloway, VTDigger's founder and editor, became suspicious of the Jay Peak project shortly after attending and publishing a story on a press conference that Quiros, Stenger, Governor Shumlin, and Senator Leahy held. Quiros and Stenger promised massive investments and expansions, which she thought were "too good to be true," given the size of the workforce in the remote region.<sup>55</sup>

38. In 2013, Galloway's suspicions and VTDigger's focus on Jay Peak increased as a journalism fellow investigated a different resort project approved by the Vermont EB-5 Regional

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<sup>50</sup> Anne Galloway & Hilary Niles, *VTDigger Exclusive: Jay Peak Loses Trust of First EB-5 Investors*, VTDigger (July 27, 2014), <https://vtdigger.org/2014/07/27/vtdigger-exclusive-jay-peak-loses-trust-first-eb-5-investors/>.

<sup>51</sup> *Sutton*, 2019 VT 71A, ¶ 17.

<sup>52</sup> *State v. Quiros*, 2019 VT 68, ¶ 7.

<sup>53</sup> See Exhibit G; *State v. Quiros*, 2019 VT 68, ¶ 12.

<sup>54</sup> *State v. Quiros*, 2019 VT 68, ¶ 17.

<sup>55</sup> Anne Galloway, *Jay Peak Partners Pitch \$500 Million Investment in Three Northeast Kingdom Towns*, VTDigger (Sept. 28, 2012), <https://vtdigger.org/2012/09/28/jay-peak-partners-expand-their-500-million/>; Jessica Huseman, *The Breakthrough: How a Small News Outlet Broke Down the State Hero*, PROPUBLICA (Aug. 11, 2017), <https://www.propublica.org/podcast/the-breakthrough-how-a-small-news-outlet-brought-down-the-state-hero>.

Center. Galloway noted that, while the state investigated and cancelled one project due to misrepresentations and the lack of progress, the Jay Peak projects did not receive any state scrutiny.<sup>56</sup>

39. As the state publicly supported the expansion projects and promoted them internationally, VTDigger's journalists sought out sources to reveal the project's underlying issues.<sup>57</sup>

40. In 2014, after receiving a tip from a source, VTDigger reached out to investors and conveyed the investors' concerns to the public via reporting based on exclusive interviews.<sup>58</sup> The interviews reveal that the investors "believed that the state would carefully monitor the finances of the project" to ensure that they received the promised returns on their investments, but the State did not require Jay Peak to file quarterly reports and the developers converted investors' shares into unsecured loans.<sup>59</sup>

41. Additionally, VTDigger discovered that investors had already brought these concerns to the ACCD earlier in 2014 and were met with more empty promises.<sup>60</sup>

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<sup>56</sup> See, e.g., Nat Rudarakanchana, *VTDigger Exclusive: State Pulls Plug On EB-5 Project*, VTDigger (Apr. 3, 2013), <https://vtdigger.org/2013/04/03/state-pulls-plug-on-eb-5-project/>; Hilary Niles, *DreamLife Hopes for Second Shot at Canceled EB-5 Project*, VTDigger (Jul. 3, 2013), <https://vtdigger.org/2013/07/03/dreamlife-hopes-for-second-shot-at-canceled-eb-5-project/>.

<sup>57</sup> Senator Patrick Leahy, *Jay Peak's Bill Stenger Testifies Before Leahy-Chaired Panel in Washington*, Patrick Leahy: U.S. Senator Patrick Leahy of Vermont (Dec. 12, 2011), <https://www.leahy.senate.gov/press/jay-peaks-bill-stenger-testifies-before-leahy-chaired-panel-in-washington> (announcing that Senator Leahy invited Stenger, recognized as the 2011 Vermont Chamber of Commerce Citizen of the Year, to testify about the success of the EB-5 program before the U.S. Senate); Hilary Niles, *Shumlin and Stenger Return from EB-5 Promo Trip to Asia*, VTDigger (Oct. 1, 2013), <https://vtdigger.org/2013/10/01/shumlin-stenger-return-eb-5-promo-trip-asia/> (reporting that Governor Shumlin and Stenger promoted the Jay Peak projects in Asia to solicit foreign investments).

<sup>58</sup> See Anne Galloway, *Who Are the Tram Haus Investors?*, VTDigger (Oct. 22, 2014), <https://vtdigger.org/2014/10/22/tram-haus-investors/>; Anne Galloway, *A Sense of Betrayal: EB-5 Investors Go Public*, VTDigger (Oct. 22, 2014), <https://vtdigger.org/2014/10/22/sense-betrayal-eb-5-investors-go-public/>; Anne Galloway, *VTDigger Exclusive: EB-5 Investors Question State Watchdog's Independence*, VTDigger (Oct. 5, 2014), <https://vtdigger.org/2014/10/05/documents-show-state-jay-peak-coordinated-promotional-materials-media-response/>.

<sup>59</sup> See Anne Galloway, *Who Are the Tram Haus Investors?*, VTDigger (Oct. 22, 2014), <https://vtdigger.org/2014/10/22/tram-haus-investors/>.

<sup>60</sup> Anne Galloway, *A Sense of Betrayal: EB-5 Investors Go Public*, VTDigger (Oct. 22, 2014), <https://vtdigger.org/2014/10/22/sense-betrayal-eb-5-investors-go-public/>; Anne Galloway, *VTDigger Exclusive: EB-5 Investors Question State Watchdog's Independence*, VTDigger (Oct. 5, 2014), <https://vtdigger.org/2014/10/05/documents-show-state-jay-peak-coordinated-promotional-materials-media-response/>.

42. For example, in May of 2014, Raymond promised to aid investors in obtaining financial documents; however, VTDigger obtained communications wherein Raymond never requested that Stenger provide investors with this information.<sup>61</sup> Instead, Raymond offered to help Stenger “repair this reputational damage”—referring to VTDigger’s dedicated coverage of investor complaints.<sup>62</sup>

43. In 2016, Galloway traveled to South Korea to continue VTDigger’s independent investigation into the AnC Bio project. Galloway worked with a local journalist to verify that the AnC Bio Korea facility was just an empty building with no workers or products.<sup>63</sup> Additionally, AnC Bio never sought FDA approval for touted biomedical devices that would have been key to the success of the AnC Bio project in Vermont, including one that in initial testing had a high fatality rate.<sup>64</sup>

44. VTDigger’s investigation in South Korea also uncovered public financial issues with the AnC Bio project in Korea that Vermont state officials had overlooked.<sup>65</sup> VTDigger’s exclusive reports revealed that AnC Bio Korea had not only been operating at a loss for years, but also that its CEO, a close business partner of Quiros, had been charged in 2013 with stock manipulation, corruption, and embezzlement in relation to the project.<sup>66</sup>

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<sup>61</sup> Anne Galloway, *A Sense of Betrayal: EB-5 Investors Go Public*, VTDigger (Oct. 22, 2014), <https://vtdigger.org/2014/10/22/sense-betrayal-eb-5-investors-go-public/>; Anne Galloway, *VTDigger Exclusive: EB-5 Investors Question State Watchdog’s Independence*, VTDigger (Oct. 5, 2014), <https://vtdigger.org/2014/10/05/documents-show-state-jay-peak-coordinated-promotional-materials-media-response/>.

<sup>62</sup> Anne Galloway, *VTDigger Exclusive: EB-5 Investors Question State Watchdog’s Independence*, VTDigger (Oct. 5, 2014), <https://vtdigger.org/2014/10/05/documents-show-state-jay-peak-coordinated-promotional-materials-media-response/>.

<sup>63</sup> See Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VTDigger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See Anne Galloway, *VTDigger Exclusive: State Raises Questions about AnC Bio Finances*, VTDigger (Mar. 30, 2015), <https://vtdigger.org/2015/03/30/vtdigger-exclusive-state-raises-questions-about-anc-bio-finances/>; Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VTDigger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.



45. Despite AnC Bio's alarming issues, Governor Shumlin continued to appear in promotional videos and "laud[] [Quiros's Korean business partner's] work in the biomedical industry."<sup>67</sup>

### ***EB-5 Shareholders File Sutton Lawsuit Against the ACCD and High-Level Employees***

46. After the Jay Peak fraud was exposed, investors filed suit in Vermont Superior Court against the Agency of Commerce and Community Development and various state employees. The investors—who had lost millions and either did not receive or faced uncertainty over the status of their green cards—alleged that the ACCD and certain employees were active partners in the Jay Peak fraud and liable to the shareholders for, *inter alia*, negligence, negligent misrepresentation, and breach of the contracts and of good faith and fair dealing.<sup>68</sup>

47. One such investor, Mohammed Adil, had grown up poor in India and participated in the Vermont EB-5 program so that his daughters could attend college in the United States.<sup>69</sup> His daughters faced potential deportation because of Quiros and Stenger's fraud.

48. The Vermont Supreme Court dismissed the claims against certain state officials, including Lawrence Miller, due to sovereign and qualified immunity—not a lack of wrongdoing.<sup>70</sup> Thus, the only way to hold these officials accountable is through the court of public opinion.

49. The Court then remanded the remaining claims in the *Sutton* litigation against the ACCD, James Candido and Brent Raymond for further proceedings. The suit, which is entirely focused on the State's duty to the shareholders, alleges that the State Defendants worked together to create offering documents and made other sales efforts that purported that the State would maintain

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<sup>67</sup> Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VT Digger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.

<sup>68</sup> See *Sutton*, 2019 VT 71A, ¶ 1 & n.1.

<sup>69</sup> Anne Galloway, *Immigrant Investors, Officials Scramble to Head off Deportation*, VT Digger (May 22, 2016), <https://vtdigger.org/2016/05/22/immigrant-investors-officials-scramble-to-head-off-deportation/>.

<sup>70</sup> *Sutton*, 2019 VT 71A, ¶¶ 48-50. The court allowed a gross negligence claim to go forward against James Candido and Brent Raymond. *Id.* at ¶¶ 52-57.

adequate oversight of the project.<sup>71</sup> The Defendants traveled with Jay Peak officials to trade shows and investor programs, sat at the same table at lunch, appeared in promotional materials, and took other actions that assured investors of the State's cooperation, the Complaint alleges.<sup>72</sup> But later, the Complaint alleges, the Defendants were negligent in their oversight and failed to observe easily discoverable fraud, such as the AnC Bio facility which did not even have U.S. Food and Drug Administration approval.<sup>73</sup> Drawing entirely from public documents, the Complaint also alleges that the Defendants took steps to silence a whistleblower who tried to bring the fraud to their attention, spurned investors' requests for scrutiny, and gave Jay Peak a clean bill of financial health.<sup>74</sup> The case is still in the discovery phase.

### ***The State Rebuffs VTDigger's Requests***

50. Throughout its investigation, VTDigger made multiple public record requests to uncover what state officials knew or should have known about the EB-5 fraud scheme. VTDigger made five requests to the ACCD in 2013, with only two requests being fulfilled in whole.<sup>75</sup> The State rejected additional requests in 2015 for state communications and records regarding the Jay Peak project.<sup>76</sup> VTDigger continued to pursue the records until the ACCD finally produced thirty pages of documents—though the State heavily redacted the documents.<sup>77</sup>

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<sup>71</sup> See Proposed Fifth Am. Complaint, *Sutton v. Vt. Reg'l Ctr., et al.*, No. 100-5-17, at ¶¶ 73-95 (Vt. Sup. Ct. Sept. 3, 2020) (Supplement to Plaintiffs' Composite Exhibits omitted) (a true and correct copy is attached as Exhibit I).

<sup>72</sup> *Id.* at ¶¶ 58-63, 71-75.

<sup>73</sup> See, e.g., *id.* at ¶¶ 238-50.

<sup>74</sup> *Id.* at ¶¶ 96-142, 158-223.

<sup>75</sup> *Statewide Public Record Requests Database*, Vermont Agency of Administration, <https://aoa.vermont.gov/statewide-public-record-requests> (last visited May 26, 2020).

<sup>76</sup> Anne Galloway, *State EB-5 Records Missing*, VTDigger (Aug. 27, 2019), <https://vtdigger.org/2019/08/27/state-cb-5-records-missing/>.

<sup>77</sup> *Id.*

51. In hopes of revealing the State’s motivations for its actions in the EB-5 project and promoting public accountability, VTDigger made another request to the ACCD and the Department of Financial Regulation (“DFR”) for “I-924 and I-924A [Form]s” for each year the state was enrolled in the EB-5 program, as well as related communications with state officials.<sup>78</sup> The ACCD and the DFR denied VTDigger’s access to these documents under the PRA’s litigation exemption, under 1 V.S.A. § 317(c)(14), citing the SEC and state civil suits.<sup>79</sup>

52. VTDigger ultimately filed suit to gain access to these documents, and its efforts revealed that the State could not locate certain communications between Hulme and Candido.<sup>80</sup> VTDigger became aware of these missing communications through another source.

53. Still missing pieces to the story, VTDigger narrowed its focus to another set of documents: the Miller emails at issue in this case.

54. On August 20, 2020, Galloway emailed a PRA request to the ACCD seeking Miller’s emails between January 1, 2011 and December 31, 2014 (i) pertaining to AnC Bio, Rapid USA Visas, the Hotel Jay and the Jay Peak Penthouse Suites L.P. projects, Bill Stenger, Alex MacLean or Rapid USA Visas owner Douglas Hulme; and (ii) documenting his communications with Stenger, MacLean, or Hulme.<sup>81</sup>

55. On August 25, 2020, ACCD General Counsel John Kessler denied the request based on the PRA’s litigation exemption, 1 V.S.A. § 317(c)(14), citing *Sutton v. Vermont Regional Center, et al.*, Supreme Court Docket No. 2018-158 and stating, “As this case is still open, the records you request are exempt from public disclosure under 1 VSA 317(c)(14), provided that they shall otherwise be

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> See, e.g., Paul Heintz, *A VTDigger Legal Fight Reveals that Key EB-5 Docs are Missing*, Seven Days (Sept. 11, 2019), <https://www.sevendaysvt.com/vermont/a-vtdigger-legal-fight-reveals-that-key-eb-5-docs-are-missing/Content?oid=28446570>.

<sup>81</sup> A true and correct copy of the request is attached as Exhibit J.

available as allowed under the Public Records Act upon termination of the litigation, or earlier if ruled discoverable by a court.”<sup>82</sup>

56. On September 15, 2020, Ms. Galloway appealed the decision to Secretary Lindsay Kurrle.<sup>83</sup>

57. On September 29, 2020, Mr. Kessler denied Ms. Galloway’s appeal “as seeking records exempt from public disclosure under 1 VSA 317(c)(14) related to the pending *Sutton* litigation to which the State remains a party and is still actively defending. The specific people and subject matter described in your request involves state and private people who worked on various aspects of Jay Peak EB-5 projects that relate to the operation of the Vermont EB-5 Regional Center.”<sup>84</sup>

58. After the State denied VTDigger access to these documents at every turn, VTDigger again must turn to litigation to pursue the Miller emails and continue its duty to keep the people aware of their government’s actions.

### ***Key Unanswered Questions***

59. With the requested documents, VTDigger seeks to provide the people of Vermont with the information necessary to hold accountable the state officials responsible for the lack of oversight and mishandling of the EB-5 program.

60. The documents may reveal how much the State knew about the EB-5 fraud scheme prior to taking action.

61. The documents may also shed light on why the State allowed the project to continue and promoted the project after investors, Hulme, and Raymond directly brought concerns to the State.

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<sup>82</sup> A true and correct copy of the denial is attached as Exhibit K.

<sup>83</sup> A true and correct copy of the appeal is attached as Exhibit L.

<sup>84</sup> A true and correct copy of the denial of the appeal is attached as Exhibit M.

62. Further, the documents may reveal whether the State was aware of AnC Bio’s public issues and the lack of FDA approval.<sup>85</sup>

### ***Public Records Act***

63. Article Six of the Vermont Constitution provides that, because power is “originally inherent in and co[n]sequently derived from the people,” all government officials are “at all times, in a legal way, accountable to them.”<sup>86</sup> The Vermont Public Records Act was created to allow the public to exercise its right to oversee and hold government officials accountable.<sup>87</sup> The purpose of the Act, stated in 1 V.S.A. § 315, is as follows:

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.<sup>88</sup>

64. The Vermont Supreme Court has repeatedly stated that the PRA must be construed liberally in favor of disclosure.<sup>89</sup> Exceptions to disclosure must be construed “strictly against the custodians of the records and any doubts should be resolved in favor of disclosure.”<sup>90</sup> The agency bears the burden of justifying withholding the requested records.<sup>91</sup> One such exception allows public officials to withhold records that are relevant to litigation to which the public agency is a party of

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<sup>85</sup> Anne Galloway, *Special Report: AnC Bio Vermont Troubles Began in South Korea*, VTDigger (Dec. 27, 2016), <https://vtdigger.org/2016/12/27/anc-bio-vermont-troubles-began-south-korea/>.

<sup>86</sup> Vt. Const. ch. I, art. 6.

<sup>87</sup> 1 V.S.A. § 315(a).

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., *Price v. Town of Fairlee*, 2011 VT 48, ¶ 13.

<sup>90</sup> *Id.* (citation and internal quotation marks omitted).

<sup>91</sup> *Id.*

record.<sup>92</sup> A broad interpretation of this exemption severely harms the public’s right to review and criticize government officials by cutting off “valuable information not only to the parties to the litigation, but to all Vermonters[.]”<sup>93</sup>

## Claims

### Count I. Violation of Vermont Public Records Law, 1 V.S.A. §§ 315–320

65. This section incorporates all the information set forth above.

66. The State has public records in its possession—specifically, the Miller emails—that it could make accessible to the public by inspection or copying.

67. VTDigger has requested that the State provide access to these records.

68. In response, the State has asserted a litigation exemption under 1 V.S.A. § 317(c)(14) to prevent disclosure of all of these documents.

69. The only active litigation involving the State as a party in an EB-5 related matter is *Sutton v. Vermont Reg’l Ctr.*, No. 218-158 (Vt).

70. That action was filed on May 30, 2017, and the Vermont Supreme Court recently remanded the case on October 4, 2019 for further proceedings.<sup>94</sup>

71. As applied in this case, the litigation exemption could deprive the public of documents of great public interest for years to come.

72. The Miller emails are not relevant to any ongoing litigation, within the meaning of relevant under 1 VSA § 317(c)(14).

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<sup>92</sup> 1 V.S.A. § 317(c)(14).

<sup>93</sup> *Sblansky v. City of Burlington*, 2010 VT 90, ¶ 12.

<sup>94</sup> *Sutton v. Vt. Reg’l Ctr.*, 2019 VT 71, ¶ 78, amended and superseded by 2019 VT 71A.

73. To the extent that the Miller emails could be relevant to litigation, the emails are unlikely to be privileged or otherwise exempt from discovery.

74. The purpose of 1 V.S.A. § 317(c)(14) is to prevent parties from doing an “end-run” around the discovery process by using public records requests.

75. VTDigger is not a party to any litigation, and thus is not seeking to do an “end-run” around the discovery process.

76. The likelihood of the *Sutton* case resolving in the near future is unlikely.

77. If upheld, the exemption would prevent public review and scrutiny of these documents—and the State’s oversight of the EB-5 program—for many months or years to come.

78. VTDigger’s sole purpose for seeking the documents is to fulfill the PRA’s purpose by reporting information contained within the documents and making it available to the public.

79. The public has a right to such documents under the PRA.

80. Withholding these documents does not serve any purpose under 1 V.S.A. § 317(c), and it directly violates the PRA’s purpose and policy under 1 V.S.A. § 315.

81. Since the exemption’s purposes and terms are not served, and there are compelling reasons requiring release, the PRA favors a release.

82. By refusing to release the Miller emails, the State unlawfully denies the public access. This denial removes the State and its employees from public accountability.

83. By denying the public access to these documents, the State has violated 1 V.S.A. §§ 315–19.

84. This case’s documents and facts do not support such a broad application of the litigation exemption, as to deprive the public access to the Miller emails.

85. VTDigger has exhausted its administrative remedies prior to filing the present lawsuit.

86. VTDigger, as a requesting party, is entitled to relief under 1 V.S.A. § 319, including the release of the documents sought and attorney's fees.

87. VTDigger is entitled to judgement in its favor.

### **Remedies**

Wherefore, Plaintiff Vermont Journalism Trust respectfully requests:

A. That the Court order Secretary Kurrle and the ACCD to provide promptly copies or access to all records responsive to VTDigger's request;

B. That the Court order Secretary Kurrle and the ACCD to pay all costs and attorney's fees Vermont Journalism Trust incurred in pursuing this action;

C. That the Court provide whatever other legal or equitable relief it deems appropriate.

Dated at Montpelier, Vermont this 29th day of October, 2020.

VERMONT JOURNALISM TRUST, LTD

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

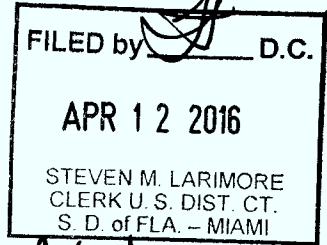
v.

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.



16-21301

*cv-Gayles*

MAGISTRATE JUDGE  
TURNOFF

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission alleges as follows:

**I. INTRODUCTION**

1. This is an emergency action the Commission is bringing to stop an ongoing,

massive eight-year fraudulent scheme in which the Miami owner and the chief executive of a Vermont ski resort have systematically looted more than \$50 million of the more than \$350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program.

2. The fraudulent scheme spans seven limited partnership securities offerings all connected to Jay Peak, Inc., a Vermont ski resort that is wholly owned by Miami-based Q Resorts, Inc., which in turn is owned by Miami businessman Ariel Quiros. Quiros and William Stenger, the president and CEO of Jay Peak, are primarily responsible for the fraudulent scheme.

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

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

5. The EB-5 investment program gives foreign investors the chance to earn permanent residence in the United States through investing in U.S. projects that create a certain

number of jobs. Quiros, Stenger, and the other Defendants made numerous misrepresentations and material omissions to these foreign investors. Among them were telling investors the Defendants would only use investor money to finance the specific project to which each investor contributed. The Defendants further assured investors that Stenger, the *de facto* general partner for the first six projects, had control of investor funds. In reality, Stenger extremely recklessly ceded control of investor funds to Quiros. He did almost nothing to manage investor money, even when confronted with red flags of Quiros' misuse.

6. The first six projects for which the Defendants raised money were all part of a ski resort and accompanying facilities located near Jay, Vermont. The most recent project, for which the Defendants continue to raise money from unwitting investors, purports to be for a nearby \$110 million biomedical research center that the Defendants have operated as nearly a complete fraud. The offering documents the Defendants are providing to investors in that project are rife with material misstatements and omissions. These include bogus claims that the Defendants are in the process of obtaining Food and Drug Administration approval for the research center's products. In reality, the Defendants have not undertaken the necessary steps to begin the lengthy and cumbersome process of getting FDA approval. Further exacerbating their misstatements, the Defendants have baselessly projected hundreds of millions of dollars in revenue from the research center – projections based on FDA approval they have done virtually nothing to obtain.

7. As a result, although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site preparation and ground-breaking, and are years behind their original construction and revenue schedule. Quiros has secretly used most of the money raised for the research facility's construction to pay

off and pay down a margin loan and to misappropriate approximately \$30 million for his own use.

8. As a consequence of the Defendants' systematic misuse of investor funds from the various Jay Peak projects, there is little money left in any of the research facility's accounts to pay for its construction. Similarly the sixth project, part of the ski resort, is nowhere near completion and out of money. Investors in those projects, who contributed \$500,000 each, are in grave danger of losing their investments and having their immigration petitions denied.

9. The Defendants apparently are hoping to fund remaining construction of the sixth and seventh projects through ongoing efforts to raise money from new investors – both in the biomedical research facility and in additional EB-5 projects Quiros is attempting to start. To stop the Defendants' illegal course of conduct and prevent further fraud on investors, the Commission is bringing this action and seeking emergency relief, among other remedies.

10. Through their conduct, the Defendants have each violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"). In addition, Quiros violated Section 20(a) of the Exchange Act and he and Q Resorts aided and abetted violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act. The Commission is seeking several forms of relief, including simultaneous emergency relief of temporary restraining orders, asset freezes, appointment of a Receiver, and sworn accountings. The Commission also seeks preliminary and permanent injunctions and civil money penalties against all the Defendants, and disgorgement of ill-gotten gains against the Defendants and Relief Defendants.

## **II. DEFENDANTS AND RELIEF DEFENDANTS**

### **A. Defendants**

11. **Jay Peak** is a Vermont corporation with its principal place of business in Jay, Vermont. Jay Peak operates the Jay Peak Resort in Jay, Vermont, which encompasses the first six projects for which the Defendants raised money. Jay Peak, in conjunction with others, has served as the manager or developer of the projects.

12. **Q Resorts** is a Delaware corporation with its offices in Miami, Florida. Q Resorts is the 100 percent owner of Jay Peak, and Quiros is the sole owner, officer and director of Q Resorts. Q Resorts acquired Jay Peak from a Canadian firm in 2008, and Quiros has since overseen the various Jay Peak projects through Q Resorts.

13. **Quiros**, 58, resides in Key Biscayne, Florida. In addition to being the sole owner, officer and director of Q Resorts, he is chairman of Jay Peak. Through those two companies, Quiros controlled each of the Defendant general and limited partnerships. He is a principal of the general partner of the Jay Peak Biomedical limited partnership offering, which is the seventh and most recent project offering. Between February and April 2011, Quiros served on the board of directors of Bioheart, Inc., a publicly-traded company.

14. **Stenger**, 66, resides in Newport, Vermont. Stenger is the Director, President, and CEO of Jay Peak. 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. All six offerings were set up as limited partnerships. Stenger is, along with Quiros, a principal in the Jay Peak Biomedical general partner.

15. **Jay Peak Hotel Suites L.P.** ("Suites Phase I") is a Vermont limited partnership with its principal place of business in Jay, Vermont. 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. The hotel is completed and operating.

16. **Jay Peak Hotel Suites Phase II L.P.** (“Hotel Phase II”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. 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. Construction on all is complete and they are operating.

17. **Jay Peak Management, Inc.** is a Vermont corporation which is the general partner of Suites Phase I and Hotel Phase II. It is also a wholly-owned subsidiary of Jay Peak. Stenger is the company’s president.

18. **Jay Peak Penthouse Suites L.P.** (“Penthouse Phase III”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. 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. Construction is complete and the facilities are operating.

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

20. **Jay Peak Golf and Mountain Suites L.P.** (“Golf and Mountain Phase IV”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. 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. Construction is complete, and the facilities are operating.

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



22. **Jay Peak Lodge and Townhouses L.P.** (“Lodge and Townhouses Phase V”) is a Vermont limited partnership with its principal place of business in Jay Vermont. 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. Construction is complete and the facilities are operating.

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

24. **Jay Peak Hotel Suites Stateside L.P.** (“Stateside Phase VI”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. 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. Although the Stateside Phase VI offering was fully subscribed, the Defendants have only built the hotel. A small amount of work has been done on building the cottages and work has not yet begun on the recreation and medical centers.

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

26. **Jay Peak Biomedical Research Park L.P.** (“Biomedical Phase VII”) is a Vermont limited partnership with its principal place of business in Newport, Vermont. 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. Other than site preparation and groundbreaking, no work has been done on the facility. 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.

27. **AnC Bio Vermont GP Services, LLC** is a Vermont limited liability company and the general partner of Biomedical Phase VII. Its managing members are Quiros and Stenger.

#### **B. Relief Defendants**

28. **Jay Construction Management, Inc.** (“JCM”) is a Vermont corporation with its offices in Miami, Florida, at the same address as Q Resorts. Its status is listed as terminated as of March 16, 2016. Quiros is the sole officer and director of JCM. 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. He also used misused tens of millions of dollars of the funds JCM received. Quiros controlled JCM’s bank accounts. Without any legitimate basis, JCM received investors’ proceeds emanating from the Defendants’ securities fraud.

29. **GSI of Dade County, Inc.** (“GSI”) is a Florida corporation with its offices in Miami at the same address as Q Resorts and JCM. Quiros is the owner and sole officer and director of GSI. GSI received more than \$13 million of investor money emanating from Biomedical Phase VII investor funds. Without any legitimate basis, GSI received investors’ proceeds emanating from the Defendants’ securities fraud.

30. **North East Contract Services, LLC** (“Northeast”) is a Florida limited liability company formed in February 2013 and headquartered in Weston, Florida. Northeast acts as project manager for Biomedical Phase VII. William Kelly, who is Jay Peak’s COO and a longtime business associate of Quiros, is the managing principal of Northeast. 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. 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. Quiros misused and misappropriated the vast majority of the remaining more than \$37 million of Biomedical Phase VII investor funds that JCM received. Hence, Northeast received construction supervision fees for work that was not performed. Without any legitimate basis, Northeast received investors' proceeds emanating from the Defendants' securities fraud.

31. **Q Burke Mountain Resort, LLC** ("Q Burke") is a Florida limited liability company formed in April 2012 and headquartered in Miami at the same address as Q Resorts. Quiros is the managing principal of Q Burke. 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. As described below, Quiros improperly used approximately \$7 million from a margin loan backed by investor funds to purchase Q Burke. 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. Without any legitimate basis, Q Burke received investors' proceeds emanating from the Defendants' securities fraud.

### **III. JURISDICTION AND VENUE**

32. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a); and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

33. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida for several reasons. Q Resorts, which owns Jay Peak and as a

result oversees the Jay Peak projects, is located in Miami. 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. Stenger and the other Jay Peak employees all take direction from Quiros. 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.

34. 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. 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. Quiros and Stenger had numerous communications with the Raymond James broker located in Coral Gables, including emails, letters, wires, and telephone calls.

35. Furthermore, Kelly, Jay Peak's COO, is located in South Florida. Other key Jay Peak employees spent significant time in South Florida during the time period alleged in this Complaint. A number of investors who received green cards also have settled in the Southern District, including at least 22 investors in Hotel Phase II, eight in Penthouse Phase III, 19 in Golf and Mountain Phase IV, 11 in Lodge and Townhouses Phase V, 17 in Stateside Phase VI, and seven in Biomedical Phase VII.

36. The Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

#### **IV. THE EB-5 PROGRAM**

37. Congress created the EB-5 Immigrant Investor Program in 1990 in an effort to boost the U.S. economy. The Program provides a prospective immigrant with the opportunity to become a permanent resident by investing in the U.S.

38. 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”). Once he or she has invested, the foreign applicant may apply for a conditional green card, which is good for two years. 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. The applicant can then live and work in the U.S. permanently.

39. 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.

40. The State of Vermont EB-5 Regional Center has been a federally-designated Regional Center since 1997. Prospective immigrants investing through the Vermont Regional Center only have to invest \$500,000. 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. The Vermont Agency of Commerce and Community Development has, until recently, administered the state’s EB-5 program. The Vermont Division of Financial Regulation now shares that responsibility with the Agency.

#### **V. THE JAY PEAK EB-5 OFFERINGS**

41. Jay Peak began offering and selling securities in the form of limited partnership interests in December 2006. Since that time it has raised more than \$350 million from more than

700 investors from at least 74 countries in seven separate offerings. The individual offerings are set forth in Paragraphs 15, 16, 18, 20, 22, 24, and 26 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.

42. 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.

43. For example, Jay Peak has routinely attended events overseas where company representatives, including Stenger, have spoken and met with prospective investors. In addition, Jay Peak has sponsored booths and spoken at immigration-related conferences and events, both in the U.S. and abroad. 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.

44. While foreign residents are interested in investing to obtain their permanent green cards, they also are interested in achieving a return on their investment. Stenger has told investors he anticipated the individual projects would each make a two to six percent annual return once they were each complete and operating. In addition, the offering materials the Defendants provided to investors have touted their potential returns. 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. A Biomedical Phase VII investor received materials stating a five percent annual return is expected.

Other Biomedical Phase VII investors also received offering documents touting a four to six percent annual return once the project is built.

45. Interested investors in each of the partnerships generally put down a \$10,000 deposit, which goes towards their \$500,000 investment. The investors then normally receive from Jay Peak, and often from Stenger, offering materials that consist of a private placement memorandum, a business plan, and a limited partnership agreement.

46. Among the documents included in each business plan is one showing the cost of each project and the use of investor funds. 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. 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. 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.

47. 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. The costs are then broken down as \$10.4 million for construction, \$1.6 million for operating systems and equipment, \$800,000 for utilities and common areas, \$1.8 million for purchase of the land, approximately \$600,000 for contingencies, and approximately \$400,000 for working capital. Upon completion of the project, Jay Peak is entitled to take \$1.9 million in developer fees, for a total of \$17.5 million.

48. 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). In each project through Stateside Phase VI, the general partner is an entity in which Stenger is the sole principal. In Biomedical Phase VII, Stenger and Quiros are both principals in the general partner.

49. 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.

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

51. 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. Moreover, Quiros reviewed the contents of the Phase I-VI offering documents, was familiar with them, and understood he had to abide by them. He also approved the use of proceeds document in Phases III-VI.



52. Both Stenger and Quiros, as principals of the general partner for Biomedical Phase VII, reviewed and approved the contents of that project's offering documents, including the limited partnership agreement and the use of proceeds document.

53. 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. Each project had an escrow account at People's United Bank in Vermont (formerly known as the Chittenden Trust Company). 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.

54. The initial \$500,000 investment normally was deposited into the People's Bank account for the specific project in which the investor was participating. 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.

55. Stenger had no signatory or other authority over the Raymond James accounts. Rather, Quiros opened all of the Raymond James accounts, and had sole authority over them. The Raymond James broker listed on the accounts was Quiros' former son-in-law. Once the Raymond James accounts received transfers from the People's Bank accounts, it was solely Quiros who directed use of the funds.

56. 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. Investors played no role in the development, construction, or operation of the facilities.

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

57. Jay Peak was originally owned by a Canadian firm, Mont Saint-Sauveur International, Inc. (“MSSI”), that oversaw the Phase I securities offering. 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. Suites Phase I raised \$17.5 million from 35 investors from December 2006 through May 2008.

58. 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. The agreement was signed on June 13, 2008, and the parties closed on the deal 10 days later, June 23, 2008, for a final price of \$25.7 million.

59. Jay Peak owned Suites Phase I. During the time when Quiros and MSSI were negotiating the stock transfer agreement, Suites Phase I was raising funds from investors. Approximately eight people invested in the Suites Phase I limited partnership between January and May 2008.

60. 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). From July through September 2008, Hotel Phase II received \$500,000 apiece from another 15 investors (a total of \$7.5 million).

61. 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. He knew Suites Phase I was raising money and investigated how that was being done before he bought Jay Peak.

62. 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. MSSI representatives agreed, and Stenger opened a Suites Phase I account at Raymond James on May 20, 2008. A month later, on June 20, 2008, he opened a Hotel Phase II account at Raymond James.

63. 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. As a brokerage firm, Raymond James was not a bank and not FDIC-insured. 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. This cleared the way for the transfer of investor funds to Raymond James accounts. 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.

64. 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. Three days later, on June 20, MSSI transferred \$7 million in Hotel Phase II investor funds from People's Bank to Raymond James. Stenger signed the wire transfer request for this \$7 million. 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.

65. 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. 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.

66. 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.

67. Despite the fact that MSSSI 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. 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.

68. Quiros began his fraudulent use of investor funds on June 17, the day before the MSSSI letter, when he opened two accounts at Raymond James under his name and control, one each for Suites Phase I and Hotel Phase II. On the day of closing, June 23, MSSSI transferred the \$11 million in its Suites Phase I account at Raymond James to Quiros' new Suites Phase I account. The same day, MSSSI transferred the \$7 million in its Hotel Phase II account at Raymond James to Quiros' new Hotel Phase II account. MSSSI closed the two Raymond James accounts within days, leaving Quiros in total control of investor money. Stenger, as the sole principal of the Suites Phase I and Hotel Phase II general partners, knew he was supposed to control investor funds. Yet he willingly allowed Quiros to take control of the funds, abdicating the responsibilities clearly laid out for him in the limited partnership agreements.

69. 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. 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 MSSSI as partial payment for the Jay Peak purchase.

70. 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. 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.

71. 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.

72. Quiros and Q Resorts made all of these payments improperly using investor funds. 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. 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.

73. Stenger facilitated many of these payments by transferring additional money to the Raymond James accounts. 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. 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. Quiros turned right around and wired \$1.5 million of that money to the law firm

representing MSSSI. 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 MSSSI law firm. 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.

74. 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. As noted in Paragraph 47, 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. 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. 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. Therefore, it was only entitled to take about \$60,000 of the \$17.5 million of investor money in developer, contingent, and land fees. 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% 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. This is far short of the \$12.4 million of investor money Quiros improperly used on the Jay Peak purchase.

75. 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. 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. 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. Therefore, Jay Peak was not entitled to take any investor money as fees for itself at that time.

76. 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.

77. The use of investor funds to purchase Jay Peak also contravened prohibitions in the Phase I and II limited partnership agreements. Each agreement contained a Section 5.02, entitled “Limitations on the Authority of the General Partner.” 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.

## **VII. IMPROPER USE OF INVESTOR FUNDS FOR MARGIN LOANS**

78. 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.

79. Quiros' use of margin loans began in June 2008. 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. Put another way, the accounts went into debt to Raymond James when they incurred margin balances.

80. 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. 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.

81. 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. Stenger had signatory authority and control over that account. 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. 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. Each time this happened, Stenger violated terms of the limited partnership agreements. 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. 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.

82. The process in Phases II and IV-VII worked the same way. 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. 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. He signed one on October 1, 2010, expanding the list of accounts to Penthouse Phase III and Q Resorts. Quiros signed a credit agreement on February 10, 2011, adding the account for Golf and Mountain Phase IV. He signed the next one on August 25, 2011, adding the account for Lodge and Townhouses Phase V. On February 28, 2012, he signed a credit agreement adding the account for Stateside Phase VI as collateral for the margin loans. 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).

83. Thus, in every offering, Quiros put investor funds at risk by pledging them as collateral for the margin loans. 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. And, as described below in Paragraphs 92-95, Quiros eventually paid off the margin loans using investor funds.

84. Quiros' establishment of the margin loans violated the terms of each of the limited partnership agreements (which the Defendants provided to all investors). Those

agreements specifically prohibited the projects' general partners from encumbering or pledging investor funds as collateral without the express approval of the investors. 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. 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. 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.

85. 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. 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. That \$11 million purchase matched the \$11 million of Suites Phase I investor funds MSSI had transferred to Quiros' Suites Phase I account. 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. There was only \$3.4 million in investor funds left in the Suites Phase I account. 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). Under terms of the credit agreement Quiros had signed, that \$7.6 million was actually a debt to Raymond James. 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.

86. Quiros undertook the same acts in the Hotel Phase II account at Raymond James on the same day. On June 25, he ordered the purchase of \$7 million in Treasury Bills in that account. Again, this amount matched the \$7 million of Hotel Phase II investor funds MSSSI had transferred to Quiros' Hotel Phase II account. But again, Quiros had already transferred \$6 million of that amount out of the account to pay for Q Resorts' purchase of Jay Peak. *See* Paragraph 69. There was only \$1 million in investor funds left in the Hotel Phase II account. 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). Under terms of the credit agreement Quiros had signed, that \$6 million was actually a debt to Raymond James. 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.

87. 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. When he transferred funds out of the accounts to pay either Q Resorts' or MSSSI's law firm as described in Paragraphs 69-71, that often increased the margin loan balance in the accounts, putting investor funds further at risk.

88. 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. Stenger had authorized transfer of the funds from People's Bank. 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.

89. 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 (*see* Paragraphs 74-75 and 84). By February 2009, the combined margin loan balances of the two accounts had reached \$23.8 million. 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.

90. 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. Over the next three years, Quiros signed the aforementioned credit agreements pledging investor funds from Phases III-VI as collateral. 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.

91. Margin Loan III continued to be backed by Suites Phase I and Hotel Phase II investor funds, putting them at risk, until February 2012. In addition, during this same time, the Defendants commingled Suites Phase I investor funds with other projects. 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. 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.

92. 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. 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. The \$22.4 million of investor funds breaks down as follows: approximately \$5.8 million of this amount came from Stateside Phase VI, and approximately \$16.6 million of this amount came from Lodge and Townhouses Phase V.

93. 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). 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. 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.

94. From February 2012 through March 2014, Quiros used more than \$6.5 million of investor funds from Phases V-VI towards paying down Margin Loan IV. However, because Quiros spent approximately \$25.5 million on 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.

95. Raymond James then demanded that Quiros pay off Margin Loan IV. 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. The pay down and pay off of this margin loan was a major

contributor to Biomedical Phase VII project shortfalls.

### **VIII. MISREPRESENTATIONS AND OMISSIONS IN PHASES II-VI**

#### **A. Hotel Phase II**

96. 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. As discussed in Paragraph 75, the Hotel Phase II use of proceeds document set forth how these Defendants would spend investors' money, down to the dollar. 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*, as discussed in Paragraphs 68 to 73, they used \$9.5 million of Hotel Phase II investor money between June and September 2008 to help finance Quiros' and Q Resorts' purchase of Jay Peak.
- *Second*, as discussed in Paragraphs 79 to 92, 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.
- *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.
- *Fourth*, Quiros and Q Resorts used a net amount of \$3 million of Hotel Phase II investor funds on Penthouse Phase III project costs.

97. The same Defendants listed in Paragraph 96 also misrepresented in the Hotel Phase II limited partnership agreement certain restrictions on the general partner's use of investor funds. As set forth in Paragraph 77, 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. 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 these ways:

- *First*, as discussed in Paragraphs 79 to 92, 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.
- *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.
- *Third*, Quiros and Q Resorts used a net amount of \$3 million of Hotel Phase II investor funds on Penthouse Phase III project costs.
- *Fourth*, these 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. This included an April 28, 2011 \$500,000 transfer from a Phase II account into Q Resorts' Raymond James account.

98. Stenger was on notice as early as 2010 that Quiros was improperly using investor funds. The former CFO 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. The CFO 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. Stenger falsely told the CFO there were sufficient funds either from Hotel Phase II investor money or future project management fees to cover Hotel Phase II construction costs.

### **B. Penthouse Phase III**

99. 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.

100. Penthouse Phase III raised \$32.5 million from 65 investors. 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 (included in this amount was approximately \$900,000 for cost overruns and approximately \$2.8 million for construction supervision fees, and the remaining \$4.4 million on the accompanying recreation and learning centers and a café and bar (Jay Peak was to contribute another \$5 million). 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 developer fee up to a maximum of \$2.8 million; and (b) if there were cost overruns, the developer could take up to \$900,000 in investor funds.

101. 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. There was nothing in the use of proceeds document



indicating the Defendants could spend investor funds on paying down a margin loan.

102. The same Defendants listed in Paragraph 99 also misrepresented in the Penthouse Phase III limited partnership agreement certain restrictions on the general partner's use of investor funds. 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. The Defendants violated those provisions in two ways:

- *First*, as discussed above, 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.
- *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.

#### **C. Golf And Mountain Phase IV**

103. Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Golf and Mountain Phase IV use of proceeds document how they would spend investor money.

104. Golf and Mountain Phase IV raised \$45 million from 90 investors. 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. 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.

105. The Defendants in Paragraph 103 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. There was nothing in the use of proceeds document stating the Defendants could use investor funds to pay down a margin loan.

106. 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. 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. Yet the Defendants violated these provisions by Quiros and Q Resorts using the funds as collateral for, and to pay down, Margin Loan III. 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.

#### **D. Lodge and Townhouses Phase V**

107. Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and

Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Lodge and Townhouses Phase V use of proceeds document how they would spend investor money.

108. Lodge and Townhouses Phase V raised \$45 million from 90 investors. 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. 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.

109. The Defendants in Paragraph 107 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. There was nothing in the use of proceeds document stating the Defendants could use investor money to pay down and pay off margin loans.

110. 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. Yet these Defendants violated these provisions by Quiros and Q Resorts pledging partnership assets as collateral and by paying down the two margin loans at Raymond James and paying off Margin Loan III. 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.

#### **E. Stateside Phase VI**

111. Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, and Stenger (and Quiros and Q Resorts as the owners of Jay Peak) misrepresented in the Stateside Phase VI use of proceeds document how they would spend investor money.

112. Stateside Phase VI raised \$67 million from 134 investors. 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. In addition, the project sponsor had to contribute \$20 million to the project. 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.

113. The Defendants in Paragraph 111 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. There was nothing in the use of proceeds document indicating the Defendants could spend investor money on paying down or paying off margin loans.

114. These same Defendants also misrepresented in the Stateside Phase VI limited partnership agreement the restrictions on the general partner's use of investor funds. 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. Yet these Defendants violated these provisions by Quiros and Q Resorts pledging partnership assets as collateral and by investor funds to pay down and pay off margin loans. 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.

115. 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. The Defendants built the Stateside hotel in 2013, but are not anywhere close to completing the remainder of the project – the vacation cottages, the medical center, and the recreation center. Based on the amount the Defendants have already spent on building the vacation cottages, the medical center, and the recreation center and the Defendants' own future cost estimates, they need at least another \$26

million to finish Stateside. With all the commingling of funds and use of money for improper purposes, including paying off the margin loan, as of September 30, 2015, the Stateside accounts had only approximately \$58,000 left in them. 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.

## **IX. MISREPRESENTATIONS AND OMISSIONS IN BIOMEDICAL PHASE VII**

### **A. Misrepresentations And Omissions About The FDA Approval Process**

116. Quiros, Stenger, Jay Peak, Biomedical Phase VII, and AnC Bio Vermont GP Services began offering the Biomedical Phase VII investment in November 2012. It purportedly involves the construction of the biomedical research facility the Defendants will use for several purposes. These include operating and leasing “clean rooms” – facilities in pristine condition for medical research – conducting stem cell research, and developing, manufacturing, and distributing certain artificial organs. 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.

117. 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. They forecasted the project would create 3,000 jobs and achieve more than \$306 million in annual revenue by 2018. 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. Moreover, practically from the beginning, Quiros started siphoning tens of millions of dollars from this project.

118. The success of the biomedical research facility was highly dependent on FDA

approval of the products, as the products requiring FDA approval accounted for 67% to 100% of the facility's projected annual revenue from 2014 through 2018. 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. Thus, any delay or failure to obtain FDA approval would dramatically reduce the scope of the research center and the projected revenues.

119. The Defendants listed in Paragraph 116 knew their products required FDA approval. The offering materials indicated the project "plans on developing, producing, and marketing the products . . . once FDA approval is obtained." 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. The Defendants were aware of this fact also. 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.

120. Despite the Defendants' knowledge of the lengthy FDA process, the Biomedical Phase VII offering documents misrepresented the status of the process. In an information sheet attached to the PPM, the Defendants stated that the T-PLS device was "currently under process of US FDA approval." In the same document, the offering materials indicated the C-PAK system was "currently under progress of US FDA approval (2013)."

121. 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. Stenger and Quiros were fully aware of this fact. At the time the Defendants distributed the Biomedical Phase VII offering materials in 2012 and 2013, Stenger was heading up the company's FDA approval efforts. Stenger knew full well that the *only*

contact he had had with the FDA prior to 2012 consisted of two isolated email exchanges in June 2010 and February 2011, and a telephone call in 2010. All of these exchanges were about Biomedical Phase VII first contacting the FDA, not to submit any products for review, but only to get more information on and discuss the review and approval process.

122. Thus, there was no truth to the statements that the Biomedical Phase VII products had been submitted to the FDA. 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. Even Stenger has acknowledged the statements in the offering materials were misleading.

123. 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. 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.

#### **B. Baseless Revenue Projections**

124. 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.

125. 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. In other words, that was the date by which Biomedical would *begin* developing and testing its products. 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.

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

### **C. Further Misrepresentations And Misappropriation Of Phase VII Investor Money**

127. The Biomedical Phase VII use of proceeds document given to investors also misrepresented how Jay Peak, the general partner of Phase VII (AnC Bio Vermont GP Services), Stenger, Quiros, and Q Resorts would spend investor money. Furthermore, as with the previous Phases, the Phase VII limited partnership agreement misrepresented the restrictions on how the same Defendants could use investor money.

128. 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. In addition, the project sponsor must contribute \$8 million to the project. 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. The Defendants cannot charge construction supervision fees on any other category of costs besides construction of the clean rooms. As of September 30, 2015, at best only approximately \$2 million of these construction supervision fees had been earned.

129. 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. 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.

130. Biomedical Phase VII, Jay Peak, Stenger, Quiros, Q Resorts, and AnC Bio Vermont GP Services regularly violated the use of proceeds document and limited partnership agreements when they pilfered tens of millions of dollars of investor funds for a variety of improper expenses:

- \$18.2 million towards paying off Margin Loan IV at Raymond James, which the brokerage firm had called due;
- \$4.2 million for corporate taxes to the IRS and State of Vermont;

- \$10.7 million to back Quiros' personal line of credit, out of which he used \$6 million more for personal income taxes, \$1.4 million to pay purported returns to investors in earlier projects, and \$3.5 million to pay Stateside construction vendors;
- \$2.2 million to purchase a Trump Place condominium for Quiros in New York;
- \$7 million to purchase Q Burke resort;
- \$7.9 million to Northeast for purported construction supervision fees when little construction has taken place; and
- \$6 million for the sale of seven acres of land for the research facility from GSI to Biomedical Phase VII in December 2012. 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. 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.

1. Paying Off Margin Loan IV

131. As discussed above in Paragraph 95, Raymond James insisted that Quiros pay off the \$19 million balance of Margin Loan IV. In response, in March 2014, Quiros paid off Margin Loan IV using more than \$18 million of Biomedical Phase VII funds. 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. 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.”

132. Accordingly, from approximately February 2013 through approximately October 2014, JCM submitted a series of false invoices for Clean Room and other costs. JCM received \$47 million of Biomedical Phase VII investor funds in return. Quiros did not use a vast majority of the investor funds JCM received for their intended purpose (construction costs). 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. 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.

133. 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.

## 2. Taxes To The IRS And The State Of Vermont

134. 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.

## 3. The Citibank Line Of Credit

135. 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. For each dollar of the line of credit Quiros used, Citibank held a corresponding amount of the investor funds. 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. Quiros had falsely claimed to Citibank that none of the funds backing the account belonged to JCM's customers, such as Biomedical Phase VII.

136. Around April 2015, Quiros transferred approximately \$10.7 million of Biomedical Phase VII investor funds as collateral for the personal line of credit. 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. 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. 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.

#### 4. The Trump Place Luxury Condominium

137. On April 12, 2013, Quiros transferred \$3 million in Biomedical Phase VII investor funds to GSI. 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.

#### 5. Q Burke Mountain Resort

138. 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. Quiros and Stenger are trying to raise \$98 million from the Q Burke EB-5 offering, and to date have raised approximately \$53 million. As described above, Quiros improperly used approximately \$7 million from the last margin loan (collateralized by investor funds) to purchase Q Burke. 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).

6. Misrepresentations To The State Of Vermont

139. 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. 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. Those same documents further state that Biomedical Phase VII has \$21 million of investor funds in operating accounts.

140. 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.

**D. The Status Of Biomedical Phase VII**

141. As of Sept. 30, 2015, Quiros, Stenger, Biomedical Phase VII, Jay Peak, and Q Resorts have raised at least \$83 million from Biomedical Phase VII investors. Of this amount, the Defendants have taken \$69 million, while the remaining \$14 million remains in escrow. However, they have done very little work on the project – just site preparation and minimal groundbreaking. In total, they have spent only approximately \$10 million of the \$69 million on Biomedical Phase VII vendors and related project costs.

142. Biomedical Phase VII documents show the company needs an additional \$84 million to complete the project. However, there is only about \$5.2 million remaining in non-escrow accounts associated with the Biomedical Phase VII project, and the aforementioned \$14 million in escrow. Furthermore, the Defendants can only raise an additional \$27 million from new Biomedical Phase VII investors before the offering is fully subscribed. 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. 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.

#### **X. THE DEFENDANTS' CONTINUED FUNDRAISING**

143. The Defendants continue to raise money through additional EB-5 projects, as well as in Biomedical Phase VII. As discussed above, Quiros, with the assistance of Stenger, continues to solicit investors for the \$98 million Q Burke project.

144. The Defendants also continue to solicit new investors for the remaining subscriptions available in Biomedical Phase VII. To that end, Stenger and the other members of the Jay Peak organization regularly travel around the world in search of new investors. In the last few months, Stenger and others (including Quiros on occasion), have traveled to Vietnam, Dubai, Istanbul, Hong Kong, Singapore, and South America.

145. The Defendants also make presentations in this country, including at recent immigration conferences and events in Las Vegas and Dallas.

146. At these events and in other solicitations, the Defendants continue to make misrepresentations and omissions to investors. The State of Vermont directed Biomedical Phase VII to stop raising money in June 2014 due to questions over its offering materials. Ultimately, the Biomedical Phase VII defendants began soliciting new investors with revised offering materials in 2015, but were not allowed to have new invested funds released from escrow until they completed a financial review, which they have not completed. However, the revised offering materials still contain misrepresentations and omissions.

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

148. 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.

## **XI. CLAIMS FOR RELIEF**

### **SUITES PHASE I**

#### **COUNT 1**

##### **Section 17(a)(1) of the Securities Act**

**(Against Suites I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

149. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

150. Defendants Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

151. By reason of the foregoing, Suites Phase I, Jay Peak Management, Jay Peak, Q



Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT 2**

**Section 17(a)(3) of the Securities Act  
(Against Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

152. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

153. Defendants Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

154. By reason of the foregoing, Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

**COUNT 3**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act  
(Against Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

155. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

156. Defendants Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

157. By reason of the foregoing, Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

#### **COUNT 4**

##### **Section 10(b) and Rule 10b-5(c) of the Exchange Act (Against Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

158. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

159. Defendants Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

160. By reason of the foregoing, Suites Phase I, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

#### **COUNT 5**

##### **Section 20(a) – Control Person Liability For Suites Phase I and Jay Peak Management’s Violations Of The Exchange Act (Against Quiros)**

161. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

162. Beginning no later than June 23, 2008, Quiros has been, directly or indirectly, a control person of Suites Phase I and Jay Peak Management for purposes of Section 20(a) of the

Exchange Act, 15 U.S.C. § 78t(a).

163. Beginning no later than June 23, 2008, Suites Phase I and Jay Peak Management violated Section 10(b) and Rule 10b-5 of the Exchange Act.

164. As a control person of Suites Phase I and Jay Peak Management, Quiros is jointly and severally liable with and to the same extent as Suites Phase I and Jay Peak Management for each of their violations of the Section 10(b) and Rule 10b-5 of the Exchange Act.

165. By reason of the foregoing, Quiros directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

## **HOTEL PHASE II**

### **COUNT 6**

**Section 17(a)(1) of the Securities Act**  
**(Against Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

166. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

167. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

168. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

### **COUNT 7**

**Section 17(a)(2) of the Securities Act**

**(Against Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

169. The Commission repeats and realleges Paragraphs 1-17, 28-98, 115, and 142-148 of this Complaint as if fully set forth herein.

170. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

171. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT 8**

**Section 17(a)(3) of the Securities Act**

**(Against Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

172. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

173. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

174. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to

violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

**COUNT 9**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act**  
**(Against Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

175. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

176. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

177. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

**COUNT 10**

**Section 10(b) and Rule 10b-5(b) of the Exchange Act**  
**(Against Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger)**

178. The Commission repeats and realleges Paragraphs 1-17, 28-98, 115, and 142-148 of this Complaint as if fully set forth herein.

179. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

180. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

#### **COUNT 11**

##### **Section 10(b) and Rule 10b-5(c) of the Exchange Act (Against Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger)**

181. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

182. Defendants Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

183. By reason of the foregoing, Hotel Phase II, Jay Peak Management, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

#### **COUNT 12**

##### **Section 20(a) – Control Person Liability For Hotel Phase II and Jay Peak Management's Violations Of The Exchange Act (Against Quiros)**

184. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

185. Beginning no later than June 23, 2008, Quiros has been, directly or indirectly, a control person of Hotel Phase II and Jay Peak Management for purposes of Section 20(a) of the

Exchange Act, 15 U.S.C. § 78t(a).

186. Beginning no later than June 23, 2008, Hotel Phase II and Jay Peak Management violated Section 10(b) and Rule 10b-5 of the Exchange Act.

187. As a control person of Hotel Phase II and Jay Peak Management, Quiros is jointly and severally liable with and to the same extent as Hotel Phase II and Jay Peak Management for each of their violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

188. By reason of the foregoing, Quiros, directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

### **COUNT 13**

#### **Aiding and Abetting Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger's Violations Of Section 10(b) and Rule 10b-5(b) of the Exchange Act (Against Quiros and Q Resorts)**

189. The Commission repeats and realleges Paragraphs 1-17, 28-98, 115, and 142-148 of this Complaint as if fully set forth herein.

190. From no later than June 2008, Hotel Phase II, Jay Peak Management, Jay Peak, and Stenger each, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

191. Quiros and Q Resorts knowingly or recklessly substantially assisted those four Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

192. By reason of the foregoing, Quiros and Q Resorts, directly or indirectly, violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

**PENTHOUSE PHASE III**

**COUNT 14**

**Section 17(a)(1) of the Securities Act  
(Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

193. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

194. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

195. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT 15**

**Section 17(a)(2) of the Securities Act  
(Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

196. The Commission repeats and realleges Paragraphs 1-14, 18-19, 28-56, 78-95, 99-102, 115, and 142-148 of this Complaint as if fully set forth herein.

197. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of



transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

198. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

#### **COUNT 16**

##### **Section 17(a)(3) of the Securities Act (Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger)**

199. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

200. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

201. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

#### **COUNT 17**

##### **Section 10(b) and Rule 10b-5(a) of the Exchange Act (Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger)**

202. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

203. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

204. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated and, unless enjoined, are reasonably likely to continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

#### **COUNT 18**

##### **Section 10(b) and Rule 10b-5(b) of the Exchange Act (Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, and Stenger)**

205. The Commission repeats and realleges Paragraphs 1-14, 18-19, 28-56, 78-95, 99-102, 115, and 142-148 of this Complaint as if fully set forth herein.

206. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

207. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

**COUNT 19**

**Section 10(b) and Rule 10b-5(c) of the Exchange Act**  
**(Against Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

208. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

209. Defendants Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

210. By reason of the foregoing, Penthouse Phase III, Jay Peak GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

**COUNT 20**

**Section 20(a) – Control Person Liability**  
**For Penthouse Phase III and Jay Peak GP Services' Violations Of The Exchange Act**  
**(Against Quiros)**

211. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

212. Beginning no later than July 2010, Quiros has been, directly or indirectly, a control person of Penthouse Phase III and Jay Peak GP Services for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

213. Beginning no later than July 2010, Penthouse Phase III and Jay Peak GP Services

violated Section 10(b) and Rule 10b-5 of the Exchange Act.

214. As a control person of Penthouse Phase III and Jay Peak GP Services, Quiros is jointly and severally liable with and to the same extent as Penthouse Phase III and Jay Peak GP Services for each of their violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

215. By reason of the foregoing, Quiros, directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

### **COUNT 21**

#### **Aiding and Abetting Penthouse Phase III, Jay Peak GP Services, Jay Peak, and Stenger's Violations Of Section 10(b) of the Exchange Act and Rule 10b-5(b) (Against Quiros and Q Resorts)**

216. The Commission repeats and realleges Paragraphs 1-14, 18-19, 28-56, 78-95, 99-102, 115, and 142-148 above of this Complaint as if fully set forth herein.

217. From no later than July 2010, Penthouse Phase III, Jay Peak GP Services, Jay Peak, and Stenger each, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

218. Quiros and Q Resorts knowingly or recklessly substantially assisted those four Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

219. By reason of the foregoing, Quiros and Q Resorts, directly or indirectly, violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b)

of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

**GOLF AND MOUNTAIN PHASE IV**

**COUNT 22**

**Section 17(a)(1) of the Securities Act  
(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

220. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

221. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

222. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT 23**

**Section 17(a)(2) of the Securities Act  
(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

223. The Commission repeats and realleges Paragraphs 1-14, 20-21, 28-56, 78-95, 103-106, 115, and 142-148 of this Complaint as if fully set forth herein.

224. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and

omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

225. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT 24**

**Section 17(a)(3) of the Securities Act  
(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger)**

226. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

227. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

228. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

**COUNT 25**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act  
(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger)**

229. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

230. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

231. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

### **COUNT 26**

#### **Section 10(b) and Rule 10b-5(b) of the Exchange Act** **(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger)**

232. The Commission repeats and realleges Paragraphs 1-14, 20-21, 28-56, 78-95, 103-106, 115, and 142-148 of this Complaint as if fully set forth herein,

233. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

234. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

**COUNT 27**

**Section 10(b) and Rule 10b-5(c) of the Exchange Act  
(Against Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

235. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

236. Defendants Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

237. By reason of the foregoing, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

**COUNT 28**

**Section 20(a) – Control Person Liability  
For Golf and Mountain Phase IV and Jay Peak GP Services Golf's Violations Of  
The Exchange Act (Against Quiros)**

238. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

239. Beginning no later than December 2010, Quiros has been, directly or indirectly, a control person of Golf and Mountain Phase IV and Jay Peak GP Services Golf for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

240. Beginning no later than December 2010, Golf and Mountain Phase IV and Jay



Peak GP Services Golf violated Section 10(b) and Rule 10b-5 of the Exchange Act.

241. As a control person of Golf and Mountain Phase IV and Jay Peak GP Services Golf, Quiros is jointly and severally liable with and to the same extent as Golf and Mountain Phase IV and Jay Peak GP Services Golf for each of their violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

242. By reason of the foregoing, Quiros, directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

### **COUNT 29**

#### **Aiding and Abetting Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger's Violations Of Section 10(b) of the Exchange Act and Rule 10b-5(b) (Against Quiros and Q Resorts)**

243. The Commission repeats and realleges Paragraphs 1-14, 20-21, 28-56, 78-95, 103-106, 115, and 142-148 of this Complaint as if fully set forth herein.

244. From no later than December 2010, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Jay Peak, and Stenger each, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

245. Quiros and Q Resorts knowingly or recklessly substantially assisted those four Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

246. By reason of the foregoing, Quiros and Q Resorts, directly or indirectly, violated,

and unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

**LODGE AND TOWNHOUSES PHASE V**

**COUNT 30**

**Section 17(a)(1) of the Securities Act**

**(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger)**

247. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

248. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

249. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT 31**

**Section 17(a)(2) of the Securities Act**

**(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger)**

250. The Commission repeats and realleges Paragraphs 1-14, 22-23, 28-56, 78-95, 107-110, 115, and 142-148 of this Complaint as if fully set forth herein.

251. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or

instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

252. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT 32**

**Section 17(a)(3) of the Securities Act  
(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak,  
Q Resorts, Quiros, and Stenger)**

253. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

254. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

255. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

**COUNT 33**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act**  
**(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak,  
Q Resorts, Quiros, and Stenger)**

256. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

257. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

258. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

**COUNT 34**

**Section 10(b) and Rule 10b-5(b) of the Exchange Act**  
**(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge,  
Jay Peak, and Stenger)**

259. The Commission repeats and realleges Paragraphs 1-14, 22-23, 28-56, 78-95, 107-110, 115, and 142-148 of this Complaint as if fully set forth herein.

260. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

261. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

**COUNT 35**

**Section 10(b) and Rule 10b-5(c) of the Exchange Act**  
**(Against Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger)**

262. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

263. Defendants Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

264. By reason of the foregoing, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

**COUNT 36**

**Section 20(a) – Control Person Liability**  
**For Lodge and Townhouses Phase V and Jay Peak GP Services Lodge’s Violations Of The Exchange Act (Against Quiros)**

265. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

266. Beginning no later than May 2011, Quiros has been, directly or indirectly, a control person of Lodge and Townhouses Phase V and Jay Peak GP Services Lodge for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

267. Beginning no later than May 2011, Lodge and Townhouses Phase V and Jay Peak GP Services Lodge violated Section 10(b) and Rule 10b-5 of the Exchange Act.

268. As a control person of Lodge and Townhouses Phase V and Jay Peak GP Services Lodge, Quiros is jointly and severally liable with and to the same extent as Lodge and Townhouses Phase V and Jay Peak GP Services Lodge for each of their violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

269. By reason of the foregoing, Quiros, directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

### **COUNT 37**

#### **Aiding and Abetting Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and Stenger's Violations Of Section 10(b) of the Exchange Act and Rule 10b-5(b) (Against Quiros and Q Resorts)**

270. The Commission repeats and realleges Paragraphs 1-14, 22-23, 28-56, 78-95, 107-110, 115, and 142-148 of this Complaint as if fully set forth herein.

271. From no later than May 2011, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Jay Peak, and Stenger each, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the

Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

272. Quiros and Q Resorts knowingly or recklessly substantially assisted those four Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

273. By reason of the foregoing, Quiros and Q Resorts, directly or indirectly, violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

### **STATESIDE PHASE VI**

#### **COUNT 38**

##### **Section 17(a)(1) of the Securities Act**

**(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger)**

274. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

275. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

276. By reason of the foregoing, Stateside Phase VI, Jay Peak Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

#### **COUNT 39**

##### **Section 17(a)(2) of the Securities Act**

**(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger)**

277. The Commission repeats and realleges Paragraphs 1-14, 24-25, 28-56, 78-95,

111-115, and 142-148 of this Complaint as if fully set forth herein.

278. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

279. By reason of the foregoing, Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT 40**

**Section 17(a)(3) of the Securities Act**  
**(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger)**

280. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

281. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

282. By reason of the foregoing, Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).



**COUNT 41**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act  
(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

283. The Commission adopts by reference Paragraphs 1-148 of this Complaint as if fully set forth herein.

284. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

285. By reason of the foregoing, Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

**COUNT 42**

**Section 10(b) and Rule 10b-5(b) of the Exchange Act  
(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, and Stenger)**

286. The Commission repeats and realleges Paragraphs 1-14, 24-25, 28-56, 78-95, 111-115, and 142-148 of this Complaint as if fully set forth herein.

287. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

288. By reason of the foregoing, Stateside Phase VI, Jay Peak GP Services Stateside,

Jay Peak, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

**COUNT 43**

**Section 10(b) and Rule 10b-5(c) of the Exchange Act  
(Against Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

289. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

290. Defendants Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

291. By reason of the foregoing, Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

**COUNT 44**

**Section 20(a) – Control Person Liability  
For Stateside Phase VI and Jay Peak GP Services Stateside’s Violations Of  
The Exchange Act (Against Quiros)**

292. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

293. Beginning no later than October 2011, Quiros has been, directly or indirectly, a

control person of Stateside Phase VI and Jay Peak GP Services Stateside for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

294. Beginning no later than October 2011, Stateside Phase VI and Jay Peak GP Services Stateside violated Section 10(b) and Rule 10b-5 of the Exchange Act.

295. As a control person of Stateside Phase VI and Jay Peak GP Services Stateside, Quiros is jointly and severally liable with and to the same extent as Stateside Phase VI and Jay Peak GP Services Stateside for each of their violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

296. By reason of the foregoing, Quiros, directly and indirectly violated, and unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a), and 17 C.F.R. § 240.10b-5.

#### **COUNT 45**

##### **Aiding and Abetting Stateside and Jay Peak GP Services Stateside's Violations Of Section 10(b) of the Exchange Act and Rule 10b-5(b) (Against Quiros and Q Resorts)**

297. The Commission repeats and realleges Paragraphs 1-14, 24-25, 28-56, 78-95, 111-115, and 142-148 of this Complaint as if fully set forth herein.

298. From no later than October 2011, Stateside Phase VI, Jay Peak GP Services Stateside, Jay Peak, and Stenger each, directly or indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

299. Quiros and Q Resorts knowingly or recklessly substantially assisted those four

Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

300. By reason of the foregoing, Quiros and Q Resorts, directly or indirectly, violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

**BIOMEDICAL PHASE VII**

**COUNT 46**

**Section 17(a)(1) of the Securities Act  
(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

301. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

302. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes, or artifices to defraud.

303. By reason of the foregoing, Biomedical, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT 47**

**Section 17(a)(2) of the Securities Act  
(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

304. The Commission repeats and realleges Paragraphs 1-14, 26-56, 78-95, and 115-148 of this Complaint as if fully set forth herein.

305. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q

Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

306. By reason of the foregoing, Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT 48**

**Section 17(a)(3) of the Securities Act  
(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts,  
Quiros, and Stenger)**

307. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

308. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

309. By reason of the foregoing, Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue, to violate Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

**COUNT 49**

**Section 10(b) and Rule 10b-5(a) of the Exchange Act  
(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts,**

**Quiros, and Stenger)**

310. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

311. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

312. By reason of the foregoing, Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

**COUNT 50**

**Section 10(b) and Rule 10b-5(b) of the Exchange Act**  
**(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Quiros, and Stenger)**

313. The Commission repeats and realleges Paragraphs 1-14, 26-56, 78-95, and 115-148 of this Complaint as if fully set forth herein.

314. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

315. By reason of the foregoing, Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Quiros, and Stenger violated and, unless enjoined, are reasonably likely to

continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

**COUNT 51**

**Section 10(b) and Rule 10b-5(c) of the Exchange Act**  
**(Against Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger)**

316. The Commission repeats and realleges Paragraphs 1-148 of this Complaint as if fully set forth herein.

317. Defendants Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

318. By reason of the foregoing, Biomedical Phase VII, AnC Bio Vermont GP Services, Jay Peak, Q Resorts, Quiros, and Stenger violated, and unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c).

**COUNT 52**

**Aiding and Abetting Biomedical Phase VII, AnC Bio Vermont GP Services, and Quiros' Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)**  
**(Against Q Resorts)**

319. The Commission repeats and realleges Paragraphs 1-14, 26-56, 78-95, and 115-148 of this Complaint as if fully set forth herein.

320. From no later than November 2012, Biomedical Phase VII, AnC Bio Vermont GP Services, and Quiros each, directly or indirectly, by use of the means and instrumentalities of

interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

321. Q Resorts knowingly or recklessly substantially assisted those three Defendants' violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

322. By reason of the foregoing, Q Resorts, directly or indirectly, violated, and unless enjoined, is reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

## **XII. RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests the Court find the Defendants committed the violations alleged, and:

### **A. Temporary Restraining Order and Preliminary Injunctive Relief**

Issue a Temporary Restraining Order and a Preliminary Injunction restraining and enjoining: (1) Quiros, Stenger, Jay Peak, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services from violating Section 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act; (2) Quiros from violating Section 20(a) of the Exchange Act; and (3) Quiros and Q Resorts from aiding and abetting violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

### **B. Permanent Injunctive Relief**

Issue a Permanent Injunction restraining and enjoining: (1) all Defendants from violating Sections 17(a)(1) and (3) of the Securities Act, and Section 10(b) and Rules 10b-5(a) and (c) of



the Exchange Act; (2) Quiros, Stenger, Jay Peak, Q Resorts, Hotel Phase II, Jay Peak Management, Penthouse Phase III, Jay Peak GP Services, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services from directly or indirectly violating Sections 17(a)(2) of the Securities Act and Section 10(b) and Rule 10b-5(b) of the Exchange Act; (3) Quiros from violating Section 20(a) of the Exchange Act; and (4) Quiros and Q Resorts from aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5(b).

### **C. Conduct-Based Injunctive Relief**

Issue a Temporary Restraining Order, a Preliminary Injunction and Permanent Injunction restraining and enjoining Quiros and Stenger, at a minimum from directly or indirectly, including through any entity they own or control: (a) participating in the issuance, offer or sale of any securities issued through the EB-5 Immigrant Investor Program (provided, however, that such injunction would not prevent them from purchasing or selling securities for their own accounts); and (b) 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.

### **D. Disgorgement**

Issue an Order directing all Defendants (except Stenger) and all Relief Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

### **E. Civil Penalty**

Issue an Order directing all Defendants to pay civil money penalties 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. § 78(d)(3).

**F. Sworn Accounting**

Issue an Order directing all Defendants except Stenger and all Relief Defendants to provide a sworn accounting of all proceeds received resulting from the acts/or courses of conduct alleged in this Complaint.

**G. Asset Freeze**

Issue an Order freezing the assets of Defendants Quiros, Q Resorts, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services and all Relief Defendants until further Order of the Court.

**H. Appointment of a Receiver**

Appoint a receiver over Defendants Jay Peak, Q Resorts, Suites Phase I, Hotel Phase II, Jay Peak Management, Penthouse Phase III, Jay Peak GP Services, Golf and Mountain Phase IV, Jay Peak GP Services Golf, Lodge and Townhouses Phase V, Jay Peak GP Services Lodge, Stateside Phase VI, Jay Peak GP Services Stateside, Biomedical Phase VII, and AnC Bio Vermont GP Services, and all Relief Defendants.

**I. Records Preservation**

Issue an Order restraining and enjoining all Defendants and Relief Defendants from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to all Defendants and Relief Defendants, wherever located and in whatever form, electronic or otherwise, that refer, reflect or relate to the acts or courses of conduct alleged in this

Complaint, until further Order of this Court.

**J. Officer and Director Bar**

Issue an Order barring Defendant Quiros from and serving as an officer or director of any public company pursuant to Section 20(e) of the Securities Act, Sections 21(d)(2) and 21(d)(5) of the Exchange Act, and Section 305(b)(5) of the Sarbanes-Oxley Act.


**K. Further Relief**

Grant such other and further relief as may be necessary and appropriate.

Respectfully submitted,

April 12, 2016

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# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2019 MAY 21 PM 12: 27

CLERK  
BY    
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

ARIEL QUIROS,  
WILLIAM KELLY,  
JONG WEON CHOI, aka Alex Choi, and  
WILLIAM STENGER,  
Defendants

Criminal No. 5:19-cr-76-1-4

INDICTMENT

The Grand Jury charges:

COUNT ONE

At all times relevant to this indictment:

The Defendants

1. Defendant ARIEL QUIROS, from Florida, purchased the Jay Peak Resort in Jay, Vermont in 2008. QUIROS had long-term business relationships with WILLIAM KELLY and JONG WEON CHOI, aka Alex Choi.

2. Defendant WILLIAM KELLY, from Florida, had long acted as an advisor for QUIROS and participated in various business ventures with QUIROS. In 2011, QUIROS made KELLY Chief Operating Officer of the Jay Peak Resort.

3. Defendant JONG WEON CHOI, aka Alex Choi, from South Korea, ran AnC Korea. In or about 2007, CHOI oversaw the construction of a biotechnology facility in Korea for AnC Korea. In early 2013, CHOI was detained as part of a criminal investigation in Korea relating to his operation of AnC Korea. He was released for a period during the second half of

2013 and detained again for most of 2014. In 2016, he was convicted of multiple financial frauds in Korea associated with his management of AnC Korea.

4. Defendant WILLIAM STENGER, from Vermont, managed the Jay Peak Resort before QUIROS purchased it. STENGER knew QUIROS before the purchase and assisted QUIROS with the purchase. After the purchase, QUIROS continued to employ STENGER as the President and manager of the resort.

#### The Businesses

5. Jay Peak, Inc., a Vermont corporation, operated Jay Peak Resort, in Jay, Vermont.

6. Jay Peak Biomedical Research Park L.P. was a Vermont limited partnership associated with the AnC Vermont EB-5 project, a plan to operate a biotechnology facility in Newport, Vermont. The limited partnership was supposed to construct and own the biotechnology facility, purchase distribution rights for certain products from AnC Korea, and then participate in the operations at the AnC Vermont facility. The project was never completed.

7. AnC Bio Vermont GP Services, LLC, was a Vermont limited liability company that acted as general partner for the AnC Vermont project. Its managing members were QUIROS and STENGER.

8. AnC Bio VT LLC was a Vermont limited liability company that developed and sponsored the AnC Vermont project. Its managing members were originally QUIROS, STENGER, and QUIROS's son. In or about early 2015, QUIROS took over his son's interest in AnC Bio VT LLC.

9. AnC Bio, Inc., a Korean corporation, began operations in approximately 2009 as the successor corporation to Bioheart Manufacturing, the corporation that owned the Korean biotechnology facility. In or about 2009, AnC Bio, Inc. became a subsidiary of AnC Bio

Holdings, Inc., a Korean publicly traded company. In or about 2013, after CHOI was detained in Korea, he created AnC Biopharm, Inc., to appear as a separate business from AnC Bio, Inc. CHOI controlled each of these corporations, which are here referred to collectively as AnC Korea.

10. Jay Construction Management, Inc. (JCM), a Vermont corporation with offices in Miami, Florida, was created by the defendants in 2011. CHOI was listed as the Director and President of JCM, but QUIROS controlled JCM. In 2014, QUIROS took formal ownership of JCM.

11. GSI of Dade County, Inc. (GSI), a Florida corporation, served as a corporate shell for QUIROS's personal business. QUIROS paid personal expenses through GSI bank accounts.

12. Q Resorts, Inc., a Delaware corporation, was organized in 2008 by QUIROS to own Jay Peak, Inc. QUIROS was the sole owner, officer and director of Q Resorts.

13. North East Contract Services, LLC (NECS), a Florida limited liability company owned by KELLY, was started in or about 2012 by KELLY with QUIROS's approval to provide construction supervision services for EB-5 projects.

#### EB-5 Foreign Investments

14. The EB-5 Immigrant Investor Program was created by Congress in 1990 to boost the United States economy through job creation. EB-5 immigrant investors have the opportunity to become lawful permanent residents of the United States by investing in job-creating enterprises in the United States. The particulars of the EB-5 program vary by project and location, but relevant to this indictment an immigrant investor could qualify for permanent resident status (commonly known as a green card) by investing \$500,000 in a commercial enterprise approved by the Vermont EB-5 Regional Center and by U.S. Citizenship and

Immigration Services (CIS). CIS made an initial assessment for approval of a project based on whether an investor's I-526 application showed that the commercial enterprise would create within the near future ten jobs for each investment. CIS considered a number of factors in approving a commercial enterprise, including the credibility and financial viability of the project business plan. If approved, the investor could obtain a conditional green card. Two years after receiving the conditional green card, the investor had to demonstrate to CIS in an I-829 application that ten jobs had been, or would soon be, created to receive a permanent green card.

15. The State of Vermont ran a federally designated EB-5 regional center. CIS approved the Vermont Regional Center (VRC) and granted it authority to approve and monitor EB-5 projects in Vermont. VRC, in its capacity as a federally-approved and designated regional center, in turn entered into memoranda of understanding with EB-5 project sponsors. In this regard, VRC assisted CIS in the regulation and administration of the EB-5 investment program. VRC was part of the Vermont Agency of Commerce and Community Development (ACCD) until late 2014, when the Vermont Department of Financial Regulation (DFR) joined ACCD as a partner in VRC.

#### The Jay Peak EB-5 Offerings

16. The Jay Peak resort began a plan to use funds from EB-5 immigrant investors to support construction at the resort in 2006, before QUIROS bought the resort. Between 2006 and 2012, over \$250 million in investor funds were raised to build facilities at Jay Peak as part of six different EB-5 projects. The EB-5 projects were marketed in a variety of ways, including through its website, immigration attorneys, and overseas and domestic meetings and seminars with prospective investors.



17. Each EB-5 investor became a limited partner in a limited partnership associated with a specific project. Each investor signed a limited partnership agreement with the general partner, which gave the general partner certain control over the use of partnership funds. At the same time, according to the limited partnership agreement for the AnC Vermont project, the general partner had certain obligations to the limited partners, including a duty not to borrow or commingle investor funds or acquire property with investor funds that did not belong to the limited partnership without consent, and a duty to inform limited partners of any investigation or event that could have a material adverse impact on the partnership. Each AnC Vermont investor was also required to pay an administrative fee for the sponsor for the EB-5 project. The offering materials for the AnC Vermont project stated that the administrative fees were to be used for expenses associated with the project.

18. At around the time he bought the resort in 2008, QUIROS took control over the Jay Peak-related EB-5 investor funds through bank accounts at Raymond James. QUIROS also set up a series of loan accounts at Raymond James with EB-5 investor funds as collateral for the loans. In February 2012, QUIROS set up a loan account in the name of Jay Peak, Inc., which relied on collateral from a variety of Raymond James accounts containing EB-5 investor funds. QUIROS used the loan proceeds for a variety of purposes, including personal expenditures and EB-5 project costs. For example, in May 2012, QUIROS used approximately \$7 million in loan proceeds to purchase Burke Mountain ski area, where he set up an approximately \$100 million EB-5 project in 2013 to construct a hotel and other facilities. By 2013, QUIROS was using AnC Vermont investor funds as collateral for the loan.

19. By 2011, the defendants knew that Jay Peak's EB-5 projects faced financial problems resulting from the use of EB-5 funds raised for a particular project for purposes

unrelated to that project, including costs associated with other EB-5 projects, financial challenges at Jay Peak resort, and QUIROS's personal expenses. In 2011, the defendants agreed to use JCM as a vehicle to commingle EB-5 investor funds from different projects.

#### The Scheme

20. Between in or about the fall of 2011 and in or about April 2016, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER knowingly and willfully conspired to devise a scheme to defraud investors in the AnC Vermont EB-5 project and to obtain money from these investors by materially false and fraudulent pretenses, representations, and promises and to execute that scheme by means of interstate and foreign wire communications, in violation of 18 U.S.C. § 1343. Moreover, during that period, the defendants in fact executed the scheme through interstate and foreign wire communications, including some to and from Vermont.

21. From the beginning, each of the defendants had certain responsibilities in connection with the AnC Vermont scheme. QUIROS acted as the ultimate decision maker on many project matters and controlled the money raised from investors. KELLY was QUIROS's key advisor and assistant in executing QUIROS's decisions. CHOI was a hidden partner in the project. He formulated the foundation of the business plan for AnC Vermont. CHOI's company, AnC Korea, was supposed to design the Vermont facility, provide the technology for AnC Vermont's operations, and use part of the completed facility. STENGER's primary jobs were to recruit investors and to use his personal connections and reputation to garner support from local, state, and federal politicians. STENGER presented a variety of false and fraudulent statements about the status of the AnC Vermont project to investors, VRC, and CIS. In marketing the projects, STENGER and others highlighted VRC's approval and monitoring of the project.

STENGER also assumed the role of the general partner who authorized the expenditure of investor funds to JCM, an entity used to commingle investor funds.

22. The defendants misrepresented the true business relationship between QUIROS and CHOI. QUIROS and CHOI were financial partners in control of the project. The transaction with AnC Korea involved self-dealing.

23. In 2009, the defendants had begun formulating a plan for a \$50 million project to build a biomedical facility in Vermont. Then in September 2011, QUIROS and CHOI discussed doubling the price of the AnC Vermont project from \$50 million to \$100 million.

24. In mid-2012, KELLY took the lead in developing the details for the fraudulent business plan, which would be included in the materials provided to potential investors. Immigrants who decided to invest in the project would, in turn, provide the business plan to CIS as part of their EB-5 submissions. The fraudulent business plan described the planned business operation, business projections, and the use of investor funds. KELLY and STENGER received and used information from CHOI as the principal source for the business plan. QUIROS reviewed and approved KELLY's work. The plan was fraudulent in various ways, including two major deceptions: 1) secret embezzlement of investor funds; and 2) deceptions about the number of jobs to be created by the project within several years and the project's ability to generate revenue.

25. In October 2012, QUIROS and STENGER entered into a memorandum of understanding with VRC for the AnC Vermont project. In the memorandum, among other things, VRC described its responsibility and duty to monitor the project, and QUIROS and STENGER agreed to promote the project honestly and fairly.

26. The AnC Vermont project was supposed to raise and spend \$110 million from 220 EB-5 investors, and to use \$8 million from the project sponsor, AnC Bio VT LLC. Between November 2012 and April 2016, the defendants convinced approximately 169 investors to invest in the AnC Vermont EB-5 offering. Those investors each contributed a \$500,000 capital investment, for a total of approximately \$85 million, plus an “administrative fee” of between approximately \$20,000 and \$50,000, for a total of approximately \$8 million. The AnC Vermont facility, however, was never constructed. In late 2012, the defendants planned to use the building plans for the AnC Korea facility to build the facility in Vermont. Almost immediately, the defendants discovered that the Vermont facility could not be constructed without a new design. Final designs for the AnC Vermont facility were never completed.

27. To maintain their scheme, the defendants responded to inquiries from different entities that monitored and regulated the AnC Vermont project. During the course of CIS review of the project, CIS submitted two rounds of Requests for Evidence (RFEs) about the project plans. The defendants answered the questions about the project on behalf of the investors. CIS approved the first AnC Vermont I-526 submissions in June 2014.

28. By mid-2013, the Securities and Exchange Commission (SEC) was investigating whether QUIROS and STENGER had violated federal securities laws in connection with their marketing of EB-5 projects and their use of EB-5 investor funds. In April 2016, the SEC sued QUIROS and STENGER and successfully petitioned a federal court to appoint a receiver to take responsibility for Jay Peak, Burke Mountain, and the EB-5 projects. The defendants lost control of the AnC Vermont project at that time.

29. In late 2013, as part of its responsibility to monitor the EB-5 projects in Vermont for CIS, VRC began asking QUIROS and STENGER detailed questions about the AnC Vermont

project, including questions about AnC Korea, about QUIROS's business relationships, and about AnC Vermont's business plan. In June 2014, VRC directed that the defendants suspend offering and marketing of the AnC Vermont project. VRC demanded, among other things, that QUIROS, KELLY, and STENGER prepare more detailed offering materials and provide a third-party assessment of the financial projections in the business plan. The project was permitted to go back into the investor market in or about April 2015 with several restrictions imposed by VRC.

#### Secret Embezzlement

30. In or about the fall of 2012, QUIROS, KELLY, and CHOI created a chart of the purported use of the AnC Vermont project funds for inclusion in the project offering materials. The use-of-funds chart contained a number of fraudulent statements designed to hide money that they planned to be siphoned to QUIROS and CHOI. For example, the chart listed a \$40 million cost for "construction fit out and equipment," referred to here as equipment costs, when in fact QUIROS, KELLY, and CHOI planned to spend approximately \$28 million on equipment with the remaining \$12 million going to QUIROS and CHOI. The chart listed \$10 million to be paid by investors to AnC Korea for distribution rights for the AnC Korea "products," when in fact the defendants knew that this value was inflated and decided by self-dealing. The chart listed working capital of \$16 million, when in fact QUIROS, KELLY, and CHOI planned that \$6 million would be used for working capital and the remaining \$10 million would be shared by QUIROS and CHOI.

31. The defendants used JCM as the vehicle for controlling the secret embezzlement from the investors. JCM was designated as a pass-through corporation for approximately \$52 million that was supposedly to be paid to AnC Korea. Specifically, JCM contracted to act as the



pass-through for the \$40 million in equipment costs and \$10 million in distribution rights described above, as well as \$2.1 million in design fees. The JCM pass-through allowed QUIROS and CHOI to secretly skim off millions of dollars of investor funds for their own purposes.

32. In November 2012, the defendants met in Korea to finalize details about the project. During this visit, QUIROS and CHOI documented their plan to split \$34 million. They also documented that KELLY was to receive \$4 million and STENGER was to receive \$1 million in connection with the “management fee,” which was to be paid through NECS.

33. Between March 2013 and October 2014, QUIROS, KELLY, and STENGER paid over \$47 million in AnC Vermont investor money to JCM, which were documented by eighteen monthly invoices of \$2.6 million each. Each monthly invoice listed monies due for “architectural, engineering fees, and deposits for equipment.” QUIROS controlled the investor money sent to JCM, and he could and did use those funds for a variety of purposes unrelated to the AnC Vermont project. During this period, QUIROS forwarded less than \$6 million from JCM to AnC Korea.

34. QUIROS, KELLY, and STENGER made the first payment of AnC Vermont investor money to JCM in March 2013, in the amount of \$2.6 million. Then in June 2013, QUIROS, KELLY, and STENGER arranged for \$10.4 million in investor money to be sent to JCM to pay four \$2.6 million invoices. No other AnC Vermont investor money was transferred to JCM between June 2013 and late February 2014.

35. In late 2013, QUIROS learned that he had to pay down the Raymond James loan, which stood at over \$21 million. He used money from JCM to make monthly loan payments of \$500,000 from October 2013 to February 2014. In or about February 2014, QUIROS learned that he had to pay off the entire loan balance. In early March 2014, QUIROS used AnC Vermont

investor money to pay off the approximately \$19 million loan balance. To do this, in late February, QUIROS, KELLY, and STENGER arranged for \$18.2 million in AnC Vermont investor money to be sent to JCM to pay seven \$2.6 million invoices. When JCM received those funds, QUIROS used the money to pay off the Raymond James loan.

36. In May 2014, QUIROS was confronted about the Raymond James loan payoff with AnC Vermont investor funds during sworn testimony with the SEC. At that time, QUIROS claimed that the funds represented his profits from EB-5 projects. After the testimony, QUIROS and KELLY convinced AnC Korea representatives to sign declarations representing that AnC Korea directed the use of \$21 million to be paid from JCM to Jay Peak Inc., the entity used for the Raymond James loan. The declarations also represented that AnC Korea would provide the equipment, distribution rights, and architectural and engineering services to AnC Vermont investors for \$21 million less than their previous contract. The declarations were submitted to the SEC, but they were concealed from investors, from VRC, and from CIS.

37. Between late March 2014 and October 2014, QUIROS, KELLY, and STENGER arranged for another \$15.6 million in investor funds to be sent to JCM to pay six \$2.6 million invoices.

38. QUIROS, KELLY, and STENGER concealed from VRC, CIS, and investors QUIROS's misuse of investor funds that had been sent to JCM. Moreover, QUIROS, KELLY, and STENGER made false and misleading statements to the SEC about the AnC Vermont project to attempt to convince the SEC to end its investigation.

39. In late 2014, VRC began asking questions about how AnC Vermont investor money had been used. In late 2014 and early 2015, QUIROS and KELLY provided false and misleading information to VRC about payments of investor funds to AnC Korea. For example, in

February 2015, QUIROS and KELLY caused the representation that AnC Korea had been paid the money that had in fact been used to pay off the Raymond James loan.

40. In or about April 2015, VRC allowed QUIROS, KELLY, and STENGER to again accept investor funds for AnC Vermont, subject to spending restrictions. The defendants were not prepared to move forward with construction. The defendants concealed from past and potential investors, from VRC, and from CIS that they lacked the money to construct and begin operations at the AnC Vermont facility, even if they got approval to use the new, restricted investor funds.

41. At the same time that QUIROS, KELLY, and STENGER requested to continue fundraising for the AnC Vermont project, QUIROS furthered his plan to misuse previously raised investor funds. After QUIROS paid off his Raymond James loan in 2014, he looked for a new financial institution that would loan him money. In early 2015, QUIROS established a banking relationship with Citibank, which agreed to loan him money. QUIROS arranged a Citibank loan account secured by \$15 million in a JCM account at Citibank, most of which was from AnC Vermont investors. QUIROS then borrowed almost \$15 million through this loan account, spending the money on matters unrelated to AnC Vermont, including a \$6 million payment to the Internal Revenue Service for QUIROS's personal tax obligations in April 2015. Because the \$15 million JCM account was acting as collateral for QUIROS's borrowing, it was not available for AnC Vermont project expenses. In June 2015, less than a million dollars was still available at JCM for project expenses from the approximately \$47 million that JCM was paid from AnC Vermont investor funds. Almost all of the AnC Vermont money sent to JCM had been used for purposes unrelated to the project.



42. In November 2015, QUIROS secretly embezzled another \$980,000 in AnC Vermont investor funds. At that time, QUIROS had control of approximately \$3 million of AnC Vermont investor funds in an account at Citibank. QUIROS transferred \$980,000 in investor funds from the Citibank AnC Vermont investor account to his Citibank GSI account. Months later, QUIROS submitted bogus documentation for the books of the AnC Vermont partnership to authorize the payment. In early 2016, KELLY and STENGER participated in the fraudulent authorization of this payment as a legitimate AnC Vermont expense.

43. The defendants also misused administrative fees paid by AnC Vermont investors. Contrary to the representations in the offering materials, the defendants used these funds for purposes unrelated to the AnC Vermont project. For example, in June 2013, STENGER, QUIROS, and KELLY used \$250,000 of these funds as an initial payment for the purchase of a property known as the “Spates Block” in Newport, Vermont, where the defendants planned to construct a future EB-5 project.

#### Jobs and Revenue Deceit

44. The defendants created a fraudulent “party line” about jobs and revenues that they presented to investors, VRC, and CIS. The defendants based this party line on inflated revenues and the job numbers they needed to achieve for CIS approval, ignoring the considerations necessary for a realistic business plan. The defendants also understood that CIS approval and business revenues were both important to investors. STENGER routinely stated to potential investors that he believed they would see returns on their investment through AnC Vermont operations as soon as it opened, and that the investors would be paid back their principal investment from operations in four to five years.

45. In 2012, the defendants knew that they had to demonstrate a plan to create at least 2,200 jobs for CIS approval of the AnC Vermont project. To gain CIS approval, the defendants presented a jobs report prepared by a third-party economist hired by the defendants. The economist's analysis was based directly on inflated hiring and financial projections formulated by the defendants to achieve the required number for EB-5 approval. The jobs report presented a calculation of jobs that would be created during the construction of the facility and during the first few years of operation of the facility. The construction-phase jobs were based on the amounts the defendants claimed would be spent on construction, equipment, and infrastructure. The operations-phase jobs were based on the number of people the defendants claimed would be hired for the business, and the amounts of money the defendants claimed would be spent on supplies or items used during operations. All of the operational jobs numbers depended on the amount of business that would be conducted by AnC Vermont in the first few years. The defendants created deceptions about both construction jobs and operational jobs.

46. The defendants maintained the party line from 2012 until 2016, even as their fraudulent business plan became increasingly unrealistic. For example, in April and May of 2014, in response to an RFE from CIS, the defendants made only minor modifications to the business plan, such as delaying the planned commencement of the project and increasing the projected revenues.

47. The defendants inflated projected jobs from the construction phase. First, as discussed above, millions of dollars in equipment costs to be paid to AnC Korea were in fact hidden embezzlement to benefit QUIROS and CHOI, which would not create jobs. Second, over \$12 million allocated to construction supervision and expenses were in fact project profit to the defendants to be paid through NECS instead of money that would be used to create jobs. Third,

the defendants falsely represented that AnC Bio VT LLC planned to contribute \$8 million to the project for infrastructure. Without these fraudulent additions, the projected jobs during the construction phase would have been far fewer.

48. The defendants also inflated projected jobs and supplies expenses from the operations of the business. The party line described three lines of business: clean room rentals, sales of stem cell products, and sales of artificial organs. The party line was deceptive about all three.

49. In 2012, when the defendants devised the fraudulent party line, they created inflated projections related to clean room rentals. CHOI's financial projections, the only financial projections considered by the defendants, provided a basis for fewer jobs from clean room rentals than would be necessary for CIS approval. For example, CHOI's business plan contemplated that there would be only ten clean rooms. STENGER and KELLY ignored these figures and inflated the numbers without planning for commercial viability. To ensure that the project appeared to create the necessary number of jobs, STENGER and KELLY told the economist that the facility would have fifty clean rooms with several AnC Vermont employees working in each room beginning as soon as construction was complete.

50. The defendants made no serious inquiry into the market for rental of clean rooms but falsely represented that there was a significant market for clean room rental. The 2012 business plan represented that clean room revenues would come from AnC Korea and from contract researchers using the facility. In fact, CHOI and QUIROS did not plan on AnC Korea paying money to AnC Vermont to use the facility, and AnC Korea was in financial distress. With regard to contract research, the defendants represented that discussions with potential clients were already underway, when in fact they had not identified any contract research clients.

51. The defendants maintained the fraudulent clean room rental figures until 2016, no matter what contrary information they received. For example, clean room rental revenues actually depended on creating a successful contract manufacturing operation, namely AnC Vermont being hired by cell therapy companies to manufacture large volumes of cells. It would take substantial investments and time to develop contract manufacturing revenue, including approval by the U.S. Food and Drug Administration (FDA) and business development within the cell therapy industry. The defendants made no plan to develop a contract manufacturing operation, lacked personnel to develop a contract manufacturing operation, and had no financial resources to develop a contract manufacturing operation. In short, a contract manufacturing operation, even if successfully developed, would not be commercially viable within the time restrictions of the party line.

52. In 2012, when the defendants devised the fraudulent party line, they created inflated projections related to stem cell therapy products. The defendants misrepresented their ability to market a heart regeneration stem cell therapy product. The product was not commercially viable and the defendants had no rights to such a product. Indeed, the fraudulent revenue projections reflected sales of two stem cell products less than two years after construction started. In fact, the defendants had no stem cell products, were conducting no research about stem cell products, and made no efforts to find a stem cell product from a third-party source. The defendants fraudulently maintained the stem cell product party line and the accuracy of fraudulent revenue from stem cell products until they lost control of the project in April 2016.

53. In 2012, when the defendants devised the fraudulent party line, they created inflated projections related to artificial organs. The defendants represented that AnC Vermont

would manufacture and sell three different artificial organs: an artificial heart-lung known as the T-PLS, an artificial kidney known as the C-PAK, and an artificial liver known as the E-Liver. Artificial organ marketing and sales depended on both development of the products and approval of the products by the FDA. The T-PLS had no commercial market and needed to be redesigned, and the C-PAK and E-Liver had not been developed. AnC Korea had not developed and could not develop the products. The project budget included no resources for development, CHOI had no resources for development, and QUIROS made no effort to spend money on development. FDA approval would take time and money. The defendants made no effort to seriously investigate how much time and money was necessary for FDA approval for the products. In short, these artificial organs, even if successfully developed and approved by the FDA, would not be commercially viable within the time restrictions of the party line. The defendants fraudulently maintained the artificial organs party line and the accuracy of revenue from artificial organs until they lost control of the project in April 2016.

(18 U.S.C. § 1349)

Count Two

54. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

55. On or about February 28, 2014, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line “Jay Peak Biomedical Research Park LP General Partner’s Authorizations for Payment,” for the purpose of executing the scheme in connection with the use of AnC Vermont investor funds to pay off the Raymond James loan.

(18 U.S.C. §§ 1343, 2)



Count Three

56. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

57. On or about April 23, 2014, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line “What should be the final workbook attached” for the purpose of executing the scheme in connection with CIS questions in the second RFE regarding the job and revenue projections for the AnC Vermont project.

(18 U.S.C. §§ 1343, 2)

Count Four

58. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

59. On or about January 2, 2015, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line “FW: ACCD Ltr to Kelly,” for the purpose of executing the scheme in connection with responding to VRC questions including about the AnC Vermont projections and FDA timeline.

(18 U.S.C. §§ 1343, 2)



Count Five

60. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

61. On or about February 20, 2015, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line “FW: Revised Spreadsheet,” for the purpose of executing the scheme in connection with responding to VRC questions about the use of AnC Vermont investor funds.

(18 U.S.C. §§ 1343, 2)

Count Six

62. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

63. On or about August 14, 2015, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line “Letter to the Malek Brothers,” for the purpose of executing the scheme in connection with responding to a potential investor’s questions including about the SEC investigation and the AnC Vermont project party line.

(18 U.S.C. §§ 1343, 2)

Count Seven

64. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

65. On or about January 22, 2016, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER, having devised the scheme to defraud and to obtain money by materially false and fraudulent pretenses, representations, and promises described above, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce an email with subject line that begins “FW: \$980,000 wire transfer from \$ Citibank,” for the purpose of executing the scheme in connection with QUIROS’s secret embezzlement of \$980,000 in AnC Vermont investor funds.

(18 U.S.C. §§ 1343, 2)

Count Eight

66. The allegations in paragraphs 54 through 65 of Counts Two through Seven are incorporated here.

67. In or about April 2015, in the District of Vermont and elsewhere, defendant ARIEL QUIROS knowingly engaged in a monetary transaction in criminally derived property of a value greater than \$10,000, namely a \$6,000,000 check payable to the Internal Revenue Service, which was derived from specified unlawful activity, namely wire fraud, as alleged in Counts Two through Seven.

(18 U.S.C. §§ 1957, 2)

Count Nine

68. The allegations in paragraphs 54 through 65 of Counts Two through Seven are incorporated here.

69. In or about December 2015, in the District of Vermont and elsewhere, defendant ARIEL QUIROS knowingly engaged in a monetary transaction in criminally derived property of a value greater than \$10,000, namely a check on the account of GSI for \$46,465.00 to purchase a Jeep Rubicon, which was derived from specified unlawful activity, namely wire fraud, as alleged in Counts Two through Seven.

(18 U.S.C. §§ 1957, 2)

Count Ten

70. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

71. Between in or about March 2014 and in or about April 2016, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER knowingly and willfully concealed and covered up by trick, scheme and device, a material fact in a matter within the jurisdiction of the Executive Branch of the United States, namely that QUIROS used approximately \$21 million in AnC Vermont investor funds sent to JCM for purposes unrelated to the AnC Vermont project.

(18 U.S.C. §§ 1001, 2)

Count Eleven

72. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

73. Defendants ARIEL QUIROS, WILLIAM KELLY, and JONG WEON CHOI, aka Alex Choi, represented AnC Korea as a principal support for the AnC Vermont project to investors, VRC, and CIS. These defendants concealed the truth about AnC Korea and CHOI.

74. The defendants misrepresented the financial viability of AnC Korea. AnC Korea was a failed business. The marketing materials falsely stated that AnC Korea had the capacity to support the AnC Vermont project. QUIROS and CHOI knew that AnC Korea was desperate for operational funds, as it had no substantial revenue stream and substantial debts. Moreover, AnC Korea had made no progress in research and development for years.

75. In early 2013, after CHOI was detained by Korean authorities, CHOI arranged to have AnC Vermont investor funds for AnC Korea sent to a new entity, AnC Biopharm, instead of AnC Bio, Inc. QUIROS and KELLY understood that AnC Biopharm was a company created and controlled by CHOI. CHOI had associates of AnC Korea appear to control AnC Biopharm when CHOI still controlled the company and the funds flowing to AnC Biopharm. In short, after CHOI was first arrested, QUIROS, KELLY, and CHOI sought to further conceal CHOI's participation in the project through the use of AnC Biopharm.

76. As described above, beginning in 2009, AnC Bio Holdings owned AnC Bio Inc. CHOI was instrumental in the financial transactions establishing AnC Bio Holdings. In late 2013, VRC began raising concerns about AnC Korea and CHOI. VRC learned that AnC Bio Holdings was under investigation in Korea and asked about CHOI's relationship with AnC Bio

Holdings. QUIROS, KELLY, and CHOI presented false and misleading statements about CHOI's relationship with AnC Bio Holdings.

77. VRC also asked whether CHOI was under investigation by Korean law enforcement. QUIROS and KELLY knew that CHOI had been detained as part of a criminal investigation in early 2013. Nevertheless, QUIROS, KELLY, and CHOI falsely stated that CHOI was not under investigation. CHOI was detained for part of 2013 and for most of 2014 as the criminal investigation against him proceeded. QUIROS, KELLY, and CHOI concealed this information from investors, VRC, and CIS.

78. Between in or about October 2013 and in or about April 2015, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, and JONG WEON CHOI, aka Alex Choi, knowingly and willfully concealed and covered up by trick, scheme and device, a material fact in a matter within the jurisdiction of the Executive Branch of the United States, namely that CHOI was under investigation for financial crimes in Korea.

(18 U.S.C. §§ 1001, 2)



Count Twelve

79. The allegations in paragraphs 72 through 77 of Count Eleven are incorporated here.

80. On or about May 20, 2014, in the District of Vermont and elsewhere, defendants ARIEL QUIROS, WILLIAM KELLY, and JONG WEON CHOI, aka Alex Choi, knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the Executive Branch of the United States, namely that AnC Korea was not in financial distress.

(18 U.S.C. §§ 1001, 2)

Count Thirteen

81. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

82. On or about July 23, 2014, in the District of Vermont and elsewhere, defendant WILLIAM STENGER knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the Executive Branch of the United States, namely that he had stopped marketing the AnC Vermont project to prospective investors.

(18 U.S.C. §§ 1001, 2)

Count Fourteen

83. The allegations in paragraphs 1 through 19 and 21 through 53 of Count One are incorporated here.

84. On or about January 9, 2015, in the District of Vermont and elsewhere, defendant WILLIAM STENGER knowingly and willfully used and caused to be used a false writing and document, knowing the same to contain materially false, fictitious, and fraudulent statements and entries in a matter within the jurisdiction of the Executive Branch of the United States, namely a letter representing that a third party had analyzed the sales projections in the AnC Vermont business plan when the third party had not; and a timeline about product commercialization that omitted uncertainty about the FDA approval process.

(18 U.S.C. §§ 1001, 2)

Forfeiture Notice

1. The allegations contained in Counts One through Seven of the Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C).

2. Upon conviction of the offenses charged in Counts One through Seven, the defendants ARIEL QUIROS, WILLIAM KELLY, JONG WEON CHOI, aka Alex Choi, and WILLIAM STENGER shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property real or personal, constituting, or derived from, proceeds obtained directly or indirectly, as a result of such violations. The property to be forfeited includes, but is not limited to, the following:

- a. United States funds in the amount of the gross proceeds obtained as a result of the violation, to be determined by the Court at sentencing.

3. If any of the property described above, as a result of any act or omission of the defendants,

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c).

(18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

A TRUE

FOREP

*Christina E. Nolan* / *AD* / *NPC*

Christina E. Nolan (PJV/NPC)

United States Attorney

Burlington, Vermont

May 21, 2019

# EXHIBIT C



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# Jay Peak partners pitch \$500 million investment in three Northeast Kingdom towns

By **Anne Galloway**

Sep 28 2012

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SHARES

NEWPORT—The Northeast Kingdom has long been plagued by unemployment and a depressed local economy. The sparsely populated region has lagged behind the rest of the Green Mountain State for decades economically. Many people still scratch a living from dairy farming or the tourist industry here.

From time to time, the state of Vermont has injected funding for projects in the region. A prison was built in Newport; Pike Industries has a large operation near the border; and a military helmet factory remains in business in Newport. But many other companies, especially wood products industries, have gone by the boards over the years: Ethan Allen Furniture closed in Island Pond; a plywood factory folded in North Troy; and the largest paper mill in the area closed.



Bill Stenger announces a \$500 million investment in Northeast Kingdom developments. VTD Photo/Anne Galloway

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So when Bill Stenger, the CEO of Jay Peak Resort, and his partners announced the largest economic revitalization investment of its type in the history of the Northeast Kingdom on Thursday it seemed natural that a TV news reporter would push a microphone in the face of one of the developers and ask: “What’s different this time?”

That’s a question to which Stenger gave a quantitative answer: \$500 million, 10,000 jobs, 60 months.

Stenger and his partner Ariel Quiros plan to build seven new businesses as part of an “enterprise” initiative in Newport, Jay and Burke. The partners have purchased five of the properties and have attracted 10 percent of the financing to begin construction.

All seven projects will be built simultaneously Stenger says. Ninety-five percent of the money will come from the EB-5 Visa program, which enables foreign nationals to invest \$500,000 in “targeted employments areas” in exchange for a two-year green card. Each investment must result in 10 jobs.

The EB-5 program had been set to expire this year until Congress extended it earlier this month. Sen. Patrick Leahy, D-Vt., a strong backer of the program, was instrumental in extension’s passage and President Barack Obama is expected to sign the bill.

Stenger praised Leahy’s efforts in Congress. “It’s his work that has opened this window,” the ski area mogul said. “If it were not for him, this window would not exist.”

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“It’s nice to see a government program that brings jobs here,” Leahy said. “The most important part is it didn’t cost the taxpayers a penny.”

The Stenger and Quiros mega-project is a complex array of industrial, commercial and travel projects, some of which have been in the works for several years. The initiative traverses most of the Northeast Kingdom.

The plan includes:



- A 75,000-square-foot research tower in Newport for AnC Bio, [a South Korean biotechnology firm that will produce stem cells, vaccines and possibly artificial organs](#). The tower will be located on a 40-acre campus that includes the former Bogner clothing plant, a 90,000-square-foot facility that will begin manufacturing and distributing AnC Bio products in the spring of 2013. Stenger says \$50 million has been raised for the project, which will cost a total of \$104 million.
- A high-end window manufacturing plant, will also be located on the 40-acre AnC Bio campus. [Menck Window Systems](#), based in Hamburg, Germany, which designs energy efficient windows will locate an operation in Newport that will employ 140 workers. The estimated cost of the plant is \$20 million.
- A marina and grand hotel on Lake Memphremagog in Newport, located right off I-91 and a walkable distance from downtown, will feature restaurants, retail space and conference facilities. The 150-suite hotel will accommodate 1,200 people and cost \$100 million to build. The land, now occupied by a retail strip mall, is owned by Burlington real estate developer and Newport native Tony Pomerleau.
- The Renaissance Block is a four-story residential and commercial space near the Orleans County Courthouse in downtown Newport. The new building would take the place of a row of late 19th century offices and shops on Main Street now owned by the Spates family. The cost? \$70 million.
- The Newport Airport expansion will include a 1,000-foot extension of the runway, new hanger space for regional passenger service, a private aviation light plane manufacturing and repair facility, an expanded terminal and a bonded warehouse for free trade zone goods. The expansion will pave the way for small jet (20-seat) service in Newport. The cost of the new construction is \$20 million.
- The Burke Mountain Resort will get a makeover. Stenger and Quiros bought the resort in May. They plan to construct four “rustic” lodges that will house as many as 1,250 people on the mountain. This fall the company will invest \$1 million in snowmaking upgrades at the ski area. Total investment: \$108 million.
- Jay Peak Resort will get another dumping of \$170 million in cash for the West Bowl ski area which will have 15 trails and three lifts and the Stateside project, which includes an 84-unit hotel, 100 dwellings and a medical center.

The Northeast Kingdom Economic Development Initiative comes on the heels of an initial \$250 million Jay Peak Resort expansion that is 75 percent complete and encompasses a new hotel, an indoor water park, condos and extensive upgrades to the ski area. Stenger and Quiros have kept 500 construction workers busy for five years.

All told, the Jay property investment alone will total \$420 million. The combined projects will total \$750 million.

Has the capital infusion begun to pay off? Stenger says last year was Jay Peak’s “best year ever, and the snow was horrible.” He chalks up their success to the year-round attractions at the resort, which employs 1,000 people.

The projects were planned in anticipation of the extension of the EB-5 program. Stenger said he has hired four architects and six construction companies to handle the simultaneous build out of the projects.

The EB-5 Visa investments are coming from all over the world, Stenger said, but largely from the Asian and South American markets. He is raising about \$3 million a month, he said. Though has about 10 percent raised so far, Stenger says he anticipates attracting all of the money he needs within 12 to 14 months. None of the projects are dependent on taxpayer funding, he said.

“This momentum is so good it is going to catapult us forward,” Stenger said.

State Sen. Vince Illuzzi, R/D-Essex-Orleans, said he found the prospect of the developments “almost overwhelming and a bit scary to have all of this happening essentially at the same time, but it’s a window of opportunity, not only because of EB-5 but because the world economy has all but collapsed.” More investors, he said, are seeking a safe haven in North America.

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Filed under:



Tags: [Burke Mountain](#), [EB-5](#), [Jay Peak Resort](#)



## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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VERMONT NEWS BRIEFS

# Stenger hires MacLean to oversee investor recruitment and relations for Northeast Kingdom EB-5 projects

By **Alicia Freese**

Jan 7 2013



Alex MacLean, two-time campaign manager and longtime top aide to Gov. Peter Shumlin, will help manage [a vast economic development project slated for the Northeast Kingdom.](#)

Bill Stenger — co-owner of Jay Peak and the architect of the initiative — expects the project will cost more than \$800 million and create 10,000 jobs.

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Gov. Shumlin made the announcement today at a press conference held in Montpelier.

MacLean will oversee investor recruitment and investor relations for the project, which relies almost entirely on the EB-5 program — a federal arrangement that grants green cards to foreign investors who put a minimum of \$500,000 into U.S. businesses — for funding. MacLean will also manage communications for the project.

MacLean, 30, is a Northeast Kingdom native. She starts on Jan. 21 and says her “immediate focus” will be two projects — the expansion of Burke Mountain ski resort and the redevelopment of a section of downtown Newport.

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VERMONT NEWS BRIEFS

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## About Alicia

Alicia Freese is VTDigger's political and education reporter. After receiving a B.A. in international relations from Pomona College in Claremont, Calif., she worked as a media associate at ReThink Media, an organization building communications capacity amongst progressive foreign policy organizations. While out West, she also wrote for Bay Nature Magazine, a publication covering environmental news in the San Francisco Bay Area. Inspired by the investigative reporting she observed in the foreign policy arena, but eager to return to her home state and re-immense herself in Vermont politics, she naturally ended up at VTDigger's doorstep.

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# VTDigger exclusive: State pulls plug on EB-5 project

By **Nat Rudarakanchana**

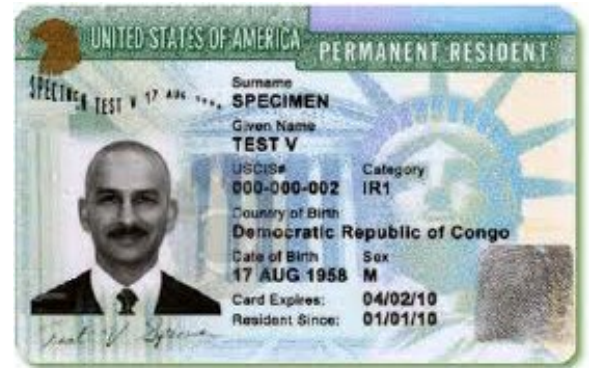
Apr 3 2013

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*Editor's note: Anne Galloway contributed to this report.*

A development company that hoped to build high-end assisted living facilities for retirees in Vermont has lost approval from the state's EB-5 center.

The company, DreamLife Retirement Resorts, LLC, with representatives in Quebec, Ontario, Vermont and Florida, [hoped to build six well-appointed, 160-apartment unit projects](#). The plans for the assisted living facilities include spas, salons, libraries and movie theaters. In February, the company was negotiating purchases of sites selected in Bennington, Rutland and Montpelier, documents show. DreamLife planned construction at two of the sites within the year.



An EB-5 Green Card sample.

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In order to make that plan a reality, the company, doing business as EB-5 American Dream Fund I, Inc., needed to raise more than \$144 million and attract more than 300 foreign investors who, under a federal program known as EB-5, receive green cards in exchange for cash investments, according to the company website and state documents.

The DreamLife developers have not purchased land or obtained options on properties, nor have they attracted a single foreign investor.

Nearly three years have passed since American Dream first received permission from the Vermont EB-5 Regional Center to seek foreign investors for two apartment buildings, and in the intervening period, the DreamLife developers have not purchased land or obtained options on properties, nor have they attracted a single foreign investor. Though it's not uncommon for a project to take three years to attract adequate funding, officials and experts say, it's difficult to bring on investors if a site hasn't been secured.

Officials with the Vermont Agency of Commerce and Community Development cancelled the agreement with American Dream on March 27 because of "material misrepresentations." Three of the four individuals who represent the company cited themselves as attorneys for the project; none of the men identified are licensed to practice law in Florida, where the law firm cited in the agreement, USMS Team, is registered.

In addition, American Dream listed a DreamLife construction team on its website that state officials determined were not notified that they had been identified as contractors for the project. Several said they did not have contracts with the company.

American Dream has 14 days to respond to the state's notice of cancellation. Phil Mooney, the managing director of DreamLife and a former CEO and president of the nonprofit [Immigration Consultants of Canada Regulatory Council](#), told VTDigger the company would resolve the issue with the state in a few days. As of April 3, there was no update from the company.

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"We can refute and justify everything," Mooney said. "We have 14 days to provide a remedy, and we believe we can absolutely do that. Not even in 14 days, in just one or two. We disagree completely with the letter and are busy preparing a response which will see us continue as an EB-5 project under the [Vermont] Regional Center."

It's not the first time the state has lost confidence in American Dream. In September, the Vermont EB-5 Regional



Center cancelled its memorandum of understanding with the company when officials discovered that American Dream had changed its development plans and neglected to send an economic assessment to the state. Originally, DreamLife proposed two retirement resorts; in 2011, the developers decided to expand the number to six without formally notifying the Vermont center, according to the state.

Richard Parenteau, the founder of DreamLife, who state officials say is now a background investor,” was convicted of perjury in Quebec in October 2010.

Last spring, state officials became aware that a key participant in the project recently stepped down from a leadership role in the company. Richard Parenteau, the founder of DreamLife, who state officials say is now a “background investor,” was convicted of perjury in Quebec in October 2010, according to court documents, after a decade-long dispute over a will. State officials say as a result of the conviction, Parenteau, a former Rock Forest (Quebec) chief of police, is no longer able to cross the border for meetings in Vermont. Parenteau has also been accused of violating labor rules in Quebec, according to court documents.

Over the last 20 years, Parenteau has created and dissolved more than two dozen companies in Florida and Vermont, some of which list his sons Marc-Andre and Richard Jr. as business associates, according to information from state websites. Five of the entities bear the DreamLife name, including an insurance company, a real estate firm and a finance company, all three of which are now inactive.

Parenteau declined, through Mooney, to be interviewed for this story.

Mooney defended his longtime business partner and friend.

“I understand that certain individuals have raised questions about past and present developments,” Mooney wrote in an email. “My belief is that as soon as we begin operations, and better yet, as we deliver on our promises, these stories will be seen to be irrelevant.”

Mooney described Parenteau as a generous person who is a “typical entrepreneur.”

“He gets really big ideas, and he’s not afraid to invest in them,” Mooney said. “People like that who get ideas — sometimes they don’t all work out.”

State officials, including the former head of the Vermont EB-5 Center, and Kevin Dorn, the former secretary of the Agency of Commerce and Community Development who signed the original agreement with Parenteau in 2010, apparently knew little about the businessman’s past. It wasn’t until last spring that state officials were alerted to Parenteau’s legal difficulties.

Lawrence Miller, the current secretary of the Vermont Agency of Commerce and Community Development, cancelled the agreement with American Dream in September and then reinstated the memorandum of understanding (MOU) in November after he and other state officials were assured that Mooney would lead the company and that a new escrow account

had been secured.

The state's latest decision to cancel its agreement with American Dream, based on the aforementioned "material misrepresentations," comes on the heels of accusations that the company may have violated Securities and Exchange Commission rules with regard to marketing to investors.

Agency Secretary Miller said it's unlikely the state will reinstate the American Dream MOU. In the cancellation letter, he wrote: "Based on the nature and significance of the examples of material breach, we do not foresee American Dream Life Fund I being able to cure them or remedy the broken trust."

State officials say the Vermont EB-5 Center, which so far has a 100 percent success rate, must maintain its stellar reputation in order to continue to attract investors.

John Kessler, general counsel for the commerce agency, said as the No. 1 ranked regional center in the country, the Vermont EB-5 Center is under scrutiny from the nation's biggest media outlets. The Boston Globe, the Wall Street Journal and the New York Times, he said, "come to us."

"We're kind of in a bull's-eye of a target for a lot of things, and we've done really well," Kessler said. "Our approvals at the adjudication centers are the best in the country, and so what it comes down to for us is a matter of confidence."

Confidence, Kessler said, is crucial for the success of the center and the state's other 14 projects. "We've worked hard for 16-plus years to get where we are with this regional center, and we do have unparalleled success, and our reputation is important so if our confidence level is shaken, and if we read about things and ask ourselves how confident are we, that's a very important factor," he said.

David North, a fellow with the [Center for Immigration Studies](#) and a vocal critic of the EB-5 program, said he's "never heard of a regional center doing something like this."

"Vermont is the only one in the country that is an arm of the government, as opposed to Chamber of Commerce regional center," North said. "It's perfectly possible that the Vermont entity has a different agenda and a higher standard than other folks."



Lawrence Miller, secretary of the Agency of Commerce and Community Development, speaks at a press conference with Gov. Peter Shumlin. File photo by Taylor Dobbs



One national expert on EB-5 projects, who asked to remain anonymous for fear of losing clients, told VTDigger that making a “material misrepresentation” is a “bad thing to do, if you’re trying to get a project done.”

The state and other developers in Vermont have a lot at stake. In December, [Bill Stenger, an owner of Jay Peak Resort, proposed a sweeping \\$600 million megadevelopment in the Northeast Kingdom](#) that would be financed by the EB-5 visa program and generate as many as 10,000 jobs. The projects include a new conference center, improvements to two ski areas, regional airport improvements, the construction of a biotech research firm and a window manufacturing plant. It has been hailed as the largest investment in economic development in the state’s history and a game changer for Vermont’s most remote rural area. Half of the state’s 14 EB-5 projects are associated with Stenger’s Northeast Kingdom developments.

Gov. Peter Shumlin and the three members of Vermont’s congressional delegation — Sens. Bernie Sanders and Patrick Leahy, and Rep. Peter Welch — have been vocal supporters of Stenger’s project. Shumlin was criticized in the press for helping to sell the project to investors at a meeting in Miami earlier this year.



Bill Stenger, owner of Jay Peak and Burke Mountain resorts, shows lawmakers plans for development in the Northeast Kingdom on Feb. 5, 2013, at Jay Peak. File photo by Nat Rudarakanchana

## EB-5 and the state

The questions about American Dream highlight issues confronting the federal visa program used to attract foreign investors to projects. The EB-5 visa program is designed to infuse capital into risky projects and offer foreigners an opportunity to obtain a green card for two years with the possibility of gaining permanent residency if the projects create jobs. Investors, who must make at least \$500,000 in cash available to participate in the program, are not guaranteed a return on investment, nor is there any promise that their investments will be held harmless.

Investors are eligible for permanent residency if the company they invest in generates 10 new jobs that last for at least a 24-month period. In the case of DreamLife, each of the six resorts — at a cost of \$24 million — is projected to create 153 direct jobs and generate work for 205 additional people, Mooney said.

The federal EB-5 visa program has been championed as an effective tool for job growth in America, and last August, [Sen. Leahy pushed hard for a three-year extension.](#)

Vermont has a long history with the federal program. Former Gov. Howard Dean, a Democrat, was a proponent of EB-5, and in 1997 helped to develop Vermont's program. The center was authorized by the U.S. Citizenship and Immigration Service in 2007 and was approved for EB-5 visa investments in 2009.

Vermont's center is unique because it is the only state-run EB-5 program in the country that certifies and approves businesses, and it currently maintains 14 different projects. Most centers are for-profit and are directly tied to individual projects, state officials say.

There are approximately 160 centers nationwide, according to Jeffrey Carr, an EB-5 analyst who also serves as an independent economist for the Shumlin administration.

American Dream was one of the state's first projects. It sought approval in July 2009 and entered into an agreement with the state a year later. [In all, the state has 14 projects](#), including seven associated with Jay Peak and Stenger's megaproposal, Sugarbush Resort, Trapp Family Lodge, DR Power Equipment and Country Home Products.

In May of last year, Brent Raymond, who had just become the head of the Vermont EB-5 Center, started getting phone calls from the former head of the project. He learned at that time that DreamLife's economic study had changed significantly from just two buildings to six. In September, the state pulled the agreement with American Dream.

"That combined with their not being active for a couple of years, we weren't comfortable with the MOU they were working under as being current because the economic impact study is very material to our decision-making as well as to USCIS," Raymond said.

After the developers made a concerted effort to document their progress and changes with DreamLife project and were able to show they had a bank escrow account, the state signed a second memorandum of understanding with American Dream in November.

American Dream, like all projects through the Vermont center, is required to file quarterly reports with the Agency of Commerce and Community Development. Officials provided VTDigger with the two agreements and other



Former Vermont Gov. Howard Dean.  
Photo by Vincent Gallegos

documents, including the cancellation notices, but at press time, the progress reports were not available.

Once the DreamLife project was reinstated by the state in November, [Mooney and his team traveled with Raymond to attract investors from China and Vietnam.](#)

It appeared that DreamLife might have secured tens of millions in funding early this winter after visits to Asia, but the situation was complicated by news that broke last month about a scandal involving the EB-5 center associated with the Chicago Convention Center. More than \$145 million in securities were fraudulently sold and about 250 largely Chinese investors lost \$11 million [in administrative fees for the Chicago project before the Securities and Exchange Commission froze the project assets and shut down the center.](#)

Even though the Chicago project is unrelated to DreamLife, the scandal didn't help the Vermont American Dream project, or any other EB-5 program for that matter, in its quest for investors.

[According to the LexisNexis Corporate and Securities Law Blog,](#) the SEC prosecution has been widely reported by China Central Television, the largest TV network in China, and the Chinese government has warned investors about fraud in the EB-5 program.

“It is very rare for the Chinese Ministry of Foreign Affairs to make such a bold comment,” the authors, Mona Shah and Yi Long, wrote. “The important issue that should not be forgotten is that the joint action of USCIS and the SEC actually prevented the investment funds from being dissipated.”

## American Dream runs afoul of state officials

In the cancellation letter sent to American Dream on March 27, state officials said project leaders falsely claimed to have retained licensed attorneys and listed people as project partners without their knowledge or consent.

Mooney denies that American Dream is responsible for these claims, which the state labeled “material misrepresentations.”

The letter from the state contends that American Dream's legal counsel, USMS Team, LLC, consists of Richard Parenteau, Richard Beaupre and David Gervais, all of whom are involved in the DreamLife project, and none of whom are licensed to practice law in Florida where USMS Team is registered. Gervais, the project's chief operating officer, practices law in Quebec and New York state.

DreamLife contends this should not present a problem.

“Legal counsel will be contracted out to experienced EB-5 counsel, if issues arise that require their services,” Mooney said.

Mooney says Brent Raymond, who heads Vermont's EB-5 Regional Center, knowingly signed off on the USMS Team, LLC, as a placeholder substitute for DreamLife's more complex legal arrangements.



Phil Mooney. Canadian government photo. Image was taken when Mooney was the CEO of the Immigration Consultants of Canada Regulatory Council (ICCRC).

“We have in-house legal counsel now, and will add legal counsel as demand requires,” he said. “And we will have specialized legal counsel if we need it. That arrangement was made very clear.”

The state’s cancellation letter also cites inquiries regarding trade professionals on materials American Dream “used to market its EB-5 project.” The company named architect Tom Leytham and engineers Carl Childs and Edward Pearson, as project participants on their website although neither knew they’d been listed, nor given their consent.

In an interview, Raymond said this could be seen as “false marketing.”

Mooney said he’d spoken to Leytham on March 28, and that Leytham “categorically denies” he told the state he objected to being included on DreamLife’s website.

“He’s been receiving money from us. He’s been involved all along, and had no objection whatsoever,” Mooney said of Leytham.

Leytham couldn’t be reached for comment.

Mooney is preparing letters from people who are reiterating they have no objection to being associated with DreamLife, adding: “This is common practice in our industry, that you list your subcontractors in your project.”

“This list has been around for two years,” said Mooney. “All of the people on the list were more than happy to be on the list.”

Pearson, whose firm is supposed to handle DreamLife’s electrical, mechanical and geothermal engineering, said he met with company officials once, in Stowe in 2011, and he hasn’t done any work for them.

Childs, an engineer from Williston, last heard from DreamLife principals almost two years, at a June 2011 meeting in Stowe.

“I don’t know if it’s active or not,” Childs said.

Childs is listed as the structural engineer for DreamLife, and his resume was posted on DreamLife’s website in an undated document that compiled the resumes of the entire construction team.

Although Childs hasn't performed any paid work for DreamLife, he doesn't object to being linked to the development.

"As far as I was concerned, the project was dead a year and a half ago," said Childs. "To me there is no project, there is no connection there. If they want to put that stuff up there, I suppose I should object. On the other hand, I don't see anything bad coming out of it."

Mooney isn't sure when the list was last updated, saying it could be four or six months ago.

On Friday, the list of contractors disappeared from the American Dream website.

## A questionable video

[While on a trip to China with Mooney earlier this month](#), Raymond received an anonymous email complaint about DreamLife promoting Vermont as a great place to host projects.

The anonymous complaint alleged that DreamLife's website violated Securities and Exchange Commission laws about how securities can be marketed.

The video, which featured a text scroll that Raymond had not approved, has since been taken down.

Alarmed, Raymond ordered DreamLife to take down an online video in which he and the state endorse the project, until they had received legal advice clarifying their website met all SEC regulations. The video, which featured a text scroll that Raymond had not approved, has since been taken down.

Within hours, according to Mooney, securities lawyers advised him the website was already in compliance with federal regulations. [But they encouraged him to "tweak" some "legalese" in their disclaimer.](#)

Susan Donegan, commissioner of the state's Department of Financial Regulation which regulates securities, explained to VT Digger anybody marketing securities must not mislead investors with marketing materials that tout the "merits of the possible future success of the project" while failing to disclose major risks.

"Nothing is to be sold or solicited in a way that is to mislead investors," said Donegan. "You want there to be full disclosure about the risks of an investment."

She said a website notifying investors of the existence of an EB-5 project is generally acceptable, though disclosing too much detailed financial information before vetting potential investors is generally prohibited.

Donegan declined to comment on DreamLife's website.

"We don't, here at the department, opine on those kinds of things. I have no opinion," Donegan said. "Someone must file a complaint to trigger our investigatory requirements."



## Lack of property investment raises questions

Despite actively searching for sites in Vermont for at least two years and seeking foreign investors, the DreamLife development project owns no land and holds no options on any property.

Jeffrey Carr, an economist who has produced hundreds of job projection reports for EB-5 projects nationally, said that a project that lacks ownership or control of land while still actively seeking investors is an odd combination.



Jeffrey Carr

“People usually have control of the land before they sink all the money into an EB-5 project,” said Carr. “The problem is that if you don’t control the land, and then lose control of the land, then your project is done [dead], if you can’t build the project you said you were going to build. If you know that a parcel is available and then go off and try to build an EB-5 project without actually owning the land, it’s kind of a silly thing to do, because you could lose control of the land and then your project would be dead.”

David North, a national EB-5 policy expert with the Center for Immigration Studies in Washington, D.C., said if projects don’t have even an option on the land, in which the landowner is obliged to sell the land at a specified price and time “that would sort of raise some very large questions about the whole thing.”

“They should certainly have control of the land first, if they’re going into a specific building project,” he continued. “I’d think that’d be a necessary thing. Otherwise you get the money, and where are you going to build the building, if you don’t have control of the land?”

Under EB-5 program rules, funds from foreign investors cannot be used to buy land. Properties must be purchased with other funds, often from company principals who are managing the project.

A USCIS spokesperson told VTDigger that the agency, which processes I-526 immigration petitions that foreign investors file for conditional green cards, has no regulations that specifically address land ownership or control.

“Each case is looked at, in its totality and its circumstances, for compliance with our eligibility criteria,” she said.

Mooney said that it would be “irresponsible” for DreamLife to purchase land without first securing investors. He said the company is weeks away from securing its first committed investor, with about 30 investors at varying stages in the long process between initial meetings and laying down funds.

“It would be highly irresponsible to go out and purchase land, which doesn’t count towards EB-5 investment, before you actually have investors,” Mooney said. “We didn’t get into this business to own land.”

“We have done all the work to acquire land, but we won’t put out the money or capital on the land, because once you do, you own it. And you can’t turn around and sell it the next day,” Mooney said.

Mooney wouldn’t disclose how they’d finance a land purchase, but said that company principals, primarily himself, chief operating officer David Gervais, CEO Richard Beaupre, Richard Desilets, and former chief Richard Parenteau, had already invested about \$500,000 in cash from their own money over the years, as well as collective time and effort worth about \$1.5 million.

James Candido, former director of the Vermont EB-5 Regional Center from 2005 to 2012, said when the state first approved DreamLife, he repeatedly told company principals that they needed to buy land and acquire permits. “I don’t know if they internalized it or not, but they were aware of it,” he continued.

“There were different parcels of land that they kept trying to work on. And just each parcel didn’t work out,” he said. “That was sort of what was hanging everything up.”

“Frankly, the biggest issue with the project was just honestly that there was no activity from it,” said Candido of his years working with DreamLife. “There was none. As far as I could tell, they never talked to an actual investor. ... So as far as I knew, and so far as they told me, their marketing was somewhat non-existent.”

Although speculative projects across the nation tend to be less successful, Candido said, that doesn’t mean a lack of land is a hurdle that can’t be overcome — with the right strategies.

People usually have control of the land before they sink all the money into an EB-5 project,” Carr said.

Candido said the project appear to be speculative “in the sense that it didn’t own land. And if you don’t own land, you obviously don’t know where it’s permitted.”

Raymond told VTDigger it’s “totally fine” for DreamLife to market to investors despite not controlling land, so long as they disclose that up front. But he added: “I honestly would not have approved the project knowing that they hadn’t selected properties, and that there’s potential permitting issues – except that they had already been approved previously.”

Raymond is now actively reviewing state standards on the question of land ownership and how far projects have progressed on land use permits. “I can say that is not the only project I know of that hasn’t had land in hand,” in terms of EB-5 projects nationally, Raymond added.

“In the future, if we made any changes to whether we approve projects, it wouldn’t be necessarily about owning land. It’d be: Do you have permits in place? Because that’s what really takes time,” he said.

## Parenteau’s perjury conviction and role in DreamLife

State officials have raised serious concerns about DreamLife’s founder, Richard Parenteau, who is still involved

with the company on a daily basis.

Parenteau was DreamLife's project manager from 2009 until the summer of 2012, according to Mooney. Parenteau founded the project and authored the project's overall vision. [He also signed the first memorandum of understanding with Vermont's Regional Center, in July 2010, as a general partner.](#)

Now Parenteau is a senior adviser for DreamLife: He helps to structure the project's complex business consortium, and he selects partners and contractors, according to Mooney.

[In October 2010, a Quebec court convicted Parenteau of perjury,](#) a conviction which he later unsuccessfully appealed, [according to Canadian court documents.](#) The former police officer fabricated false documents, records show.

Mooney said Parenteau is free to travel in and out of the United States, despite his perjury conviction, contrary to what state sources alleged to VTDigger.

I'm aware of it [the

conviction], and it gives me

no concern," Mooney said.

"I'm aware of it [the conviction], and it gives me no concern," Mooney said. He encouraged people to read the actual court records and see that the conviction stemmed from forgivable and well-intentioned mistakes on Parenteau's part. "[Richard] stands by his friends," he added. "If he has a fault, he's too trusting."

Two of Parenteau's other businesses, Can-Am Investment Construction Job Center and Work Permits USA, have faced claims from employees that they haven't been properly paid. Two employees have won their court cases; in another, Parenteau prevailed.

[In one case from May 2008,](#) Can-Am Investment Construction Job Center was ordered to pay \$696 Canadian dollars to contractor Diane Chicoine for "canvassing" work, although Parenteau denied that Chicoine delivered tangible results, with the court agreeing that Chicoine could not produce detailed proof of the work she did.

[In another case from September 2011,](#) Fair Ways Development claimed Work Permits USA, an immigration firm, owed them about \$5,000 Canadian dollars in unpaid bills for web design work, and won that payment, plus interest.

Mooney said that Parenteau doesn't handle investors' money in DreamLife. Mooney, CEO Richard Beaupre, and chief operating officer David Gervais are now the key decision-makers, he said. Neither the three partners nor Parenteau are paid at the moment, said Mooney, partly because the company hasn't generated any revenue yet.

Vermont EB-5 Regional Center director Brent Raymond said that Parenteau's background wasn't of material relevance when the state reinstated DreamLife's MOU in 2012 because Parenteau is no longer a decision-maker for the project.

Yet, information that came up while he vetted the background of the entire DreamLife management team, Raymond said, "caused me to question his [Parenteau's] business, how he operates as a business person."



Raymond said DreamLife project principals (i.e., Mooney and others) presented a different side of the story as to the perjury conviction, but also assured Raymond that Parenteau couldn't apply undue pressure within the project.

For Raymond, a big reason for later re-approving DreamLife was that its new management team was led by Phil Mooney, instead of Richard Parenteau.

"These [new management] structures that I've seen [and Mooney's leadership] provided me comfort that even though he [Parenteau] is involved behind the scenes, and still has an interest in the project, he is not a decision-maker," Raymond said.

"I didn't see somebody like Phil Mooney, with his excellent reputation, putting his reputation on the line for a project like this" if there were unacceptable risks, Raymond said, [citing Mooney's distinguished career and work with the Canadian government](#). "With a new management team, I thought everything would be OK."

Raymond's predecessor, James Candido, says that in 2010 he didn't conduct a review of the principals at DreamLife and remained unaware of Parenteau's background.

"It wasn't typical for us to do a personal background check, on someone coming with an EB-5 project," said Candido. "We didn't do background checks. It just wasn't within the scope of what we approved."

"We would approve them on the merits of their EB-5 [project]," said Candido. "We don't monitor anything else. It's not in our jurisdiction." But, Candido added, if someone had come forth with evidence of problems with company directors, even outside of their limited EB-5 project arena, he would have investigated.

"One of the ways that I describe it is that an EB-5 application is similar to a land permit," Candido said. "You don't look into everything, into the background of the people necessarily for a land permit. You just look at the validity of the land permit."

*Editor's note: This story was supported by a grant from the [Fund for Investigative Journalism](#).*

**CORRECTION: The story originally read: "Richard Parenteau, the founder of DreamLife, who state officials say is now a "background investor," was convicted of perjury in Quebec last summer."**

**In fact Parenteau was originally convicted of perjury in October 2010. His appeal to overturn that conviction was defeated in June 2012. The article has been updated to reflect that, at 2:40pm on April 8, 2013.**

**The article now also includes translations of court records related to Parenteau, which were commissioned by VTDigger for this article.**



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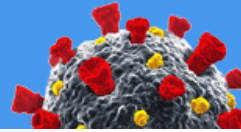
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# DreamLife hopes for second shot at canceled EB-5 project

By Hilary Niles

Jul 3 2013

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The state cut ties May 1 with DreamLife Retirement Resorts, but the company is hoping for another try.

“We’re pursuing every avenue we can,” said Phil Mooney of American Dream Fund I LLC — the company that proposed to build up to eight resort-style retirement centers in Vermont, funded through the federal government’s EB-5 immigrant investor program.

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Two of those projects initially were approved by the state’s Agency of Commerce and Community Development through the Vermont EB-5 Regional Center. The office later rescinded approval and [canceled its memorandum of understanding with ADFI](#), citing “material misrepresentations” in the application.

The lawyers listed on the application were not, the agency found, licensed to practice law in Florida as had been implied. Additionally, several members of the construction team were not aware they had been listed on the

application and in marketing materials.



Phil Mooney. Canadian government photo. Image was taken when Mooney was the CEO of the Immigration Consultants of Canada Regulatory Council (ICCRC).

These errors not only breached the terms of the company's partnership with the state, according to a letter of intent to cancel the arrangement sent to Mooney by Lawrence Miller, secretary of the Agency of Commerce and Community Development. "(T)hey also have caused the State to lose confidence that ADFI can perform at the level we expect of EB-5 projects in the nation's Number One ranked regional center."

Speaking Wednesday by phone, Brent Raymond, director of International Trade and the Vermont EB-5 Regional Center, said that without "significant changes to various aspects ... this project is canceled."

In addition to himself, Mooney said the three principle signatories on the project are Richard Beaupre of Florida and David Gervais of New York. Those are two of the three whose credentials and roles were questioned previously. Richard Parenteau, the third, currently is listed as the registered agent for at least three DreamLife corporations classified as "active" with the Vermont Secretary of State.

Mooney says he's confident the company can bring the state around.

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Mooney thinks the documentation his company provided proves that there were no "misrepresentations," only clerical errors on the part of the state and his company.

He said they've identified Rutland and Bennington as "ideal" locations for the first two DreamLife resorts. The communities need senior living options, he said, and part of the draw is a faster permitting process subject to less community scrutiny for this type of project.

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What is it?

EB-5 is a federal program that offers permanent residency to citizens from outside the U.S. in return for their investment in job creation.

But ADFI hasn't bought the land or sought the permits yet.

"Everything is on hold because until we have investors, we can't buy the land. And we don't have an approval of the project yet, so we can't get investors," Mooney said.

They can't get investors, and there appears to be some question as to whether ADFI still can present itself as an EB-5 investment company.

ADFI was required to remove any mention of Vermont from its website after the cancellation letter — a mandate with which the company complied. Raymond said the company also complied with his request that they take down a video about EB-5 in which Raymond appeared, preceded by wording with which the office was "uncomfortable."

Raymond remains uncomfortable with the DreamLife website's more generic framing as an EB-5 project.

"Although there is no mention of the Vermont EB-5 Regional Center that I could locate on [your site pages](#), DreamLife, to my knowledge is not approved by the USCIS or another regional center," Raymond wrote by email on May 17. "I don't want there to be any confusion out there that you are an approved project still operating under the VT EB-5 Regional Center."

Mooney said Wednesday that he did not recall receiving that email. He confirmed the company is not approved by any EB-5 program. Yet he stated firmly that the website is legitimate and held that, without reference to Vermont, it is outside Raymond's purview.

Both Mooney and Raymond expressed surprise that a different [website](#) still refers to the DreamLife as an approved and active project through the Vermont EB-5 Regional Center. Mooney said that site is outdated, and claimed he had never seen it before it was pointed out to him Wednesday.

He then sounded fatigued when he explained the references to the Vermont projects on his current LinkedIn profile. He had been working so hard to prove to the state the project's worth, he said, he hadn't had time to update that social media profile.

## Prospects for a dream

"I know they would like us to reconsider," Secretary Miller said. "But that's not on my immediate to-do list."

Raymond echoed: "There's been no indication that we would consider reinstating the old MOU (memorandum of understanding) or developing a new one," he said.

Raymond explained that the long process of EB-5 applications starts with informal discussions and progresses gradually to business summaries, formal business plans and then third-party economic analysis.

But “nobody’s talking” with regard to ADFI, Raymond said.

Mooney didn’t dispute that.

“Brent is right. He and I have not had conversations about this,” he said. “But that doesn’t mean that that’s the sum total of our efforts to try to get the project back on its feet. We’re pursuing every avenue we can,” he reiterated, but declined to specify what other efforts might entail.

When Vermont canceled ADFI’s EB-5 involvement, Miller encouraged the company to pursue conventional financing for the assisted living centers.

Mooney indicated ADFI was not interested in such arrangements. His is an EB-5 company, he said. “Our purpose isn’t to build buildings. Our purpose is to get people green cards.”

While the partners remain hopeful that arrangements can be made in Vermont, he said the company is actively pursuing EB-5 financing in nearby states, including New Hampshire, Connecticut and upstate New York.

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## About Hilary

Hilary Niles joined VTDigger in June 2013 as data specialist and business reporter. She returns to New England from the Missouri School of Journalism in Columbia, where she completed her master's coursework. While there, she worked at Investigative Reporters &



Editors and covered state and local government for radio, print and the Web. She's been a researcher-in-residence at American University's Investigative Reporting Workshop in Washington, D.C.; a reporter and community radio program director in the New Hampshire; and, in Boston, a public radio producer. She studied English at the University of New Hampshire and documentary writing at the Salt Institute for Documentary Studies in Maine.

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# Shumlin and Stenger return from EB-5 promo trip to Asia

By **Hilary Niles**

Oct 1 2013



Gov. Peter Shumlin and Jay Peak co-owner Bill Stenger returned from Asia in the wee hours of Monday morning. Joined by a small state delegation, the group avoided a typhoon, made all their appointments on time, and spent a solid week promoting spinoffs of the ski resort's immigrant-funded development projects in the Northeast Kingdom.

Stenger went looking for investors to support a Korean biotech firm planning to locate in Newport and expansions at Jay Peak's newly acquired "sister" resort, Burke Mountain. He asked the governor to come along to demonstrate the state's support — official cachet that goes a long way in foreign business pitches, state officials say. Through the federal EB-5 Immigrant Investor Program, investors and their immediate family members can receive green cards for permanent residency in the U.S., so long as each investment generates 10 jobs — or 10 jobs' worth of American economic activity — within two years.





Bill Stenger. Photo by Anne Galloway/VTDigger

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A couple of investors signed up during the trip, Stenger said, and more than 20 have made commitments in the few days since they met. Agreements in hand, they'll now start applying for conditional visas, a process that easily lasts months. Stenger estimates the delegation met more than 500 investors in Beijing, Shenzhen and Shanghai in China, and Ho Chi Minh City in Vietnam. Each must pay \$500,000 to secure a visa.

"I'm expecting between 100 and 150 investors to come from this trip," Stenger said Tuesday, the majority to solidify in the next 30 days.

That would yield between \$50 million and \$75 million in capital, to be split between Newport's future AnC Bio and Burke Mountain. Stenger is not authorized yet to raise funds for Jay Peak's other planned development, a combined mixed-use block, marina and waterfront hotel in downtown Newport.

The recent trip to Asia cost nearly \$100,000, Stenger said in September. It's money he's happy to "front," and that he hopes to get back. But it remains to be seen how much, if any, will be repaid.

The Legislature created a special fund in 2011 to collect fees from investors, the idea being to help underwrite the state's cost of

administering the EB-5 program.

That fund’s balance at the moment, however, is zero. And once money’s in the bank, how to spend it will be another question.



Gov. Peter Shumlin in January.  
Photo by Roger Crowley for  
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Vermont’s EB-5 Regional Center exists to promote the projects it chooses to align with. Developers submit detailed business plans to the state’s regional center, which screens them and decides whether or not to sign an agreement allowing the developer to raise EB-5 funds.

Brent Raymond, who heads up the state’s regional center, said the U.S. Citizenship and Immigration Services agency requires regional centers to actively market and promote economic development through the EB-5 projects. And promotion involves travel.

“So we can do that on our own. Which I’ve done,” Raymond said in September. “Or we can be asked by a project to attend an event with the project.”



Brent Raymond, director of Vermont's EB-5 Regional Center. Photo by Hilary Niles/VTDigger

Raymond and others from the state have done that, too. Generally, these events include conferences for immigration attorneys or foreign investment expos — or a trip designed to solicit investors for one particular developer.

[Jay Peak's September travels in Asia](#) marked the first overseas trip Shumlin has taken for EB-5, but at least the third time Stenger requested state presence on his pitching tours. Shumlin accompanied Stenger on a trip to Florida in spring 2013, and Raymond joined Jay Peak representatives in Las Vegas in June. Raymond previously traveled overseas with [American Dream Fund](#), a company that proposed building luxury retirement resorts with EB-5 funding, but with whom the regional center later severed ties.

To keep down the regional center's travel and operational costs, the Legislature in 2011 allowed the state to assess a \$1,500 fee for every investment in a Vermont EB-5 project. There still would be General Fund appropriations, according to Lawrence Miller, secretary of the Agency of Commerce & Community Development. But the EB-5 Regional Center "shouldn't cost a helluva lot," Miller said in a September interview.

"The problem is, we have a zero balance in that right now," Raymond said. Miller confirmed that a bit of money has gone in and out of the fund, but more time will be needed to build it up.

The fee is not assessed until an investor receives his or her conditional visa — visitor status stemming from a successful I-526 immigration form. This is how investors and their families get into the country for two years, while their investments hopefully go to work.

Those I-526 forms take time to wind their way through the federal immigration system, while USCIS vets visa applications to ensure investors are eligible for residency.

"The typical processing time for Vermont is four to six months, with the occasional outlier of seven months," Raymond said, adding that visas elsewhere in the country often take up to a year for approval. An investor's money may be deposited into the project's escrow account, he said, but the state will not assess its own fee until the I-526 is approved.

"We don't want to be billing them for what potentially could be an investor that's not approved," he said.

Once conditional visas come through, the state's bill goes directly to the project itself, not the investor. It's issued on a quarterly basis.

"I think they expected the money would just start coming in when that was passed," Raymond said about legislation establishing the special fund.

## EB-5 operational spending

Although the special EB-5 investor account is empty, Raymond feels the intention to save taxpayer money is established. Therefore, if a developer asks for the state's company on a special promotional trip, he'll say, "Sure, but it has to be at your cost."

"If we're going to be traveling with a project," Raymond said, "we don't want to have taxpayers covering the cost, even though there are a lot of positives for the economy."

He added that, when he does travel specifically for one EB-5 developer, he also tries to incorporate meetings related to the other hat he wears for the state: director of international trade. Raymond routinely emphasizes that he and other state officials are legally prohibited from explicitly endorsing any of the regional center's EB-5 projects, as an investment adviser would. The state's role is to promote the regional center itself — its methods and track record — and the state of Vermont as a great place to live, work and invest.

What happens on a special project, therefore, and who ultimately should pick up the tab, may involve nuance.

"There's been some discussion about what's fair," Raymond said.

The zero-balance fund that eventually will accrue investor fees was established to offset the regional center's operational costs, he said. Indeed, the enabling [legislation that created the special fund](#) reads, "Expenditures from the fund shall be used only to administer the EB-5 program."

Miller said a developer such as Jay Peak may ask to be compensated out of the special fund for money the developer spent on special promotional travel, such as September's state delegation to China and Vietnam. That prospect raises the question of which regional center activities count as standard operations and which are considered special services for an EB-5 project.

"The stuff that's dedicated to one (project), I would tend to think of as special. And the things that are core to the USCIS requirements of the regional center, I tend to think of as supported by the fee," Miller said Tuesday. "We'll be establishing those procedures as we go through it."

After all, Miller pointed out, Jay Peak hasn't yet requested compensation for September's trip to Asia, and won't have opportunity to do so until more visa applications are approved.

"There would have to be some (funds) we have received to pay out of, after all," Miller said in September. He also pointed out that the special investor fund was created after AnC Bio was formally established as an EB-5 project, and the fund is not retroactive for existing agreements. Just Burke Mountain, among Jay Peak's approved EB-5 plans, could receive any benefits from it.

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Hilary Niles joined VTDigger in June 2013 as data specialist and business reporter. She returns to New England from the Missouri School of Journalism in Columbia, where she completed her master's coursework. While there, she worked at Investigative Reporters & Editors and covered state and local government for radio, print and the Web. She's been a researcher-in-residence at American University's Investigative Reporting Workshop in Washington, D.C.; a reporter and community radio program director in the New Hampshire; and, in Boston, a public radio producer. She studied English at the University of New Hampshire and documentary writing at the Salt Institute for Documentary Studies in Maine.

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## **B** BUSINESS & ECONOMY

# VTDigger exclusive: Jay Peak loses trust of first EB-5 investors

By **Anne Galloway and Hilary Niles**

Jul 27 2014

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Bill Stenger stands before the future Stateside Hotel at Jay Peak in September 2013.

File photo by Hilary Niles/VTDigger

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A group of immigrant EB-5 investors are incensed that Bill Stenger, president and CEO of Jay Peak Resort, seized ownership of the Tram Haus Lodge and turned their half-million dollar equity stakes in the property into IOUs.

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Investors had no knowledge of Stenger's actions until five months after they were executed.

Stenger and his partner at Jay Peak, Miami-based [Ariel Quiros](#), dissolved the company on Aug. 31, 2013, turned the investments into unsecured loans and "waived" investors' legal rights, according to documents obtained by VTDigger. Stenger says he sent an email to investors with the promissory note on Jan. 24 of this year, but he did not mail official, paper copies until May.

After the investors sent letters of complaint to Stenger and the state, Jay Peak agreed to change certain terms of the IOU in a take-it-or-leave-it offer earlier this month.

In an interview, Stenger said he did not need to consult with the 35 limited partners in Jay Peak Hotel Suites LP before he dissolved the company, because Jay Peak had the legal right to do so under the limited partnership agreement with the investors.

Stenger said he regrets not communicating better with both investors and state officials, and he takes full responsibility for the "big mistake."

"I made a mistake in not communicating with the investors, and I should have," Stenger said in an interview Friday. "And I've apologized to them, rather profusely, that it was my oversight in not reaching out to them in August when that decision was made. And I was wrong. It was not intentional."

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About half of the Tram Haus investors in the state's first EB-5 project, however, say they have lost faith in Jay Peak and the state-run Vermont EB-5 Regional Center, which oversees all EB-5 developments in Vermont. One investor said he had his life savings invested in the Tram Haus, and most fear they will never recoup their investments in the property.

The dissolution was legal under the limited partnership agreement, Stenger says. Regional Center director Brent Raymond agrees, though he said the transaction's execution did not meet state standards.

Under accepted industry standards set by the Institutional Limited Partners Association, any amendment to such an agreement should require the approval of a majority interest of the limited partners.

According to best practices promulgated by the Association to Invest in America, a trade group that represents EB-5 regional centers, of which Stenger is a board member, limited partners in EB-5 projects must be informed of substantive changes to limited partnership agreements.

Unilateral authority to dissolve the partnership without investor consultation was provided for in the agreement, Stenger said. As a general partner, his sole discretion broadened after the immigrant investors achieved permanent residence.

"Once that's done, we can do what we want," Stenger said.

Stenger said he dissolved the partnership because a few of the investors were asking for an "exit strategy," and he felt compelled to develop a schedule for repaying investors. In a letter to investors dated July 14, Stenger apologized for the "unintentional delay" in communication.

"My objective was and is, to **guarantee** a repayment of the full investment of \$500,000," Stenger wrote (emphasis his).



Ariel Quiros at the opening of Jay Peak Resort's Stateside Hotel. Photo by Hilary Niles/VTDigger.



Stenger said he originally told immigrant investors there was no guarantee they would recoup their investments after five years because he wasn't allowed to offer such a commitment under U.S. Customs and Immigration Service rules.

The primary purpose of the program is to help investors obtain green cards and establish U.S. residency, Stenger said. Return on investment and repayment of capital are secondary, he said.

"Every investor that got involved in the EB-5 program knows that there is no guarantee of any return, and no guarantee when they'll get their investment back," Stenger said. "We're making a good faith effort on Phase I. We have committed ourselves, contractually, to pay them back 100 percent of their investment by 2018. And that's a pretty good outcome. Is that the best outcome? If the real estate market after 2008 had been progressing the way it might have from 2005 or 2006 and didn't have this, I mean, you know what happened. We're recovering."

Last September, Stenger told reporters Jay Peak would repay the investors \$50,000 a year over 10 years.

"And our partners are thrilled," Stenger said at the time.

Yet the terms of the Aug. 31, 2013, promissory note Stenger and Quiros signed just weeks before specify that investors would receive a 1 percent interest rate and payments on their \$500,000 principal over a nine-year period: \$21,500 each year for eight years and a check for \$343,697 on Jan. 31, 2023.

The Vermont EB-5 Regional Center, which oversees the immigrant-funded projects in the state, was aware of the dissolution of Jay Peak Hotel Suites, LP, around the time the papers were signed. But Stenger did not inform regional center director Brent Raymond about the terms of the deal, nor did Raymond ask for specifics.

Raymond said Jay Peak representatives verbally informed him the resort had agreed on an exit strategy for the immigrant limited partners. He assumed the investors were being paid off, and that they were satisfied.

"I guess I can blame myself for making assumptions," Raymond said.

Disgruntled investors sent formal letters of complaint to the Vermont Regional Center in May. Several say that instead of investigating their complaints, Raymond directed them back to Stenger for answers.

Investors who communicated with VTDigger asked not to be identified for fear of retaliation.

Fifteen of the investors then sent letters to a different state department over the July Fourth weekend. A week later, Stenger sent the 35 investors a new, take-it-or-leave-it IOU with a five-year payback period.

In a letter sent with the second promissory note, Stenger said the second offer would "omit any reference to waiving legal rights," and he guaranteed their loans against the full value of the entire Jay Peak Resort facility. The letter says he would "re-evaluate the plan at the end of each fiscal year to determine if the payment can be further accelerated."



Bill Stenger, right, presides over the ribbon-cutting ceremony to open Jay Peak's Stateside Hotel and Baselodge in December 2013. File photo by Hilary Niles/VTDigger

## Tram Haus: The first part of a grand plan

The Tram Haus, which was built in 2008, is the stepping stone Jay Peak used to launch a sweeping, [\\$600 million interconnected set of developments in Vermont](#). The Northeast Kingdom Economic Development Initiative included developments at the Jay Peak and Q Burke ski resorts, improvements to a local airport, and developments in Newport, including an office building, a window factory, a biotechnology research and manufacturing campus, and a marina, hotel and conference center.

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### What is EB-5?

EB-5 is a federal program that offers green cards, and eventually permanent residency, to immigrants who invest \$500,000 or \$1 million in pre-approved development projects in the U.S. Each investment must generate 10 jobs.

The plan, publicly lauded by state officials, including Gov. Peter Shumlin and Sen. Patrick Leahy, D-Vt., promised to bring thousands of jobs to the poorest region of the state. The ambitious development plan has also received national media attention.

Plans to bring the German window manufacturing company Menck to Newport [fell through in September 2013](#). The [buildout of the state-owned Newport State Airport](#) was pulled from the EB-5 pipeline in favor of private equity. The mixed-use Renaissance Block in downtown Newport and a waterfront marina, hotel and conference center on Lake Memphremagog remain in limbo months after [real estate complications](#) surfaced this spring.

The Northeast Kingdom initiative continues to be touted by state officials as a showpiece of the EB-5 program. Vermont's EB-5 Regional Center is overseen by the state's Agency of Commerce and Community Development; it was long the only state-run program in the United States, until Michigan formed its own regional center earlier this year.

Gov. Peter Shumlin and the state's congressional delegation have endorsed the EB-5 program in general, and the Northeast Kingdom initiative in particular. In 2012, Leahy successfully pressed his colleagues in the Senate for an extension of the national EB-5 regional center pilot program. Shumlin has traveled to Asia to promote the Vermont Regional Center's work, in an effort to help the state recruit more immigrant investors. His travel expenses were [paid for by Jay Peak Resort](#).



Jay Peak's Tram Haus Lodge.  
Photo by Justin  
Cash/skivermont.com

## Mounting investor expectations

The Tram Haus, also known as Phase I, was the first EB-5 project for both Jay Peak and the state. Like the other developments, Tram Haus is heavily leveraged by EB-5 monies. Stenger and Quiros put in \$6 million in private equity and \$17.5 million from 35 immigrant investors to build the \$23.5 million property.

The Tram Haus is also the first project in which payments for EB-5 investments have come due. Stenger and Quiros are trying to manage expectations as they develop an exit strategy, not only for the first 35 investors in Phase I, but also for the 150 investors in Phase II who will likely expect an exit plan next year. In all, Stenger and Quiros have completed five separate EB-5 projects, with about 500 investors. A sixth, [Stateside Hotel and Baselodge](#), is near completion. Two more, [AnC Bio](#) and [Q Burke](#), are under preliminary construction.



**Northeast  
Kingdom  
Economic  
Development**

Stenger said on Friday that Jay Peak is looking at a fractional ownership program to pay back investors in both the Tram Haus and subsequent EB-5 projects. Such business decisions are at

U.S. Rep. Peter Welch, D-Vt., Gov. Peter Shumlin and Ary Quiros, CEO of Q Burke Mountain, at a groundbreaking ceremony for the ski resort in June 2014. File photo by Hilary Niles/VTDigger

## Initiative

These numbers are approximate and the project costs do not include additional private capital. Job numbers reflect the estimated value of direct, indirect and induced employment (combined) generated by the investments.

Granting of conditional visas comes first, and indicates USCIS has signed off on the business plan and job creation projections. Granting of permanent residency indicates USCIS has recognized a project has met job creation targets.

## Jay Peak Hotel

### Suites Phase I

Tram Haus  
\$17.5 million EB-5 money  
35 investors  
350 jobs (total)  
Project complete

the sole discretion of the companies' general partners, he said.

Dissolving the Tram Haus limited partnership was in the best interest of the limited partners, in his view.

But many of the investors disagree. About half of the limited partners have complained.

"I believe this decision is outrageous and has seriously jeopardized the financial futures for myself, my wife and my children," one investor wrote in a letter to the state. "If I had known a simple \$500,000, 5-year investment would turn into a 15-year investment I would NEVER have considered the EB-5 Program."

The investors allege, in letters sent to the state earlier this month, that they expected full repayment by 2013. Over the course of the past five years, they have each been paid a small return on their \$500,000 investments.

USCIS regulations prohibit EB-5 developers from guaranteeing investors will get their capital back; investments must be at-risk. Stenger said the company is vigilant in following this rule, and he doesn't know where the investors would have gotten such an impression.

"Our intent has always been after a certain period of time we would evaluate the market," Stenger said. "And if we could pay back or begin paying back after five years, we would. And indeed we have."

Stenger said he's doing "everything in his power" to improve the situation for investors — accelerating the payment, shortening the timeframe, developing a fractional program, and "setting up a structure for future projects so that we can continue to have a more predictable repayment program."

"I don't want to be sitting here having a conversation about unhappy customers," Stenger said. "I'm in a business where 85 percent of our customers are repeat people. This is not something I'm comfortable with, the fact that we've got some unhappy people. I do not like this. And I'm doing everything in my power to improve it."

The five-year loan agreement issued July 14 specifies payments of \$21,500 for the first four years and a balloon payment of \$434,311 in the final year. Stenger has asked the investors to agree to the second promissory note in writing.

In their complaints to state officials, many investors scoffed at the original promissory notes, which were "unsecured." The second note uses the Jay Peak Resort as collateral. The resort's infrastructure was expanded largely with other EB-5 investments.

# Jay Peak Hotel Suites Phase II

Hotel Jay and  
water park, ice  
arena, golf course,  
club house and  
commercial  
conference center  
\$75 million EB-5  
money  
150 investors  
1,500 jobs (total)  
Project complete

“I have many hundreds of other investors who are expecting at some point an exit strategy,” Stenger said. “And I want a positive one. So I’m working my ass off right now to implement and keep our businesses here successful, jobs continuing to perform well, the businesses growing, and also set up a situation where there can be a predictable inflow of capital, maybe from a new real estate product line, that will be a multi-year conduit for the repayment of these investors.”

# Jay Peak Penthouse Project

- 55 suites on the top floor of Hotel Jay
- \$32.5 million EB-5 money
- 65 investors
- 650 jobs (total)
- Project complete

### Jay Peak Phase

#### III-A

Golf & Mountain  
Suites  
\$45 million EB-5  
money  
90 investors  
900 jobs (total)  
Project complete

### Jay Peak Phase

#### III-B

Lodge &  
Townhouses  
\$45 million EB-5  
money  
90 investors

900 jobs (total)  
 Project complete

**Jay Peak Phase III-C**

Stateside hotel and  
 base lodge  
 \$67 million EB-5  
 money  
 134 investors  
 1,340 jobs (total)  
 Hotel and  
 baselodge built,  
 condos incomplete

**AnC Bio**

\$110 million EB-5  
 money  
 220 investors  
 2,200 jobs (total)  
 Project pending  
 Act 250 and other  
 permits

**Q Burke**

**Mountain Resort**

Hotels, conference  
 center and  
 recreation facilities  
 \$120 million EB-5  
 money  
 240 investors  
 2,400 jobs (total)  
 Ground broken for  
 initial  
 construction.  
 Conditional green  
 cards have not yet  
 been approved.

◇ ◇ ◇

A few other  
 projects intended

for EB-5 funding  
are on hold:  
Newport's  
waterfront marina,  
hotel, conference  
center and  
Renaissance  
Block, and Jay  
Peak's West Bowl  
buildout and  
village  
development. The  
state already has  
signed MOUs with  
Jay Peak on the  
latter endeavors in  
Jay. The  
developers have  
not yet signed an  
MOU with the  
state for the  
Newport projects,  
which may or may  
not be rolled into  
one. The MOU is  
necessary before  
EB-5 investors can  
be solicited.

## Vermont Regional Center inaction

Investors also allege that the Vermont Regional Center has not adequately responded to formal complaints and pleas for assistance. The center, which is part of the Agency of Commerce and Community Development, has an oversight role, including the authority to [cancel agreements with developers](#).

One Tram Haus investor describes ACCD officials as uncooperative and indifferent to their plight. He says Raymond has “reflexively sided with Jay Peak,” failed to act on their complaints and refused to provide documents they have requested. The investor said he and others feel abandoned by the Vermont Regional Center, which has represented its role to the world as the “EB-5 police.”

Raymond said Friday he takes “great pains” to respond immediately to investor concerns, but the center has no authority over the private placement memorandum. The Tram Haus agreement was signed by investors, and it gave



the general partner the legal right to dissolve the company, he said.

“Obviously, we had concerns that a document dated in August was delivered sometime in May,” Raymond said. The timing of the second, revised promissory note didn’t surprise him because it followed after Raymond received complaints and pursued the issues with Jay Peak.

“I also had concern about whether or not it was legitimate for the general partner to dissolve the partnership,” Raymond said. He and the agency’s lawyer examined the documents and concluded it was allowed, he said.

The center has no ability to intercede in private legal contracts, he said, but it is making more of an effort to hold Jay Peak accountable. Company management now copies the center on all communications with investors. Raymond also has asked Jay Peak to submit weekly written updates. As of Friday, the first deadline the company agreed to had been missed by a day.

Patricia Moulton, the [new ACCD secretary](#), said she couldn’t comment on the details of the relationship between Jay Peak and the investors, nor on the current dispute over the dissolution of the company and conversion of equity stakes into loans.

“If this is a provision within the agreement the investors have with Jay, these kinds of conversions can happen,” Moulton said. “It doesn’t reflect on the regional center if they exercise something within their rights to do.”

Moulton said Friday the center has been monitoring Jay Peak “right along.” Recently, the center put the resort “on notice,” and is now requiring the company to submit quarterly reports. Before now, the regional center did not require any formal reporting, even though MOUs with all the EB-5 projects include a clause that quarterly reports are to be submitted.

Moulton and Raymond said there is little the regional center can do to help investors who are already invested in projects.

“We’ve advised investors that if you feel something is wrong you should get counsel but it’s not our purview in the regional center,” Moulton said. “As long as it’s in compliance with the SEC and USCIS, the rest is up to investors and the company. I don’t think it reflects poorly on the regional center. We have been doing our due diligence.”

With the regional center’s limited requirements and abilities to intercede, however, it’s unclear how far its diligence and authority, even when fully exercised, can go.

Some investors say Brent Raymond, for example, directed investors back to Jay Peak with their complaints. They allege that Raymond said they would need to provide him with proof of fraud in order for him to take action.

The Tram Haus allegations focus on a lack of transparency from Jay Peak — a charge Stenger denies. He said Jay



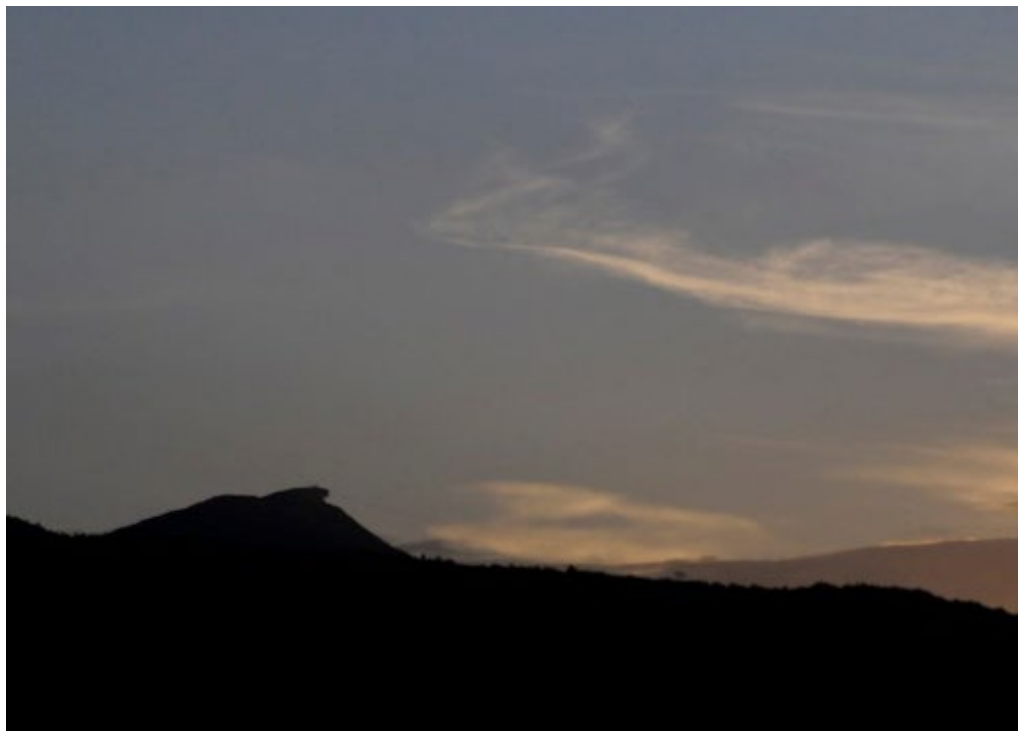
Brent Raymond, director of Vermont’s EB-5 Regional Center. File photo by Hilary Niles/VTDigger



Peak provided quarterly reports and required documentation throughout the limited partnership, and the company is now responding to requests for detailed financial accounting.

But investors, kept in the dark about the status of their own \$500,000 equity investments, fear that without partnership status, they'll lose legal rights to access the documents they would need to prove fraud.

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A sunset silhouette of Jay Peak from the nearby town of Troy illustrates the magnitude of the resort's development. The building that receives the tram up the mountain has altered the skyline. File photo by Hilary Niles/VTDigger

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## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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# VTDigger Exclusive: EB-5 investors question state watchdog's independence

By **Anne Galloway**

Oct 5 2014

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2014

Investors in a Northeast Kingdom development question whether a state official was watching out for their best interests. In complaints to the state, they allege that Brent Raymond, the



Jay Peak's Tram Haus Lodge. Photo by Justin Cash/skivermont.com

executive  
director of the  
Vermont EB-5

Regional Center, was not playing enough of a watchdog role in his oversight of the Tram Haus Lodge project at Jay Peak.

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Raymond is charged with monitoring a novel investment program being used for development in the Northeast Kingdom.

A series of emails obtained by VTDigger shows that Raymond, who is charged with overseeing EB-5 projects in the state, has a close relationship with Bill Stenger, the CEO and president of Jay Peak.

Following a recent dispute between Stenger and a group of investors, Raymond assured Stenger he was “a great man” in a July email.

Stenger and his partner, Ariel Quiros, changed the terms of a deal with EB-5 immigrant investors over money raised to build a hotel at Jay Peak.

Stenger and Quiros have said they had the right to change the deal but acknowledge they failed to properly notify their investors. Some of the investors question the legitimacy of the new deal, which was transacted without their knowledge, and have turned to the state for help. They were dissatisfied with the state’s response to their concerns, and they wonder who’s watching out for their interests and whether the state’s relationship with the developer is too close.

Raymond says his relationship with Stenger is “hardly cozy.”



Bill Stenger at the construction site of the Stateside Hotel at Jay Peak. File photo by Hilary Niles/VTDigger

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“Both myself and other Regional Center staff work long hours every day to monitor projects and do our best to protect investors required by the USCIS to be an ‘at risk’ investment,” Raymond said by email. “I know our requests and questions sometimes cause our project principals to be frustrated, but that’s our job. If I didn’t feel that I was able to be impartial and serve my duties to the state, our projects and their investors ethically, then I would resign.”

In an email to the state, one of the investors, whose name was redacted by state officials, says he can’t understand



why Raymond isn't acting in an independent capacity, "unless the representations by the state of Vermont and its Regional Center are in and of themselves misrepresentations to induce investors?"

The disgruntled investors say they worry that state officials, including Gov. Peter Shumlin, are so intent on job creation that they are not holding Stenger accountable enough. For example, the governor made comments about the state's level of oversight of the investment program that were inaccurate and needed to be removed from a promotional video produced by Jay Peak. Shumlin incorrectly said the projects are audited by the regional center.

Shumlin has staked his reputation as a jobs creator in part on the economic development impact of Stenger and Quiros' projects in the Northeast Kingdom. The governor has traveled to China to help Stenger raise funds from foreign investors who can obtain permission to live in the United States with a \$500,000 investment.

[The developments have already dramatically improved economic prospects in the state's poorest region.](#) For the first time, Orleans County job growth outpaced all other counties in the latest state revenue analysis.

To date, Stenger and Quiros have attracted 1,089 investors and raised \$544.5 million for the Economic Development Initiative, which includes seven projects at Jay Peak Resort, a ski area and four-season destination resort near the Canadian border; AnC Bio, a biotech company; and Q Burke, a ski area near Lyndonville.



Brent Raymond, director of Vermont's EB-5 Regional Center. File photo by Hilary Niles/VTDigger

## State official, Jay Peak coordinate media response

**I**n the wake of a VTDigger report on investor complaints, Raymond offered to help Stenger, the CEO and president of Jay Peak. Raymond wrote in an email to Stenger that he hoped "we can repair this reputational damage, and move on, but it won't be easy."

"You're still a great man in my book," Raymond continues. "Unfortunately, I don't think there'll be a great demand for my memoirs. :-)"

## A short explainer on EB-5 projects in the Northeast Kingdom

### What is the Tram Haus?

The Tram Haus Lodge was built in 2008 and is the first EB-5 project at Jay Peak.

Stenger and Quiros built the \$23.5 million hotel with \$17.5 million from 35 immigrant investors and \$6 million in private equity. Each of the 35 limited partners in Jay Peak Hotel Suites LP invested \$500,000 in the Tram Haus Lodge through the federal EB-5 immigrant investor program.

The luxury hotel is phase 1 of an expansion of Jay Peak Resort, a ski area near the Canadian border, that has been transformed into a four-season destination with three hotels, three condo complexes,

That exchange follows months of correspondence between Raymond and investors who were outraged by the way they have been treated by Jay Peak.

More than a year ago, Stenger and his partner at Jay Peak, Miami-based [Ariel Quiros](#), converted the equity stakes of 35 investors in the Tram Haus Lodge into unsecured loans with a nine-year payback period. The investors' limited partnership shares in Jay Peak Hotel Suites LP, the business entity for the Tram Haus were terminated as part of the transaction. The investors did not receive the redemption agreement and promissory note that sealed the deal on Aug. 31, 2013, until eight months later.

In May and June, 15 of the Tram Haus investors questioned the adequacy of the state's oversight of the Jay Peak projects in a series of complaints filed with Raymond.

Investors say Jay Peak seized their \$500,000 equity stakes in the Tram Haus Lodge without their knowledge and kept them in the dark about the finances of the project. Several investors have said that their expectation, based on the terms of their limited partnership agreement, was that the hotel would be sold after five years and they would recoup their investment with a profit.

The group of disgruntled investors say they put their faith in Jay Peak because of assurances that the Vermont Regional Center would vet the EB-5 projects.

When the investors complained to the state, Raymond told them to direct their questions to Jay Peak. The investors were outraged that he was not willing to assist them directly, and they emailed a new set of complaints to another state official over the July Fourth weekend.

VTDigger published a [story about the complaints](#) on July 27.

When the story went public, Stenger apologized for what he described as an "unintentional delay" in communication with the investors. Stenger said he dissolved the partnership because a few of the investors were asking for an "exit strategy," and he felt compelled to develop a repayment schedule. All of the investors have received permanent residency in the United States.

Discussion about the complaints, a Fortune Magazine mention, the VTDigger article and a British expatriate forum feature prominently in correspondence between the state and Jay Peak.

In the email exchange, Raymond and Stenger discuss the impact of media reports on Jay Peak and other projects planned in the Northeast Kingdom. All identifying information about investors was redacted before the records were provided to VTDigger.

Raymond assesses the potential damage from the Fortune Magazine article about an EB-5 embezzlement scheme in Chicago. The story mentions in a caption that Jay Peak had not yet paid back the first group of EB-5 investors.

a water park, ice arena, club house, base lodge, and a business conference center.

Jay Peak has funded the expansion with \$314.5 million in capital from 629 immigrant investors.

### **How does EB-5 work?**

EB-5 is a federal program that offers green cards, and eventually permanent residency, to immigrants who invest \$500,000 or \$1 million in pre-approved development projects in the United States. Each investment must generate 10 jobs.

U.S. Citizenship and Immigration Services determined the Tram Haus project created 350 jobs — 10 for each investor — and granted permanent residency to

“You two entrepreneurs were known internationally as the best and most honest in the EB-5 industry,” Raymond wrote. “Angered Phase 1 investors have gone to multiple media outlets, causing everything you’ve accomplished to be doubted and shrouding the entire VT RC under a cloud.”

Raymond notified Quiros and Stenger of a media request on an international forum posted by a VTDigger reporter asking EB-5 investors to share their experiences and perspectives on the program. “FYI,” Raymond wrote to Stenger and Quiros in an email with the link.

Several days later, Stenger sent Raymond a detailed description of an interview with VTDigger.

In response, Raymond says he was “blindsided” by a VTDigger reporter who contacted him after the Stenger interview. “I know you’re busy,” Raymond writes. “I really do know you’re extremely busy, but a quick courtesy heads up would have been helpful.”

In an email the following day, he tells Stenger he “sent several remarks to Pat Moulton to provide better perspective should we choose to respond.” Moulton is the secretary of the Agency of Commerce and Community Development.

Raymond said in a comment requested for this story that he has acted professionally and ethically.

“I have known Bill Stenger for a long time,” Raymond said by email. “I was the bond trustee officer for a VEDA Jay Peak municipal bond many years prior to my current role as Executive Director of the Regional Center. A position I have held for just over 2 years. We have a professional working relationship, as I do with all EB5 projects principals, but that doesn’t mean we haven’t had differences of opinion. I know that as I’ve performed my responsibilities both Bill Stenger and Ariel Quiros have sometimes disagreed with me. That’s inevitable due to the Regional Center’s role. I don’t think any project would consider their relationship with me or the Regional Center to be ‘cozy,’ but I would hope they consider me to be professional and ethical.”



investors.

Although there was never a guarantee their capital would be returned, disgruntled investors in the Tram Haus say Bill Stenger led them to believe the money would be repaid after five years.

**What is the  
Northeast  
Kingdom  
Economic  
Development  
Initiative?**

The Jay Peak Resort expansion is part of an interconnected set of developments in Vermont. The Northeast Kingdom Economic Development Initiative originally included developments at the Jay Peak and Q Burke ski resorts, improvements to a local airport, and developments in Newport, including an office building, a

window factory, a biotechnology research and manufacturing campus, and a marina, hotel and conference center.

Plans to bring the German window manufacturing company Menck to Newport [fell through in September 2013](#).

The [buildout of the state-owned Newport State Airport](#) was pulled from the EB-5 pipeline in favor of private equity. The mixed-use Renaissance Block in downtown Newport and a waterfront marina, hotel and conference center on Lake Memphremagog remain in limbo months after [real estate complications](#) surfaced this spring.

The pared-down initiative, which now includes the Jay Peak Resort

expansion, AnC  
Bio and Q Burke,  
is to be funded  
with \$544.5  
million from 1,089  
investors.

**What is the  
state's  
involvement?**

The Vermont EB-  
5 Regional Center  
is charged with  
monitoring EB-5  
projects in  
Vermont. The  
center also  
promotes projects  
to immigrant  
investors. State  
officials have  
touted the  
Northeast  
Kingdom Initiative  
as a showpiece of  
Vermont's EB-5  
program.

The Vermont EB-  
5 Regional Center,  
which is part of  
the Vermont  
Agency of  
Commerce and  
Community  
Development, was  
long the only  
state-run program  
in the United  
States, until  
Michigan formed  
its own regional

center earlier this  
 year.

## Governor makes “misstatement” in Jay Peak video

State officials have long promoted the resort and other Vermont EB-5 immigrant investor projects as a way of bringing capital into the state for economic development.

Last year, Gov. Peter Shumlin and a retinue of other state officials, including Raymond and Lawrence Miller, who was secretary of the Agency of Commerce and Community Development at the time, traveled to China to help Jay Peak and other companies attract investors. Jay Peak paid for the trip. Alexandra MacLean, a former Shumlin aide who was a consultant for Jay Peak, traveled with the group and was copied on several of the emails between Stenger and Raymond.

In addition, Shumlin was filmed for a Jay Peak promotional video. He tells would-be investors that Vermont’s EB-5 projects are “audited.”

“Vermont is the only EB-5 program that covers the entire state of Vermont and is audited by the state of Vermont,” Shumlin says. “We make sure that our EB-5 program offerings are good investments for the investor, and good economic development job creators for the state of Vermont.”

The state has not conducted financial audits of the program, according to John Kessler, the general counsel for the Agency of Commerce and Community Development.

Northeast  
 Kingdom  
 Economic  
 Development  
 Initiative

The project costs  
 cited below are  
 approximate and  
 do not include  
 additional private  
 capital. Job  
 numbers reflect  
 the estimated  
 value of direct,  
 indirect and  
 induced  
 employment  
 (combined)

In a statement, the governor’s office said Shumlin recognizes the agency “does not audit these projects, but provides independent oversight.” The governor says the Vermont EB-5 center has been an important tool for Vermont’s economic development and “the agency works hard to ensure projects do not wrongly characterize the state’s role in promotional materials.”

In a June 24 memo, Kessler asks Stenger and Quiros to take the promotional video down to edit out the governor’s “misstatement” and make other changes. Kessler’s email to Jay Peak was a response to a Tram Haus investor complaint about the video.

“I am glad to learn you are removing it from Jay Peak’s web site,” Kessler wrote. “I share Brent’s concern about the portion where the governor says the State audits projects. No matter how many ways one could interpret his use of the term ‘audit,’ we have consistently advised the governor and anyone else not to describe the regional center’s oversight role as involving the performance of financial audits.

“Moreover, you will recall that a couple of years ago we asked you to hire an outside auditor to do just that and you reported to us that it was too much of an expense and that you would rely upon the overall audit done on Jay Peak rather than a separate audit focused exclusively on EB5,” Kessler wrote. “So, the reality is an audit of Jay Peak’s EB5 projects is not performed by

generated by the  
investments.

**Jay Peak Hotel  
Suites (Phase I)**

Tram Haus  
\$17.5 million EB-  
5 money  
35 investors  
350 jobs (total)  
Project complete,  
and all investors  
granted permanent  
green cards.

**Jay Peak Hotel  
Suites Phase II**

Hotel Jay and  
water park, ice  
arena, golf course,  
club house and  
commercial  
conference center  
150 investors  
\$75 million EB-5  
money  
1,500 jobs (total)  
Project complete,  
and all investors  
granted permanent  
green cards.

**Jay Peak  
Penthouse  
Project**

55 suites on the  
top floor of Hotel  
Jay  
65 investors  
\$32.5 million EB-  
5 money  
1,300 jobs (total)

the State OR Jay Peak.”

A Tram Haus investor also took issue with claims made by Stenger.

In the video, Stenger says, “all Jay Peak projects pay back investors after the fifth year.” He also says immigrant investors will see a 4 percent to 6 percent quarterly rate of return. The Tram Haus investor says in an email to the state that the actual rate of return the resort paid out on the phase 1 project was 2 percent.

Kessler asks Stenger to remove the reference to the five-year payback in the video because “we recently learned Jay Peak in August of 2013 converted the pay back on the Phase 1 Tram Haus project to a nine-year period through an unsecured promissory note.” In the final line of the memo, Kessler says all marketing materials for Jay Peak, Q Burke and AnC Bio must now be approved by the agency.

The video, which was translated into Chinese, is still available online. A translator verified for VTDigger that the governor’s “misstatement,” the assertions that investors to date had received 5 percent to 6 percent return and claims of repayment scheduled after five years have not been removed from the Chinese version of the video.

Similar claims were made in a promotional flier for an EB-5 seminar in South Africa last year.

Project complete,  
and all investors  
granted permanent  
green cards.

**Jay Peak Phase**

**III-A**

Golf & Mountain  
Suites  
90 investors  
\$45 million EB-5  
money  
900 jobs (total)  
Project complete,  
and all investors  
granted permanent  
green cards.

**Jay Peak Phase**

**III-B**

Lodge &  
Townhouses  
90 investors  
\$45 million EB-5  
money  
900 jobs (total)  
Project complete,  
and all investors  
granted permanent  
green cards.

**Jay Peak Phase**

**III-C**

Stateside hotel and  
base lodge  
134 investors  
\$67 million EB-5  
money  
1,340 jobs (total)  
Project nearly  
complete, and all  
investors granted  
conditional green

cards.

### **AnC Bio**

220 investors

\$110 million EB-5

money

2,200 jobs (total)

Project pending

Act 250 and other

permits.

Conditional green

cards have started

to be approved.

### **Q Burke**

#### **Mountain Resort**

Hotels, conference

center and

recreation facilities

240 investors

\$120 million EB-5

money

2,400 jobs (total)

Ground broken for

initial

construction.

Conditional green

cards have not yet

been approved.

Granting of

conditional visas

comes first, and

indicates USCIS

has signed off on

the business plan

and its job creation

projections.

Granting of

permanent

residency indicates

USCIS has

recognized job

creation.

## Regional center reporting requirements

**T**he Tram Haus investors' involvement in Jay Peak predates Shumlin's video misstatement about the state auditing projects by about five years.

In a response to the first complaint he received from Tram Haus investors in May, Raymond tried to disabuse the investor of the notion that the center has ever promised to review project financials. "I'm happy to assist in your obtaining financial information from Ariel Quiros and Bill Stenger if you haven't already received it, but want to be clear the Regional Center has not been auditing their financials – nor are we required to, or ever represented that we were," he wrote in an email.

Disgruntled investors have said in emails to the state that they are disappointed that Raymond has not done more to protect their investment in the Tram Haus.

Moulton and Raymond have said there is little the regional center can do to help investors who are already invested in projects.

"We've advised investors that if you feel something is wrong you should get counsel but it's not our purview in the regional center," Moulton said. "As long as it's in compliance with the SEC and USCIS, the rest is up to investors and the company. I don't think it reflects poorly on the regional center. We have been doing our due diligence."

While audits of the projects are not conducted by the state, Raymond has publicly touted other aspects of the center's oversight of EB-5 projects.

[Raymond told the Argus Leader in South Dakota](#) that once a project is approved, "We actively look and we view the projects, we look for any evidence of improper marketing, any evidence of anything even becoming potentially questionable, and we quickly seek out solutions to immediately take care of any concerns that we have."

"Because of our track record, it attracts people from all over the world that aren't even sure what 'Vermont' is," Raymond told the Argus Leader. "I think it provides comfort to a lot of investors and investor representatives that there's an independent third party that's approved a project, but in addition to (federal agencies) is constantly looking at the project and meeting with them on a quarterly basis."

In the case of Jay Peak, such scrutiny did not occur.

Patricia Moulton, the secretary of the Agency of Commerce and Community Development, said an



Patricia Moulton is secretary of the Agency of Commerce and Community Development.



interview in July that the center has been monitoring Jay Peak “right along.”

Photo by Hilary Niles/VTDigger

But before the publicity about the Tram Haus deal, the regional center did not require any formal reporting, even though MOUs with all the EB-5 projects include a clause that quarterly reports are to be submitted.

Raymond was aware of the elimination of the Tram Haus investors’ partnership shares in Jay Peak Hotel Suites, LP, at the end of August last year. But Stenger did not inform Raymond about the terms of the new deal, and Raymond did not ask for specifics.

Raymond said Jay Peak representatives verbally told him the resort had agreed on an exit strategy for the immigrant limited partners. He said in July that he assumed the investors were being paid off, and that they were satisfied.

“I guess I can blame myself for making assumptions,” Raymond said.

Recently, the center put the resort “on notice,” according to Moulton, and is requiring the company to submit quarterly reports.

The agency is now mandating that all developers certify on an annual basis that no material changes have been made to limited partnership agreements. Developers must also notify the agency of any planned material changes in advance.

Raymond said in comments for this story that the regional center’s role is to monitor projects for compliance with USCIS requirements and the covenants of the Private Placement Memorandum.

“When a project’s investors contact the Regional Center we act quickly and efficiently both to answer any questions or concerns, as well as to obtain information from project principal(s) and/or the GP [General Partner] to ascertain if there have been any violation of covenants,” Raymond said.

He says the state can do little to address the root of investors’ complaints. The limited partnership agreement they signed sets the parameters for what actions the general partner, Bill Stenger in this case, can take.

“The Regional Center conducts due diligence on new projects and their principals, reviews project pro-formas, third party economic jobs analysis, the PPM and other documents to ensure they meet or surpass industry standards,” he wrote in an email. “The financial arrangements contained in any Limited Partnership – whether related to an EB-5 project or not – require the General Partner (GP) to act as a fiduciary to the Limited Partners (LP), but the GP most often yields considerable control over business decisions. The Regional Center and I cannot change legal covenants contained within a Limited Partnership Agreement between a GP and its LPs back in 2007 because some investors don’t like a seemingly allowable exit strategy.”

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## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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# Who are the Tram Haus investors?

By **Anne Galloway**  
Oct 22 2014

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The 35 investors in the Tram Haus Lodge at Jay Peak Resort are immigrants from Europe, Canada and Asia who sought permanent residency in the United States.

Most of them, according to Tony Sutton, one of the investors, are middle- and upper-middle-class people who sold their homes and pulled together savings to make a \$500,000 downpayment on a green card and what they believed would be a profitable investment.

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They don't fit the stereotype of foreign investors with excess disposable cash.

<b>The investment</b>	One of the investors, who wanted to remain anonymous, is dismayed by public comments about the investors posted on VTDigger.
The Tram Haus, a 57-suite luxury	“One of the most common misconceptions I’ve read is that we are all millionaires who got stung by an investment that didn’t perform the way we wanted and are now stamping our feet,” the

hotel with a spa,  
rental shop, and  
restaurant, is  
Phase 1 of a  
seven-phase  
expansion at Jay  
Peak that banked  
on \$314.5 million  
from 629  
immigrant  
investors.

Each of the 35  
investors in the  
Tram Haus put up  
\$500,000 in the  
Tram Haus  
through the EB-5  
immigrant visa  
program in 2008.

Jay Peak created  
10 jobs for each of  
the half-million  
dollar investments.

When officials  
from United States  
Customs and  
Immigration  
Service verified  
that Jay Peak built  
the hotel and met  
job creation  
targets, all of the  
Tram Haus  
investors received  
their green cards  
and eventually  
permanent  
residency,  
according to Bill  
Stenger, the CEO  
of Jay Peak

investor wrote in an email to VTDigger. “This really couldn’t be further from the truth. I should categorically state that most of those in our group are most certainly not millionaires. For myself, my investment represents the bulk of my life savings obtained through years of hard work and as a result of selling my home back in the UK.”

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The seven investors interviewed for this story, four of whom were willing to talk on the record, tell a similar story. While they knew the Tram Haus was an at-risk investment, they believed that the state would carefully monitor the finances of the project and they would receive the return of their \$500,000 investment after five years, along with a share of the profits from the sale of the hotel.

Neither assumption turned out to be true. The state did not require Jay Peak to file quarterly reports, and Jay Peak converted their equity shares in the property into unsecured loans in 2013, eliminating the possibility of sharing in any profits from the future sale of the hotel.

The investors also say Stenger promised them a 6 percent annual dividend after the hotel opened. In reality, the rate of return was closer to 1.56 percent on average over the four-year period from 2010 through 2013, according to Tony Sutton, one of the investors.

Stenger has said the Great Recession made it difficult for Jay Peak to provide investors with higher dividends.

Sutton says, like the other investors, he is now worse off financially than he was when he lived in the UK.

“You very rarely will find anyone who has become richer now than they were when first got here,” Sutton says.

## Financially broke

Angie Mann and her husband lived in east London before they moved to the states. Angie was a teaching assistant and he was a telephone engineer. They had been to visit relatives in California on vacation several times, and when they met Bill Stenger at a trade show they were captivated by the idea of moving to the United States, obtaining residency here and making what sounded like a profitable investment in Jay Peak.

Angie Mann recalls Stenger told them they could expect an annual dividend of \$25,000 to \$30,000, along with the return of their \$500,000, and a \$150,000 profit after five years.

The Manns banked on that promise. They sold their house and lived with Angie’s brother-in-law for 13 months

while they waited for the immigration paperwork to go through. Once their application was approved, they tapped their life savings to become immigrant investors and moved to California in 2008.

Angie Mann is now a caregiver for the elderly and her husband works as a maintenance engineer at a local hospital. She and her husband bought a house with a large mortgage. Their daughter has had to borrow money to attend college. Visiting family in England is a thing of the past, she says.

“We are financially broke now because obviously we moved to California, and we bought a house presuming we’d receive profit payments each month,” Mann says. “We didn’t receive a third of what we anticipated.”

Angie Mann says in the beginning they believed there was “never any doubt” they would get all of their money back, she says.

When their equity stakes were converted into loans they were “very shocked.”

## **‘We went in with rose-colored glasses’**

Maurice Price and his wife were married on the west coast of Florida 23 years ago and they always wanted to move “somewhere with a climate better than England.” Price grew up in government rental housing, and he worked his way up the social ladder in the UK, but longed to live in Florida.

Like several other investors, the couple heard about Jay Peak at a trade show in the United Kingdom where Price recalls that Stenger gave an “extremely slick presentation.”

“We went in with rose-tinted glasses,” Price recalls. The investment was presented “almost like a savings plan,” he says. “You put your money in and you will get a 6 percent return for five years. At the end of five years, they would sell the investment.”

There are very few opportunities for foreign nationals to obtain permanent residency in the U.S., he said, and “we thought we’d take a chance.”

The Prices pooled their retirement funds and the proceeds from the sale of their house to invest. Unlike the other investors who lost their livelihoods when they moved to the states, they were able to continue their work remotely as textile distribution consultants, but their cushion is gone.

“We never, ever got 6 percent. It was more like 1.5 percent,” Price says. “There was always a reason — the economic climate, the cost of fuel, a million reasons. But it was still higher interest than a bank, so most people stayed quiet waiting for five years time to pass.”

When the Tram Haus ownership was transferred to Jay Peak Inc., which is owned by Ariel Quiros, he was taken aback.

While Price says he recognized the investment was not guaranteed, once it was constructed and the hotel started to turn a profit, he believed he would benefit.

“I feel grieved that the loan is not secure,” Price said.

## Starting over

Sutton, who is originally from a suburb outside London and now lives in Clermont, Florida, has become the unofficial spokesman for the disgruntled investors.

Sutton grew up in government rental housing. He had a knack for business and worked his way up in the automobile sales industry. After a successful 19-year career in the business, he sold his dealership in 2006 to start a new life in the United States.

“I felt there was a much bigger opportunity for me to get a job and eventually become a store owner in the U.S.,” Sutton said in an interview.

When he heard about the EB-5 immigrant investment program and the Tram Haus project at Jay Peak, Sutton was intrigued. He liked the fact that EB-5 offered green cards and permanent residency, and he was further swayed by the business plan for the hotel and the idea that the state would monitor the project.

In January 2008, Sutton liquidated his assets and flew with his family to Florida where he hoped to start over in the car business. At about the same time, the Great Recession began.

“The timing was awful,” Sutton says. “I’d had a successful career in business, and from a financial point of view, when we made the transfer from the United Kingdom to United States, that was a huge piece of bad timing, it could not have been any worse.”

In Britain, Sutton had built a good reputation in the car business.

Here in the states, he had to start over. “No one knew me, I was just another English guy who got off a plane,” he says.

He was competing for jobs in a high unemployment market, and he couldn’t get job interviews. Eventually, he went back to selling cars, and then he got a call from a Czech firm that needed a consultant to help with restructuring a large car sales operation.

Sutton left his family behind for months at a time while he worked in the Czech Republic and then later for a 14-month stint in Russia. More recently, Sutton has taken work in Virginia two out of the past three years.

“I was in demand in Europe because people knew me,” Sutton said. “I had to prove myself all over again in the



Tony Sutton, one of 35 Jay Peak Phase 1 investors. Courtesy Photo

U.S. The most difficult thing is, I have had to leave my family because of the jobs I've accepted, because I wanted to work."

## Overpromise, underdeliver

Sandra Chau, 32, is a pharmacy school student in Phoenix. She first came to the United States from Hong Kong in 2000 as an international student and, after graduating from the University of California San Diego, she wanted to stay in the states.

"I like this country, it has a lot of freedom," Chau said. "I don't like the lifestyle in Hong Kong. There is more opportunity in this country."

While other investors are in "financial distress" (one family had to move back to England, for example) the money is not "life or death" to Chau. But she, too, expected a \$30,000 annual dividend over the five-year investment period and a full pay-back in 2013.

"I think they overpromise and underdeliver, and I am kind of disappointed about the financial return," she says. "It's not nearly close to what they promised."

Chau says the investors in the group don't have the money to put up a legal fight against Jay Peak, which she describes as "a big company."

"They are very clever in protecting themselves legally," Chau says. "They look at holes and gaps in the agreement. I would say it's a very unequal transaction."

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# VTDigger exclusive: State raises questions about AnC Bio finances

By **Anne Galloway**

Mar 30 2015

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AnC Bio Korea image from YouTube

© 2015 VTDigger

he court auction of a biotech company headquarters in Seoul spurred state inquiries into a Vermont project

**T** with close ties to the South Korean-based research and development firm.

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[As previously reported](#), the state suspended the AnC Bio Vermont project last year not long after officials found out about the public auction, and the state is now determining whether the proposed \$118 million biotech project complies with state and federal securities laws.

In months of research and an ongoing back-and-forth with the developers of AnC Bio Vermont, the state generated hundreds of pages of documents that show officials had significant concerns about the auction.

A review by VTDigger shows that the state also had questions about the finances of the two companies and whether immigrant investors in the EB-5 biotech project were adequately informed by the developers, Ariel Quiros and Bill Stenger, about the relationship between the Vermont business and AnC Bio Korea.

AnC Bio Korea had been in financial trouble for years, according to an audit of the biotech manufacturing and stem cell research company. But the spring of 2012 was a particularly difficult period for the biotech firm. The value of the company's stock plummeted, creditors took ownership of its Seoul headquarters that May and AnC Bio Korea had to lease back office space in the building.

Within weeks of banks seizing the property, the South Korean company began taking steps to extend its operations to the United States, and in September 2012, Quiros and Stenger announced they would launch a nearly identical biotech company in Newport.

The formation of an AnC Bio beachhead in the United States had been long anticipated. Quiros and Stenger

publicly announced in 2009 that they wanted to create an affiliated company in Vermont. The businessmen planned to manufacture the same organ replacement devices that had been developed by the Seoul company and design a new headquarters in Newport that would be a virtual replica of the one in South Korea. In addition, key members of the AnC Bio Korea team would be involved in the Vermont company.

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While AnC Bio Vermont is not a division of AnC Bio Korea in the classic American sense (there is not an apparent legal ownership arrangement), Stenger has told the state that the two companies have a “scientific” and “contractual” relationship. Quiros is listed as a consultant for AnC Bio Korea on the company website.

Like Quiros and Stenger’s ski resort expansions in the Northeast Kingdom, AnC Bio Vermont depends heavily on immigrant investor funds raised through the EB-5 program. The developers are seeking \$110 million from 220 foreign investors (plus \$11 million in administrative fees) and began promoting the project overseas, with a particular focus on Chinese investors, in late 2012 after state officials approved the project in October of that year.

In documents provided to investors in November 2012, Quiros and Stenger made no mention of AnC Bio Korea’s financial difficulties.

State officials at Vermont’s Regional EB-5 Center weren’t aware of AnC Bio Korea’s problems until in the course of their own research in May 2014, they learned that the Korean headquarters had been sold at auction to satisfy banks and other creditors.

In a rare move, the center not only suspended the Vermont biotech facility last year, but also threatened to cancel the project altogether unless the developers answered a wide range of probing questions about the finances of the project. The state asked for a market study and an update of the business plan and contracts.

Stenger says the company has complied with all rules and regulations. He welcomes more rigorous state oversight and



The AnC Bio headquarters in Seoul.

said in a statement that the project is on schedule: Construction, he said, will begin this spring and the facility will open in the fall of 2016.

The developers say they have also responded to the state's requests for information and "have invested in a marketing study and legal services to update and satisfy ACCD's (the Agency of Commerce and Community Development) concerns."

"I feel we have answered every question asked," Stenger writes in a January memo to the state.

Stenger also told the state he is anxious to obtain approval as soon as possible because the permanent residency status of investors hangs in the balance.

Stenger has told the media that AnC Bio Vermont would create 3,000 jobs in Newport, a poor town that has had the highest unemployment rate in the state. The project is an opportunity, he says, "to inject some economic vitality into the Northeast Kingdom."



Bill Stenger outside the Stateside Hotel at Jay Peak in September 2013. File photo by Hilary Niles/VTDigger

## State demands more disclosure

Brent Raymond, director of the Vermont Regional EB-5 Center, began making inquiries about the biotech company in 2013 because he was concerned about the financing and business plans outlined in AnC Bio Vermont's 2012 agreement with investors, documents show.

Raymond hired Korean interns to research AnC Bio Korea's activities, and in 2014 they translated a public audit that showed the company had been in a tenuous financial position since 2008. A leading South Korean accounting firm found that in 2013 AnC Bio Korea had liabilities of \$17 million; the company's taxes were in arrears; and employees were owed compensation.

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### What is EB-5?

During the recession, it was difficult for developers in Vermont, and nationally, to obtain financing

Lawrence Miller, secretary of the Agency of Commerce and Community Development at the time, called Stenger into a meeting to discuss the involuntary auction in May 2014.

Shortly after, the state hired Edwards Wildman Palmer, a Boston securities law firm, to determine whether the information Stenger and Quiros offered to investors was accurate and complete. The burning question was whether the developers omitted information about the fiscal health of AnC Bio Korea and the relationship of the Seoul company to the Vermont project in the 2012 offering memorandum (the business plan and associated contracts) given to investors.



for projects, and the EB-5 immigrant investor program became an attractive alternative to commercial lenders.

In exchange for a \$500,000 investment in qualifying projects in Vermont, immigrant investors can seek permanent residency in the United States. Investments under the EB-5 program must be placed “at-risk” in order for immigrants to qualify for permanent residency. That means return of investment is not guaranteed.

The U.S. Customs and Immigration Service requires that each investment results in the creation of 10 jobs.

Projects are exempt from filing documentation with the Securities

A month later, not long after Patricia Moulton took over as secretary, the agency suspended AnC Bio Vermont’s memorandum of understanding, and Raymond and John Kessler, the agency’s general counsel, undertook a seven-month inquiry into the company’s financial affairs. The state agency questioned whether the developers adequately explained the relationship between affiliated companies, the principals of those companies and how investor funds were to be used.

Under the suspension, which began June 27, Quiros and Stenger are prohibited from marketing AnC Bio Vermont, soliciting new investors, spending investor funds or engaging in construction activities. Despite that prohibition, the developers promoted the project at an EB-5 conference in October and began some construction-related work in November. In both instances, state officials admonished the developers for violating the imposed moratorium.

Raymond and Kessler insisted that the developers submit a new offering memorandum to investors that provided more material disclosure, or information that a reasonably prudent investor would want to know.

In an interview with VTDigger, Moulton said the private placement memorandum was old, the state was concerned about the auction of the Korean headquarters and more information about the business plan was necessary because “biotech is a rapidly changing sector.”

The auction prompted related queries about the structure of the dozen or more affiliated AnC Bio companies, the familial relationships between individuals in those companies and the competitive viability of AnC Bio products.

Jong Weon (Alex) Choi, a 20-year business affiliate of Quiros, has served as a principal officer for AnC Bio Korea and Quiros is a consultant for the company, according to documents from the state. In a signed letter to the state, Quiros said he has no financial position or ownership “of any kind” in AnC Bio Korea.

AnC Bio Korea has transferred intellectual property rights to AnC Bio Vermont LLC, a company owned by Stenger, Quiros and Quiros’ son, Ary, that is responsible for coordinating the construction and operation of the biotech facility. The foreign investors are a part of the Jay Peak Biomedical Research Park LP, which is commonly referred to as AnC Bio Vermont. Quiros and Stenger also own the entity that serves as the general partner for the immigrant investors’ limited partnership agreement.

The state has asked for details about the ties between the individuals and companies and has



Brent Raymond, director of Vermont’s EB-5 Regional Center. File photo by Hilary Niles/VTDigger

and Exchange Commission even though investors must sign off on a limited partnership agreement with developers.

raised questions about financial transactions between the entities and whether the interconnected relationships were adequately disclosed to investors.

Stenger, in a two-page memo to the state, says, “AnC Bio Vermont LLC only has a scientific relationship with AnC Bio Korea.” In another statement, he says the relationship is “contractual.”

In a series of memos sent between July 9, 2014, and Dec. 30, 2014, the agency issued a litany of additional requests for information about AnC Bio, including a timeline for FDA approvals, new business plan projections, a regulatory discussion of biomedical and stem cell research and full financial disclosure for the AnC Bio Vermont project.

The state also has questions about internal transactions made by the company. Typically, immigrant investor funds are kept in escrow until the capital is needed for construction. Under the 2012 private placement memorandum, the investors in AnC Bio Vermont are not only buying shares in a construction project, they are also purchasing \$10 million in product distribution rights from the Korean company. Some investor funds have already been paid to AnC Bio Pharm (Korea) for the rights, according to an email from Stenger to the state.

The state has asked Quiros and Stenger for an independent valuation of the distribution rights and to explain whether and how much investor money has been transferred to affiliated entities run by the developers.

In a memo to Stenger’s and Quiros’ attorneys, Kessler asks if the value of the contract for the distribution rights is appropriate “in light of the lack of sales revenue to date attributable to those products,” and he asks Stenger and Quiros to provide the state with information about the market history and market value of the products and technologies.

In addition, the 2012 offering memorandum lists \$44.5 million in manufacturing and stem cell research equipment. State documents show that investors have paid an undisclosed sum toward the cost of the equipment to JCM, another affiliated entity, which has in turn paid AnC Bio Pharm Inc. for the distribution rights and the equipment.

There is also a separate independent contract between AnC Bio Vermont and AnC Bio Korea for the transfer of technology rights. No investor funds are to be used in that transaction.

The state also wants an independent appraisal of the real estate in Newport that is to be sold to investors. The plant is to be built on land originally purchased by GSI of Dade County, Florida, a company owned by Quiros. GSI bought the former Bogner plant and 25 acres in Newport for \$3.1 million in September 2011, according to land records.

Investors entered into a purchase and sale agreement for seven acres of the land as part of the 2012 offering memorandum, which was verified in a statement from Quiros. The agreement lists the price as \$6 million, and the payment was to be made by Jan. 31, 2013.

Stenger and Quiros took seven weeks to respond to the first

official memo from ACCD, and the developers continued to delay or push back on the responses to the state's requests, despite Kessler's repeated warnings that the state would cancel the project if they refused to comply. The developers submitted a new offering memorandum in October, but by the end of the year many of the state's questions remained unanswered, according to correspondence between Kessler and the developers and their attorneys.



Ariel Quiros. File Photo by Hilary Niles/VTDigger.

In January, the state's chief financial regulator, Susan Donegan, commissioner of the Department of Financial Regulation, was asked to review the AnC Bio Vermont project and to oversee regulatory compliance for all EB-5 projects in Vermont. Donegan now has the sole authority to determine whether the biotech project should be canceled or continued. If Donegan approves the project, the developers must ask each investor to sign off on the new offering memorandum.

While Donegan has emphasized that AnC Bio Vermont is not being singled out for special scrutiny under her department, it's rare for the regional center to reopen existing agreements with EB-5 developers. Until this summer, only one project out of 17 – DreamLife Retirement Resorts in 2013, which had no investors – had been canceled since the inception of the program in the early 2000s. [The state canceled the project](#) because of “material misrepresentations.” Last summer, the Agency of Commerce and Community Development suspended two of Stenger and Quiros' projects and canceled a third.

Stenger told the Caledonian Record that he supports the state's new approach to regulating EB-5 projects “100 percent.” In an article that appeared in the newspaper a few days later, Stenger characterized the VTDigger story about the state's suspension of AnC Bio Vermont as “incorrect, unfair and frankly abusive to the program and the community.”

## The products

Under the business agreement with investors, known as the offering memorandum or private placement memorandum, AnC Bio Vermont would manufacture four organ replacement products at the Newport facility, including an artificial kidney (C-PAK), a liver replacement device (E-LIVER), a heart-lung machine (T-PLS), and an implantable ventricular assistance device (S-VAD). T-PLS, which is intended for use in emergency rooms, operating rooms and intensive care units, has been approved by FDA equivalent agencies in Korea and the European Union, according to literature from the company.

The state asked for the status of FDA and other regulatory approvals needed to market the four products. No U.S. patents have been obtained, according to documents from the state, and FDA approvals have not yet been granted, which the state says are necessary to research, develop, produce, market and sell the described products and



technologies.

There is no regulatory discussion of biomedical and stem cell research in the 2012 offering memorandum, Kessler says in the memos, even though it is a “most sensitive area subject to intense regulation.”

In a written statement to VTDigger, Stenger said, “the FDA approval of products and services will in part be facilitated by the completion of the building, which will be FDA certified and built totally to FDA specifications.”

NNE Pharmaplan will design the facility, Stenger says, and the company has hired Biologics Consulting Group of Alexandria, Virginia, to facilitate the FDA timeline to be submitted to the state. “Biologics is highly experienced in FDA approval protocol and is among the most respected firms in this field,” Stenger writes in a memo to the state.

After five years of operation, the company expects to make \$300 million in revenue and \$127 million in gross profits from the proceeds of stem cell development, artificial organs and clean rooms leased to other researchers, according to the 2012 offering memorandum. The “market opportunity” descriptions in the business plan are largely broad explanations of the number of patients globally who suffer from heart and kidney disease.

The state asked Quiros and Stenger to update the two-year-old business plan for the stem cell research and manufacturing arms of AnC Bio Vermont.

“We note the absence of an independent marketing study, factual foundation or adequate assumptions on which to support the business plan’s projections,” Kessler writes in a memo to Stenger and Quiros’ attorney. “Absent such information, investors may not be able to evaluate the success of the project or their return on investment.”

Moulton said the biotech industry is in “a high risk, fast-changing environment.” The state sought new information that would substantiate projections made in 2012.

“It was clear we needed an update,” Moulton said. “We hadn’t seen a market study, we were concerned about the auction and we don’t know what else is there.”

Stenger and Quiros hired a global tech firm last fall, Frost and Sullivan, to conduct a [market analysis](#) for AnC Bio Vermont that was submitted to the Department of Financial Regulation earlier this month. Frost and Sullivan gives AnC Bio Vermont high marks, citing the company’s superior scientific and engineering expertise for developing organ-assistance devices that are simple, efficient, safe, small and lightweight.

“The company’s organ-assist products will not only be highly competitive in the global market but will be leaders in setting new standards for the industry,” [Frost and Sullivan](#) writes.

Similarly, AnC Bio has an opportunity to become one of the first leading-edge stem cell research manufacturing facilities in the world, according to Frost and Sullivan.

Stenger told the state the Frost and Sullivan data from the marketing study would be provided to investors upon request.

“It will be up to the individual investor to come to their own conclusion as to whether they invest, as that conclusion must come independently from the project,” Stenger wrote in a letter to the Agency of Commerce and Community Development.

Stenger urges the state to allow the company to resume promoting the AnC Bio project and to allow construction in a January memo, because the “clock is ticking” for investors who have green cards.

In order for the immigrant investors to be eligible for permanent residency in the United States, the company must prove job creation targets have been met.

“If job creation does not occur within the 24-month window ascribed by USCIS, the I-829 will be in jeopardy,” Stenger writes in a memo on Jan. 28.

Stenger points up the economic impact the biotech plant could have on the Northeast Kingdom economy in a previous letter. He has told members of the press that the facility would generate 3,000 jobs, and he describes the biotech plant and the Q Burke Mountain Resort projects as “game changers for the economics of Newport and East Burke and will improve each community immeasurably.”

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## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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## BUSINESS & ECONOMY

# Immigrant investors, officials scramble to head off deportation

By **Anne Galloway**

May 22 2016

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Secretary of Commerce and Community Development Patricia Moulton said U.S. Citizenship and Immigration Services hasn't responded to the state's inquiries. Photo by Erin Mansfield/VTDigger

**I**mmigrant investors who were allegedly defrauded by developers in the Northeast Kingdom are afraid their families will be deported in a matter of weeks unless officials take action very soon.

Mohammed Adil, an Indian investor in the Jay Peak Resort who lives in Dubai, said in an interview that his daughters, who attend Mount Holyoke College in Massachusetts, could be forced to leave the United States on June 23 unless U.S. Citizenship and Immigration Services grants his family an extension of their temporary visas through the EB-5 investment program.

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USCIS has refused to comment to the press or respond to state officials who have sought information about the immigration status of investors in Jay Peak and a biomedical facility in Newport that has not been built. The EB-5 program gives foreign investors the opportunity to secure permanent U.S. residency.

Michael Goldberg, the court-appointed receiver for properties in the [alleged Northeast Kingdom fraud](#), and state officials say they are doing what they can to help investors and their families stay in the United States. Goldberg said his first priority was stabilizing the properties and that he is now focused on investors.

“We recognize the issue, and we are on top of it,” Goldberg said. “The immigration status of investors is at the top of the list now.”

Patricia Moulton, Vermont’s secretary of commerce and community development, said that if USCIS starts deporting investors “it will be the death knell for the program internationally.” She said she believes USCIS will at least extend temporary visas for investors to avoid bad publicity.

Adil and 133 other investors each gave the developers of Jay Peak \$500,000 to build the Stateside project — a hotel and condo complex, medical center and recreational center at Jay Peak. In exchange, Adil and his family were promised permanent residency in the United States within a few years. He and his family were issued temporary visas in 2013 and applied for green cards in June 2015 with the expectation that they would obtain permanent residency this year.

That expectation was dashed last month when the SEC charged the Jay Peak developers, Ariel Quiros and Bill Stenger, with misusing \$200 million in investor funds for projects at Jay Peak, Burke Mountain and the proposed biomedical facility in Newport. The state of Vermont also sued the developers.

All of Quiros' business properties are now under the control of the court-appointed receiver.



The Stateside project at Jay Peak. File photo

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The case puts investors like Adil in limbo. The last few developments in what the SEC called the “Ponzi-like” scheme were not started at all (AnC Bio Vermont) or were not completed (Stateside). That complicates the green card approval process for about 400 investors.

Through the EB-5 program, qualified immigrants who invest \$500,000 in projects in poor areas are eligible for temporary visas. If each half-million-dollar investment creates 10 jobs after two years — including construction and direct and indirect jobs associated with the operation of the business — immigrant investors can obtain permanent residency.

More than 700 immigrants from 74 countries invested in developments at Jay Peak and Burke Mountain resorts and the proposed biomedical facility in Newport. Hotels, condos, an ice rink, a parking garage and a water park were built at Jay Peak, and developers finished a hotel at Burke Mountain.

But Quiros allegedly used money from AnC Bio Vermont and the Stateside investors to enrich himself and pay for other developments. At Stateside, all \$67 million from 134 investors has been spent. Although a hotel was built as part of the project, the condos haven't been fully constructed, and ground was never broken for planned medical and recreational centers.

Because the Stateside project was not completed, the required jobs were not created, and there is no guarantee the



investors will get green cards as promised. The chances that investors will get their money back are even slimmer.

The situation that investors in the proposed AnC Bio Vermont facility face is more dire: Quiros allegedly looted most of the money, and it seems unlikely the biomedical facility will ever be built. Quiros stole \$30 million directly from AnC Bio Vermont investors and used an additional \$50 million to pay for other projects, the SEC says.

Unless U.S. Citizenship and Immigration Services, the federal agency that authorizes green cards, makes an exception for the Stateside and AnC Bio Vermont investors, they could be deported.

Since the SEC charges were filed, USCIS officials have refused to comment on the immigration status of the investors.

Moulton, the commerce secretary, said USCIS has not responded to queries from the state. “We are still working on getting some answers from USCIS,” she said.

Moulton is urging investors to petition USCIS for visa extensions until the state and the SEC receiver can sort out how to help investors move forward with green cards.

Goldberg, the receiver, said he will post an update Monday to investors on his website and this week will provide new job creation figures, K-1 tax forms and financial information to immigration attorneys for investors who are trying to get visa extensions from USCIS.

The long-term solution for investors, Goldberg said, is more complicated. He has said he may borrow \$20 million or more, if necessary, to finish the Stateside condos and thus meet job creation targets for investors.

AnC Bio Vermont, however, is more difficult to resolve, Goldberg said, because it’s a costly, complex biomedical project and “the money isn’t there.”

The Jay Peak Resort hotels, condos and other projects have created 15 percent more jobs than anticipated, Goldberg said, and he hopes to persuade USCIS to allow the state to “pool” investors from the AnC Bio project with the Jay Peak projects to “take advantage of the excess jobs.”

Moulton said the state and the receiver will be sending a joint letter to USCIS this week “about the concept of pooling investors so we can wrap in as many of the AnC Bio investors as possible for green card approval.”

Jay Peak is different from other EB-5 fraud cases around the country, according to Gene Fullam, the director of the Vermont EB-5 Regional Center. Although the developers allegedly stole from the projects, Fullam said the business plan has been executed, jobs have been created, and “we have underlying assets that are income-



Michael Goldberg, left, the receiver for the Jay Peak and Burke ski areas, and Gov. Peter Shumlin speak at a news conference at Jay Peak Resort. File photo by Anne Galloway/VTDigger

producing.”

The additional jobs allow “tremendous optionality to do financial engineering,” Fullam said.

Moulton said USCIS could make such decisions if it chooses to. “I think they understand if victims get deported through no fault of their own, that’s going to generate negative publicity and it’s a policy decision that will reflect poorly on the program,” she said.

USCIS, however, has not communicated openly with state officials or with Sen. Patrick Leahy, D-Vt. Goldberg has had a brief conversation with the federal officials. “I have no idea how long it will take to hear back from them,” Moulton said. Leahy’s office has had “no greater luck,” she added.

The Vermont EB-5 Regional Center was responsible for overseeing the Jay Peak, AnC Bio Vermont and Burke Mountain developments, but officials did not review the project financials and didn’t pay attention to red flags that pointed to the fraud until late 2014.

Stenger, the former CEO of Jay Peak, touted the state’s oversight in his pitch to investors and used video clips and letters from Leahy and Gov. Peter Shumlin supporting the projects to sell the projects to investors.

Adil blames the state for [promoting fraudulent projects](#), and he said it is now the state’s responsibility to ensure that investors get visa extensions as quickly as possible.

Adil, 49, says he grew up poor in a village in India and is a graduate of Harvard College. He is now the CEO of a fashion retail company based in Dubai. He invested \$500,000 in Jay Peak to provide his four daughters with a first-class education in the United States.

He said he was attracted to the EB-5 program in Vermont because he thought it would be a safe investment.

“I come from a country where citizens cannot always count on the government and corruption abounds,” Adil wrote in a letter to Leahy. “But America is supposed to be different, that is why we are so trusting in giving over our savings to Vermont, knowing it would be protected by the appropriate state and federal agencies.”

Adil said in an email to VTDigger that his daughters are going “through severe trauma not knowing their future.”

“We are going through a difficult time by simply not having any credible information on our immigration status,” Adil said. “We really don’t understand what’s our fault.”

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## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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**B** BUSINESS & ECONOMY

# Documents suggest state ignored warnings about Jay Peak in 2012

By **Anne Galloway**  
Jul 25 2016

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Tram Haus Lodge was one of the early projects the Jay Peak developers built with money from the EB-5 program for immigrant investors.

**S**tate officials ignored warnings as long as four years ago that the Jay Peak developers had potentially misused immigrant investor funds, documents indicate.

Douglas Hulme, owner of the EB-5 consulting firm Rapid USA Visas, had the ear of state officials in May 2012, public records obtained by VTDigger show, and Hulme had challenged the very business practices that became part of the charges the Securities and Exchange Commission brought this year.

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Emails among Hulme, Bill Stenger, who was the CEO and president of Jay Peak, and Lawrence Miller, then secretary of the commerce agency, show officials didn't act on Hulme's warnings and sought to discredit his company.

It wasn't until 2015 — three years later — that the state opened an investigation. By that time, federal authorities were already a year deep into their investigation. And it wasn't until April of this year that state and federal officials charged Stenger and Ariel Quiros with defrauding more than 700 immigrant investors in the EB-5 visa program.

Hulme's allegations came on the heels of a very public fallout with Stenger. Hulme sent a letter to 100 immigration attorneys Feb. 28, 2012, warning that he no longer had "confidence in the accuracy of representations made by Jay Peak or in the financial status of and disclosures made by the various limited partnerships at Jay Peak."

The press quickly picked up the story, and the breakup went viral. In response, James Candido, who was director of the Vermont EB-5 Regional Center at the time, spent a day at Jay Peak and declared in media reports that he found "no issues" with the company's financials.

Behind the scenes there was a thread of communication between Hulme and Miller over Hulme's concerns about whether Jay Peak's financials were in compliance with state and federal laws.

## Timeline

## 2012

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### February

Hulme asks

Stenger for

financials

Hulme writes

letter of 'no

confidence'

### May

Hulme alerts state

officials to

financial

improprieties

Meeting between

Miller, Moulton

and Hulme

### June

ACCD goes after

Hulme

## 2014

### January

SEC opens Jay

Peak investigation

### June

Moulton replaces

Miller

## 2015

Privately, Candido was working to arrange a telephone conversation between Hulme and Miller. In an email obtained from the state by VTDigger, Candido explained to Hulme that Miller wanted "to discuss in detail the reasons for the departure from the Jay Peak project and (Hulme's) direct concerns about the project that led to the company's departure."

In advance of the conference call, an attorney for Hulme explained to Candido by email that Rapid USA had concerns about "the expenditure and use of funds by the limited partnerships and reconciliation of accounts, including the transfer of funds."

The attorney, Eugene Lindsey, had asked Stenger in February 2012 for balance sheets, bank statements and wire transfers, as well as the source and use of funds reports for the Jay Peak projects, according to email correspondence provided by the state. He also specifically asked Stenger to verify that he had not used investor monies to obtain margin loans — one of the SEC's accusations — and that the developer provide Rapid USA with written assurances from legal counsel that the projects were in compliance with federal and state law. Stenger apparently did not provide the assurances Hulme requested, and on Feb. 28, Rapid USA terminated all business dealings with Jay Peak.

Depositions taken by the SEC of two accountants for Jay Peak show that Hulme was apprised of concerns they had about the way Quiros was using investor funds. One of the accountants alerted Hulme and Stenger in 2009 to bank statements that showed [Quiros was using investor funds as collateral for loans](#). The SEC has said in its lawsuit that \$105 million of investor monies was leveraged for speculative margin loans from 2009 to 2012.

Another accountant told the SEC that in 2011 he found the developers were [commingling funds](#) and using money from new investors to pay for previous projects.

The scheduled phone meeting among Hulme, Miller and Patricia Moulton, who was then deputy commerce secretary, took place May 4, 2012, email correspondence shows. It is unclear what happened or what was said at the meeting. No meeting notes were released to VTDigger as part of a public records request made in 2015. In October, Vermont Attorney General William Sorrell put state communication



Rapid USA Visas CEO Douglas Hulme (left), a representative from Shen law firm (center), and Jay Peak developer Bill

	regarding Jay Peak on litigation hold,	Stenger (right).
DFR takes over EB-5 regulation	blocking public access.	
State opens Jay Peak investigation	The next communication after the meeting was between Stenger and Miller.	
<b>2016</b>	“James [Candido] briefed me somewhat on the Douglas [Hulme] call,” Stenger wrote May 17, 2012. “I wanted to ask your perspective on it, and if you want anything from me. I have a paper trail on all our interaction [sic]. If you would like that or anything else, please let me know.”	
<b>April</b>		
SEC, DFR file charges	Miller replied: “I don’t feel a need for any further information at this point Bill. Everyone is fully consistent with each other.”	

The secretary has said in the past he didn’t recall details from that time.

Shortly afterward, Candido left his post as regional center director, and Brent Raymond, a former staffer for U.S. Rep. Peter Welch, took his place in June 2012.

Later that month, state officials went after Hulme. Miller said Hulme was no longer authorized to use the state of Vermont logo on the Rapid USA website. (Jay Peak developers, on the other hand, continued to use the logo until the SEC stepped in.) In addition, Miller accused Hulme of marketing an EB-5 project at Mount Snow that had not yet been approved by the state. (Jay Peak marketed an office building in Newport for months without state approval.) In closing, he threatened to notify the Vermont attorney general.

In email communications, John Kessler, an attorney for the commerce agency, alleged the Florida consultant had used “Rapid’s web site to misrepresent that it is the State’s Regional Center.” The back and forth between the state and Rapid went on for a year and a half.

In September 2012, Stenger and Quiros held a daylong news conference in three locations to announce \$600 million in additional EB-5 projects as part of the Northeast Kingdom Initiative. They envisioned a large trail expansion at Jay Peak, a new hotel and conference center at Burke Mountain, a biomedical facility in Newport, a window manufacturing plant, and an office building, marina and conference center in Newport. Gov. Peter Shumlin, Sen. Patrick Leahy, Sen. Bernie Sanders and Welch were all present for the event.

The media event occurred just four months after Hulme’s meeting with Miller and Moulton to discuss his concerns about potential fraud at Jay Peak.

The state began investigating the finances at Jay Peak in March 2015, and eventually helped the SEC get to the bottom of how Quiros and Stenger allegedly used 26 shell companies, more than 100 bank accounts and 100,000 bank transactions to perpetrate fraud.

Tony Sutton, part of a group of early investors in Jay Peak, is





Lawrence Miller. File photo by Morgan True/VTDigger

frustrated. He says the state moved too slowly to stop the activity and knowingly put immigrant investors at risk.

Sutton himself began sounding alarms two years ago, and since then he has learned that the state knew much more, much earlier.

“It looked to us that back in 2012 there was enough evidence or allegations or suspicion for the state to actually mount an investigation of what was going on,” Sutton says.

Sutton says state officials lost an opportunity to conduct a “real investigation before it got out of hand.”

“Too many people seem to have turned a blind eye, and that’s the thing that (investors are) particularly aggrieved about,” Sutton says. “All this could have blown up in early 2012.”

Fifteen months after the Hulme-Miller phone meeting, Sutton and other investors in the Tram Haus Lodge lost their ownership stake when Stenger and Quiros converted their shares into unsecured loans without their knowledge in August 2013.

“From what I’ve seen on redacted emails that we’ve had access to, it’s completely clear that Lawrence Miller, especially, was very involved in the discussion between Bill Stenger and Douglas Hulme,” Sutton adds.

“From my point of view, looking at that information, it seems very clear to me that Miller, particularly, knew a lot more and did nothing, which from my point of view, had he acted at that point, he could have saved our hotel from being seized.”

Miller referred VTDigger to Moulton for comment.

Moulton said the Agency of Commerce and Community Development “did raise questions back in 2012 with the projects that were within ACCD’s limited investigatory powers.”



Tony Sutton was an investor in the Tram Haus Lodge at Jay Peak Resort. Courtesy photo

“The project’s nonresponsiveness led, in part, to the decision to shift oversight responsibilities to the Department of Financial Regulation, which has more expansive authority in these matters,” Moulton said.

“While individuals such as Douglas Hulme may have raised questions previously, his credibility and motives in raising those concerns were marred by his ties to the projects,” she said. “For example, he was told many times to cease activity in which he falsely marketed his company, Rapid USA Visas Inc., as the Vermont Regional Center.”

When the Tram Haus investors found out in May 2014 about the conversion of their ownership stakes to IOUs, they reached out to state officials for help and complained they had been defrauded by Stenger and Quiros. But instead of acting on investors’ concerns, Raymond, at the regional center, pushed back, and Moulton, who replaced Miller as commerce secretary in June 2014, defended Stenger. In a commentary submitted later that year, Moulton insisted that a story by VTDigger was inaccurate and that “Stenger’s action was not in conflict with any federal law or regulations enacted for the EB5 program.”

In correspondence, Moulton told investors that the developers had not violated partnership agreements and there was nothing the state could do to help. She recommended the investors seek recourse in the courts.

Sutton says the investors chose not to pursue a legal challenge because “it would be heard in Stenger’s backyard.”

At the same time, Moulton asked Sutton to provide proof of the investors’ allegations. A month later, Sutton sent bank statements to the state that showed loans secured against investor funds and transfers of Tram Haus money to Q Resorts, one of Quiros’ companies. Moulton never responded, according to Sutton.

“The whole time, they [Raymond and Moulton] were just defending Jay Peak,” Sutton says. “There was never a point where I was thinking they’re actually going to take us seriously and carry out an investigation.”

Emails released by the state in 2015 showed that Moulton and Raymond suspended two projects — Q Burke and

AnC Bio Vermont — in the summer of 2014 after the Jay Peak developers refused to respond to requests for financial documents. Lacking subpoena power, the agency was unable to obtain bank statements.

Frustrated by the lack of financial documentation, the agency and Shumlin decided to bring in the Department of Financial Regulation to oversee the projects. In January 2015, the agency signed an agreement with DFR and asked securities regulators to manage oversight of AnC Bio and Q Burke.

Also in January 2015, Mike Pieciak, the deputy commissioner of financial regulation, asked Stenger's lawyer a general question about Treasury bill purchases and outstanding margin loans listed on a statement from the financial services firm Raymond James.

Mark Scribner, of Primmer Piper Eggleston and Cramer, who represented Jay Peak, made a statement in a letter a month later that piqued Pieciak's interest: "I want to emphasize that all of the projects are standalone. None share financials or financial returns."

Pieciak, who is now commissioner of financial regulation, said in an interview last week that a statement made by David Gordon, an attorney for Jay Peak who is now representing Quiros in the SEC suit, provided another clue. Gordon advised that the developers used Treasury bills because the FDIC insures funds only up to \$250,000 and they wanted to protect investors in the event of a bank failure.

That didn't add up, Pieciak said, because bank accounts are fully protected.

That was the watershed moment for Pieciak in which "trust was starting to erode," and DFR began subpoenaing bank statements from Raymond James, Citibank, People's United Bank, JPMorgan, Merrill Lynch, HSBC and Sun Trust.

From March 10, 2015, until April 14 this year, Pieciak and a team of six staffers worked with SEC investigators and pored over more than 130,000 pages of financial documents.

The ongoing investigation, however, didn't stop the state from allowing the developers to solicit new investors for the AnC Bio and Q Burke projects.

On April 4, 2015, the Department of Financial Regulation gave Stenger and Quiros [partial approval to market AnC Bio overseas](#). Shumlin [helped to negotiate the deal](#), told the developers they would be able to continue the project, and promised to issue a news release reprimanding VTDigger for alleged inaccuracies in a story about the biomedical facility.

Susan Donegan, the commissioner of financial regulation at the time, required that the new investor money be



Michael Pieciak, the former deputy commissioner of financial regulation, is now the commissioner. Photo by Elizabeth Hewitt/VTDigger



placed in escrow and that the developers obtain permission from the state for expenditures. Donegan declined to issue the news release Shumlin requested.

The partial approval process was designed to protect investor funds, but it's unclear whether the 34 people whose \$500,000 investments were put in escrow for AnC Bio Vermont will get their money back anytime soon.

AnC Bio, the last project proposed, drew \$500,000 investments from 197 investors, making it by far the largest of the proposed projects. The original 163 investors put their money in before the escrow requirement.

The project hasn't been built. When the SEC filed charges, federal litigators declared AnC Bio "nearly a complete fraud."

The court-appointed receiver overseeing Stenger's and Quiros' holdings in Vermont, Michael Goldberg, said the federal district court in Miami will decide how the \$17.5 million collected from the investors whose money the state held in escrow will be disbursed.

The immigration status of more than half of all the investors in the Jay Peak projects is in jeopardy.

Despite the investigation, the Department of Financial Regulation also gave partial approval to a hotel and fitness center at Q Burke in July 2015. The state, Pieciak said, wanted to make sure there were funds to complete the hotel construction. Under EB-5 rules, investors cannot get permanent U.S. residency or get their money back unless each development meets job creation targets.

Moulton said "hindsight can be 20/20."

"As the governor said when the state and federal governments filed the complaints in this matter, we all wish we could have caught the alleged fraud earlier," Moulton said Monday.

"However, no one should forget that it is because of state and federal investigations that this alleged fraud was discovered and that filings were made. It is because of state oversight that the expenditures for the Burke hotel were rigorously examined and AnC Bio investor funds were placed in escrow where they remain to this day. Many people have been harmed by the alleged fraud in the Northeast Kingdom, including investors, subcontractors and entire communities."

More than a dozen investors interviewed by VTDigger say the primary reason they bought into the Jay Peak, Burke and AnC Bio Vermont developments was because of the state's stamp of approval. They believed the state was monitoring the projects and reviewing the developers' finances. Stenger and Quiros told them their money would be held in escrow.



Commerce Secretary Patricia Moulton is stepping down soon. File photo by Erin Mansfield/VTDigger

Investors were told the state was monitoring the projects; marketing materials from the developers bore the state's logo; and prominent [state politicians vouched for the projects](#). Gov. Jim Douglas, Leahy and Shumlin traveled overseas to talk with investors about Jay Peak and the state's EB-5 program. Shumlin appeared in a promotional video for Jay Peak in which he said the projects were "audited" by the state. The governor has since said he "misspoke."

In an August 2014 interview with the Argus Leader, a newspaper in Sioux Falls, South Dakota, Raymond, the regional center director, said once a project is approved "we look for any evidence of improper marketing, any evidence of anything even becoming potentially questionable, and we quickly seek out solutions to immediately take care of any concerns that we have."

Raymond [told the Argus Leader](#) that by running its own program, Vermont accepts liability for investor risk.

Documents show the state did not require quarterly reports from Jay Peak until late 2014 and did not obtain financial information until 2015.

Sutton, who is the unofficial spokesman for the Tram Haus Lodge investors, says they are contemplating a lawsuit against the state.

Sutton says the state has not taken responsibility for its lack of oversight and disregarding information Hulme brought to their attention in 2012. Moulton continues to say the state has the best EB-5 regional center in the country.

The Jay Peak scandal is the biggest EB-5 fraud case ever brought by the SEC, according to the [Center for Immigration Studies](#).

"I don't want to speculate on the potential motivation (state officials) might have had," Sutton says. "You'd like to believe they had the best of intentions and the whole project from their point of view was of great benefit to the state of Vermont. But that's not what they were paid to do. The offices they held meant they had an obligation to really find out if there was a problem or not."

Instead, Shumlin has portrayed his administration as champions who played a key role uncovering the alleged fraud.

Moulton, now the commerce secretary, who is stepping down at the end of this month, deflected blame onto Quiros and Stenger in an interview with Vermont Public Radio last week.

"Let's put the anger at the folks who actually committed the crime," Moulton said.

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## About Anne


Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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# Special Report: AnC Bio Vermont troubles began in South Korea

By **Anne Galloway**  
Dec 27 2016

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The AnC Bio Inc. offices in Seoul. VTDigger photo

*Editor's note: Dong Bin Kim, a graduate of Norwich University, and VTDigger staff writer Alan Keays contributed research for this story. The reporting is based on interviews, news reports and documents from the South Korean government and public records from the state of Vermont.*

**S**EOUL — The scene is of a workday interrupted. An empty coffee cup sits on a desk with papers, power cords and cables strewn about. An executive-style chair idles at a desk. Aside from a pile of boxes stacked in the hallway, there is no other sign of life at the former administrative headquarters of AnC Bio Inc., located on a floor of the glass and steel H&S Tower.

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A security guard said neither AnC Bio nor a subsidiary company on the fifth floor has received mail at H&S Tower in two and a half years. If you call the phone number listed on the AnC Bio Inc. website, a real estate firm picks up. The space is for rent.

AnC Bio Inc., now at the center of two fraud probes in South Korea and state and federal regulatory action in the United States, is essentially defunct.

The Seoul-based biotech company is a zombie. While it still exists in the business registry, it has no employees, no factory and no administrative office space.

The once expansive company — with five co-ventures in the United States, South Korea and Japan — boasted to investors that it would develop new flu vaccines and produce regenerative stem cell therapies for damaged heart, spinal cord and skin tissue. The company also promised to manufacture lifesaving medical products including a heart-lung mechanism, a portable dialysis machine and a liver replacement device.

Foreign investors in the Korean and Vermont projects were told that the stem cell therapies and medical devices would generate hundreds of millions of dollars in profits.

The Korean Development Bank in Seoul also believed the AnC Bio Inc. pitch and loaned the company \$7.5 million to build a \$30 million biotech factory in the small city of Pyeongtaek, an hour south of Seoul by express train. The factory where AnC Bio Inc. planned to conduct stem cell research and manufacture its medical devices was in a Pyeongtaek industrial park near an agricultural area punctuated by plastic greenhouses and metal warehouses.

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When AnC Bio Inc. offered to bring its miraculous technologies to Vermont at the height of the Great Recession, state officials enthusiastically embraced the idea, believing the biotech company would create thousands jobs for the gritty Northeast Kingdom region. The deal included the construction of a biomedical manufacturing plant — just like the one in Pyeongtaek — in the Canadian border town of Newport.

The Vermont plant would be financed by EB-5 investor funds, which allows foreigners to put up \$500,000 for developments in targeted poor rural or urban areas in exchange for a green card. The developer is obliged under federal rules to create 10 jobs for each investor.



The defunct offices of AnC Bio Inc. in Seoul. VTDigger photo

## A grand vision

**T**he most popular EB-5 development in Vermont was at Jay Peak Resort in the Northeast Kingdom. While other Vermont developers looked to use \$20 million to \$50 million in EB-5 investor funds for modest projects, Ariel Quiros, the owner of the resort, and Bill Stenger, its president and CEO, were thinking big. Very big.

Stenger and Quiros raised more than \$250 million from 500 investors for a massive expansion at the Jay Peak ski area that included hotels, a water park, an ice rink, three condo complexes, a golf club and other amenities. The two men planned to raise \$600 million more to develop a terminal at a regional airport, a marina and conference center

on Lake Memphremagog, an office building in Newport, and an elite athletic center at another ski area in East Burke.

But the grandest vision of all was the final project: AnC Bio Vermont. The two developers planned to revolutionize the region with the construction of a state-of-the-art stem cell laboratory and artificial organ manufacturing plant that would draw researchers from the University of Vermont College of Medicine and Canadian university hospitals.

Quiros and Stenger referred to AnC Bio Vermont as the “crown jewel.”

The idea of bringing biotech jobs to the poorest region of Vermont proved irresistible to the state’s politicians. In all, through direct and indirect economic impacts, the developers said in legal documents that AnC Bio Vermont would create 3,000 jobs.

With the backing of the Vermont EB-5 Regional Center, which was responsible for oversight, the two developers in 2009 brought Gov. Jim Douglas to the Pyeongtaek factory, where he signed off on a deal to bring the biotech company to Vermont. His successor, Gov. Peter Shumlin, promoted the project to foreign investors in two separate video clips in 2012 and 2013. A vice president at UVM endorsed the plan, as did Sen. Patrick Leahy, D-Vt.

In all, 133 foreign investors believed the pitch made by Stenger, the general partner for the project, and Quiros, the owner of the Vermont company. Many investors say it was the seal of approval from state officials that gave them confidence AnC Bio Vermont was a legitimate investment.

Together, the immigrants invested \$66.5 million in AnC Bio Vermont.

The proposed 10-story biomedical facility in Vermont, however, was never built, and federal regulators say Quiros “pilfered” the money for the project.

The U.S. Securities and Exchange Commission brought charges against Quiros and Stenger in April alleging they misused \$200 million in investor funds out of a total of about \$350 million raised for AnC Bio Vermont and projects at Jay Peak. The SEC case did not name the Burke Mountain development as a defendant. A class action lawsuit filed in May, which includes Burke, alleges that in all, the developers had \$404 million at their disposal and 836 immigrant investors from more than 74 countries were defrauded. The developers also collected an estimated \$41.8 million in administrative fees from the investors.

Five of six projects at the Jay Peak ski area were completed with the exception of a condo complex known as Stateside. The Burke Mountain facility was not completed as planned, and construction of AnC Bio Vermont was



H&S Tower in the Gangnam district of Seoul. VTDigger photo



never begun in earnest. About 400 investors may not be eligible for green cards because they were at the end of the line in the alleged Ponzi-like scheme.

The SEC describes AnC Bio Vermont as “nearly a complete fraud.”

Federal regulators allege that Quiros “looted” AnC Bio Vermont and used money from EB-5 investors as a personal piggybank. The SEC says the Miami businessman stole \$30 million just from AnC Bio Vermont for his own use. At least \$6 million was siphoned off to an unregistered Korean company associated with AnC Bio Inc., and \$6 million more went to business associates of Quiros who never delivered on services and products. Quiros and Stenger, who was the general partner for the project, turned a \$3 million profit when they sold the land for the facility to investors.

Quiros, through his attorneys, says he made legitimate profits from development fees that investors were made fully aware of in legal documents. If federal and state regulators had not put a halt to the developments, Quiros says he would have been able to find more investors to fully subscribe Burke and AnC Bio Vermont, and there would have been enough money to complete the construction.

The foreign investors in AnC Bio Vermont, meanwhile, likely won’t get their money back any time soon, and without an act of Congress exempting them from federal immigration rules, they are unlikely to get green cards because no jobs were created.



Gov. Peter Shumlin, Jay Peak CEO Bill Stenger, Ariel Quiros, the owner of Jay Peak, and his son Ary Quiros at a ribbon cutting. Photo by Hilary Niles/VTDigger

## The South Korean connection

While the story of the largest fraud case in the history of the EB-5 program blossomed in Vermont, it took root half a world away in South Korea years before.

As Stenger wooed the press, politicians and locals in a September 2012 news conference highlighting the AnC Bio Vermont project, his South Korean counterpart was already in trouble.

Auditors for the federal government in Seoul were bearing down on Jong Weon “Alex” Choi, the CEO of AnC Bio Inc., a close business associate of Quiros’ who owned the technology rights for the products that were to be manufactured in Vermont.

In 2012, just as the Vermont EB-5 Regional Center was preparing to approve an offering memorandum that would be used to solicit EB-5 investors for the Newport biomedical project, South Korean accountants found that AnC Bio Inc. had been operating at a loss for three years running. In June 2012, the Korean Development Bank authorized the auction of the Pyeongtaek factory to recoup a \$7.5 million construction bond. (It was sold in 2014.)

In September 2013, the Korea Herald reported that a “Mr. A” (Choi) was arrested and released on bail on charges of stock manipulation, corruption and embezzlement of \$10 million from AnC Bio Inc. The Pyeongtaek factory was searched and seized by South Korean prosecutors months earlier, in March that year. Prosecutors also charged the CEO of Sports Seoul 21, a holding company of which AnC Bio was a subsidiary, with corruption and stock manipulation. In connection with the AnC Bio cases, the CEO of Sports Seoul went to jail, news reports show.

Choi’s trial in Seoul is set to start this month, according to a government court schedule, but as is typical of court proceedings in South Korea, the prosecutors’ specific allegations are under seal and cannot be obtained through a records request.



Alex Choi, CEO of AnC Bio Inc. and former president of Jay Construction Management. Facebook image

## A close relationship

Choi, 55, is a native of South Korea. Like his longtime friend and business partner, Ariel Quiros, he has operated dozens of interrelated companies ranging from import-export businesses to biotech.

Choi and Quiros were partners in a number of companies. Some of the businesses are based in Seoul. Others are registered in Florida.

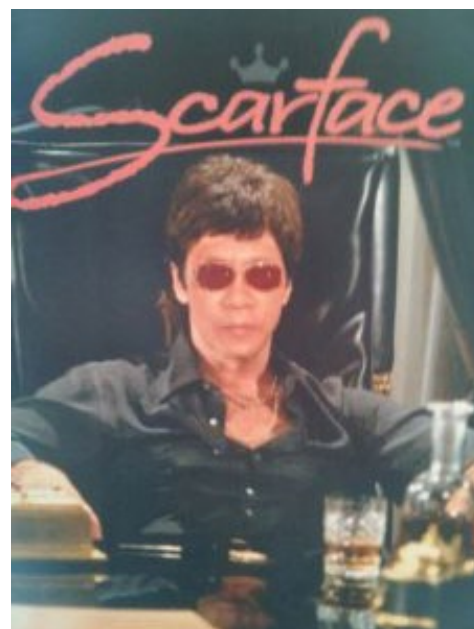
The two men met in 1981, not long after Quiros finished his tour of duty in the U.S. Army in South Korea and married a South Korean woman.

Quiros' adult children have referred to Choi as "uncle," but Quiros adamantly denies that Choi is any relation. Whether they are related or not, property records and other documents show the two men had an unusual degree of trust when it came to finances.

Together Quiros and Choi started an import-export business in the early 1980s and shared ownership of a number of other companies, including GSI Corporation, Q Resorts, The Teddy Bear Foundation of Florida and Jay Construction Management. Quiros served as an unpaid "consultant" for AnC Bio Inc. in Korea.

Choi and Quiros also traded real estate in Miami. The two men sold and resold the company offices to each other over a nine-year period. In 2007, Choi purchased the business suite at 111 NE 1st St. from Quiros for \$2.4 million — 10 times what Quiros paid for it in 1996. During Choi's financial troubles in 2012, he sold it back to Quiros for less than \$1 million.

The Miami offices for the import-export business and several dozen other companies owned by Quiros have used the address. When VTDigger visited the business suite in 2015, the offices were empty, save for a few cardboard boxes.



Alex Choi, the CEO of AnC Bio Inc. Facebook profile pic





GSI Corporation's Miami office show unpacked boxes, no staff on hand.  
Photo taken in October 2015 by VTDigger.

Choi is something of a man of mystery. While there is no recent address listed for him in South Korea, he has a presence on Facebook that features a macho profile photo of him in which he is wearing aviator shades, a black dress shirt and gold necklaces under the word “Scarface” scrawled in red above his head.

Over the past decade, Choi has moved every 18 months — each time farther and farther away from Seoul.

Choi seemed to disappear for a while — even on Facebook, where friends in 2012 encouraged him to hang tough during the Korean prosecutors’ investigation. His last known address is more than an hour from the city, while his social media posts promote a portable digital DJ device called Pacemaker (the only product Choi appears to have successfully commercialized).

Though Choi is not named as a defendant in the SEC case, his actions and his companies are central to the fraud allegations.

At the same time that Choi presided over AnC Bio Inc. as the CEO, he served as president of Jay Construction Management from 2011 through 2014. During that period, Choi ceded power of attorney, or signing power for the company, to Quiros for bank transactions and payments for the company, many of which the SEC and state regulators say were improper.

Regulators say Jay Construction Management — under Choi’s oversight and with Quiros holding power of attorney — was the pipeline through which money flowed from AnC Bio Vermont to cover cost overruns and missing investor funds for earlier projects at Jay Peak Resort.

The SEC says Quiros, using Jay Construction Management as the vehicle, commingled \$160 million in EB-5 investor funds for the Jay Peak, Burke Mountain and AnC Bio Vermont projects.

While Choi served as president of Jay Construction Management, about \$6 million was transferred from Vermont to bank accounts in South Korea held by AnC Biopharm, a company affiliated with AnC Bio Inc.

That was possible because of a special investment agreement that allowed the developers to immediately use \$60 million from investors in AnC Bio Vermont. The agreement gave the developers the ability to transfer the money to AnC Biopharm for the purchase of technology rights, distribution rights and equipment for the biotech products to be manufactured in Vermont. Ultimately, AnC Biopharm, which is not a registered company in South Korea, did not deliver on the products or the rights, according to the SEC.

In previous projects at Jay Peak, investors were told their money would be held in escrow and used only for construction of the project they invested in. However, the SEC says the money was not in fact held in escrow, but was commingled and used for a variety of construction projects and other purposes.

Through the special technology agreements and the Jay Construction Management company, Quiros allegedly tapped \$30 million from AnC Bio Vermont for his personal use. He also distributed \$7.9 million to North East Contract Services, a company run by his longtime business associate Bill Kelly, according to the SEC.

In testimony to the SEC, Stenger, the general partner for AnC Bio Vermont, did not dispute allegations that the developers had decided to use the money to pay for other projects. The developers are accused of running a “Ponzi-like” scheme that started when Quiros purchased Jay Peak using investor funds intended for future development projects.

Stenger told regulators he had hoped proceeds from AnC Bio Vermont would bankroll future developments, including an office building in Newport and the planned terminal at the regional airport.



The proposed AnC Bio plant to be built in Newport.

## Korea's patronage system

**T**he H&S Tower where the AnC Bio Inc. offices once operated is one of the smaller structures in the high-end Gangnam district of Seoul. High-rise office buildings and apartments dominate the skyline. Mountain ridges rim the city, and Namsan Mountain looms at the center of this metropolis of 10 million people.

The skyscrapers are an expression of human ambition against all odds. The Korean peninsula was overrun by the Japanese military in the 16th, 18th and 19th centuries in the waning years of the feudal Joseon Dynasty. The city of Seoul endured the indignity of Japanese occupation in World War II and then was reduced to rubble during the Korean War, a civil conflict that ensued after the failed reunification of South Korea and North Korea.

Still, given a chance to chart their own course as an independent nation, the South Korean people have completely rebuilt their country as a democratic nation. They now are a leader in the global tech boom. Today, South Korea, with a population of 55 million, is the fourth-largest economy in Asia.

The nation's economic success can in large part be attributed to a history of aggressive government support for entrepreneurs, especially in the tech industry. Corporate titans are often very closely tied to government officials who have used taxpayer money to back entrepreneurs through subsidies, federal bank loans and other incentives. Companies have, in turn, given government officials perks and even cash in return for influence. This climate of corruption has also tainted the biotech industry.

Exposés about the alleged corruption of President Park Geun-hye have led to massive demonstrations. Every Saturday since early November a river of more than 1 million people have joined demonstrations on a closed section of an eight-lane highway that stretches from downtown Seoul to the Blue House, the president's residence.

Park, now subject to impeachment proceedings, is accused of using her influence to funnel money from 10 corporations into a foundation run by a woman who has been a close confidante and adviser. At recent protests, demonstrators have surrounded the Blue House, holding hands and singing.

The Korean people, who are famous for their integrity (check out this [video](#)), have a low tolerance for the kickbacks and favors that have become commonplace in business and government circles. South Koreans are also highly literate (55 percent graduate from college) and have a more Western outlook than their peers in other Asian countries. A large percentage — 30 percent — are Christian, census figures show.

South Koreans say President Park's alleged corruption is an extension of the policies set by her father, Park Chung-hee. He took power in 1963 and ruled the country during a formative 16-year period in which South Korea rebuilt its economy and leveraged money from the Korean equivalent of the U.S. Federal Reserve to back emerging tech and manufacturing companies like Samsung and Hyundai.

[Professor Ha-Sung Jang](#), a well-known economist at Korea University, says the current business structure with the close ties between business and government is not benefiting the Korean people. Only one-sixth of the more than 3 million registered businesses in Korea pay taxes. The top 100 companies together generate 60 percent of the nation's profits but employ only 4 percent of people here. And too often, Jang says, corporations use shell companies to hide profits.

Government money and influence have been used to foster biotech developments since the early 2000s.

AnC Bio Inc. was part of a new wave of biotech in South Korea that included stem cell research, cell generation, genetic engineering, medical diagnostic devices and biomedical devices.

Stem cell research, in particular, has involved the “collusion” of medicine and government authorities, according to professor Ryu Young-jun of Kangwon National University. Ryu is famous [for blowing the whistle in 2005](#) on his superior, Dr. Woo-Suk Hwang, who faked human cloning experiments at Seoul National University, one of the most prestigious colleges in South Korea.

In an article for the Korean online newspaper [Money Today published earlier this month](#), Ryu said “(Researchers) will claim impossible treatments in order to receive research funds from the government or investors without a blink in the eye.”



More than 1.5 million people participated in a peaceful demonstration in Seoul earlier this month. VTDigger photo



## The Pyeongtaek-Newport connection

**T**hirteen years ago Byeung-gu Min, a medical engineer at Seoul National University, hoped to perform a miracle. The research professor had worked for 20 years to invent an artificial heart, and he believed the device would prolong life for people with heart failure.

Min finally had the opportunity to test his artificial heart on a patient with end stage heart failure in France. The patient died of liver failure after 12 days, sources say.

Min then redesigned the artificial heart device as an outside-the-body mechanism called the T-PLS or Twin Pulse Life Support machine. He obtained a patent for it in 2004, and the Korean Food and Drug Administration approved the device for testing that year. That same year, he received patents for a portable dialysis machine he called the C-Pak and an artificial liver device known as E-Liver.

The Twin Pulse machine is unique in that it is designed to force blood into the heart vessels of a patient experiencing a heart attack. Most life support machines on the market supply an even blood flow to the heart. The devices are typically used to bypass the heart while patients are waiting for or recovering from surgery.

In an initial phase of human testing of the Twin Pulse machine involving 50 cases, only 10 patients experienced success. An academic journal [published a description](#) of two test cases.

As Min was preparing for the testing phase, he sold his company NewHeart Bio to Alex Choi.

Choi owned a company called Bioheart Korea, or BHK, which specialized in stem cell therapy for the regeneration of heart tissue. Bioheart Korea was later renamed AnC Bio Inc.

Choi leveraged the stem cell technology and the three medical devices to obtain support from the South Korean government. Under the business name BioHeart Manufacturing, Choi obtained permission in 2006 to build the factory in Pyeongtaek. BioHeart Manufacturing received construction loans through the Korean Development Bank, and the factory was built in 2007.



AnC Bio Inc. once owned this factory in Pyeongtaek, South Korea. VTDigger photo

But by the spring of 2009, Choi was in trouble. Auditors with the HanWool accounting firm said he was not forthcoming with BHK's financials, and [the company was delisted from the Korean stock market.](#)

That stock market delisting appears to have precipitated a name change. The company was rechristened AnC Bio Inc., according to the Financial Times and Reuters, and Choi sold shares of the company that year to a large conglomerate, Sports Seoul 21, which had subsidiaries in biotech, mining, media and construction.

Choi tapped Ike Hwan Lee, a stem cell scientist, to serve as president, and one of professor Min's students, Kyungsoo "Jake" Lee, to run the operation. Under Ike Lee's leadership, the company expanded its products to include a flu vaccine and a new co-venture with a Japanese company for the stem cell heart regeneration technology.

Meanwhile, the Jay Peak developers were setting up a beach head for AnC Bio Inc. in Vermont through a deal with the state using EB-5 immigrant investor funds. Gov. Jim Douglas was scheduled to visit the Pyeongtaek factory in October 2009 to give the state's stamp of approval for the project. Just weeks beforehand another name change was in the works. Sports Seoul 21 was renamed AnC Bio Holdings Inc.

Gov. Jim Douglas of Vermont and Gov. Moonsu Kim of Gyeong-gi province



Gov. Jim Douglas of Vermont and Gov. Moonsu Kim of Gyeong-gi province.

Douglas was invited to tour the factory and sign the agreement allowing AnC Bio Inc. to form the partnership with AnC Bio Vermont, its sister company in the United States. The new company would raise money to build a \$50 million facility in Newport that would look just like the Pyeongtaek factory.

The ceremonial signing with Douglas was conducted with some fanfare. Choi and his Vermont partners — Stenger and Quiros — led the festivities. The provincial governor was on hand. And a reporter from Poli People, a Korean business magazine that was one of the Sports Seoul 21/AnC Bio Holdings media companies, was there to record the historic moment.

Douglas was clearly wowed. The Vermont governor told Poli People that he was impressed by the wide array of products AnC Bio had to offer. He especially liked the idea of the portable dialysis machine, which he believed would be a groundbreaking technology that “is going to transform how health care is delivered.”

“I think there is great demand for biotech both in our country and around the world, and because Vermont is such a good fit for this type of company I think we can position ourselves as a real leader,” Douglas said.

Three years passed as Stenger and Quiros built out the massive redevelopment of Jay Peak. And officials with the state of Vermont, charged with overseeing the projects through its EB-5 Regional Center, were doing all they could to help the developers create jobs in the historically depressed Northeast Kingdom region.

While his colleagues in Vermont were ambitiously forging ahead with \$282 million in construction projects, Choi and the CEO of AnC Bio Holdings, HongHee Jung, got into hot water with federal prosecutors in Korea. The two men were charged separately with corruption, stock manipulation and embezzlement.

Choi, who did not open his books to Korean auditors in 2011 as required under federal law, was charged with stealing \$10 million from his companies in 2012, [according to the Korea Herald](#).

As Choi’s company floundered, Stenger and Quiros were battling their own dumpster fire in 2012. Douglas Hulme, a business partner who handled investor solicitations for the Jay Peak projects, broke ranks and declared to 100 immigration attorneys that he no longer had faith in the developers’ financial representations.

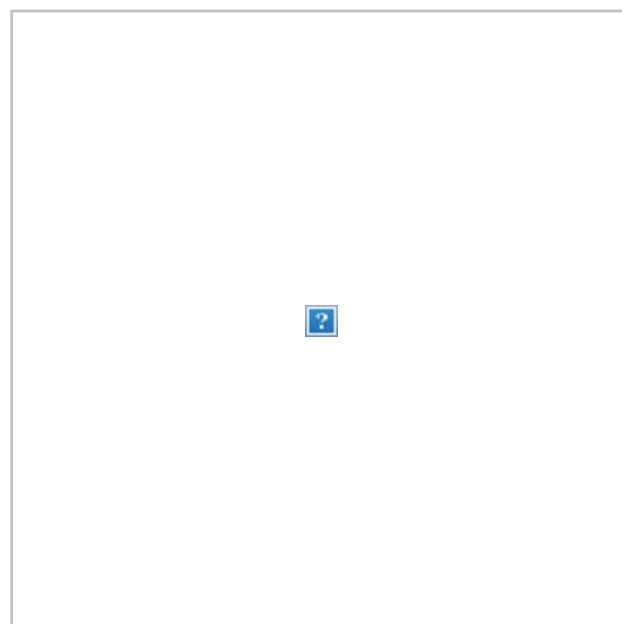
In May that year, Hulme talked with state officials about his concerns. But instead of fully addressing his allegations of anomalous accounting at Jay Peak, the state, in June of that year, accused him of operating as an unregistered broker dealer.

Not long after, Stenger and Quiros ramped up their push to launch AnC Bio Vermont. They came up with a new plan that doubled the project estimate to \$110 million from 220 investors with a promise that construction of the building would be completed in 2014 and revenues would start rolling in right away.

The two men held a daylong press conference at the end of September 2012 that featured speeches from state politicians — the congressional delegation and the governor’s office — in Newport.

In October that year, the Vermont EB-5 Regional Center approved the biomedical facility, and Stenger, who had close ties with state and federal politicians, got Gov. Peter Shumlin and Sen. Patrick Leahy to write letters of support for the biomedical factory in Newport that were used in legal documents for investors.

Stenger also solicited support from Dr. John N. Evans, a special adviser to the president of the University of Vermont.



Rapid USAs Visas CEO Douglas Hulme, left, a representative of Shen law firm, center, and Bill Stenger, right.

Evans wrote a letter to Stenger on Oct. 5, 2012, supporting the AnC Bio Vermont proposal as part of the developers' investor pitch.

"In our discussions with representatives from AnC Bio it is clear that there are many areas where research collaborations can be developed," Evans wrote.

UVM offered to share equipment with AnC Bio, provide internships for UVM students with the company, allow AnC Bio scientists to participate in academic activities and provide educational programs for potential workers at the biotech plant in Newport.

The university also rented office space to Jake Lee, the head researcher for AnC Bio Vermont, Evans said.

After Shumlin easily won re-election in November 2012, his campaign manager and chief of staff, Alex MacLean, went to work for Stenger. At the end of December the governor appeared in the first of two promotional videos for the developers. [In this one](#), he lauds Choi's work in the biomedical industry and encourages immigrants to invest in AnC Bio Vermont and the Jay Peak projects.

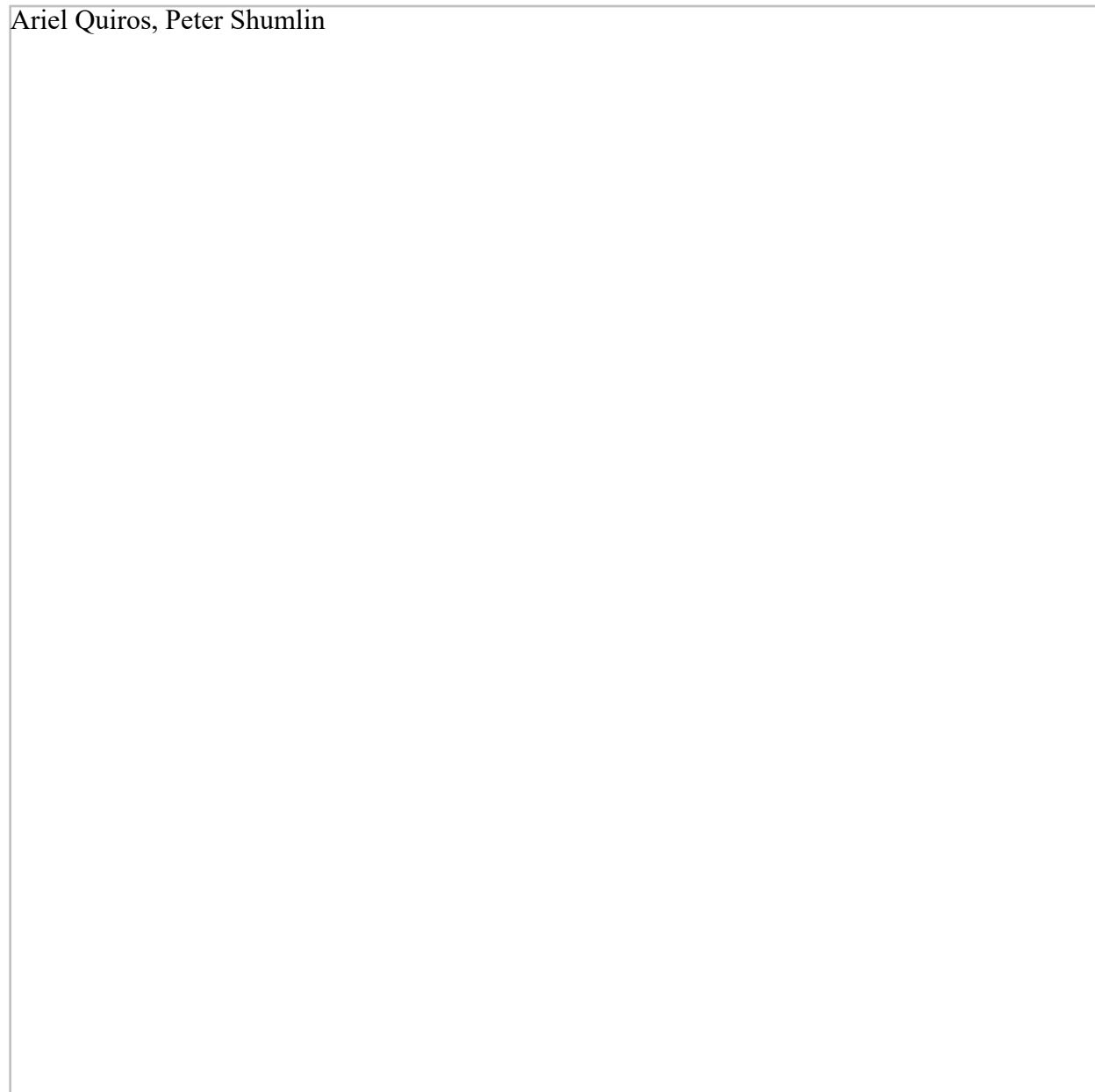
In a second video, he tells investors that the projects, including AnC Bio Vermont were "audited" by the state. Shumlin later recanted that statement and said he had misspoken. The regional center did not have the authority to subpoena financial records and was never able to review the developers' books.

Patrick Leahy, Bill Stenger



Sen. Patrick Leahy and Jay Peak developer Bill Stenger.

Ariel Quiros, Peter Shumlin



Ariel Quiros, left, whispers to Gov. Peter Shumlin at a press conference at Jay Peak Resort. File photo by Hilary Niles/VTDigger

## State involvement

**I**n South Korea, Choi's legal and financial problems intensified, and he lost ownership of the Pyeongtaek factory in 2014 when it was sold at auction.

The 2014 auction of the Pyeongtaek factory caught the attention of the Vermont EB-5 Regional Center.

Brent Raymond, the head of the center, and John Kessler, general counsel, raised questions about Choi's financial dealings, his relationship to Quiros, expenditures made by Jay Construction Management and allegations that Ike Lee, the president of the company, had inflated his credentials. (Lee is listed as a graduate of Harvard Medical School in marketing materials to investors, when in fact he had worked at an affiliated hospital.)

When Raymond and Kessler couldn't get answers, they suspended the Burke and AnC Bio Vermont projects in August 2014. That meant Stenger and Quiros could no longer solicit investors for the two projects. As money from new investors dried up that year, construction of the 84 Stateside condos at Jay Peak and a hotel at Burke, both already underway, ground to a halt.

When state officials asked about the financial status of AnC Bio Inc. in Korea, Stenger insisted that Choi was not the subject of any investigation and cited as proof an affidavit from a Korean law firm in Seoul.

In addition, Stenger and Quiros told investors and the state that the name of the company was AnC Bio Korea, an entity that is not registered in the Korean business registry. When questions were raised about the Choi investigation, both men referred to AnC Bio Korea instead of AnC Bio Inc.

The fraud the state has heard about, Stenger insists, involves a different entity, AnC Bio Holdings Inc., and a different CEO, Honghee Jung.

Stenger also told state officials that AnC Bio Vermont was “structured organizationally to protect itself” and investors.

The regional center was not satisfied with Stenger's answers and officials were miffed, despite patient prodding, that he and Quiros refused to produce financial documents.

When the developers did not fully comply with the center's requests, the agency ceded financial oversight for all EB-5 projects, including the Quiros and Stenger developments, to the Vermont Department of Financial Regulation in January 2015. The department had the expertise — and subpoena power — to conduct a probe.

The state finally launched an investigation in March 2015. (The SEC started its review and inquiry in 2013.)

At about the same time the state probe began, public records show that Shumlin pushed to give the AnC Bio Vermont and Burke projects “partial approval,” despite the misgivings of Susan Donegan, the state's chief financial regulator. That meant, after a eight-month suspension, the developers could now solicit new investors for the two projects. Donegan required Stenger and Quiros to hold the money in separate escrow accounts and go through a third party approval process for expenditures that was reviewed by the state.

It is not clear how many investors bought into AnC Bio Vermont between March 2015 and March 2016. Documents show that Stenger was soliciting investors in Johannesburg as late as March 31, less than two weeks before the SEC brought charges.



Bill Stenger



Bill Stenger thumbs through architectural renderings of pending developments at a press roundtable in September 2013. File photo by Hilary Niles/VTDigger

## Promises unfulfilled

**S**tenger told investors that FDA approvals for the artificial organs were pending, but the SEC says those approvals were never sought. The Jay Peak president wrote a letter to the FDA in 2011 asking about protocols for FDA trials, but did not follow up with an application.

In addition, Stenger and Quiros projected unrealistic revenues from AnC Bio Vermont clean room laboratories, mechanical devices and stem cell research, according to the SEC. Over a five-year period, the developers said the facility would generate \$659 million by 2018. An economic expert who testified for the SEC in May said the facility would make \$204 million in revenues at most — if the AnC Bio Vermont facility opened in 2014 as planned.

But a groundbreaking for the facility was not held until May 2015. Only \$2 million in pre-construction work was complete by the spring of 2016 when federal regulators brought charges.

While the feds say AnC Bio Vermont is a fraudulent project, Quiros maintains in court filings that the project remains viable. His attorneys cite a Frost and Sullivan marketing study, which claims that AnC Bio's "organ-assist productions will not only be highly competitive in the global market, but will be leaders in setting new standards for the industry." The study says "the company is well positioned to provide new, leading-edge stem cell therapies for cardiovascular disease."

Quiros' attorney says there is potential for AnC Bio Vermont "to be completed and any alleged shortfalls can be attributed to good faith, contractually protected management decisions."

The design for the AnC Bio Vermont facility resembles the Pyeongtaek factory. The 33,000 square foot structure, which was to be located near Newport, was seen as a panacea for the economic ills that have dogged the region for decades. Residents hoped that Stenger, a local hero, would help save the Northeast Kingdom economy with thousands of biotech jobs.

People in Pyeongtaek also expected to see hundreds of workers employed at the local AnC Bio Inc. factory. But residents say the building sat largely empty from the time it was built in 2007.

And the Pyeongtaek factory was never used in the way Choi advertised to investors.

Instead of lifesaving devices and stem cell therapies, AnC Bio Inc. made Applicell, a cosmetic cream that was sold door to door like Mary Kay products.

Meanwhile, AnC Bio Inc. in South Korea still exists in cyberspace. While its stock is no longer traded, Naver, the Korean version of Google, lists a price and heaps praise on the company's prospects for growth.

But the products Choi promised to investors in the Pyeongtaek factory operation appear never to have materialized.

Medical devices are tested in phases with increasingly larger pools of patients. A final trial would typically be conducted on hundreds of patients. There is no scientific literature showing the artificial heart machine ever progressed past the Phase I human trial on 50 subjects. Nor is there literature available on the efficacy of Min's artificial kidney and liver devices, and neither appears to have garnered approval from the Korean Food and Drug Administration for human trials.

The stem cell heart regeneration therapy, which received KFDA approvals for two clinical trials, including one for 330 patients, doesn't appear to have progressed to the final trial phase and was never made available commercially, based on information provided by company websites. Prominent scientists have questioned [the efficacy of stem cell injections](#) as a regenerative therapy for damaged heart tissue.

Back in Vermont, John Evans at UVM said he read about the SEC charges in the paper "like everybody else," but he doesn't feel duped by Stenger or regret that he was a booster for the project.

“It was in the early stages. ... There are lots of startup companies that start in a community like this, and part of a university’s responsibility is to provide whatever assistance to those when we can,” he said.

Ike Lee doesn’t return phone calls. Evans doesn’t know where Jake Lee is now. At some point, the AnC Bio researcher stopped coming into the office.

The South Korean scientists who were working in Vermont seem to have disappeared, along with Choi.

ANC Bio Vermont, Alex Choi, Ike Lee



Alex Choi, left, with Ike Lee for the ANC Bio Vermont groundbreaking in May 2015.  
Photo by Anne Galloway/VTDigger

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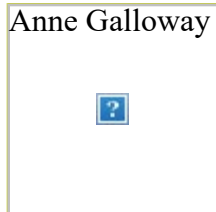
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Anne Galloway



## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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# EB-5 chief was repeatedly shut down in efforts to audit Jay Peak

By **Anne Galloway**

Sep 20 2018

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Brent Raymond appears in a promotional video for Dreamlife Investments in 2013.

**A** director of the Vermont EB-5 Regional Center says he repeatedly recommended audits for the Jay Peak Resort projects, but was told to stand down in efforts he said were coordinated by current and former members of the Shumlin administration.

In a sworn deposition last month, Brent Raymond said he asked the commerce agency secretary to order an independent financial review in May 2012 – after a tipster warned state officials about financial improprieties at Jay Peak. At the time, the resort’s developers, Ariel Quiros and Bill Stenger, planned to solicit \$800 million from foreign investors for a grand, sprawling series of developments in the poverty-plagued Northeast Kingdom.

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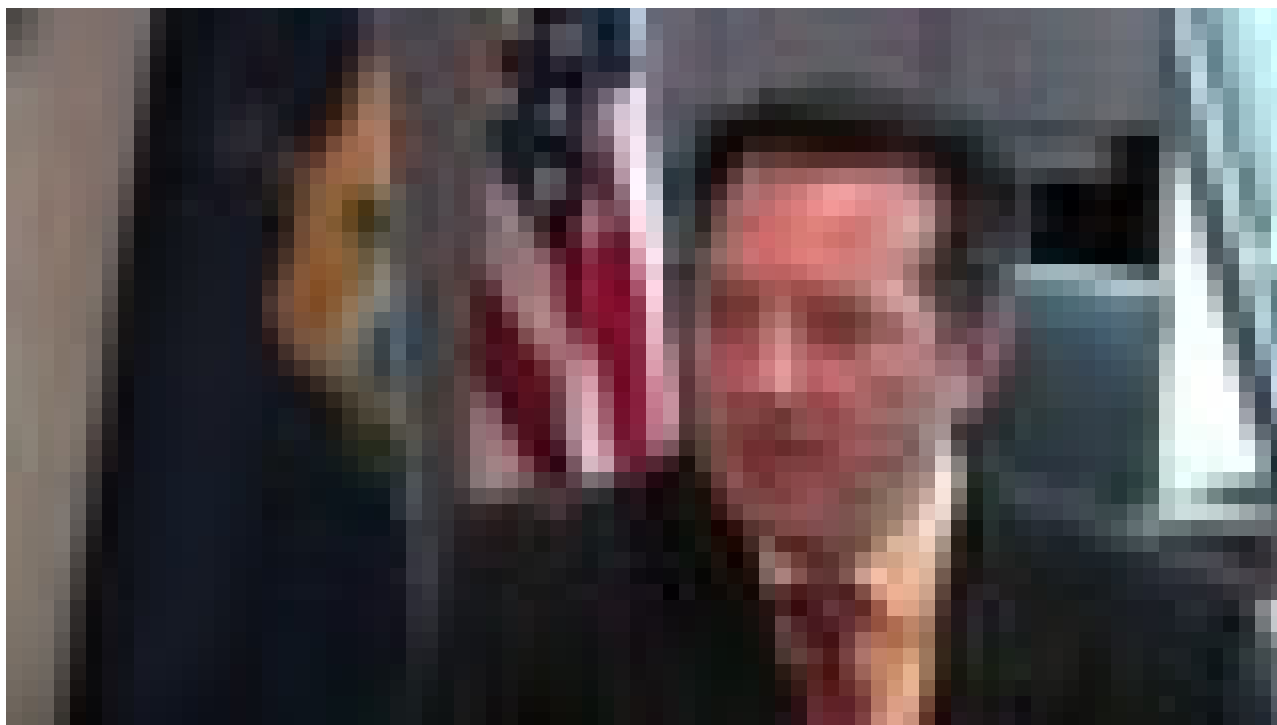
“I recommended forensic audits. I was told no,” Raymond said. “I had asked for various documents. I was always told no.”

Four years later, in April 2016, federal regulators shut down the Jay Peak developments and accused Stenger and Quiros of misusing \$200 million of investor monies in a Ponzi-like scheme that involved eight projects, most of which were built.

The Vermont Regional Center was required to oversee and manage the projects, according to legal agreements. In July, U.S. Citizenship and Immigration Services [terminated the state-run EB-5 program](#) because state officials didn’t do enough to stop the fraud, which occurred over an eight-year period. The commerce agency is [appealing the decision](#).

In a deposition taken by attorney Russell Barr, Raymond, who was director of the program for three years, says commerce agency and state securities officials, the developers and their agents, including Gov. Peter Shumlin’s

former deputy chief of staff and close confidante, shut down questions about financial improprieties and self-dealing by Quiros and Stenger. In addition, Raymond says U.S. Citizenship and Immigration “was so mismanaged that it didn’t provide enough direction to regional centers to really know what their responsibilities would be.”



The deposition is a window into what state officials knew and when, and why they did not investigate allegations in 2012 that the Jay Peak developers were misusing investor funds and giving kickbacks to lawyers. Instead of exercising their authority and legal obligation to prevent the fraud and protect the interest of investors, state officials not only refused to investigate in 2012, 2013 and much of 2014, they also heavily promoted the Jay Peak projects in China.

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After alarms had been raised about Jay Peak’s finances, and despite Raymond’s own misgivings, he frequently shared a booth with Jay Peak at EB-5 conferences. In 2013, Shumlin appeared in a video that was translated into Chinese, falsely claiming the projects were audited by the state. And there were several junkets to China in 2013 and 2014 in which Shumlin, Sen. Patrick Leahy, D-Vt., and Rep. Peter Welch, D-Vt., were featured speakers at



meetings with investors organized by Jay Peak.

Many of the 800 immigrants who invested in Jay Peak said they did so because Leahy and Shumlin vouched for the projects.



Sen. Patrick Leahy and Jay Peak developer Bill Stenger.

Stenger had a close relationship with Leahy, and Quiros was close with Shumlin. Both politicians received large campaign contributions from Jay Peak. While Quiros has been called the “mastermind” of the scheme, Stenger had immense political clout in Vermont — having testified in Congress about EB-5, traveled on a trade mission with Leahy to Ireland, and on multiple occasions being named Vermont Chamber of Commerce’s “man of the year.”

The deposition was taken last month in a federal investor case against Shen Jianming, an immigration attorney who allegedly took \$1.25 million in [kickbacks from the developers](#).

Raymond is a witness providing testimony in the case, and is being represented not by his own counsel, but by the Vermont attorney general’s office, at taxpayers’ expense. Barr Law Group, which is also suing the state on behalf of investors, is

representing three Chinese plaintiffs.

## Quarterly financial reports ‘never’ filed

Raymond’s concerns about the finances at Jay Peak began when he was invited to participate in a conference call in May 2012 with Douglas Hulme, a former business partner who [cut ties with Stenger](#), the former CEO of the resort, and Quiros, the former owner of the ski area in February that year.

Raymond says he got on the call late and didn’t recall what Hulme’s attorney Eugene Lindsey said, except that “he gave us absolutely no information.” But in an email to Raymond’s predecessor, James Candido, in April 2012, Lindsey explicitly said Hulme had concerns about expenditures and the use of funds at Jay Peak.

It is not known what was actually said or how the state communicated with the Jay Peak developers before or after Hulme raised red flags about the finances at the resort because Shumlin, Gov. Phil Scott, former Vermont Attorney General Bill Sorrell and his successor TJ Donovan have refused to release records pertaining to the state’s complicity in the fraud. Scott and Donovan have used a relevant litigation exemption clause in the Vermont Public Records Act to block records requests from VTDigger. The governor’s office is worried



about the state's liability to investors; Donovan believes the state can use an absolute immunity defense to fend off an investor lawsuit now pending before the Vermont Supreme Court.

Attorney General TJ Donovan. File photo by Anne Galloway/VTDigger

Raymond, however, makes it clear in his deposition that the state could have stopped the fraud years before the Securities and Exchange Commission brought 52 counts of securities fraud against the developers for the scheme, which started in 2008 when Quiros illegally purchased the resort with investor funds that were supposed to be held in escrow accounts for the construction of two hotels at Jay Peak.

If the state had obtained use of funds and other financial statements from Jay Peak, Raymond says the original act of fraud that led to shortfalls for later projects "would stick out to somebody who has familiarity with balance sheets and transfers."

Raymond claims that after he became director of the EB-5 program in June 2012, he repeatedly asked his superiors — Commerce Secretary Lawrence Miller, deputy secretaries Lucy Leriche and Pat Moulton, and John Kessler, general counsel for the agency — to require audits of the projects.



Gov. Peter Shumlin and Lawrence Miller attend a news conference in 2014. File photo by John Herrick/VTDigger

"I can't tell you how many times I ... went to people to tell them of my concerns," Raymond said. "So, typically [my concern] was listened to and then I may have been allowed to request information in writing or verbally, or a couple of times they said, yes, let's have them meet in person. Sometimes, they'd let me seek sort of an affidavit response. Sometimes, my recommendations were not – or oftentimes my recommendations were not followed."

Commerce secretary Miller initially agreed that Jay Peak needed to pay for an independent audit by an accounting firm that would be selected by the state. Later, when Stenger insisted it would be "very, very expensive," Miller let the subject drop. "He decided they didn't have to do the audits," Raymond said.

At that point, the regional center director says he didn't see the point of asking for quarterly financial reports, which were required by the U.S. Citizenship and Immigration Service.

"I never asked for quarterly financial reports when I worked as director because if you can't get an audit done, you know, what are the chances of getting a quarterly report?" Raymond said.

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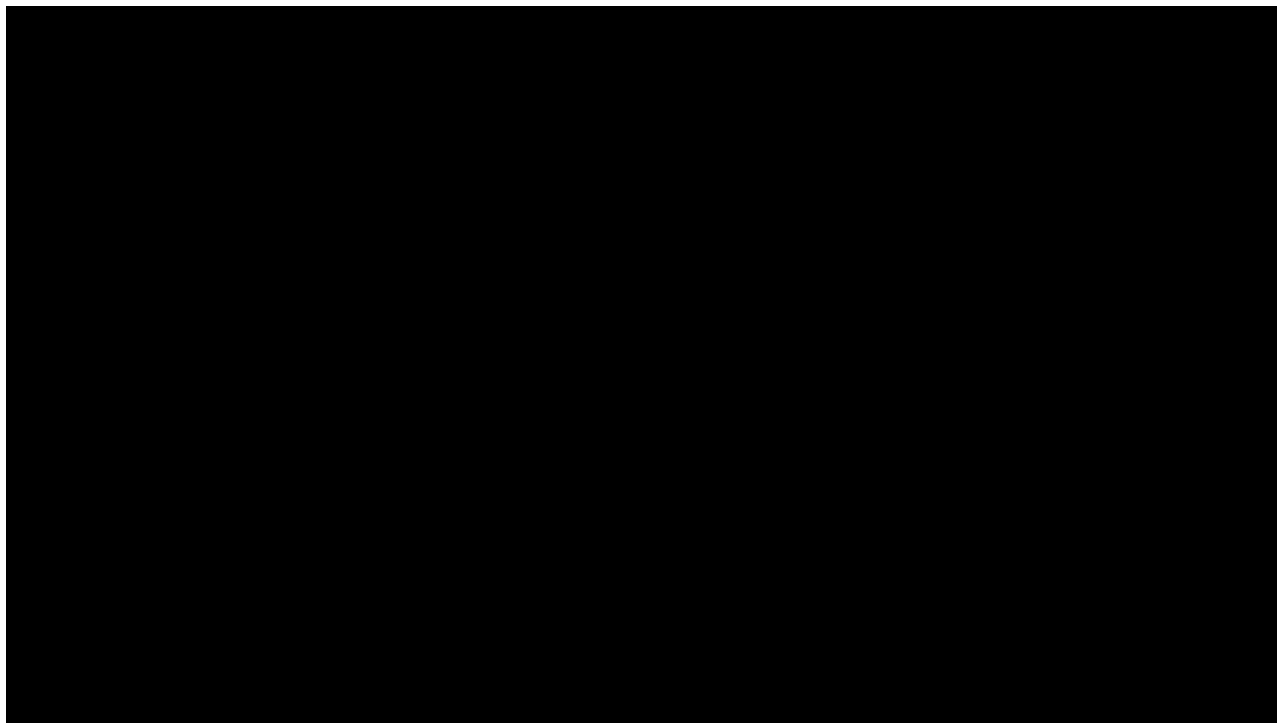
Miller did not respond to a request for comment.

“As far as I know, there was so much communication on a regular basis that people felt that quarterly reports weren’t needed unless there was something of concern where we wanted it on the record,” Raymond continued in the six-hour deposition.

Raymond’s comments are in direct conflict with statements made by the state in an appeal of the regional center termination submitted earlier this month to the USCIS.

The failure of the Vermont EB-5 Regional Center to require the quarterly reports was cited by USCIS as a reason for terminating the state program. In its appeal, the state chided the federal agency for referring to VTDigger reports from 2014 and insisted that the projects were monitored appropriately and quarterly financial reports were filed.

## Alex MacLean: Stop asking questions



Raymond says it was his responsibility to review the Jay Peak projects, but he was not allowed to ask questions of Stenger without permission from Miller, Kessler, the governor's office or from Shumlin's former deputy chief of staff, Alex MacLean, who went to work at Jay Peak in 2013.

"I often was not privy to conversations and decisions made," Raymond said. "Bill had a regular line to various people in state government."

In several instances, he says he was asked to stand down.

For example, in 2013, when Raymond reviewed an investor agreement for a biomedical facility in Newport proposed by Stenger and Quiros, he became concerned about self-dealing and inappropriate family connections. When Raymond asked Stenger why he and Quiros sold the land for AnC Bio Vermont to investors for \$3 million more than they paid for it, and why relatives were benefiting from a \$10 million technology and distribution deal, he was told to stand down.



Bill Stenger, left, and Ariel Quiros at a ribbon cutting. File photo by Hilary Niles/VTDigger

was asking were appropriate."

In a text exchange with VTDigger, MacLean categorically denied the allegation.

Raymond had received a certified letter from an attorney in South Korea that didn't adequately address his concerns about whether Alex Choi was Ariel Quiros' brother-in-law. Choi was a longtime business partner of Quiros and the owner of AnC Bio Korea. He was prosecuted by the Korean government for defrauding investors in 2012 — the same year an identical project was brought to Vermont and approved by Miller. The question about the exact nature of his relationship with Quiros is unresolved.

Raymond asked MacLean if he could follow up "and was told no. Lay off."

"I couldn't make heads or tails of the pro forma of AnC Bio," Raymond said.

Raymond's questions prompted MacLean to run interference as the governor's liaison at Jay Peak. A former Shumlin aide, she was hired by Stenger in 2013 to manage the Renaissance Project, a hotel and retail building in Newport that never materialized.

Raymond said MacLean told him to stop asking questions about AnC Bio Vermont.

"[Alex MacLean] told me it was totally unacceptable the questions I was asking and told me she was going to — she had spoken to the governor and was going to speak to Lawrence Miller," Raymond recalled. "She didn't feel the questions I

Questions about Quiros' family ties in relationship to AnC Bio Vermont, MacLean told him were "off limits," Raymond said. He recalled that she said: "You don't speak to Bill Stenger that way."

After that, Raymond said he tried to balance his questions with niceties. In one exchange from 2014, for example, Raymond calls Stenger "a great man." Such blandishments became part of a strategy he hoped would keep him from getting into trouble with the governor's office.

"So this is my attempt to nudge him, but there's a term within management when you're trying to give feedback to somebody who works under you," Raymond said. "You sandwich it with a compliment, you give them feedback, and then you give them another compliment. I didn't sandwich it. I just put a compliment at the end to try to avoid my being — my being spoken to about how I was communicating with Bill Stenger."

"At that point I was just tired of seeking permission for a lot of things," Raymond said.



Governor-elect Peter Shumlin, right, celebrates his victory with Alex MacLean, his campaign manager in November 2010.

## **'Base-level' concerns about AncBio Vermont**

On behalf of Lawrence Miller, the commerce secretary, Raymond signed off on federal applications for the regional center. In one of the applications, the state attested that the developers had applied for FDA approval of artificial organs that were to be manufactured at AnC Bio Vermont.

Raymond told Barr that he knew "they never moved forward with the stated FDA approval." In the July decision to terminate the state-run EB-5 center, USCIS said the regional center statement about the FDA approval was a "material misrepresentation."

In 2012 and 2013, when the state first began reviewing the AnC Bio Vermont project, FDA approval was the least of Raymond's worries.

"I mean, there were so many other concerns that I had," Raymond said in his deposition. "I didn't even go as far as the FDA approval. There were so many base-level concerns that I had that I didn't go that far."

He was most stressed about the developers double counting jobs, which allowed them to bring on more investors. Because of the fraud, more than 700 investors will not recoup the hundreds of millions dollars they invested and 400 likely will





Russell Barr speaks to reporters outside the Lamoille County Courthouse in Hyde Park last summer. Photo by Anne Galloway/VTDigger

not receive the green cards they were promised. Raymond says he “never, ever had any knowledge of embezzlement or misuse of funds.”

Raymond forwarded all of Jay Peak’s offering documents to state securities regulators at the state Banking, Insurance, Securities and Health Care Administration, the precursor to the Vermont Department of Financial Regulation, looking for

advice.

“BISHCA had no concern with them,” Raymond said. “They said it wasn’t their job.”

In the summer of 2014, after investors complained they had been bilked, and Raymond spurned entreaties for help, the commerce agency contacted the SEC and asked to be subpoenaed in order to be deposed and to provide records to federal regulators.

At the end of the deposition, Barr asked to continue questioning Raymond, but was rebuffed by Bill Griffin, the chief assistant for the Vermont attorney general. Griffin has refused to reschedule the interview and has moved to quash a subpoena of Kessler, the commerce agency counsel.

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## About Anne

Anne Galloway is the founder and editor of VTDigger and the executive director of the Vermont Journalism Trust. Galloway founded VTDigger in 2009 after she was laid off from her position as Sunday editor of the *Rutland Herald* and *Times Argus*. VTDigger has grown from a \$16,000 a year nonprofit with no employees to a \$2 million nonprofit daily news operation with a staff of 25. In 2017, Galloway was a finalist for the Ancil Payne Award for Ethics, the Al Neuharth Innovation in Investigative Journalism Award and the Investigative Reporters and Editors FOIA Award for her investigation into allegations of foreign investor fraud at Jay Peak Resort.

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Joan Goldstein  
Vermont Agency of Commerce & Community  
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Michael Sullivan Pieciak and Joan Goldstein  
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Development Regional Center  
One National Life Dr./Deane C. Davis Bldg./6th Floor  
Montpelier, VT 05620

**DATE: July 3, 2018**

**Application: Form I-924**

**File Number: RCW1031910148**

**RCID: ID1031910148**

**NOTICE OF TERMINATION**

This letter shall serve as notification that U.S. Citizenship and Immigration Services ("USCIS") has terminated the designation of Vermont Agency of Commerce and Community Development Regional Center (the "Regional Center" or VACCD RC) as a regional center under the Immigrant Investor Program (the "Program") pursuant to Title 8 of the Code of Federal Regulations ("8 C.F.R.") section 204.6(m)(6). The reasons for the termination are explained, below:

**(SEE ATTACHED)**

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

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Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

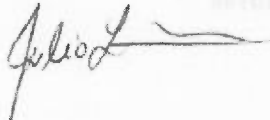
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Washington, DC 20529-2090

For more information about the filing requirements for appeals and motions, please see 8 C.F.R. § 103.3 or 103.5, or visit the USCIS website at [www.uscis.gov](http://www.uscis.gov).

Sincerely,



Julia L. Harrison  
Acting Chief, Immigrant Investor Program

Enclosure: (1) Form I-290B with instructions  
(2) Notice of Intent to Terminate issued on August 14, 2017

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

### **NOTICE OF TERMINATION**

#### **Termination of Regional Center Designation Under the Immigrant Investor Program** Vermont Agency of Commerce and Community Development Regional Center

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

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

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

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

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

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

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

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

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

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

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

(vi) A regional center may elect to withdraw from the program and request a termination of the regional center designation. The regional center must notify USCIS of such

election in the form of a letter or as otherwise requested by USCIS. USCIS will notify the regional center of its decision regarding the withdrawal request in writing.

### **I. Procedural History**

On June 26, 1997, USCIS designated and authorized the Regional Center's participation in the Program. On July 8, 2016, USCIS issued a Request for Information (RFI) to the Regional Center. The Regional Center submitted its response to the RFI on August 25, 2016. On August 14, 2017, USCIS issued a Notice of Intent to Terminate ("NOIT") to the Regional Center which afforded the Regional Center 30 days from receipt of the NOIT to offer evidence in opposition to the grounds alleged in the NOIT. On September 18, 2017, USCIS received a response to the NOIT (the "NOIT Response"), which did not sufficiently address the grounds alleged in the NOIT. Accordingly, USCIS has determined that the Regional Center's participation in the Program should be terminated. Pursuant to 8 C.F.R. § 204.6(m)(6)(v) and through this Notice of Termination, USCIS hereby terminates the Regional Center's participation in the Program.

### **The Regional Center Deficiencies Cited in the NOIT**

The NOIT specified four reasons for its issuance:

1. Failure by VACCD RC to provide adequate and proper oversight, monitoring, and management of its projects.
2. Diversion of EB-5 investor funds from intended job creating projects to other purposes, including for Ariel Quiros's<sup>1</sup> personal use. This (a) caused some project funding shortages, and (b) jeopardized the eligibility of some EB-5 investors to have the conditions on their permanent residence status lifted via their Form I-829 petitions, due to insufficient job creation.

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<sup>1</sup> Ariel Quiros is a key defendant in separate civil complaints brought by the U.S. Securities and Exchange Commission (the SEC) and the state of Vermont concerning allegations of diversion of EB-5 investment funds. Mr. Quiros was involved in operating the New Commercial Enterprises (each an NCE) associated with most of VACCD RC's projects charged in those complaints.

The "SEC complaint" refers to a civil action brought by the SEC on April 12, 2016 against 7 EB-5 entities associated with the VACCD RC, among 10 other named Defendants. See <http://www.sec.gov/litigation/complaints/2016/comp-pr2016-69.pdf>.

The "Vermont State complaint" refers to a civil complaint filed by the State of Vermont on April 14, 2016 against the same 17 Defendants as in the SEC complaint, regarding activities relating to the Regional Center. The allegations in the SEC and Vermont State complaints are similar. (The SEC and Vermont's Department of Financial Regulation, which handled the state's investigation, coordinated their investigations.) See <http://www.dfr.vermont.gov/sites/default/files/jaypeak/Amended%20Complaint%20%28State%20v.%20Quiros%29%20FILED.PDF> for the June, 2016 amended complaint.

3. Misrepresentations to USCIS and the EB-5 investors with regards to sponsored job-creating projects' funding and prospects for success.
4. Adverse effects on future projects and job creation. The resulting negative publicity from the SEC and Vermont State complaints has led developers which had been associated with two VACCD RC projects to drop their participation with the Regional Center for future projects.

This Notice will discuss these in further detail below, as well as the VACCD RC NOIT response.

## **II. Reasons for Termination**

USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment as required by 8 C.F.R. § 204.6(m)(6).

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

Regional centers are designated for the promotion of economic growth and must continue to meet the requirements of section 610(a) of the Appropriations Act as amended, and promote economic growth in a manner that does not conflict with requirements for classification under section 203(b)(5) of the Immigration and Nationality Act ("INA"), removal of conditions on lawful permanent residence under section 216A of the INA, and implementing regulations following their designation. According to section 610(a) of the Appropriations Act, economic growth includes increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *See also* 8 C.F.R. § 204.6(m)(6)(ii) ("USCIS will issue a notice of intent to terminate the designation of a regional center in the program if. . . USCIS determines that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.").

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

When derogatory information arises (such as evidence of inaction, mismanagement, theft, or fraud by the regional center or related entities), USCIS weighs all relevant factors in the totality of the circumstances



to determine whether the regional center is continuing to serve the purpose of promoting economic growth. Such factors may include the seriousness of the derogatory information, the degree of regional center involvement in the activities described in the derogatory information, any resulting damage or risk imposed on investors and the economy, as well as any mitigating, corrective, or restorative actions taken or forthcoming to redress the situation.

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

### **I. Negative Factors identified in the NOIT**

#### ***1. Lack of Administrative Oversight (8 CFR 204.6(m)(6))***

The NOIT provided detail as to how the Regional Center did not carry out sufficient monitoring, oversight, and management of its projects and, in contrast, how if it had done so, the alleged malfeasance related to the projects, might have been prevented. This lack of oversight was consequential, as diversion of investor capital negatively impacted the regional center’s ability to continue to promote economic growth. At the time of the regional center’s designation, USCIS regulations provided for termination of a regional center when it was not continuing to meet program requirements and upon a Service determination that the regional center no longer was promoting economic growth. 8 C.F.R. 204.6(m)(6) (1997). Additionally, at that time participation of a regional center in the Immigrant Investor Program required a “detailed statement regarding the amount and source of capital which has been committed to the regional center” and agency policy in the Adjudicator’s Field Manual (AFM). AFM 22.4(a)(2)(B)(iv) interpreted this to include in part, “A description of the plans to administer, oversee, and manage the proposed Regional Center, including but not limited to how the regional center will:

- Oversee all investment activities affiliated with, through or under the sponsorship of the proposed Regional Center.”

Further, at the time of the Regional Center designation, the regulations stated:

To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. 8 C.F.R. 204.6(m)(6) (1997).

In addition, USCIS reminded VACCD of this responsibility in its I-924 approval notice and subsequent amendment approvals. As highlighted in the NOIT, multiple USCIS approval letters sent to VACCD RC for its designation and amendments (i.e., for Form I-924 applications) conveyed its monitoring responsibilities. For instance, the Regional Center's letter reaffirming its designation, dated June 11, 2007, clarifies the management and oversight responsibilities stating:

"In order for USCIS to determine whether your regional center is in compliance with the above cited regulation, and in order to continue to operate as a USCIS approved and designated regional center, your administration, oversight, and management of your regional center shall be such as to monitor all investment activities under the sponsorship of your regional center..."<sup>2</sup>

That letter also indicates that the Regional Center must be prepared to explain,

"How the VACCD-RC is administering its regional center"<sup>3</sup>, and...

"How the VACCD-RC is actively engaged in the evaluation, oversight and follow up on any proposed commercial activities that will be utilized by alien investors in order to create direct and/or indirect jobs through qualifying EB-5 capital investments into commercial enterprises within the State of Vermont."<sup>4</sup>

The NOIT also mentions that "the USCIS amendment approval letters (sent to the Regional Center) dated October 6, 2009 and August 12, 2010 convey VACCD-RC's administration, oversight, and management responsibilities, as described immediately above."<sup>5</sup>

In response to the concern raised, the Regional Center provided three main arguments. First, that "A regional center's responsibilities for the oversight of day-to-day operations of the separate and unaffiliated NCEs are not established in any law, regulation, or published policy, and are not defined anywhere."<sup>6</sup> However, as explained above, at the time of the regional center's designation, participation in the program required that a regional center provide the agency with a detailed statement regarding the amount and source of capital committed to the regional center, and agency policy reflected in the AFM interpreted that to mean oversight of all investment activity affiliated with, through, or under the sponsorship of the proposed regional center. This policy has remained unchanged and is currently in the Policy Manual at Volume 6, Part G, Chapter 3, Section A.

Second the Regional Center argued that "the NOIT fails to identify any legal standard for measuring the adequacy of the VRC's (i.e., VACCD RC's) monitoring and oversight".<sup>7</sup> Again, as indicated above,

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<sup>2</sup> See page 17 of the NOIT.

<sup>3</sup> Ibid., page 17.

<sup>4</sup> Ibid., page 17.

<sup>5</sup> Ibid., page 17.

<sup>6</sup> See page 5 of the response.

<sup>7</sup> Ibid., page 8.

USICS clarified the policy requirement in numerous letters to the Regional Center over multiple years. And, these oversight responsibilities clearly involved the projects themselves, which turned out to be the problem area for the widespread misuse and misappropriation of EB-5 funds, as well as misrepresentations to USCIS and the EB-5 investors, according to the SEC and Vermont State complaints.

Third, the Regional Center argued that because the VACCD RC did indeed timely report the required information to the agency, it had met its monitoring and oversight requirement.<sup>8</sup> However, timely filing the I-924A is only part of the annual requirement for regional centers. The form I-924A instructions clearly indicate the requirement to “Answer all questions fully and accurately.” As well as a notification that “By signing this form, you have stated under penalty of perjury (28 USC section 1746) that all information and documentation submitted with this form is complete, true, and correct.” Therefore it is not sufficient to timely file the I-924A, but the information contained in that filing must be complete, true and correct. The NOIT Response seems to argue that VACCD RC’s only oversight responsibility was reporting its activities to USCIS. But, such reporting must be accurate and without effectively monitoring its projects, a regional center cannot accurately carry out its reporting requirements and responsibilities to USCIS. This is the case for any regional center.

Although the MOUs between the Regional Center and project developers seemed to require quarterly reports, the NOIT pointed to reports that this did not happen. The NOIT Response did not address this or provide any other evidence that the Regional Center had engaged in monitoring and oversight.

Therefore after considering all of the information in the record, the agency concludes by a preponderance of the evidence that the VACCD RC did not adequately fulfill its project oversight and monitoring responsibilities, which are integral to satisfying obligations set forth in the EB-5 regulations. As noted previously, a regional center that fails to engage in proper monitoring and oversight of the capital investment activities and jobs created or maintained under the sponsorship of the regional center may no longer serve the purpose of promoting economic growth in compliance with the Program and its authorities.

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

As addressed in the NOIT, the SEC and Vermont State complaints indicate that EB-5 funds were used for purposes that are inconsistent with the business plans and Private Placement Memoranda (each, a PPM) submitted to USCIS by the Regional Center and in furtherance of job creation. As noted in the NOIT, “according to the Vermont (State) complaint, EB-5 ‘investors were not informed through the (PPMs’) Source and Use of Investor Funds or in any other part of any offering document that their funds would be used in any other way than for the purposes specifically identified in the PPMs, including, for example, that their funds would be:

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

- (a) Misused to purchase T-bills;
- (b) Pledged as collateral for loans for non-project purposes;
- (c) Misappropriated for the personal benefit of Quiros;
- (d) Misused to pay for other EB-5 Projects' costs or other non-disclosed costs; or
- (e) Commingled with funds invested in other projects'.<sup>9</sup>,<sup>10</sup>

In addition, the NOIT stated that, "as for further specifics regarding the diversion and misuse of EB-5 funds, the Vermont (State) complaint also notes that 'since 2008, Quiros has misappropriated at least \$50 million of investor funds to, among other things: (1) purchase Jay Peak Resort; (2) purchase Burke Mountain Resort; (3) back a personal line of credit to pay his personal income taxes; (4) pay taxes for an unrelated company Quiros owns; and (5) purchase a luxury condominium in Trump Place New York. Quiros also improperly used investor funds to pay for margin loan interest and fees (\$2.5 million) and to pay down and off margin loan debts'.<sup>11</sup>,<sup>12</sup>

The NOIT details how the diversion of funds from the Jay Peak Hotel Suites Stateside, Jay Peak Biomedical, and Q Burke Mountain Resort projects contributed to budget shortfalls and an inability to complete the intended project work on time -- or complete almost no work at all, in the case of Jay Peak Biomedical. Also, the NOIT describes how these diversions led to many contractors not being paid on time for their work, causing financial problems. For instance, the Receiver's \$150 million settlement with Raymond James & Associates reportedly does not cover the contractors owed for previously completed work on the Jay Peak Biomedical project.<sup>13</sup>

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

The NOIT Response did not address the NOIT's points about the diversion of funds, and thus did not overcome its concerns. Therefore, after reviewing the evidence in the record, including all that was submitted in response to the NOIT, it appears that EB-5 funds invested in activities sponsored by the Regional Center were used for purposes unrelated to the business activities of the JCEs. These diversions may have also jeopardized the EB-5 investors' eligibility for lawful permanent resident status in the United States through their investments in projects sponsored by the Regional Center. Based on this apparent diversion and the seriousness of its consequences, USCIS has determined by a preponderance of

<sup>9</sup> For the citation from the Vermont State complaint, see page 27 of that document.

<sup>10</sup> See pages 20-21 of the NOIT.

<sup>11</sup> For the citation from the Vermont State complaint, see pages 3-4 of that document.

<sup>12</sup> See page 21 of the NOIT.

<sup>13</sup> See [http://www.stowetoday.com/news\\_and\\_citizen/news/local\\_news/better-late-than-never-percy-gets-eb--pay/article\\_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html](http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-eb--pay/article_b1ed7fc8-3be9-11e7-9ce7-e7ba214b9d6a.html) -- Andrew Martin, *News and Citizen*, "Better late than never – Percy gets EB-5 pay", May 18, 2017, and the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

the evidence that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

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

As indicated in the NOIT, during the course of its adjudications and the verification of information submitted by VACCD RC and individual Form I-526 petitioners, USCIS has discovered significant discrepancies between what the Regional Center represented in its filings and documents provided to individual Form I-526 petitioners, and what USCIS was able to determine independently.

For example, the NOIT described how the Jay Peak Biomedical PPM states that a certain ANC Bio Product was, “currently in the process of FDA approval”, but that, in reality, as noted in the Vermont State complaint, the, “...Defendants had not, and, upon information and belief, have never, applied for FDA approval for the ANC Bio Products. The PPM further states that the project is set to commence in October, 2014, without also including the material contingency that commencement of the project was dependent on FDA approval, and without disclosing the risk that the FDA might not approve the ANC Bio Products”.<sup>14</sup> This was a misrepresentation which made the project’s prospects appear much more favorable than the facts warranted. The Regional Center’s NOIT Response did not address the NOIT’s points about these misrepresentations.

USCIS concerns regarding material representations submitted in filings associated with VACCD to USCIS were raised previously in the Request for Information (RFI) that was issued to the Regional Center on July 8, 2016. In that RFI, USCIS noted that it had received petitioner filings for the ANC Bio project as recently as April 2016 and asked when the Regional Center became aware of the alleged diversion of investors’ funds, as relevant to (1) any investigative action(s) taken, and (2) the Regional Center’s marketing activities for the projects.

According to the RFI response to questions about the ANC Bio documents the Regional Center responded that, “ACCD directed significant attention to the offering documents and the manner in which the Jay Peak Biomedical project was marketed. ACCD paid particular attention to the accuracy of marketing materials, which led to a focus on the Private Placement Memoranda (“PPM”), as well as the Business and Marketing Plans, and the Job Creation analysis. By late 2013, ACCD began having concerns about whether all material information about the Jay Peak Biomedical project was being disclosed to investors.” Yet these concerns were not shared with USCIS, rather VACCD remained silent in their concerns and took no action as over 83 petitions for this NCE that were approved in 2014 and 2015.

Therefore, taking into account all of the information in the record it appears that there were misrepresentations consisting of false or misleading information about Regional Center-sponsored capital investment activity in materials submitted to USCIS and that when VACCD became aware of these misrepresentations, it took no corrective action. These discrepancies and misrepresentations cast doubt

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<sup>14</sup> See page 25 of the NOIT. This quotation was originally in pages 39-40 of the amended Vermont State complaint.

on the credibility of VACCD RC's filings and call into question the legitimacy of its operations. For these reasons, USCIS has determined by a preponderance of the evidence, that the Regional Center no longer serves the purpose of promoting economic growth in compliance with the Program.

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

While the NOIT acknowledged that VACCD RC has completed a number of projects and created jobs, it raised concerns that the SEC and Vermont State complaints and the resulting extensive adverse publicity have negatively affected the Regional Center's ability in the future to sponsor projects and create new jobs.<sup>15</sup> In particular, it mentioned two NCEs which have participated in job creating projects sponsored by VACCD RC but recently said they will not be doing so in the future. First, as explained in the NOIT<sup>16</sup>, "Stowe Aviation has ended its relationship with the VACCD RC to carry out a project expanding the Morrisville-Stowe State Airport. Russell Barr, Stowe Aviation's owner, said that marketing for the project was hampered by allegations of fraud at Jay Peak Resort."<sup>17</sup> Second, Peak Resorts Inc. has partnered with the Regional Center to develop the Mount Snow project, which has expanded its snow-making capacity and will build a new Carinthia ski lodge. "However, Peak Resort's next EB-5 project will build new residential units at Mount Snow, but it will not work with the VACCD RC, but instead..."<sup>18</sup> has formed its own regional center for this, the Great North Regional Center.<sup>19</sup> Peak Resorts Vice President, Dick Deutsch, reportedly "...told investors that he wanted to divorce Mount Snow's projects from the state's EB-5 troubles", which he thought led to a delay in getting their EB-5 funds released for the first phase of the Mount Snow project.<sup>20</sup> Thus, the NOIT noted, "the SEC and Vermont (State) complaints and the resultant publicity appear to have dampened the future ability of the VACCD RC to sponsor projects and promote economic growth".<sup>21</sup>

The NOIT asserts that the negative publicity and fallout from the SEC and Vermont State complaints hurt the ability of VACCD RC to sponsor future projects; the NOIT Response did not refute that. Rather, the Regional Center noted that it will not sponsor any new projects and that the Vermont State government wants to wind down operations of the Regional Center. The Regional Center stated, "The State and USCIS have a common interest in ultimately closing the VRC." Further, the Regional Center submitted a document dated August 18, 2017 from the Vermont Department of Financial Regulation ("DFR") which states, "Fundamentally, we believe operating a regional center is not a function that is best performed by the State and the need for a State-run regional center has passed." Here, the Regional Center and the

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<sup>15</sup> See page 26 of the NOIT.

<sup>16</sup> Ibid., page 26.

<sup>17</sup> See <https://vtdigger.org/2017/04/03/stowe-aviation-withdraws-vermont-eb-5-regional-center/>; *VTDigger*, Anne Galloway, "Stowe Aviation Withdraws from Vermont EB-5 Regional Center", April 3, 2017, p. 2.

<sup>18</sup> See page 26 of the NOIT.

<sup>19</sup> USCIS designated this as an EB-5 regional center on November 9, 2017.

<sup>20</sup> See <https://vtdigger.org/2017/03/10/mount-snow-split-state-plans-eb-5-fueled-expansion/>; *VTDigger*, Mike Faher, "Mount Snow to Split with State, Plans EB-5-Fueled Expansion", March 10, 2017. This is also mentioned on page 26 of the NOIT.

<sup>21</sup> See page 26 of the NOIT.



State of Vermont acknowledge that the Regional Center will no longer sponsor any new projects and that it should be closed. Thus, by these statements, we can conclude that the Regional Center will not continue to promote economic growth in the future. Also, while the regulations do allow a regional center to withdraw from the EB-5 Program, they do not provide for a regional center to withdraw or wind down on its own timeline. The regulations specifically provide that USCIS should terminate a regional center when it determines that it no longer continues to promote economic growth, regardless of any timeline. Here, USCIS has determined at this present time that the Regional Center no longer serves the purpose of promoting economic growth required by 8 C.F.R. § 204.6(m)(6) and that the Regional Center should be terminated based on negative factors relating to the Regional Center. As explained in more detail below, the positive factors contained in the record as a whole are outweighed by negative factors, warranting termination of the Regional Center's designation.

## II. Positive Factors

While this Notice has so far generally focused on negative factors involving VACCD RC, in reaching its determination, USCIS also considered the positive factors as they relate to the Regional Center's promotion of economic growth. The following are some of the positive equities that were considered. First, the VACCD RC has completed a number of projects and in the process has created many jobs. Also, some projects are ongoing, such as the Mount Snow project, and will create additional jobs in the future. For example the NOIT Response stated, "In fact, prior to receipt of the NOIT, Mt. Snow had begun discussions with the [VACCD RC] about affiliating for its next phase, which would produce an estimated nearly 1,400 additional jobs."<sup>22</sup> The success of both Trapp (i.e., the Von Trapp NCE) and Mt. Snow shows that the [VACCD RC] is currently promoting economic growth, and will continue to do so, unless it is terminated by USCIS."<sup>23</sup> (However, as explained in more detail below, the accomplishment of job creation and project completion is severely undermined and outweighed by the diversion of funds that occurred while the Regional Center failed to conduct adequate monitoring and oversight. This is especially true considering that the diversion of funds affected multiple projects and continued over a period of eight years.)

USCIS notes that problems with the projects are not alleged to have been perpetrated by any Vermont State or VACCD RC employee; instead, the main defendants in the SEC and Vermont State complaints are Ariel Quiros and William Stenger. A positive equity considered by USCIS included the support that the State of Vermont provided in the investigation. For example, in the Receiver's press statement about the settlement announced on April 13, 2017 between the Receiver, Michael Goldberg, and Raymond James & Associates, Goldberg was very thankful of Vermont State government officials helping to structure the settlement and protect, "the defrauded investors and creditors since the very beginning of the

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<sup>22</sup> USCIS notes that Mount Snow applied for designation of a separate regional center, Great Northern Regional Center, which was approved on November, 2017.

<sup>23</sup> See page 3 of the NOIT Response.



case”.<sup>24</sup> (Here, however, the cooperation is outweighed by the lax oversight that the Regional Center provided which allowed the fraud to occur in the first place.)

Also among the positive equities considered by USCIS are the actions that the Vermont State government has taken or claims to have taken to improve their monitoring and oversight of the Regional Center projects. Since a MOU was signed by the VACCD and the DFR in December, 2014, the DFR has been involved in what appears to be a rigorous compliance program for all Regional Center projects. This includes the DFR setting standards with which new EB-5 projects must comply before associating with VACCD RC, and performing comprehensive monitoring and oversight activities for current projects (such as (1) physically visiting and inspecting all EB-5 projects in active construction, (2) requiring annual certified project audits by independent accountants that are to be given to DFR, and (3) enacting stricter requirements surrounding the existence of escrow and the release of escrowed funds). While it is a good first step that the Regional Center signed an MOU with DFR and is creating a more “rigorous” compliance program, we must weight this against the fact that the State failed to monitor and oversee the activities of VACCD (allowing it to divert millions of dollars of EB-5 funds). The latter undermines the claim that the Regional Center is able to conduct monitoring and oversight now. While the MOU and the plan are a step in the right direction, these new procedures have been in effect for four years and it is unclear that this new framework will actually allow the State to conduct adequate monitoring and oversight of EB-5 investment activities it sponsors. For example, the Receiver is still unable to account for all the money that was misappropriated, and the State was unable to answer many project-related questions raised in the RFI issued in July 2016 and NOIT issued in August 2017, 3 years after this new process was supposedly put into place.

USCIS, in making its decision, considered remedial efforts undertaken. For example, the \$150 million settlement announced April 13, 2017 between the Receiver, Michael Goldberg, and Raymond James & Associates may mitigate the financial harm caused by the fraudulent use of funds. The Receiver has indicated that these recovered funds may be used to reimburse some of the defrauded investors, to pay off some contractor liens for project work already completed, and allow completion of the construction for the Jay Peak Hotel Suites Stateside project.<sup>25</sup> Again, while there may be some positive outcomes related to this settlement agreement, this factor does not support the Regional Center’s claim that it continues to promote economic growth. Rather, this factor underscores the primary negative factor: that settlement was necessary because the Regional Center failed to conduct monitoring and oversight of the EB-5 capital investment activity it sponsored, resulting in the diversion of EB-5 funds. Here again, the negative factors outweigh the positive factors.

### III. Other Considerations

USCIS also considered the fact that not all of the NCEs or projects were involved in the alleged fraud.

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<sup>24</sup> Ibid, p.1.

<sup>25</sup> See, the Receiver’s website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

For example, the NOIT Response noted that, “terminating the VRC (quickly) may either leave Trapp and/or Mt. Snow investors with no immigration benefits, or obligate Trapp and/or Mt. Snow to undertake efforts to refund those investors. The latter would be costly and harmful to those businesses, as it would likely require the businesses to access capital at potentially high costs to accomplish refunds and result in the loss of jobs in the region. Such an outcome would conflict with the goals of the Program by eliminating jobs and putting unnecessary financial strain on otherwise successful projects.”<sup>26</sup> The NOIT Response provided letters from Dick Deutsch and Johannes von Trapp, President of Trapp Family Lodge, in support of VACCD RC and in opposition to a quick termination. Both letters said that their NCEs had nothing to do with and were not defendants in the SEC and Vermont State complaints, and thus they and their EB-5 investors did not deserve to be hurt by an immediate termination. USCIS agrees that the repercussions of the lack of management and oversight on the part of the regional center have far reaching effects, which may include harm to businesses that did not invest in projects which were mentioned in the SEC or State complaint. However, the ultimate responsibility for compliance with the relevant statutes and regulations in the EB-5 Program, remains with the regional center entity. Here, it is the Regional Center itself which has failed to engage in effective management and oversight, allowing EB-5 funds to be diverted away from job creation and away from promotion of economic growth. It is with respect to these diverted funds where the Regional Center has failed to promote economic growth. Therefore, it is the Regional Center itself which has failed to comply with the requirements of 8 C.F.R. § 204.6(m)(6) (to continue to promote economic growth) leading to its termination. Thus, any harm to businesses which were not listed in the SEC or State complaint is attributable to the Regional Center’s lack of management and oversight which resulted in the diversion of EB-5 funds.

As indicated above, the NOIT also raised the potential harm to investors that may come from termination. Deutsch’s letter, raised the concern that USCIS should allow, “Vermont to fulfill existing commitments to EB-5 shareholders who relied on USCIS adjudications for benefits administered by virtue of an affiliation with the Regional Center”. Von Trapp’s letter described how a quick termination would harm many of its EB-5 investors, inter alia, since (1) they would be unable to enter the U.S. with conditional residence status, and (2) their investments could not be refunded, as their funds had already been irrevocably spent on the project. In this case, the Regional Center’s lack of actions regarding management and oversight allowed the diversion of funds and misrepresentations to USCIS across multiple projects and over many years has jeopardized their petitioners’ eligibility for EB-5 classification. The diversion of EB-5 investment funds away from job creating activities is contrary to the intent of the Program as it undermined investors’ ability to comply with EB-5 statutory and regulatory requirements and jeopardized their eligibility for EB-5 classification. The actions of a regional center and all of its related entities must be considered when evaluating the regional center’s continued promotion of economic growth. The fact that some investors’ immigration status may be jeopardized who did not invest in those projects or whose funds were not diverted is not enough to overcome the problems associated with the Regional Center’s diversion of EB-5 investments funds.

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<sup>26</sup> Ibid., page 3.

#### IV. Balancing of the Positive and Negative Equities

After considering all evidence in the record and balancing all of the positive and negative equities, USCIS has determined that the Regional Center's participation in the Program should be terminated. As explained in more detail below, the positive factors contained in the record as a whole are outweighed by the severity of the negative factors regarding whether the Regional Center continues to promote economic growth.

First, the extent, severity, and duration of the alleged malfeasance and diversion of funds are weighed heavily in considering if the regional center continues to promote economic growth. It is important to highlight here that the overall purpose of a regional center is to pool EB-5 investor capital so that it may be deployed to new commercial enterprise(s) for the purpose of promoting economic growth and job creation. Each immigrant investor who invests \$500,000 (or \$1,000,000 outside a "Targeted Employment Area") must demonstrate that their investment will create 10 jobs for qualifying individuals (regional center-sponsored investments may receive credit for indirect job creation). 8 C.F.R. § 204.6(m)(7). In addition, in situations where the NCE is not the job-creating entity, *Matter of Izummi*, as well as USCIS policy, requires that, in order to be considered properly at-risk, "the full amount of money must be made available to the business(es) most closely responsible for creating the jobs upon which EB-5 eligibility is based."<sup>27</sup>

Therefore, capital investment projects sponsored by a regional center demonstrate its promotion of economic growth through the pooling of investment capital from EB-5 investors made available for, and resulting in, job creation. Here, however, the Regional Center allowed EB-5 capital to be diverted, thus, the diverted funds were not made available to the business most closely related to job creation and were similarly not utilized for the promotion of economic growth. This factor is weighted heavily because it has resulted in harm on various levels.

First, the diversion of EB-5 funds harmed the specific investors who were victims of fraud, resulting in the loss of their investment funds. Moreover, the harm caused by the improper diversion of funds not only harms the investors whose funds were misused, but extends beyond the EB-5 investors. For instance, the diversion of EB-5 funds harms the workers (U.S. citizens and other qualifying workers) who would have received jobs had the funds been properly invested. It results in a loss of overall economic growth in the area where the diverted funds would have been invested. The diversion of funds damages the integrity of the EB-5 Program and causes loss of public trust in the Federal and State agencies that oversee the use of EB-5 funds. These various levels of harm are the result of the Regional Center's failure to properly monitor and oversee the EB-5 investment activities under its sponsorship.

In this case, the SEC complaint alleged that over \$200 million of EB-5 investor funds were misused, including at least \$50 million being misappropriated by Quiros for unpermitted purposes, including personal use. All in all, the SEC complaint filed 52 counts against Quiros, Stenger and 7 VACCD RC

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<sup>27</sup> *Matter of Izummi*, 22 I&N Dec. 169, 179 (Assoc. Comm'r 1998).

NCEs (New Commercial Enterprises). According to the SEC and Vermont State complaints, the alleged malfeasance went on from 2008 through the filing of the complaints in April, 2016 – *a total of 8 years*.<sup>28</sup> Eight NCEs were involved in the alleged wide-ranging impropriety mentioned in the SEC and Vermont State complaints, involving about half of the Regional Center's approved projects.<sup>29</sup> All this describes malfeasance on a large scale. Evidence in the record indicates that VACCD RC's failure to provide adequate oversight and monitoring of its projects allowed the alleged impropriety by Quiros and Stenger to occur and jeopardize the Regional Center's ability to promote economic growth within EB-5 Program requirements, as well as the EB-5 investors' investments and immigration benefits. A regional center must continue to demonstrate ongoing active engagement in monitoring, oversight, and due diligence of all investment activities under its sponsorship. This is essential for USCIS to determine that VACCD RC is in compliance with 8 CFR 204.6.

Second, as noted above, a regional center that takes actions that undermine investors' ability to comply with EB-5 statutory and regulatory requirements such that investors cannot obtain EB-5 classification through investment in the regional center may no longer serve the purpose of promoting economic growth. See Section 610(a)-(b) of the Appropriations Act (stating that one purpose of a regional center is to concentrate pooled investment in defined economic zones and accomplishing such pooled investment by setting aside visas for aliens classified under INA 203(b)(5)). In this case, the regional center's lack of management and oversight has jeopardized their petitioners' ability to obtain EB-5 classification through their initial investment. For example, even if some of the investors recoup their investments, as noted above per the Receiver's settlement, some of them have had their funds tied up unproductively for years. Certain other investors whose investments are not reimbursed are also unduly at risk of not achieving permanent residence status. For instance, 186 petitioners filed Forms I-526 with USCIS for the Jay Peak Biomedical NCE, representing \$94 million dollars. However, reports indicate that work has stopped on this project,<sup>30</sup> and almost nothing on it was done. Again, when the Regional Center first became aware of the concerns with this project, it is unclear what action if any was taken to inform investors or USCIS of their concerns.<sup>31</sup> The Regional Center's inaction placed its investors' immigration status in jeopardy, and in tying up funds for a project that would not be completed, it undermined the dual purpose of the regional center program, job creation and economic growth. In this case, the regional center's lax oversight provided an environment in which this fraud was not only perpetrated, but continued for eight

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<sup>28</sup> This is detailed throughout the SEC and Vermont State complaints.

<sup>29</sup> These were the Jay Peak Hotel Suites LP, Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, Jay Peak Hotel Suites Stateside LP, Jay Peak Biomedical Research Park LP, and Q Burke Mountain Resort, Hotel & Conference Center LP.

<sup>30</sup> See [http://www.stowetoday.com/news\\_and\\_citizen/news/local\\_news/better-late-than-never-percy-gets-cb-pay/article\\_b1ed7fc8-3be9-11e7-9cc7-e7ba214b9d6a.html](http://www.stowetoday.com/news_and_citizen/news/local_news/better-late-than-never-percy-gets-cb-pay/article_b1ed7fc8-3be9-11e7-9cc7-e7ba214b9d6a.html) -- Andrew Martin, *News and Citizen*, "Better late than never – Percy gets EB-5 pay", May 18, 2017, and the Receiver's website: [https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529\\_1-2.pdf](https://jaypeakreceivership.com/wp-content/uploads/2017/04/41473529_1-2.pdf).

<sup>31</sup> As noted previously, in response to the NOIT issued on August 14, 2017 VACCD acknowledged that four year ago VACCD began having concerns about whether all material information about the Jay Peak Biomedical project was being disclosed to investors." Yet these concerns were never shared with USCIS.

years. Also, the misrepresentations contained in documents that the Regional Center submitted to USCIS (as detailed above) are additional factors which cast significant doubt upon the Regional Center's ability to monitor and oversee its operations and promote economic growth. Finally, for a regional center to continue to promote economic growth it must continue to have projects for new EB-5 investors to invest in for the purpose of job creation. Here, however, the Regional Center has indicated that it does not plan to sponsor any new projects.

USCIS has considered the positive factors for the VACCD RC. However, in summary USCIS believes the concerns conveyed in the preceding paragraphs and NOIT outweigh those positive factors, leading to the decision in this Notice.

#### V. Conclusion

For the reasons described above and set forth in the NOIT and pursuant to 8 C.F.R. 204.6(m)(6), USCIS has determined that the Regional Center no longer serves the purpose of promoting economic growth and hereby terminates the Regional Center's participation in the Program.

If the Regional Center disagrees with this decision, or if the Regional Center has additional evidence that shows this decision is incorrect, the Regional Center may file a motion or an appeal to this decision by filing a completed Form I-290B, Notice of Appeal or Motion, along with the appropriate filing fee. A copy is enclosed. The Regional Center may also include a brief or other written statement and additional evidence in support of the motion or appeal. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

The Regional Center must send the completed Form I-290B and supporting documentation with the appropriate filing fee to the address indicated below.

If using the U.S. Postal Service:

USCIS  
P.O. Box 660168  
Dallas, TX 75266

If using USPS Express Main/Courier:

USCIS  
Attn: I-290B  
2501 S. State Highway 121 Business  
Suite 400  
Lewisville, TX 75067

For an appeal, the Regional Center may request additional time to submit a brief within 30 calendar days of filing the appeal. Any brief, written statement, or evidence in support of an appeal that is not filed with Form I-290B must be directly sent within 30 days of filing the appeal to:

USCIS Administrative Appeals Office  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090

# **EXHIBIT E**





U.S. Department of Justice  
Immigration and Naturalization Service

HQ 70/8.5-C

425 I Street NW.  
Washington, DC 20536

Howard Dean, MD  
Governor  
Office of the Governor  
State of Vermont  
Montpelier, Vermont 05609

JUN 26 1997

RE: Application for Designation as a Regional Center for the  
State of Vermont, Agency of Commerce and Community Development

Dear Mr. Dean:

Pursuant to Section 610 of the Appropriations Act of 1993, the State of Vermont, Agency of Commerce and Community Development (ACCD) has been designated as a regional center to participate in the Immigrant Investor Pilot Program. As of this date, aliens seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with the Immigration and Naturalization Service (Service) for new commercial enterprises located within the State of Vermont.

Alien entrepreneurs who file petitions for commercial enterprises located within the State of Vermont must fulfill all of the requirements set forth in 8 CFR 204.6, except that the petition need not show that the new commercial enterprise hired ten new employees as a result of the alien entrepreneur's investment. The petition may contain evidence that the investment indirectly created or will create full-time positions for not fewer than ten persons, using economically or statistically valid methodologies as described in 8 CFR 204.6(j)(4)(iii), through revenues generated from increased exports resulting from the Pilot Program.

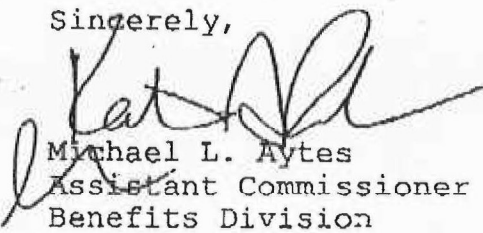
The designation by the Service of the State of Vermont as a regional center does not reflect any determination by the Service on the merits of individual petitions filed by alien entrepreneurs under the Investor Pilot Program. All petitions for alien entrepreneurs who invest within the regional center will be adjudicated by the Service on a case-by-case basis and each petition must be fully documented. The individual petitions must be submitted to the Vermont Service Center.



Page 2  
Howard Dean, MD  
Governor

If you have any questions concerning Vermont ACCD's designation under the Immigrant Investor Pilot Program, please contact Katherine Lorr at (202) 514-5014.

Sincerely,



Michael L. Aytes  
Assistant Commissioner  
Benefits Division

# EXHIBIT F

HOWARD DEAN, M.D.  
Governor



State of Vermont  
OFFICE OF THE GOVERNOR  
Montpelier 05609

Tel.: (802) 828-3333  
Fax: (802) 828-3339  
TDD: (802) 828-3345  
June 17, 1997

Mr. Michael Aytes  
Assistant Commissioner for Adjudications  
Immigration and Naturalization Service  
425 I Street Northwest, Room 3214  
Washington, DC 20536

Dear Mr. Aytes,

Thank you for your letter of June 6, 1997, responding to Vermont's proposal to have its Agency of Commerce and Community Development (ACCD) designated a Regional Center as defined by 8 CFR 204.6. Your interest, along with Senator Leahy's, has been a great help. I would also like to express my gratitude to Katherine A. Lorr for the outstanding assistance she has provided in processing Vermont's proposal,

As I noted in the April 30, 1997 proposal, Vermont is requesting Regional Center designation to give us an additional tool in recruiting capital for investment in Vermont. Regional Center status makes it easier to recruit capital from foreign investors. Under provisions of the pilot program, indirect as well as direct jobs can be counted toward the ten necessary to meet the job creation requirement of 8 CFR 204.6 (j)(4).

I also appreciate you confirming that ACCD is well suited to manage the Regional Center and that a whole state may be designated a Regional Center. Vermont is a single well defined geographic region with unique regional characteristics that affect its economic growth and development. I understand that the only information you need to approve Vermont's proposal is additional information on how jobs will be created through increased exports. The attached supplemental material, with the April 30, 1997 submissions, should be considered as Vermont's proposal for regional center status designation.

Again, thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Dean".

Howard Dean, M.D.  
Governor

HD/rs

**SUPPLEMENTAL SUBMISSION**  
**TO**  
**VERMONT'S APRIL 29, 1997 PROPOSAL TO DESIGNATE**  
**ITS AGENCY OF COMMERCE**  
**AND COMMUNITY DEVELOPMENT**  
**AS A**  
**REGIONAL CENTER**

**MONTPELIER, VERMONT**

**JUNE 17, 1997**

1. Tabs 1 and 2 of the April 29, 1997 proposal were ACCD's 1996 annual report and ACCD's current Directory of Foreign Based Companies in Vermont respectively. These documents were provided to you along with the discussion in paragraphs 2, 3, and 5 of the proposal to provide you with verifiable detail of how ACCD meets its mission of focusing on promoting Vermont's economic growth by creating jobs, promotion of domestic capital investment, increased regional productivity, and increased export sales. Please refer to Tab 1, pages 7, 8, and 17 on job creation; pages 8, 9, 10, and 21-28 on increased domestic capital investment; pages 15-16 in regards to increased regional productivity; and pages 17-18 on increased export sales. Tab 2 showed the width and breadth of Vermont's export partners. To provide you with more verifiable detail on Vermont's export partners, attached at Tab 1 of this submission is a chart from the U.S. Department of Commerce verifying Vermont's 1996 number one position in exports per capita; attached at Tab 2 of this submission is a list from the U.S. Department of Commerce showing Vermont's exports in dollars by country; and attached at Tab 3 of this submission is a list from the U.S. Department of Commerce showing Vermont's exports in dollars, by industry group, less tourism.

2. International tourism is the fastest growing sector of the tourism industry. Vermont, in part due to its geographic proximity to Montreal (1 ½ hours by car), Ottawa (3 ½ hours by car), and Toronto (6 hours by car), is in the perfect position to export tourism to an under tapped Canadian market of 16,000,000 people, all within an easy day's drive.

3. At Tab 4 is an extract from a document from the U.S. Department of Commerce's Travel and Tourism Administration (USCTTA). Note the number of jobs created (4,000) and amount of taxes generated (\$22,800,000 local, state, and federal) from the money spent by international tourists. This document establishes Vermont's historical success in courting international tourism. Also, if you cross reference the export sales of \$198,000,000 against the dollar figures of exports by industry figures at Tab 3, international tourism is in third place. Even recognizing that the years reported in Tabs 3 and 4 do not match, you have strong evidence on the strength of Vermont's tourism exports.

4. At Tab 5 is an estimate and projection from USCTTA on international travel to the United States. While overall numbers from Canada are decreasing, the change has been smaller each year until 1997 and 1998, when the changes are projected to be positive changes. The decreases in numbers are due to the strong position of the dollar versus the Canadian dollar. Here you have an economically or statistically valid forecasting tool that analyzes the international tourism market that Vermont is accessing, and in which it is increasing its share.

5. At Tab 6 is an extract from *Regional Multipliers: A user handbook for the Regional Input-Output modeling System (RIMS II)*. This handbook is published by the U.S. Department of Commerce's Economic and Statistics Administration, Bureau of Economic Analysis. On page 3, under the heading "Services:", is a listing for hotels and lodging places and amusements. These

are multipliers that allow you to project employment and income created for dollars invested. This multiplier table is an economically or statistically valid forecasting tool that assists Vermont in taking the data contained in paragraph 4 of our April 30, 1997 proposal and predicting how many jobs will be generated by the creation of a new commercial enterprise.

6. There is no better way to illustrate how increased exports will indirectly create jobs than to outline the establishment of a new commercial enterprise by the Jay Peak Resort by purchasing of the existing business and its simultaneous and subsequent restructuring and reorganization into a new commercial enterprise. Jay Peak will be purchased from its parent Canadian company and will be expanded and reorganized into a four season destination resort.

7. Jay Peak Resort is located in the town of Jay, in Orleans County Vermont. This part of Vermont, which is referred to as the "Northeast Kingdom", has the highest unemployment in the state. See Tab 7, Vermont Labor Market Area Unemployment Data. The data on Newport which is the area where Jay Peak is located, is highlighted. Both the Town of Jay, and Orleans County meet the 8 USC § 1153(b)(5)(B)(ii) & (iii) definitions of targeted employment areas and rural areas. In its current function as a ski area, it capitalizes the 3,968 foot Jay Peak, which provides a vertical drop of 2,153 feet and over 50 miles of ski trails. There are also 18 miles of cross country ski trails on the mountain and another 120 miles of trails in the local area. Even Jay Peak's seasonal employment is critical to the regional productivity. Creation of a new commercial enterprise by restructuring and reorganizing Jay Peak into a four season resort to facilitate increased exports of tourism, will increase the demand for business services, utilities, maintenance and repair, and construction within the region. These increased demands will provide new jobs which will in turn increase household earnings, lessening unemployment compensation.

8. Originally developed by local skiers and business people in 1957, Jay Peak was bought by Weyerhaeuser in 1966. Weyerhaeuser invested heavily in Jay, building a new base lodge, Vermont's first and only aerial Tram, and a 48 room trail side hotel, the Hotel Jay.

9. In 1978, Weyerhaeuser sold Jay Peak to Mont Saint-Sauveur International of Montreal, Canada. In 1985, Mont Saint-Sauveur brought in Bill Stenger as president and chief executive officer. New marketing initiatives were implemented. To lessen the impact of the strong U.S. dollar as mentioned in paragraph 4, the Canadian dollar is accepted at par for lift tickets and at a preferred rate for other services. Capital improvements included a new triple chairlift, new trails, a pump house, and snow making equipment. The next year a quad chairlift, another new trail, and still more snow making equipment were added. Between 1985 and 1991, over \$4,000,000 was invested in Jay Peak, and skier visits climbed from 78,000 per year to approximately 200,000 per year. A skier visit is defined as one skier skiing one day. An additional \$10,000,000 has been invested in slope side housing which is being sold retail. Additionally, in 1994, a new sewage treatment plant was built by the town of Jay, with Jay Peak sharing the cost. Jay Peak also pays a portion of the annual operating costs. The new sewage treatment facility provides the capacity that Jay Peak needs to increase attendance of skiers and



for the reorganization and restructuring of the resort into a four season format. Jay Peak has also gone through Vermont's extensive planning and environmental permitting process. All permits needed for the project are in hand. Between the sewage treatment plant and the permitting process necessary for creating a new four season resort, Jay Peak has spent over \$1,000,000. These expenditures have laid the ground work for the creation of the new commercial enterprise, i.e., the four season resort that will result in increased exports of tourism to Canada. Recruiting investors and construction are next.

10. Jay Peak's average annual snow fall is 296 inches. This is the heaviest natural snowfall in the east. Approximately 75% of Jay Peak is covered with snowmaking equipment that is backed up by a 15,000,000 gallon water reservoir. The copious natural snowfall coupled with the snow making, gives Jay Peak an especially long ski season.

11. Jay Peak has a current uphill lift capacity of 8,400 skiers per hour. Snow-engineering, of Littleton New Hampshire, a world renown consulting firm, has appraised Jay Peak's ski operations and opined that the current lift and trail capacities can support 3,186 skiers at one time. With an average season of 145-150 days, this establishes that Jay Peak's ski operations are at 40% of its maximum comfortable use. Therefore an increase in skier visits by exporting more tourism to the Canadian market identified in paragraph 5 above can be handled with minor investments in mountain lift and associated facilities. The primary impediment to increased skier attendance is a lack of beds. Jay Peak's expansion of the Hotel Jay as part of the four season resort project will provide the beds necessary to bring in additional skiers. Going from a 48 room facility, the current Hotel Jay, to a 200 room facility, will bring an increase in direct employees such as housekeeping and indirect employment such as laundry and food suppliers.

12. While Jay Peak is located in a beautiful area, that will not provide sufficient draw in and of itself to make Jay Peak a four season resort. To provide the additional draw, Bill Stenger plans to add a golf facility that will include 27 holes, 2 practice ranges, greens practice areas, bunker practice areas, a covered range and video area, indoor classrooms, a practice rough, and practice holes for new players. Cornish and Silva, Inc., of Amherst, Massachusetts, has been hired to design the golf facility, and the initial concept and design work is complete.

13. Included in the master plan to reorganize and restructure Jay Peak into a four season resort is the expansion of the Hotel Jay to 200 rooms and the addition of conference facilities. As mentioned in paragraph 14, one of the obstacles to attendance growth has been a lack of beds to provide a true destination resort. The additional beds provided by the hotel expansion will provide part of the draw necessary to export more tourism to Canada. Not only will more skiers have a place to stay, but the expanded facility of the hotel, the conference facility, and the golf course will be accessible to the major metropolitan areas of Montreal, Ottawa, and Toronto, Canada.

14. As mentioned in the April 30, 1997 proposal, the creation of the Jay Peak Four Season Resort will directly create 236 jobs. The jobs created will be in accounting, child care, food



service, management, housekeeping, maintenance, engineering, marketing, golf/ski school, retail sales, carpentry, plumbing, equipment operators, and engineers to name a few. Enclosure 3 to the April 29, 1997 proposal contained the results of an econometric model that was run by the Vermont Department of Public Service to project jobs that would be created by the new commercial enterprise being created by Jay Peak's restructuring and reorganization into a new commercial enterprise. Econometrics models are recognized as economically and or statistically valid forecasting tools. You can also use the multiplier tables at Tab 6, to project the number of jobs that will be created.

15. With Jay Peak a four season resort, there will be an increased demand for second homes, townhouses, and condominiums. Jay Peak's master plan includes provisions for 1,200 new dwelling units. A conservative average cost estimate per unit of \$200,000 will result in an additional \$240,000,000 being invested in the region for their construction alone. If you use the multiplier table at Tab 7, this means over 8,000 jobs will be created. Even with the construction phased over a fifteen year period, the jobs created, both directly and indirectly, will be in the hundreds. Also, as new homeowners/ consumers occupy their dwellings, demands for ancillary services will grow. Utilities, grocery stores, dry cleaners, real estate sales, maintenance providers, lodging and dining facilities will all experience growth. You can also apply the multiplier table to the \$24,000,000 increase in annual tourism sales Jay Peak is projecting. This increase will support over 900 new jobs. Studies conducted by Jay Peak project a minimum of 130 of service type jobs being created by the creation of the Jay Peak four season resort.

16. Jay Peak's purchase and subsequent reorganization into a new commercial enterprise is exactly the type of situation that Congress provided the Immigrant Investor Pilot Program for. It is located in a targeted employment area. It has ready access to a foreign market that wants the product being exported. The established track record and the economically valid forecasting tools show that with the right tools, Jay Peak will create new jobs from increased exports. Regional Center status will make the recruitment of the necessary capital easier.

17. Tab 8 is an extract of surveys done by Jay Peak to identify and quantify their market. As you can see, this data proves that Jay Peak has strongly established themselves in the Canadian markets. The U. S. Commerce Department projections shown at Tab 5 compliment Jay Peak's and establish that Jay Peak's market share will grow. Jay Peak's close proximity to the Canadian border, its firmly entrenched market share with its accompanying reputation, and the growth room for increased skier days, all highlight that Jay Peak can export more tourism if it can reorganize and restructure into a new commercial enterprise.

18. You have already concluded that ACCD well suited to manage the Regional Center. In your own words, ACCD's record is both ambitious and impressive. The information provided to you in the April 29, 1997 proposal, coupled with the additional information provided in this supplemental submission, establishes how ACCD focuses on a specific geographic region of the United States, and how it promotes economic growth. These submissions provide, in verifiable detail, through the use of economically or statistically valid forecasting tools such as the analysis

from the U. S. Department of Commerce and the multiplier tables, how jobs will be created both directly and indirectly. Details as to ACCD's funding have been included as well as details as to funds spent and or work done in support of the Jay Peak Project. Finally, the submissions conclusively establish that ACCD has, is, and will have a positive impact on Vermont's economy. Authorizing the ability to count jobs indirectly created by approving Vermont's proposal to designate ACCD as a Regional Center provides a powerful tool to recruit capital. It is respectfully request that Vermont's proposal that its Agency for Commerce and Community Development be designated a Regional Center be granted.

19. Point of contact for additional information is Stephen K. Hill, Vermont Agency of Commerce and Community Development, telephone 802-828-2999, fax 802-828-3383, or email [shill@dca.state.vt.us](mailto:shill@dca.state.vt.us).

# **EXHIBIT G**

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

**CASE NO. 16-CV-21301-GAYLES**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**ARIEL QUIROS, et al.,**

**Defendants, and**

**JAY CONSTRUCTION MANAGEMENT, INC., et al.,**

**Relief Defendants.**

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**PLAINTIFF'S UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENTS  
AGAINST DEFENDANTS ARIEL QUIROS AND WILLIAM STENGER  
AND FOR COURT TO ESTABLISH FAIR FUND**

Plaintiff Securities and Exchange Commission moves for entry of Final Judgments against Defendants Ariel Quiros and William Stenger. Additionally, the Commission moves the Court to establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 to allow civil penalties paid by Quiros and Stenger to be added to a fund for the benefit of defrauded investors in this case.

By the signed, sworn Consents, attached as Exhibits A and B respectively, Quiros and Stenger have consented, without admitting or denying the allegations of the Amended Complaint except as noted within the Consents, to entry of the respective Final Judgments against them. The Final Judgments are attached as Exhibits C and D, respectively. As the Court is aware, both Quiros and Stenger previously consented to the non-monetary relief the Commission sought against them, including permanent injunctions, conduct-based injunctions against participation in future EB-5 offerings, and for Quiros, a bar from serving as an officer or director of a public

company. *See* DE 398 (Quiros) and 215 (Stenger).

The proposed Final Judgments address the monetary relief the Commission seeks in this case. The proposed Final Judgment against Quiros holds him liable for \$81,344,166 of disgorgement, representing profits gained as a result of the conduct alleged in the Amended Complaint, prejudgment interest on disgorgement of \$2,515,798, and a civil penalty of \$1,000,000, for a total of \$83,859,964. The Final Judgment sets forth 17 pieces of real property, including the Jay Peak and Burke Mountain ski resorts and two New York City condominiums, and frozen cash amounts that Quiros is to turn over to the Court-appointed Receiver to satisfy his disgorgement, prejudgment interest, and civil penalty obligations. The proposed Final Judgment against Stenger orders him to pay a \$75,000 civil penalty (the Commission did not seek disgorgement from Stenger) in three installments over the next year.

In addition to entering the Final Judgments, the Commission asks the Court to enter the Order attached as Exhibit E establishing a Fair Fund for the benefit of defrauded investors. Section 308(a) of SOX, referred to as the “Fair Funds” provision, states that a Court shall, upon the Commission’s motion, include civil penalties in disgorgement distributions for the benefit of victims of securities law violations. Here, the Commission seeks the establishment of a Fair Fund to allow the distribution of the civil penalties paid by Quiros and Stenger, along with the disgorgement and prejudgment interest paid by Quiros, to defrauded Jay Peak investors.

Pursuant to Local Rule 7.1(a)(3), the Commission has conferred with counsel for Quiros, Stenger, and the Receiver. None oppose entry of the Final Judgments. In addition, the Commission has conferred with counsel for Citibank. Citibank represents that it does not object to entry of the Final Judgment, and specifically does not object to that portion of the proposed settlement that calls for disgorgement of the amounts indicated in the Citibank accounts listed on Page 2 of the Final

Judgment. However, by not objecting, Citibank indicated it is reserving and not waiving any legal, equitable, contractual or other rights against Quiros or anyone else pertaining to any transactions with Citibank or Citibank accounts. Nor is Citibank waiving any right to petition the Court for further relief, if necessary, or in respect of any further relief for which the SEC may petition the Court as provided in Section I of the Final Judgment.

Respectfully submitted,

February 2, 2018

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on February 2, 2018, 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  
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*SEC v. Ariel Quiros, et al.*  
Case No. 16-CV-21301-GAYLES

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# EXHIBIT H



U.S. Citizenship  
and Immigration  
Services

RECEIVED

OCT 01 2019

Agency of Commerce and  
Community Development

ATTN JOAN GOLDSTEIN  
COMMISSIONER  
AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT  
1 NATIONAL LIFE DR 6TH FL  
MONTPELIER VT 05620

DATE: SEPT. 25, 2019

APPLICATION RECEIPT #: RCW 10 319 10148  
I-290B RECEIPT #: AAO 18 900 00630

IN RE: VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT  
REGIONAL CENTER

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE IMMIGRANT  
INVESTOR PILOT PROGRAM

ON BEHALF OF APPELLANT:

ROBERT DIVINE, ESQUIRE  
BAKER DONELSON BEARMAN CALDWELL  
& BERKOWITZ, P.C.  
633 CHESTNUT ST STE 1900  
CHATTANOOGA TN 37450

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision, reopen the proceeding, or both. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, **within 33 days of the date of this decision**. This time period includes three days added for service by mail.

The Form I-290B website ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Sincerely,

Barbara Q. Velarde  
Chief, Administrative Appeals Office



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-A-O-C-A-C-D-R-C-

DATE: SEPT. 25, 2019

**APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION**

**APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE  
IMMIGRANT INVESTOR PILOT PROGRAM**

In 1990, Congress established the EB-5 program<sup>1</sup> to promote economic growth in the United States through foreign investment. *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). Foreign national investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status.<sup>2</sup> Investors may fund their own projects, or invest through a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

The Appellant, Vermont Agency of Commerce and Community Development (VACCD),<sup>3</sup> applied for designation as a regional center to participate in the EB-5 program. USCIS granted the application in 1997. The designated regional center is called Vermont Agency of Commerce and Community Development Regional Center (VRC). The Chief of the Immigrant Investor Program Office terminated the VRC's designation in July 2018, finding that it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii).

On appeal, the Appellant provides additional evidence and requests the preservation of the VRC's regional center designation. It urges USCIS to "allow the VRC to continue existence until all pending projects are concluded." It indicates that it will "cease to solicit new EB-5 investment" and "work together with USCIS to implement a gradual and orderly wind-down of VRC operations."

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<sup>1</sup> The EB-5 program, as it is commonly called, issues employment-based fifth preference visas to qualified foreign national investors.

<sup>2</sup> A foreign national investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that he or she meets the criteria for conditional resident status, which includes showing that his or her investment (at least \$500,000 or \$1,000,000, depending on the geographic area) creates at least 10 jobs for qualified United States workers. After two years, the investor may file a Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent resident status in the United States. As part of the petition, the investor must show that his or her initial investment is still creating the requisite number of qualifying jobs.

<sup>3</sup> The evidence shows that the VACCD is a Vermont State government agency that is responsible, in part, for marketing Vermont to businesses and individuals.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Congress enacted the EB-5 program that set aside visas for foreign national investors who invest in a new commercial enterprise associated with a USCIS designated regional center. To obtain USCIS designation to participate in the program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. *See* Section 610(a) of the Appropriations Act. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

Once designated, the regional center must “[p]rovide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area.” 8 C.F.R. § 204.6(m)(6)(i)(B). If the regional center does not submit the required information or is no longer serving the purpose of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT) the designation. Subsequently, USCIS may issue a notice of termination (NOT), if the regional center does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

## II. BACKGROUND

USCIS granted the VRC regional center designation in 1997, specifying Vermont as the approved geographic area. In its initial filing, the Appellant stated that the VRC would sponsor projects that use EB-5 capital in the ski and related tourism industry, specifically, to expand the Jay Peak Resort in Jay, Vermont. After its initial designation, USCIS approved the Applicant’s requests to include additional industries, including manufacturing and professional services. A Memorandum of Understanding indicates that beginning in December 2014, the VACCD and the Vermont Department of Financial Regulation (VDFR)<sup>4</sup> jointly administer the VRC.

In April 2016, the Securities and Exchange Commission (SEC) filed a civil complaint in federal court, alleging Ariel Quiros, William Stenger, and private entities<sup>5</sup> associated with a group of projects known as “the Jay Peak EB-5 Projects” engaged in “an ongoing, massive eight-year fraudulent scheme” that “systematically looted more than \$50 million” EB-5 capital and “misused more than \$200 million” investor funds.<sup>6</sup> Subsequently, Vermont filed a separate lawsuit in state court against Mr. Quiros and

<sup>4</sup> The evidence shows that the VDFR is a Vermont State government agency that is responsible, in part, for supervising organizations that offer financial services and products.

<sup>5</sup> The named corporate defendants in the SEC civil lawsuit include: 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.

<sup>6</sup> *SEC v. Quiros*, No. 16-21301 cv-DPG, 2016 WL 1521288 (S.D. Fla. Apr. 12, 2016) (Compl. ¶¶ 1, 3).

Mr. Stenger, alleging that they had “orchestrated a large-scale investment scheme to defraud investors participating in the EB-5 Program.”<sup>7</sup> The SEC action led to a U.S. district court judge appointing a receiver, Michael Goldberg, to administer and manage the affairs of the private entities involved in the fraudulent scheme.

In light of these legal proceedings, the Chief issued to the Appellant a request for information (RFI) in July 2016, and subsequently a NOIT in August 2017. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(iv). Upon reviewing the Appellant’s responses, the Chief terminated the VRC’s designation as a regional center in July 2018. Specifically, the Chief considered both positive as well as negative factors, and concluded that the VRC did not demonstrate that it continued to serve the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(v).

The Appellant files the instant appeal to challenge the Chief’s termination of the VRC’s regional center designation. On appeal, it offers evidence that on May 22, 2019, a federal grand jury indicted Mr. Quiros, Mr. Stenger, and other individuals on criminal charges in connection with their management of one of the Jay Peak EB-5 Projects.<sup>8</sup> The Appellant does not dispute that individuals and businesses associated with the projects misused and misappropriated a substantial sum of investor funds, diverting them from the specific projects that it had represented to USCIS would receive the funds and create jobs. Rather, the Appellant requests that USCIS allow the VRC to wind down its operations. It indicates that the VRC will “cease to solicit new EB-5 investment” and will not sponsor new projects, but it asks that “the VRC [be permitted] to continue in existence until all pending projects are concluded.”

### III. ANALYSIS

#### A. Winding Down Operations

The Appellant has not demonstrated that the applicable statute and regulation permit us to preserve the VRC’s regional center designation for the sole purpose of winding down its operations. Rather, the regulation prescribes the steps that USCIS must follow to designate and then terminate, in

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<sup>7</sup> *See Vermont v. Quiros*, No. 217-4-16 Wncv, 2016 WL 10860920 (Super. Ct. Vt. Dec. 13, 2016) (citing the Plaintiff’s Amended Complaint); *see also Vermont v. Quiros*, 2018 WL 7051004 (Super. Ct. Vt. Jul. 12, 2018) (providing that “[t]he matter was resolved with a settlement for \$2.1 million in damages, including \$2 million from Ariel [Quiros] and \$100,000 from [William Stenger]” and that “[p]roceeds of the settlement will go to the state of Vermont, not to the investors allegedly defrauded by the defendants”).

<sup>8</sup> *See* U.S. Department of Justice, U.S. Attorney’s Office, District of Vermont, *Four Men Indicted on Fraud Charges Related to the Jay Peak EB-5 Anc Vermont Project in Northeast Vermont*, <https://www.justice.gov/usao-vt/pr/four-men-indicted-fraud-charges-related-jay-peak-eb-5-anc-vermont-project-northeast>, accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings. We take administrative notice that the defendants pleaded not guilty and that the criminal proceedings are ongoing. *See* Timothy McQuiston, *Stenger, Quiros Indicted on Multiple Fraud Counts*, Vermont Biz (May 22, 2019), <https://vermontbiz.com/news/2019/may/22/stenger-quiros-indicted-multiple-fraud-counts>, accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings. The defendants are not parties to this termination proceeding. With respect to the current immigration matter, neither the Appellant’s reference to the criminal proceedings nor our consideration of the indictment should be viewed as an indication of criminal culpability. Instead, we review the indictment as evidence related to the Appellant’s burden to show the VRC’s ongoing capacity to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v); *Cf. Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995) (holding that evidence of criminal conduct that has not yet culminated in a final conviction may nonetheless be considered).

appropriate cases, an entity's regional center designation. Specifically, USCIS may designate an entity as a regional center in the EB-5 program if it meets certain requirements, including showing that it "will promote economic growth." 8 C.F.R. § 204.6(m)(3)(i). Once designated, the regional center must establish its continuous eligibility to participate in the program. As noted, if the designated regional center "no longer serves the purpose of promoting economic growth," then USCIS will issue a NOIT, and subsequently a NOT to terminate the designation, if the entity does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

In this case, while the Appellant has communicated the VRC's intent to refrain from soliciting additional EB-5 investment or sponsoring new EB-5 projects, it has not cited to any legal authority that permits us to preserve the VRC's regional center designation for wind down or any other purpose if we find that it "no longer serves the purpose of promoting economic growth." 8 C.F.R. § 204.6(m)(6)(ii)(B); *see also* Section 610(a) of the Appropriations Act. For the reasons we will discuss below, we conclude, after a consideration of both positive and negative factors, that the VRC no longer serves the purpose of promoting economic growth. Accordingly, the Chief properly terminated its regional center designation.

## B. Promoting Economic Growth

To determine whether a regional center serves the purpose of promoting economic growth, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors include inaction, mismanagement, theft, or fraud by or otherwise affecting the regional center, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center.

### 1. Positive Factors

As relating to the positive factors, the record shows that the VRC has sponsored EB-5 projects that have resulted in job creation in Vermont. According to pages 4 through 6 of the August 2017 "Review of the EB-5 Program in Vermont and the Vermont Regional Center [VRC]" (2017 VRC Review), prepared by the VDFR, in consultation with the VACCD, after its designation in 1997, the VRC sponsored its first EB-5 project in December 2006 when it executed a Memorandum of Understanding with Jay Peak Hotel Suites L.P.<sup>9</sup> concerning Jay Peak Phase I, also known as the Tram Haus Lodge Project. The 2017 VRC Review states that "the VRC-affiliated [EB-5] projects have resulted in the deployment of hundreds of millions of dollars in foreign capital in Vermont" and "the creation of at least 3,700 jobs as a result."<sup>10</sup> Additionally, the report provides that the VRC has sponsored projects that are unrelated to the Jay Peak EB-5 Projects – which, as discussed, are involved in federal and state litigations – and that these projects have "completed construction, and are operating successfully."

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<sup>9</sup> Jay Peak Hotel Suites L.P. is one of the named corporate defendants in the 2016 SEC's civil lawsuit and its affairs are currently under receivership.

<sup>10</sup> The 2017 VRC Review explains that it derived the job creation figure by counting the number of individuals with approved Forms I-829 and assuming that each one of them had created at least 10 jobs. *See supra* note 2.



On appeal, the Appellant names two projects that are unrelated to the Jay Peak EB-5 Projects. They are Mount Snow Ski Resort and Trapp Family Lodge, and they involve three new commercial enterprises: Carinthia Group 1 L.P.; Carinthia Group 2 L.P.; and Von Trapp Enterprises L.P. The Appellant claims that “[t]he success of [these projects] is strong evidence that significant economic growth and job creation was achieved and is continuing as a result of the EB-5 program.” Christine L. Ryan, an examiner in the VDFR’s securities division provides in an August 2018 affidavit that the Mount Snow Ski Resort is using EB-5 funds to complete two projects: the West Lake Project, the construction of which “is complete or substantially complete”; and the Carinthia Ski Lodge Project, which is “currently under construction.” USCIS records concerning Form I-526 approvals show that Carinthia Group 1 L.P. and Carinthia Group 2 L.P. raised approximately \$44,500,000 and \$4,500,000, respectively, in EB-5 capital.

In addition, on appeal, the Appellant indicates that the construction phase of the Trapp Family Lodge has been completed. The executive vice-president of Trapp Family Lodge provides in an August 2018 letter that the business’s use of EB-5 funds led to “the successful construction [and operation] of [an] expanded brewery and [a] new Austrian-style beer hall restaurant.” He states that the Trapp Family Lodge has preserved and created jobs, and has “had a substantial and positive impact on the economy of both [Vermont] and for the U.S. economy as a whole.” USCIS records concerning Form I-526 approval show that Von Trapp Enterprises L.P. raised approximately \$17,000,000 in EB-5 funds.

Another positive factor relates to the Appellant’s attempt to oversee the Jay Peak EB-5 Projects and its efforts in ensuring that the projects and their offering documents were in compliance with the applicable securities laws. Specifically, on appeal, the Appellant submits letters that the VACCD sent to Mr. Quiros and Mr. Stenger between July and December 2014, which raised concerns over the projects, primarily, whether their offering documents were in compliance with securities laws. The VACCD also appeared to have concerns over the financial status of the projects. For example, in two November 2014 letters, the VACCD’s general counsel requested Mr. Quiros and Mr. Stenger to complete “an independent audit of all Jay Peak EB-5 Projects” and provide “a certified statement” explaining whether there had been commingling of EB-5 and non-EB-5 funds. When Mr. Quiros and Mr. Stenger did not adequately address these concerns, the Appellant asked them to stop soliciting EB-5 capital for one of the projects – the AnC Bio Project, which is associated with the new commercial enterprise Jay Peak Biomedical Research Park L.P.<sup>11</sup> The 2017 VRC Review explains that, in part, because of the VACCD’s concerns, in December 2014, the VDFR “became formally involved in the VRC” and “immediately began to investigate the financial aspects of the Jay [Peak EB-5] Projects.”

The record includes evidence that the VRC has extended its oversight efforts to projects that are unrelated to the Jay Peak EB-5 Projects. On appeal, the Appellant submits an August 2018 affidavit from William R. Carrigan, the deputy commissioner in the VDFR’s securities division, stating that there is “a robust financial review process of the existing EB-5 [projects]” that “consist[s] of reviewing financial documents provided by the projects” and “conducting on-site visits of the projects.” In addition, the VRC requires projects to complete “a questionnaire” and submit it “along with the

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<sup>11</sup> Jay Peak Biomedical Research Park L.P. is one of the named corporate defendants in the 2016 SEC’s civil lawsuit and its affairs are currently under receivership. According to page 9 of the 2017 VRC Review, the VRC allowed Jay Peak Biomedical Research Park L.P. to again solicit EB-5 funds in April 2015.

requisite financial information.” Ms. Ryan’s August 2018 affidavit details additional information on how the VDFR performs financial reviews of EB-5 projects.

On appeal, the Appellant submits evidence showing that the VRC has terminated its sponsorship of EB-5 projects that did not comply with the terms of the parties’ Memoranda of Understanding. For example, in 2013, the VRC terminated its sponsorship of EB-5 American Dream Fund I, LLC’s project, because the entity did not “perform its obligations . . . honestly, consistently and fairly in furtherance of its efforts to assist [the VACCD] with the oversight and management of the Regional Center.”

Finally, USCIS records show that the Appellant has complied with its annual filing requirements by timely submitting the Form I-924A, Annual Certification of Regional Center. In its appellate brief, the Appellant asserts that it “has consistently made comprehensive and accurate representations in its annual filings and in response to direct USCIS inquiries” and “has consistently represented the data it had accurately to USCIS in annual filings and in response to inquiries.”

## 2. Negative Factors

While the record contains positive indicia of the VRC’s efforts to serve the purpose of the EB-5 program, it also contains numerous and significant negative factors demonstrating the limitations on its ability to continue to promote economic growth. Upon a close review, we conclude that the negative factors outweigh the positive ones. Since 2006, the Appellant has sponsored the Jay Peak EB-5 Projects that the SEC alleges have allowed Mr. Quiros and Mr. Stenger to engage in “an ongoing, massive eight-year fraudulent scheme” that “systematically looted more than \$50 million” and “misused more than \$200 million” EB-5 funds.<sup>12</sup> In addition, the evidence the Appellant offers on appeal shows that in May 2019, the U.S. Attorney’s Office announced criminal charges, including fraud and conspiracy, against Mr. Quiros, Mr. Stenger, and other individuals based on the scheme described in the 2016 SEC action. The federal grand jury indictment, on pages 5 and 6, states that “[b]y 2011, the defendants knew that Jay Peak’s EB-5 projects faced financial problems resulting from the use of EB-5 funds raised for a particular project for purposes unrelated to that project, including . . . [paying Mr.] Quiros’s personal expenses.” The document alleges that the individuals raised approximately \$85,000,000 in EB-5 capital for the AnC Bio Project, the “[proposed] facility, however, was never constructed.”<sup>13</sup> In May 2019, Mr. Goldberg filed a complaint in federal court, asserting on page 15 of the pleading that “[a]n accountant for the SEC testified that he documented repeated instances in which funds from each of the Jay Peak EB-5 projects were commingled with funds from other Jay Peak EB-5 projects” and that “[a]ll told, the SEC documented commingling of more than \$350 million of [project] funds.”

The Appellant has not challenged the allegations relating to Mr. Quiros, Mr. Stenger, and other individuals’ misuse and misappropriation of a substantial sum of EB-5 capital during an extended period. Indeed, Vermont also brought a lawsuit against Mr. Quiros and Mr. Stenger, alleging that they had “orchestrated a large-scale investment scheme to defraud investors participating in the EB-5

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<sup>12</sup> See *supra* note 6.

<sup>13</sup> We again note that these criminal proceedings are ongoing.

Program.”<sup>14</sup> While Mr. Goldberg stated in a September 2017 letter that he had recouped some of the diverted funds, the record does not show that he and the affected new commercial enterprises have been able to recover the rest of the misused and misappropriated funds, funds that the Appellant claimed would be used to promote economic growth. Misuse and misappropriation of EB-5 capital, as well as fraud perpetrated by individuals managing the Jay Peak EB-5 Projects and associated businesses, diminish the VRC’s ability to promote economic growth, and constitute a weighty negative consideration.

In addition, although the Appellant has offered evidence on the VRC’s efforts to promote economic growth, the record shows that most of the purported capital raised and jobs created were linked to the Jay Peak EB-5 Projects, which, according to federal and state authorities, were part of a large-scale fraudulent scheme. The 2017 VRC Review confirms that the VRC’s non-Jay Peak EB-5 Projects – including Mount Snow Ski Resort and Trapp Family Lodge – account for approximately 20% or \$109,000,000 of the total EB-5 capital the VRC helped raised, while the Jay Peak EB-5 Projects account for the remaining approximately 80% or \$423,000,000.

Moreover, although the 2017 VRC Review states that “the VRC-affiliated [EB-5] projects have resulted in . . . the creation of at least 3,700 jobs,” the record includes evidence that casts doubt on this figure. For example, according to page 14 of the May 2019 indictment against Mr. Quiros, Mr. Stenger, and other individuals, the job creation figure of the AnC Bio Project came from an economist’s analysis that “was based directly on inflated hiring and financial projections formulated by the defendants to achieve the required number for EB-5 approval,” and that “[t]he defendants created deceptions about both construction jobs and operational jobs” that the project would create. The indictment further states on pages 14 and 15 that “[t]he defendants inflated projected jobs from the construction phase” and “inflated projected jobs and supplies expenses from the operations of the business.” The job creation projections of other Jay Peak EB-5 Projects similarly were calculated, in part, from EB-5 capital each project raised. In light of the allegations of misuse and misappropriation of EB-5 funds, which the Appellant does not dispute, the Appellant has not sufficiently demonstrated that the 3,700 jobs figure – most of the jobs are purportedly from Jay Peak EB-5 Projects – or the VRC’s alleged success in its promotion of economic growth inferred by that figure, is accurate.

As previously discussed, one positive factor is that the Appellant has taken steps to oversee and monitor EB-5 projects under its sponsorship. It maintains on appeal that USCIS should not terminate the VRC’s regional center designation because it has engaged in a sufficient level of oversight and monitoring, and that the regulation “does not . . . impose specific obligations on a regional center to administer, oversee, or manage any of its associated commercial enterprises . . . .” The multiple lawsuits involving Mr. Quiros, Mr. Stenger, and the Jay Peak EB-5 Projects, alleging misuse and misappropriation of a large sum of EB-5 funds over many years, however, do not support the Appellant’s contention that its oversight and monitoring efforts were sufficient. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii); *see also* 6 *USCIS Policy Manual* G.3(A), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (requiring a regional center to explain how it “[w]ill oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center”). In addition, although the Appellant did timely file the required annual Forms I-924A, its representations in these filings – as relating to specific amounts of

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<sup>14</sup> *See supra* note 7.

EB-5 funds being deployed in qualifying projects and used to create jobs – have turned out to be inaccurate according to both federal and state authorities.

Furthermore, the Appellant's insufficient level of oversight of the Jay Peak EB-5 Projects has led to loss of investor confidence, which does not serve the purpose of the EB-5 program of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii). The record includes an April 2018 letter from Russell D. Barr, an attorney representing a group of foreign national investors who sued Vermont and the VACCD.<sup>15</sup> The investors claimed that the VRC had “for years . . . ignor[ed] investor complaints” when they raised concerns over the wrongdoing of Mr. Quiros and Mr. Stenger in their management of the Jay Peak EB-5 Projects. Mr. Barr provided printouts from the VACCD's website that read: “[the] VRC monitors all Vermont EB-5 projects for compliance with USCIS EB-5 regulations and policy guidance.” Mr. Barr asserted that many investors invested in the Jay Peak EB-5 Projects because they had believed in the VACCD's statements on oversight and monitoring. According to an October 2017 affidavit of Antony Sutton, one of the named plaintiffs in the investors' civil lawsuit against Vermont and the VACCD, “[he] specifically chose the VRC due to its representations of strict State oversight over the EB-5 project at Jay Peak and the express representation of State officials representing such State oversight.” The Appellant's oversight and monitoring efforts, however, had been insufficient to prevent, or timely recognize, misuse and misappropriation of EB-5 capital discussed in federal and state actions.

The record includes other evidence of loss of confidence in the VRC. According to a September 2017 letter from Mr. Barr, who is also affiliated with the Stowe Aviation Project, which was once sponsored by the VRC, he supports the termination of the VRC's designation based, in part, on its insufficient oversight and monitoring of its sponsored EB-5 projects. In addition, in 2017 after federal and state authorities accused Mr. Quiros and Mr. Stenger of EB-5 investment fraud, Peak Resorts, Inc., which is involved with the Mount Snow Ski Resort, formed its own regional center in Vermont – Great North Regional Center – that will sponsor future EB-5 projects.<sup>16</sup> The lack of confidence in the VRC's oversight and monitoring capabilities on part of the investors and businesses diminishes the VRC's ability to promote economic growth.

Additionally, the record shows the Appellant had learned that Mr. Quiros, Mr. Stenger, and other individuals may have engaged in wrongdoing concerning the Jay Peak EB-5 Projects, but did not share such information with USCIS until 2016, after SEC initiated its action. Page 8 of the 2017 VRC Review states that as early as in 2012, the VACCD learned that “the principal of a commercial entity that had been soliciting investors on behalf of the Jay [Peak EB-5] Projects stated publicly that he had lost confidence in the projects.” The report provides that around the same time, the VACCD “began having significant concerns about whether all material information about the Jay [Peak EB-5] Projects . . . had been disclosed to investors.” Documentation from Mr. Barr shows that Michael Gibson of USAdvisors sent email correspondence to the VACCD in November 2011, raising concerns over the VACCD's level of oversight and monitoring of the Jay Peak EB-5 Projects, and in February 2012,

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<sup>15</sup> *Sutton v. VRC*, No. 2018-158, 2018 WL 5046826 (Vt. Aug. 6, 2018) (Appellants' Br.); *see also Sutton v. VRC*, No. 2018-158, 2018 WL 5046827 (Vt. Sept. 17, 2018) (Appellees' Br.).

<sup>16</sup> Timothy McQuiston, *Mount Snow Owner Gets EB-5 Regional Center Approval*, Vermont Biz (Nov. 17, 2017), <https://www.vermontbiz.com/news/2017/november/17/mount-snow-owner-gets-eb-5-regional-center-approval>, accessed on July 23, 2019, a copy of the article has been incorporated into the record of proceedings.

sharing that Rapid USA Visas, Inc., terminated its relationship with the projects, because it had lost confidence in the accuracy of the projects' financial status and disclosures. Likewise, page 21 of Mr. Goldberg's May 2019 complaint alleges that the VACCD began having concerns over "the security of investor funds" in 2014. While the Appellant took actions attempting to address these concerns, it did not communicate the concerns with USCIS in its annual Form I-924A filings or supplemental filings for fiscal years 2012 through 2016. This inaction and the omission or inaccurate reporting of relevant and material facts resulted in USCIS approving Forms I-526 and Forms I-829 associated with the Jay Peak EB-5 Projects that, based on pleadings in the federal and state cases, should not have been approved because, in part, the job creation figures might have been inflated, and thus inaccurate.

Finally, the evidence confirms that if we were to preserve the VRC's regional center designation, it would unlikely promote economic growth. 8 C.F.R. § 204.6(m)(6)(ii)(B). The VRC has indicated that it does not intend to solicit additional EB-5 capital or sponsor new EB-5 projects. It concedes on page 16 of the 2017 VRC Review that "operating a regional center is not a function that is best performed by the State and the need for a State-run regional center has passed." The VRC's express intent to not seek out new EB-5 funds or projects does not support a finding that it "is continuing to promote economic growth." 8 C.F.R. § 204.6(m)(6)(i)(B).

As discussed above, there are both positive and negative considerations concerning whether the VRC "serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(m)(6)(ii)(B). Upon a close examination of the totality of the circumstances and the factors, we determine that the negative indicia here outweigh the positive. Accordingly, we conclude that the VRC no longer continues to promote economic growth and does not warrant the preservation of its regional center designation.

#### C. Relating to Investors' Concerns

Some foreign national investors who have invested in the VRC sponsored EB-5 projects oppose the termination of its regional center designation. For example, according to a September 2017 letter from some Jay Peak EB-5 Projects investors, they are concerned about their immigration petitions upon the termination of the VRC's designation. The termination of a regional center designation and the adjudication of foreign national investors' petitions are separate proceedings that focus on different facts as applied to their applicable legal frameworks. While we sympathize with the investors' situation, in the instant termination proceeding, we must decide whether the VRC serves the purpose of promoting economic growth. *See* Section 610(a) of the Appropriations Act; 8 C.F.R. § 204.6(m)(6)(i), (ii). As we have explained above, upon a consideration of the totality of the circumstances as well as the positive and negative factors, we conclude that the Appellant has not sufficiently shown that the VRC serves the purpose of promoting economic growth.

#### IV. CONCLUSION

The Appellant has not submitted sufficient evidence demonstrating that the VRC continues to serve the purpose of promoting economic growth. Accordingly, we find the Chief properly terminated the VRC's regional center designation.

*Matter of V-A-O-C-A-C-D-R-C-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-A-O-C-A-C-D-R-C-*, ID# 1982072 (AAO Sept. 25, 2019)

# EXHIBIT I



STATE OF VERMONT

SUPERIOR COURT  
Lamoille Unit

CIVIL DIVISION  
Docket No. 100-5-17 Lecv

\_\_\_\_\_x

ANTONY SUTTON, ROBERT CONNORS  
DAVID WOODING, DIRK KROONEN  
WILLIAM HANDLEY, CHARMAINE ENSLIN,  
STEPHEN WEBSTER, FELIPE ACCIOLY VIEIRA  
WEI WANG, XIAOFENG FENG,  
GUANGYI XIONG, SYLVANA CARNIERO HETMA,  
HRH LINUS NTO MBAH, LIN THI THU PHAM  
and, MAURICIO ESTEBAN GARCIA GIRALDO,  
individually, and on behalf of a class of similarly  
situated persons,

*Plaintiffs,*

v.

STATE OF VERMONT AGENCY OF  
COMMERCE AND COMMUNITY  
DEVELOPMENT, JAMES CANDIDO,  
and BRENT RAYMOND,

*Defendants.*

\_\_\_\_\_x

**FIFTH AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Antony Sutton, Robert Connors, David Wooding, Dirk Kroonen, William Handley, Charmaine Enslin, Stephen Webster, Felipe Accioly Vieira, Wei Wang, Xiaofeng Feng, Guangyi Xiong, Sylvana Carneiro Hetma, HRH Linus Nto Mbah, Lin Thi Thu Pham, and Mauricio Esteban Garcia Giraldo, individually, and on behalf of a class of similarly situated persons (collectively, “Plaintiffs” or “Jay Peak Investors”) by and through their counsel, Barr Law Group, hereby bring this Complaint, and the causes of action herein, against the Defendants, the State of

Vermont Agency of Commerce and Community Development (the “ACCD” and/or “VRC”),<sup>1</sup> James Candido, and Brent Raymond (the “VRC Team”) (all parties in defense of this action are referred to collectively as “Defendants”).

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## **I. INTRODUCTION**

1. The damages in this cause of action arise largely out of Defendants’ disregard and wrongful conduct in administering the largest EB-5 fraud in history.
2. For over a decade, the ACCD and the VRC Team worked hand-in-hand with Jay Peak and its principals within projects that were a complex and high-functioning Ponzi-scheme (the myriad Jay Peak projects are referred to herein as the “Jay Peak Projects”).

3. There were no legitimate governmental interests served by the partnership within the Jay Peak Projects, and in dereliction of duty, ACCD's incompetent oversight allowed the Jay Peak fraud to thrive. Further, the VRC's staff, and in particular Defendants Candido and Raymond (the "VRC Team"), took an active role in the Ponzi-scheme out of self-interest, self-preservation, personal gain, and protection of their Jay Peak partners.
4. For years, investor complaints were ignored, and those who raised issue with wrongdoing at the Jay Peak Projects and within the VRC were attacked and discredited by VRC employees.
5. Throughout its tenure, the VRC was to operate as an effective, independent, and diligent overseer of EB-5 projects.
6. The VRC's "stellar work" was a hallmark of the Jay Peak Projects and their various investment offerings.
7. The VRC's status as a "state run regional center" with superior oversight, inspired entrepreneurial confidence, and encouraged would-be investors to select a VRC sponsored project as a safe and secure partner in the EB-5 investor world.
8. In practice, the VRC oversight was not "stellar," in fact, it was functionally non-existent. Further, the VRC Team acted as agents and partners within those projects and allowed the fraud to continue for almost a decade.
9. Unfortunately, hundreds of foreign investors believed in the Jay Peak Projects and the VRC. These investors came from countries throughout the world.
10. Of course, at one level the EB-5 program represents a traditional investment in a for-profit endeavor. At the same time, the program represents an opportunity for many to live and work here in the United States. Many of these immigrant investors came from countries

that are mired in corruption. For these investors, the EB-5 program involved an opportunity to escape that corruption for themselves and their families. While this escape was a welcomed one pursued with gratitude, it was not an easy one, as it involved the liquidation of lifesavings, acclimating children to a new language and culture, and securing employment and schooling in a foreign country.

11. While the immigrant investors were drawn to the U.S. and to Vermont for many reasons, their reasons all shared a common center – they were drawn by the accountability, legitimacy, and oversight of the EB-5 program and the “gold-star standard” at the state-backed VRC .
12. But the accountability and oversight of the VRC never happened, and these investors became the victims of the Jay Peak Ponzi-scheme and the decade-long failings at the VRC.
13. In July 2018, USCIS terminated the VRC. In its Termination Decision, USCIS found that:
  - (i) in violation of the EB-5 program requirements the VRC failed to engage in proper monitoring and oversight of the capital investment activities and jobs created and, accordingly, no longer served the purpose of promoting economic growth; (ii) the project MOUs required developers to submit quarterly reports which did not happen in violation of the MOUs and USCIS expectations; (iii) The ACCD was aware of false and misleading information submitted to the USCIS and when it became aware it took no corrective action; (iv) the discrepancies and misrepresentations cast doubt on the credibility of ACCD’ s regional center filings and call into question the legitimacy of its operations; and (v) The ACCD’ s regional center lack of management and oversight has jeopardized immigrant investors’ ability to obtain EB-5 classification through their investments.
14. An appeal of the termination of the VRC was later denied by USCIS.

15. Recently, USCIS began to deny I-526 applications to later investors in the Jay Peak Projects. These investors will likely be denied permanent residency in the United States and lose the majority of their investment (to be described in more detail below).
16. As the direct result of the VRC's failed oversight, each Jay Peak investor threw all that they invested and sacrificed into an abyss, with many of them wondering how long until they and their families are forced out of this country to start over in the countries they left behind. As such, and for the reasons set forth herein, Mr. Sutton, Mr. Connors, Mr. Wooding, Mr. Kroonen, Mr. Handley, Ms. Enslin, Mr. Webster, Mr. Vieira, Mr. Wang, Mr. Feng, Mr. Xiong, Ms. Hetma, HRH Mbah, Ms. Pham, Mr. Giraldo, and other similarly situated Jay Peak Investors seek relief in this court to repair the harm caused by the Defendants' wrongful actions.

## **II. THE PARTIES**

17. Plaintiff, Antony Sutton, is a United Kingdom citizen residing at 126 Homestead Lane, Welwyn Garden City, Hertfordshire, AL7 4NX, United Kingdom, who invested assets in Phase I of the Jay Peak Projects (to be described in more detail below).
18. Plaintiff, Robert Connors, is a United Kingdom citizen residing at Station House Long Lane, Picton, North Yorkshire, TS15 0AE, United Kingdom, who invested assets in Phase I of the Jay Peak Projects (to be described in more detail below).
19. Plaintiff, David Wooding, residing at 2207 Margaret Way, Dunedin, Florida, 34698, invested assets in Phase II of the Jay Peak Projects (to be described in more detail below).
20. Plaintiff, Dirk Kroonen, residing at 13323 Pond Apple Drive East, Naples, Florida 34119, invested assets in Phase II of the Jay Peak Projects (to be described in more detail below).



21. Plaintiff, William Handley, is a United Kingdom Citizen, residing at 24761 Paramount Drive, Tehachapi, CA 93651, who invested assets in Phase II of the Jay Peak Projects (to be described in more detail below).
22. Plaintiff, Charmaine Enslin, is a South African Citizen, residing at 4444 Marchbolt Court, Peachtree Corners, GA 30091, who invested assets in Phase III of the Jay Peak Projects (to be described in more detail below).
23. Plaintiff, Stephen Webster, is a United Kingdom Citizen, residing at 5063 Via Santana, Newbury Park, CA 91320, who invested assets in Phase V of the Jay Peak Projects (to be described in more detail below)
24. Plaintiff, Felipe Accioly Vieira, is a Brazilian Citizen, residing at 113 Scribner Road, Stowe, Vermont, 05672, who invested assets in Phase VI of the Jay Peak Projects (to be described in more detail below).
25. Plaintiff, Wei Wang, is a Chinese citizen, who invested assets in Phase VII of the Jay Peak Projects (to be described in more detail below), and he has recently been compelled to return to China due to the factual allegations herein.
26. Plaintiff, Xiaofeng Feng, is a Chinese citizen who invested assets in Phase VII of the Jay Peak Projects (to be described in more detail below).
27. Plaintiff, Guangyi Xiong, is a Chinese citizen who invested assets in Phase VII of the Jay Peak Projects (to be described in more detail below).
28. Plaintiff, Sylvana Carneiro Hetma, is a Brazilian Citizen, who invested assets in Phase VIII of the Jay Peak Projects (to be described in more detail below).

29. Plaintiff, HRH Linus Nto Mbah, is a Nigerian Citizen, residing at Linto House, 116 Azikiwe Road, Aba, Aba State, Nigeria, who invested assets in Phase VIII of the Jay Peak Projects (to be described in more detail below).
30. Plaintiff, Lin Thi Thuy Pham, is a Vietnamese Citizen, who invested assets in Phase VIII of the Jay Peak Projects (to be described in more detail below).
31. Plaintiff, Mauricio Esteban Garcia Giraldo invested assets in Phase VIII of the Jay Peak Projects (to be described in more detail below).
32. Defendant, State of Vermont Agency of Commerce and Community Development, is a government agency and the principal administrator of the VRC since its inception on June 26, 1997.
33. Defendant, James Candido, is the former executive director of the VRC from November 2004 to June 2012, or thereabouts. Upon information and belief, he resides in Massachusetts.
34. Defendant, Brent Raymond, is the former Executive Director of the VRC serving from 2012 to June 2015, or thereabouts. Upon information and belief, he resides in Vermont.

### **III. JURISDICTION AND VENUE**

35. Jurisdiction is proper in this Court pursuant to 4 V.S.A. § 31.
36. Venue is proper in this Court pursuant to 12 V.S.A. §§ 402(a) and 5601 *et al.*
37. Class action certification is appropriate pursuant to the Vermont Rules of Civil Procedure Rule

### **IV. FACTUAL BACKGROUND**

#### **A. THE VRC AND JAY PEAK FORGE A PARTNERSHIP WITHIN THE BILLIONS OF DOLLARS FLOWING INTO EB-5**

38. In 1990, the United States Congress enacted the employment-based fifth preference visa program (the “EB-5 Program”) to stimulate the U.S. economy through job creation and capital investment by foreign investors.
39. In general terms, the USCIS administers the EB-5 program whereby foreign investors, along with their spouse and children under age twenty-one (21), are eligible for a green card if they make the required investment in a commercial enterprise in the U.S. and plan to create or preserve at least ten (10) permanent full-time jobs for qualified U.S. workers.
40. In 1992, the United States Congress enacted the Immigrant Investor Program, in which a certain number of EB-5 visas are set aside for foreigners who invest \$500,000.00 in commercial enterprises associated with regional centers approved by USCIS based on proposals promoting economic growth.
41. In 1997, the United States Immigration and Naturalization Service – the predecessor to USCIS – designated Vermont’s ACCD as a “Regional Center” under the EB-5 Program. The ACCD was reaffirmed as such in 2007 and 2010. *See* Letter from Christina Poulos, Dir., Calif. Serv. Ctr., USCIS, to James Candido, Exec. Dir. Of the VRC, at 3 (June 28, 2010) [hereafter “USCIS Designation Letter”] (attached and found in the 4<sup>th</sup> amended complaint as **Composite Ex., Bates Stamp 64-68**).<sup>2</sup>
42. By its mission statement, the ACCD is charged with, *inter alia*, enhancing Vermont’s business climate, marketing Vermont to businesses and individuals, along with facilitating, promoting and creating business opportunities within Vermont to contribute to the economic viability and growth of the State.

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<sup>2</sup> Attached to the 4<sup>th</sup> amended complaint is a compilation of all exhibits filed in this action entitled the “Composite Exhibit.” For the Court’s convenience, the Composite Exhibit is accompanied by a Composite Exhibit Index that lists all documents in chronological order. The new exhibits referenced herein continue with the Bates Stamps and are attached hereto.

43. Within its role in the EB-5 world, through its employees, the ACCD started operating under the moniker and within the entity known as the “Vermont Regional Center” (again, referred to as the “VRC”).
44. The VRC is not the only regional center in the EB-5 world.
45. In fact, at any given point of time, there are hundreds if not thousands of regional centers throughout the United States (currently there are over 1,200 regional centers).
46. These regional centers provide a pathway for a foreign national to gain permanent residency here in the United States. They also provide a pathway for the flow of billions of dollars in investor funds within the United States. Included with this massive amount of investment flow is the potential for lucrative consultancy opportunities, brokerage opportunities, and a micro-economy of administrative and transactional business opportunities.
47. Regional centers have become a competitive business, and they provide their principals and employees with income and opportunities to build relationships with entities and individuals who are managing projects in the millions and sometimes billions of dollars.
48. As a regional center, the VRC was developed and existed to take on an active role in administration, oversight, auditing, and consultation.
49. Virtually all regional centers are private ventures.
50. While not the only state-affiliated regional center, the VRC was the only one that held itself out as being a “state run agency,” with superlative powers of oversight and support due to this state backing.
51. At its basic and dry level, the VRC was to approve developments that apply for designation as a “Regional Center” project, and was to engage in ongoing monitoring of approved

projects to assure compliance with USCIS EB-5 regulations, U.S. immigration laws/regulations, as well as with federal and state securities laws.

52. From its inception, the VRC held superlative “oversight powers” and a opportunity for prioritized VRC investor petitions, “resulting in a faster path to approval.” *See* State of Vermont Regional Center Marketing Materials (**Composite Ex., Bates Stamp 1-3, 30-31, 70-74**).

53. Indeed, the VRC was supposed to be a preferred choice for investors and projects alike within the EB-5 investment world, specifically due to its diligent oversight, review, and pre-approval of EB-5 projects.

54. During its active time as a USCIS approved regional center, the VRC trumpeted and promoted its crown jewel – the Jay Peak EB-5 project.

**B. THE VRC TEAM AND JAY PEAK PROJECTS: PARTNERS IN THE LARGEST FRAUD IN VERMONT HISTORY AND THE LARGEST EB-5 FRAUD IN U.S. HISTORY**

55. In 2006, Jay Peak, captained by William Stenger and Ariel Quiros, partnered with the VRC to pursue a multi-million dollar EB-5 project to develop Jay Peak, Burke, and the greater Newport area (again, the “Jay Peak Projects”). The Jay Peak Projects include:

- i. Jay Peak Hotel Suites L.P. (“Phase I”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between December 2006 and May 2008, Phase I raised \$17.5 million from thirty-five (35) investors through an EB-5 offering of limited partnerships to build a hotel.
- ii. Jay Peak Hotel Suites Phase II L.P. (“Phase II”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between March 2008 and January 2011, 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.
- iii. Jay Peak Penthouse Suites L.P. (“Phase III”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between July 2010 and October 2012, Phase III raised \$32.5 million from sixty-five

(65) investors through an EB-5 offering of limited partnership interests to build a fifty-five (55) unit “penthouse suites” and an activities center, including a bar and restaurant.

- iv. Jay Peak Golf and Mountain Suites L.P. (“Phase IV”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between December 2010 and November 2011, Phase IV raised \$45 million from ninety (90) investors through an EB-5 offering of limited partnership interests to build “golf cottage” duplexes, a wedding chapel, and other facilities.
- v. Jay Peak Lodge and Townhouses L.P. (“Phase V”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between May 2011 and November 2012, Phase V raised \$45 million from ninety (90) investors through an EB-5 offering of limited partnership interests to build thirty (30) vacation rental townhouses, ninety (90) vacation rental cottages, a café, and a parking garage.
- vi. Jay Peak Hotel Suites Stateside L.P. (“Phase VI”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between October 2011 and December 2012, Phase VI raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an eighty-four (84) unit hotel, eighty-four (84) vacation rental cottages, a guest recreation center, and a medical center.
- vii. Jay Peak Biomedical Research Park L.P. (“Phase VII”) is a Vermont limited partnership with its principal place of business in Newport, Vermont. Since November 2012, Phase VII raised approximately \$83 million from 166 investors through an EB-5 offering of limited partnership interests to construct a biomedical research facility, and sought to raise an additional \$27 million from 54 investors.
- viii. QBurke Mountain Resort, Hotel, and Conference Center L.P. (“Phase VIII”) is a Vermont limited partnership with its principal place of business in Burke, Vermont. Phase VIII consists of 121 investors who invested in an EB-5 offering of limited partnership interests to construct a hotel, conference center, an aquatic center, a tennis center, and a mountain bike facility.

56. The various memoranda of understanding between the VRC and Jay Peak (collectively referred to herein as the “Jay Peak MOUs”) – like all memoranda of understanding issued

by the ACCD to EB-5 projects – required quarterly compliance reports and site visits to ensure USCIS and U.S Securities and Exchange Commission (the “SEC”) compliance and project progress. These quarterly compliance reports and monitoring were to include financial oversight and project audits, and this was specifically laid out to investors.

57. The Jay Peak Projects were required to pay a fee to the VRC for each EB-5 investor approved by USCIS.

58. Specifically, during the period from 2006 to 2015, the Jay Peak Projects enlisted VRC employees – James Candido, Eugene Fullam, John Kessler, Lawrence Miller, Patricia Moulton, and Brent Raymond – and directed them to actively market and solicit investors for the Jay Peak Projects, including Plaintiffs.

59. To that end, the VRC Team traveled with the Jay Peak fraudsters to solicit investors for the Jay Peak Projects. This included travelling to EB-5 tradeshows, at which the VRC Team and Jay Peak representatives would share a table and act on behalf of the Jay Peak Projects.

60. Not only did the VRC Team travel with the Jay Peak Projects, the Jay Peak Projects also used the State’s economist, Jeffrey Carr, to create the necessary economic and job creation forecasts upon which Plaintiffs, and all Jay Peak Investors, used and relied upon in subscribing to the Jay Peak Projects.

61. The economic and job creation forecasts created by the State’s economist were also submitted with the I-526 Petitions necessary for Plaintiffs to acquire a conditional green card and begin the path to permanent residency in the United States.

62. In contradiction of the State’s duties and regional center requirements of independent oversight, administration, and management of the Jay Peak Projects, the VRC played an



active role in the economic forecasts, and ultimately in the sale of securities to Plaintiffs, by deploying its own economist to promote the Jay Peak Projects.

63. The VRC Team actively marketed and solicited investors for the Jay Peak Projects. These individuals, by and through the VRC, continually and directly marketed the Jay Peak Projects to third parties, to the effect that the Jay Peak Projects – their legitimacy, viability, and overall accountability – presented an attractive opportunity for EB-5 investors.
64. The VRC’s duties and roles on behalf of the Jay Peak Projects included, *inter alia*: (i) state approval and oversight of VRC projects to assure investors were making a sound investment; (ii) the VRC conducting quarterly reviews of project progress to ensure project compliance with all applicable laws and regulations; (iii) the VRC engaging in the financial monitoring and auditing of projects to ensure legitimacy; (iv) the VRC requiring all projects to be bound by a “Memorandum of Understanding” (“MOUs”) imposing strict covenants and obligations on the project to ensure compliance with all applicable laws and regulations; and (v) ensuring a project’s appropriate use of investment funds with the EB-5/USCIS guidelines.
65. ACCD and its employees represented and were to provide prospective investors, including all plaintiffs herein, the added protections of state approval and oversight, all of which made the Jay Peak Projects a particularly sound investment.
66. All of these assurances and duties were represented to prospective investors, including all plaintiffs, and all duties were to be provided to these investors, including specifically, quarterly reviews to ensure compliance with all applicable laws and regulations, engaging in financial monitoring and auditing of projects to ensure legitimacy, and the ability to

carry out these obligations because the MOU's imposed strict covenants and obligations to ensure compliance with all applicable laws and regulations.

67. The VRC's abilities were repeated by the VRC to both immigrant investors and would-be investors throughout the marketing of the Jay Peak Projects, all in order to induce foreign investors to join the VRC and its crown jewel, the Jay Peak Projects.

68. The VRC's capabilities and duties, were repeated consistently to the named Plaintiffs herein.

69. Reasonably relying on these actions, behavior, representations, abilities, and duties of the VRC, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.

70. So too, government officials and VRC Team were motivated to continue to assist the Jay Peak Projects in the marketing of its EB-5 investment packages. For their assistance, the VRC Team enjoyed the lavish and private benefits that came with it. By way of example, in September 2013, the VRC Team and Jay Peak Projects (including William Stenger), and the Governor's office (including then-Governor Shumlin), traveled on private jets and included a \$100,000.00+ all expenses paid business trip to China to promote the Jay Peak Projects and solicit investors, like Wei Wang, to purchase these securities.

71. The VRC Team and Jay Peak Projects were hitched together, with the VRC Team creating promotional materials touting both its oversight and diligence using images of the ongoing development at the Jay Peak Projects.

72. The Jay Peak Projects were so brazen about creating an agency relationship with the VRC that they actively marketed a promotional video of Governor Peter Shumlin touting the State's oversight and audit requirements of the Jay Peak Projects to solicit investors.

**1. THE VRC AND JAY PEAK CREATE OFFERING DOCUMENTS, OUTLINING VRC OVERSIGHT, MANAGEMENT, AND MONITORING OF JAY PEAK AND THE FINANCES AT THE JAY PEAK PROJECTS**

73. With each Jay Peak project, the VRC Team crafted an MOU with their partners at the Jay Peak Projects.

74. Each of these MOU was attached to and became an integral part of each of Jay Peak's offering documents.

75. Each of these MOUs was presented to each individual investor – including the named Plaintiffs – as a part of Jay Peak's various offering documents.

76. The VRC was to ensure that the Jay Peak's Projects complied with and were in conformity with the job creation requirements of the EB-5 program.

77. The MOUs are agreements which dictate that the VRC would monitor and ensure Jay Peak's compliance with U.S. immigration law and regulations concerning investments within a regional center in the EB-5 visa preference category. The VRC also warranted its responsibility to promote economic growth, improve regional productivity, job creation, and increased domestic capital investment in the approved geographic area. Further, the VRC warranted and was to continually demonstrate ongoing active engagement in monitoring, oversight, and due diligence of all investment activities. Indeed, the VRC, under the pains and penalties of perjury, and pursuant to 8 C.F.R. 204.6(m)(6)(b), claims that it submitted I-924 and I-924A forms to USCIS explaining that it conducted the oversight, administration, and management of the required under federal law. *See*

Instructions for Application for Regional Center Designation Under the Immigrant Investor Program [hereafter the “I-924 Instructions”] (**Composite Ex., Bates Stamp 4-29**).

78. Within the MOU’s, the VRC was to ensure compliance with its own regional center requirements.
79. VRC’s administration, oversight, and management included monitoring all investment activities in the Jay Peak Projects and maintaining records, data and information on a quarterly basis in order to report the activities of the Jay Peak Projects to USCIS. Such reports must explain, *inter alia*, the VRC’s active engagement in the evaluation, oversight and follow-up on any proposed commercial activities related to direct and/or indirect job creation through Jay Peak Investor capital in the Jay Peak Projects.
80. Within the MOU’s, the VRC represented and undertook to monitor and oversee the Jay Peak Projects’ compliance with legal and regulatory requirements, and Jay Peak would formally report to the VRC in writing every three months regarding the activities of Jay Peak.
81. Further, the VRC undertook mandatory obligations to specifically benefit Jay Peak Investors as the MOU’s specifically laid out duties to ensure compliance with regional center requirements by monitoring “prospective investors,” “the status of alien investor capital,” and “Investor Petitions.” *See* Memorandum of Understanding between ACCD and AnCBioVT, LLC, at 2-3 (all 8 phases had these MOUs) as **Composite Ex., Bates Stamp 103-104**; *see* Memorandum of Understanding between ACCD and Jay Peak Hotel Suites, L.P., at 2-3 (**Composite Ex., Bates Stamp 33-34**).

82. The offering documents assured investors that Jay Peak was in partnership with the VRC, and was obligated to assist the VRC with any and all regulatory compliance and to comply with the VRC's as necessary to assure VRC's oversight duties.
83. Within the MOU's, Jay Peak promised and contractually obligated itself to assist the VRC with the VRC's oversight and management of all of Jay Peak's EB-5 investment projects.
84. Jay Peak agreed to assist the VRC to assure that Jay Peak's EB-5 investment projects were in compliance with U.S. immigration law and regulations concerning investments within a regional center.
85. Jay Peak contractually agreed to assist the VRC in the oversight, administration, management and overall compliance of the Jay Peak projects with legal and regulatory requirements.
86. As part of this assistance, the VRC and Jay Peak agreed to formal, written reports every three (3) months (or more) regarding Jay Peak and investor activities.
87. Also as part of this assistance, and for the specific benefit of Plaintiffs and investors, the VRC undertook the duty to acquire such formal reports in order to monitor, administer, and manage the Jay Peak Projects and meet its own regional center licensing requirements.
88. Further, Jay Peak agreed and there is no question that (and as known to investors) Jay Peak was required to respond to any VRC inquiries and assist the VRC in compliance, oversight, and monitoring of the Jay Peak Projects.
89. The VRC represented and undertook duties for the specific benefit of Plaintiffs and investors, that it would require Jay Peak to provide quarterly reports to the VRC setting forth, at a minimum, the status of all EB-5 investor capital.

90. Within the MOU's, the VRC undertook duties and assured would-be investors that Jay Peak would respond to any VRC inquiries regarding the Jay Peak Projects.
91. Within the MOU's, the VRC undertook duties and assured investors that the Jay Peak Projects were required to provide, and the VRC would oversee, investment information, economic analysis and modeling reports, and documenting compliance with all relevant administrative requirements related to an EB-5 investment.
92. These MOU's were included in each and every one of the Jay Peak Projects' offering documents, and the VRC continued to engage in marketing even for the AnCBio and Q-Burke projects, which were engaged in investor fundraising after SEC subpoenas were issued to representatives of the Jay Peak Projects. The VRC never notified prospective investors or the Jay Peak Investors of the SEC subpoenas, the VRC greenlit both AncBio and QBurke, and the VRC continued to market the Jay Peak Projects without disclosing any material developments and while continuing to neglect the VRC's oversight duties.
93. These MOU's were specifically included in the named Plaintiffs' offering documents, upon which they relied in making their investment.
94. Each of these offerings was issued individually to each specific investor.
95. The VRC failed in its duties to monitor and oversee the Jay Peak projects as set forth in the offering documents and as stated in offering documents, MOU's, and to the Plaintiffs. Further, when called upon by the EB-5 Investors to satisfy these basic duties and promises, the VRC and VRC Team specifically blocked any and all inquiries.
- 2. THE VRC TEAM AND THEIR JAY PEAK PARTNERS IGNORE AND THEN RETALIATE AGAINST WHISTLEBLOWERS WHO RAISE ALARMS ABOUT THE JAY PEAK FRAUD**
- a) An EB-5 Consultant, who was employed by the VRC and Jay Peak partnership, alerted the VRC to wrongdoing at the Jay Peak Projects**

96. In or about 2009, the VRC and Jay Peak Projects enlisted the help of consultancy firm, Rapid USA Visas, and its owner Douglas Hulme, to solicit potential EB-5 investors for the VRC and the Jay Peak Projects.
97. For years, Rapid USA Visas acted as a promoter and immigration advisor for the Jay Peak Projects by directing investors to the VRC and the Jay Peak Projects, as well as performing other services. For these investors, the VRC collected administrative fees to operate the VRC, to pay salaries to the VRC Team, and to fund travel to meet prospective EB-5 investors – much of which included travel to exotic locations in Southeast Asia. Upon information and belief, over the course of this partnership, the amount of those fees paid by Rapid USA Visas-related Jay Peak Investors totaled approximately \$1.6 million.
98. However, the VRC and the individual officials who traveled for the Jay Peak Projects – Peter Shumlin, Lawrence Miller, James Candido, Brent Raymond, Eugene Fullam, and Patricia Moulton – did not use such payments in furtherance of their duties as state officials or in furtherance of their responsibilities as a regional center, rather these payments were used to perpetuate the scheme at Jay Peak.
99. Focused entirely on their active marketing efforts for the Jay Peak Projects' EB-5 securities (without a broker-dealer license or a filed exemption), the VRC and VRC Team undertook no legitimate audit or even the slightest oversight of the Jay Peak Projects and/or the use of investor funds. Without any underlying analysis or scrutiny, the VRC greenlit project after fraudulent project.
100. Included in the VRC's active promotional efforts were targeted representations and duties as to project oversight, financial monitoring and auditing, which were repeated to both



- immigrant investors and would-be investors throughout the marketing of the Jay Peak Projects, all in order to induce foreign investors to join the VRC and the Jay Peak Projects.
101. Again, reasonably relying on these actions, behavior, and misrepresentations by the VRC, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.
102. As a result of growing concerns, promoters began to issue formal, written, and detailed complaints in February 2012, or thereabouts, when Douglas Hulme and his attorney raised concerns with the VRC, including concerns that the Jay Peak Projects were misappropriating funds in violation of state and federal laws.
103. Specifically, Douglas Hulme's attorney asked for balance sheets, banks statements and wire transfers, as well as the source-and-use of funds reports for the Jay Peak Projects, all with the aim to provide written assurances that the Jay Peak Projects were in compliance with federal and state law.
104. With knowledge of these concerns, a conference call was held between the VRC/VRC Team and Douglas Hulme to discuss the potential fraud at the Jay Peak Projects.
105. Additionally, in March of 2012, or thereabouts, the then-Director of the DFR's Securities Division, John R. Cronin – in response to a Jay investor with deep concerns regarding his investment – explicitly stated that, “to be very clear,” the Vermont Securities Division was “not conducting an investigation of Jay Peak” in spite of the substantial and documented complaints against the Jay Peak Projects and the VRC.
106. Further, the Managing Director of USAdvisors, Michael Gibson, alerted the VRC to various securities violations by the Jay Peak Projects by sending detailed emails to John Kessler, James Candido, and John R. Cronin.

107. Initially, on or about November 13, 2011, Michael Gibson inquired into the care, custody, and control/audit procedures promoted by the VRC, and for information concerning Governor Shumlin's attendance at an EB-5 promotional event.

108. On or about November 15, 2011, James Candido specifically acknowledged that the VRC undertook auditing duties and explained that:

The event is actually a jay peak event. They asked the governor if he would attend and he was able to. The governor has this open to all the projects if they plan an event and his schedule permits. En route today, is there a way we can connect via phone on Thursday and I can go over the audit process.

*See* Email from James Candido, Exec. Dir., VRC, to Michael Gibson, Managing Dir., USAvisors (Nov. 14, 2011) (**Composite Ex., Bates Stamp 77**).

109. Then, on or about April 11, 2012, Michael Gibson highlighted the fact that the Jay Peak Projects had not filed any exemptions for its securities offerings in violation of federal and state securities laws, the problems with the marketing, sales and solicitation of the Jay Peak Projects and the VRC's role therein, the VRC's lack of oversight supervising the marketing and compensation of agents, "finders" and attorneys, and the fact that none of the compensated marketers – which we now know included the State of Vermont – were registered to market or sell securities. *See* Section 15 U.S.C.A. §§ 77l, 77r; 17 C.F.R. § 230.501 et. Seq; 9 V.S.A. §§ 5301, 5302(c), 5501, 5502 and 5606; and Vermont Admin. Codes 4-4-1:33.12, 4-4-1.33.18, and 4-48:4-3.

110. Indeed, Michael Gibson implored the VRC to heed his concerns by exclaiming that "I can't imagine that you are not treating the POSSIBILITY that not all securities laws were followed and that some internal standards and procedures might not have to be tightened up a bit."

111. Instead of the VRC taking action, these complaints were archived and functionally ignored. Moreover, rather than addressing Michael Gibson's, Douglas Hulme's, or Jay Peak Investor concerns (now known to be completely accurate), the VRC – working directly with their Jay Peak partners – engaged in obfuscation and frivolous accusations against Douglas Hulme and Rapid USA Visas, resulting in an outright cover-up.

**b) The VRC Team retaliates against the Whistleblower, with baseless allegations, in an effort to silence the revelations of the fraud**

112. For example, working in concert with their Jay Peak partners, the VRC Team's baseless attacks included a concocted complaint over Douglas Hulme's use of the State of Vermont logo on the Rapid USA Visas' website, all in an attempt to discredit him.

113. Of course, the Jay Peak Projects used and continued to use the State of Vermont logo throughout its Ponzi-scheme.

114. While the logo issue was clearly illegitimate, the simultaneous use of the State of Vermont logo by the Jay Peak Projects is telling as to the VRC Team's role as agents, marketers, and promoters of the Jay Peak Projects and the securities they were selling.

115. Without receiving any assurance that the Jay Peak Projects were in compliance with federal and state law, and receiving no help whatsoever from the VRC Team as the "apparent regulators," on February 28, 2012, Rapid USA Visas terminated all business dealings with the Jay Peak Projects and issued a letter to one hundred (100) immigration attorneys warning that it had lost confidence in the finances and representations of the Jay Peak Projects and its VRC Team.

116. In response, and in a hollow attempt to feign oversight of its true principal, former VRC Director, James Candido, conducted a supposed (but, in reality, hollow) audit-visit to the Jay Peak Projects and purportedly found "no issues" with the Jay Peak Projects' financials.

117. However, no record or report of James Candido’s “audit-visit” was produced, in a clear breach to the duties established by federal law and undertaken by the VRC pursuant to the various Jay Peak MOUs.

118. To be clear, it is now known as fact that a non-CPA junior accountant with little practical experience could have uncovered this Ponzi-scheme within an hour of reviewing basic financial records.

**c) The VRC hired a lawyer with financial ties to the success of the Jay Peak fraud, and commissioned him to issue a report reiterating the VRC’s state oversight, concealing the ongoing fraud**

119. During James Candido’s visit to the Jay Peak Projects, he and the VRC Team coordinated with immigration attorney, John Roth, to inspect the Jay Peak Projects and issue a report relative to the claims made by Douglas Hulme and Rapid USA Visas.

120. After spending an extravagant weekend with his family at the Jay Peak Projects, John Roth issued a report (the “Roth Report”) painting a glowing picture of a successful EB-5 project wherein he highlights the first-class amenities at the Jay Peak Projects, its high sale figures, and the “particularly careful” oversight by the VRC to mask the concerns raised by Douglas Hulme.

121. Specifically, the Roth Report highlights that James Candido inspects the Jay Peak Projects’ financial records at least four (4) times a year and that the Jay Peak Projects were set to be audited by an independent accounting firm (yet with no completion and release date made available to John Roth). However, it is now known that no such oversight existed as subsequent statements by the VRC Team specifically disclaimed any financial review whatsoever. Additionally, the audit by the “independent” accounting firm never occurred. Clearly, this State-sanctioned report was an attempt to discredit Douglas

Hulme's claims and paint the VRC and the Jay Peak Projects as the gold standard in EB-5 oversight.

122. Further, the revelation of John Roth's background and relationship with the Jay Peak Projects corrupts the rosy picture he painted.

123. It turns out that John Roth is an immigration attorney that had a long-standing referral relationship with the Jay Peak Projects. His financial interest in the success of the Jay Peak Projects provided him a clear motive-in-fact as he misrepresented the VRC oversight and the Jay Peak Projects' financial state.

124. Compounding John Roth's improper motive, the Roth Report was circulated with and to William Stenger prior to its release so as to allow it to conform to William Stenger's specifications.

125. The VRC – with full knowledge of John Roth's relationship to the Jay Peak Projects – used the Roth Report as proof-positive that the Jay Peak Projects were healthy and that Douglas Hulme's concerns about the misappropriation of funds were unfounded and merely sourced from a "business dispute."

126. Such representations as to its activities (and the omissions) were targeted repeatedly immigrant investors throughout the marketing of the Jay Peak Projects, all in order to gain an improper competitive advantage and induce foreign investors to continue to join the VRC and the Jay Peak Projects. *See* Affidavit of Michael Gibson (**Composite Ex., Bates Stamp 393-97**).

127. Indeed, at EB-5 tradeshows and conventions, the Jay Peak Projects' representatives shared a booth with VRC (or, the ACCD) representatives, including James Candido, Brent

Raymond, John Kessler, and Lawrence Miller. *See* Affidavit of Michael Gibson (**Composite Ex., Bates Stamp 393-97**).

128. At these tradeshows and conventions, from their booth that they shared with the VRC/ACCD representatives, Jay Peak “packets” were distributed to immigration lawyers. *See* Affidavit of Michael Gibson (**Composite Ex., Bates Stamp 393-97**).

129. In addition details of the VRC’s oversight, these packets included referral-fee agreements (or agent referral agreements), wherein attorneys were promised financial payouts for every investor that they brought to a VRC-sponsored project. These referral relationships constituted a clear violation of established securities law regarding unregistered broker-dealers and finders that receive transaction-based compensation. *See* Brumberg, Mackay & Wall, P.L.C., S.E.C. No-Action Letter 2010 WL 1976174 (May 17, 2010).

130. In addition, at these booths and in its marketing materials, Jay Peak would assure immigration lawyers and investors that the State-run VRC audited their financials and regularly audited their operations.

131. These representations were made in the presence of VRC officials who had full knowledge that the VRC never engaged in such conduct.

132. Regardless, the VRC acted in concert with Jay Peak and permitted this conduct so as to maintain an unfair competitive advantage and improperly funnel immigration attorneys, and their clients, to the Jay Peak Projects.

133. Reasonably relying on the VRC’s duties, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.

**d) The VRC and Jay Peak complete elimination of a Whistleblower by ensuring that no business would receive state approval if it was associated with the Whistleblower – effectively extricating him from the State of Vermont and removing him as a thorn Jay Peak’s side**

134. After Rapid USA Visas terminated its business dealings with the Jay Peak Projects, the VRC Team ensured that Rapid USA Visas’ calls for an investigation would be silenced and that Rapid USA Visas could not do business with any other EB-5 projects in Vermont.

135. For instance, in April 2012, or thereabouts, James Candido considered Rapid USA Visas a “representative of . . . the [VRC]” and that the VRC had concerns over Rapid USA Visas “marketing exercises.” These “marketing exercises” – the use of the State of Vermont logo – were substantially similar, if not the same, to those employed by the Jay Peak Projects.

136. In the wake of Rapid USA Visas’ split with the Jay Peak Projects, the VRC was notified that a prospective EB-5 project at Mt. Snow was working with Douglas Hulme and Rapid USA Visa.

137. Upon learning that Mt. Snow was using Douglas Hulme and Rapid USA Visas, and after coordinating with William Stenger, James Candido requested a meeting with Patricia Moulton and Lawrence Miller to “chat” about the Mt. Snow submission.

138. Soon thereafter, Mt. Snow proceeded with its EB-5 submission without Douglas Hulme and Rapid USA Visas.

139. Subsequently, the VRC ensured that no Vermont project, including Mt. Snow, would be granted approval if that project was in any way associated with Rapid USA Visas.

140. After Rapid USA Visas’ forced exit from Vermont, the fraud – specifically the misappropriation of Jay Peak Investor funds – at the Jay Peak Projects continued unabated. All the while, the Jay Peak Projects continued to use the State of Vermont logo hand-in-hand with their VRC partners.



141. While Rapid USA Visas – a whistleblower of the fraud at the Jay Peak Projects, as discussed above – was forced out of the State, the VRC/DFR made sure that none of Rapid USA Visas’ concerns would be addressed.

142. Unimpeded, in order to prevent revelation of the prior misappropriation of Jay Peak investor funds, the VRC Team and Jay Peak Projects continued to actively funnel prospective investors to attorneys with either financial and/or immigration interests in the Jay Peak Projects.

**C. THE VRC ENABLES AND ASSISTS JAY PEAK IN WRONGFULLY SUBSCRIBING INVESTORS FOR A DECADE**

**1. The VRC and VRC Team Engage Investors with their Oversight Duties and Powers of Due Diligence**

143. During meetings with investors, James Candido outlined the VRC’s unique state oversight as a reason to choose an EB-5 project overseen by the VRC.

144. In a consistent pattern, such conduct, intentional misrepresentations and omissions were repeated to both immigrant investors and would-be investors throughout the marketing of the Jay Peak Projects, all in order to induce foreign investors to join the VRC and its crown jewel, the Jay Peak Projects.

145. Indeed, James Candido recommended Jay Peak and specifically highlighted Jay Peak because it was a good project and he had a good relationship with the Jay Peak President and CEO, William Stenger.

146. As an example, on March 23, 2010, Plaintiff Vieira contacted Mr. Candido to obtain information about the VRC.

147. In response, on March 24, 2010, Mr. Candido responded by explaining that particular projects were each “independently vetted by our agency and subsequently approved to

solicit investment through EB-5 and our Vermont Regional Center at a \$500,000 level.” A true and accurate copy of the March 24, 2010 correspondence (**Composite Ex., Bates Stamp 441-443**).

148. Mr. Candido also offered that Mr. Vieira “call me personally with any further questions . . . [and] continue to touch base with me if you are continuing your search in the future.” (**Composite Ex., Bates Stamp 441-443**)

149. The very next day, Mr. Vieira contacted one of the VRC’s promotional partners, Rapid USA Visas, Inc. (“Rapid”), to obtain information about the VRC and its Jay Peak Projects.

150. Nicholas Hulme of Rapid sent Mr. Vieira an email containing marketing materials about the Jay Peak Projects and the VRC, including a link to the VRC website.

151. Mr. Vieira continued to research the VRC and the Jay Peak Projects by viewing the marketing materials, along with the VRC’s website, both of which touted the VRC’s oversight obligations.

152. On July 15, 2010, Mr. Vieira contacted Mr. Candido to set up a meeting to “learn a little bit more from your experience in the regional center so I can apply for [sic] EB5 program in [sic] a more informed basis.”

153. After an exchange of some emails, Mr. Candido agreed to meet Mr. Vieira in his office on July 20, 2010.

154. At their meeting, Mr. Vieira inquired about the oversight obligations of the VRC that were memorialized on the VRC’s website and if those oversight obligations applied to the Jay Peak Projects.

155. Sitting in the VRC's conference room, Mr. Candido reaffirmed the VRC's oversight obligations to Mr. Vieira and Mr. Candido provided documents in accordance with such oversight obligations.

156. Specifically, Mr. Candido reviewed the Jay Peak Projects with Mr. Vieira and reaffirmed that the VRC's method of control of Phase VI project included the oversight of investors' investments, and review of Jay Peak financial documents and quarterly reports on the Jay Peak Projects, which described the status of investor capital to-and-from escrow, *amongst* other forms of management of Jay Peak's activities.

157. Upon completion of the meeting with Mr. Candido at the VRC, Mr. Vieira understood that the VRC controlled the Phase VI project because it performed its oversight obligations for the benefit of Mr. Vieira so that that any investment that Mr. Vieira made in the VRC would be safe and monitored to ensure compliance with all applicable EB-5 requirements.

**2. The Jay Peak Investors uncover incontrovertible proof of the Jay Peak Projects' fraud, including a double/fraudulent sale of the penthouse suites**

158. Beginning in 2012, if not earlier, additional individuals (besides Douglas Hulme) put the VRC and Jay Peak Projects' officials on notice of the Jay Peak Projects' fraud, specifically the expenditure and misuse of investor funds as highlighted by Rapid USA Visas.

159. Nevertheless, with calls for investigation and oversight mounting, the VRC responded not by engaging in the audit and oversight it knew to be false, but by stepping up promotion of the Jay Peak Projects and the falsities of the VRC's superior state oversight.

160. In response to investor complaints and inquiries, James Candido informed prospective investors and Jay Peak Investors alike that nothing was wrong because Rapid USA Visa's issue was simply a "business dispute."
161. This was repeated to both immigrant investors and would-be investors throughout the marketing of the Jay Peak Projects, all in order to induce foreign investors to join the VRC and its crown jewel, the Jay Peak Projects.
162. Due to these actions, behavior, and representations by the VRC, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.
163. Continuing as if there was nothing wrong, and continuing to concoct the outward appearance of legitimacy, state officials held a daylong news conference with William Stenger and Ariel Quiros touting the next phase of the Jay Peak Projects.
164. Brent Raymond and James Candido, in particular, deflected investor complaints and continued to provide cover for the Jay Peak Projects and the VRC Team's involvement.
165. As more evidence and complaints were received by the State over the next three years, the VRC and the VRC Team continued to neglect their duties of oversight, and thereby expanded a scheme to shield the Jay Peak Projects. Further, and strangely, the VRC and VRC Team turned against the Jay Peak Investors.
166. During this time, the Jay Peak Investors cobbled together information from their various I-829, Petitions to Remove Conditions on Permanent Residence Status (the "I-829 Petition(s)"), myriad newspaper articles, complaints to financial institutions, inquiries to general contractors and architects, along with internet searches for Act 250 land use permits

and Jay Zoning Board meeting minutes to determine how their investments were used in the Jay Peak Projects.

167. In May 2014, approximately twenty (20) Jay Peak Investors – led by Plaintiff Sutton – flooded Brent Raymond with complaints about the Jay Peak Projects’ misappropriation of investor funds.

168. Specifically, the Jay Peak Investors’ complaints focused on concerns regarding: (i) the double (fraudulent) sale of the “Penthouse Suites” EB-5 project at Jay Peak (the “Penthouse Suites”); (ii) the abrupt, unilateral conversion of their equity interests into a dubious, unsecured promissory note (the “Unsecured Promissory Note”) by William Stenger, which occurred in August 2013 without notification to the Jay Peak Investors; and (iii) their inability to acquire the Jay Peak Projects’ financials showing the source-and-use of Jay Peak Investor funds.

169. The double (fraudulent) sale of the Penthouse Suites was originally billed as an EB-5 investor raise to construct fifty-five (55) deluxe suites – complete with an expansive living room, either one (1) or two (2) master bedrooms, a deluxe kitchen, and a balcony – atop the five-story Hotel Jay<sup>3</sup> (Phase II of the Jay Peak Projects). In total, the Penthouse Suites were to cover an area of approximately 46,000 sq. ft. with a total project cost of \$37,500,000.00 (\$32,500,000.00 of which was derived from Jay Peak Investor funds), and a construction schedule commencing in January 2011 and ending by late 2011/early 2012. The Hotel Jay and Penthouse Suites construction was to total approximately 296,000 sq. ft. consisting of 175 suites, 55 of which were Penthouse Suites.

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<sup>3</sup> Land Use Permit #7R0854-10 shows that the Hotel Jay was to be a five-story, approximately 250,000 sq. ft. hotel, consisting of 120 guest units.

170. However, after comparing their I-829 Petitions with Land Use Permit #7R0854-10-A<sup>4</sup> (which was omitted from their I-829 Petitions) and Jay Zoning Board meeting minutes from August 9, 2010, it was discovered that the combined construction of the Hotel Jay and Penthouse Suites projects amounted to a mere 258,300 sq. ft. with a total of 130 suites.
171. Thus, approximately 40,000 sq. ft. and 45 suites of the Penthouse Suites were never built and the vast majority of monies invested by the Jay Peak Investors in the Penthouse Suites were left unaccounted. It is clear that the Penthouse Suites were largely a fraudulent offering.
172. With regard to the Unsecured Promissory Note, William Stenger waited until January 2014 to inform the Jay Peak Investors of its existence and further waited to disclose the actual document until April 2014, or thereabouts.
173. In addition to converting the Jay Peak Investors' equity interests into an Unsecured Promissory Note, William Stenger unilaterally dissolved the limited partnership; this can only be construed as an attempt to hide the source-and-use of investor funds by extinguishing Mr. Sutton's – and the other Jay Peak Investors' – rights to an accounting as limited partners. As will be seen, the VRC dealt with this shocking event with apathy, a continued neglect of its oversight duties, and in some cases, derision towards the Jay Peak Investors.
174. When Mr. Sutton and other Jay Peak Investors were unable to elicit a response from William Stenger regarding the aforementioned issues, which ultimately boiled down to obtaining proof of the source-and-use of Jay Peak Investor funds, they approached the state

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<sup>4</sup> Land Use Permit #7R0854-10-A was an amendment to Land Use Permit #7R0854-10 where it permitted the additional construction of approximately 8,300 sq. ft. consisting of only ten (10) guest suites on the fifth floor of the Hotel Jay.

overseers – the VRC’s Executive Director, Brent Raymond – to make good on their prior representations and voluntarily assumed duties of state oversight of the Jay Peak Projects and extract the relevant documents.

**3. The VRC ignores its obligations and ability to review the financials of the Jay Peak projects**

175. Much to the surprise of the Jay Peak Investors, Brent Raymond claimed that the VRC had no legal authority to conduct financial reviews. However, Brent Raymond did offer his “assistance” to acquire a response from the VRC’s partners in the largest fraud in Vermont’s history – William Stenger and Ariel Quiros.

176. Further, in a May 20, 2014 email to Mr. Sutton, Brent Raymond explicitly states that the VRC has “not been auditing [the Jay Peak Projects’] financials – nor are we required to, or ever represented that we were.” This is in direct contradiction to the Jay Peak Investors’ offering documents and years of promotional and marketing materials – which included Governor Shumlin touting the VRC’s financial audits of EB-5 projects – flaunting the VRC’s extra safeguard of state oversight.

177. This was repeated to both immigrant investors and would-be investors throughout the marketing of the Jay Peak Projects, all in order to induce foreign investors to join the VRC and its crown jewel, the Jay Peak Projects.

178. Due to these actions, behavior, and representations by the VRC, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.

179. Unsurprisingly, Raymond did not assist in having William Stenger or Ariel Quiros respond to Mr. Sutton aside from a couple of email responses to Mr. Sutton in which he copied Stenger and Quiros.



180. Instead, on May 24, 2014, Raymond lambasted Mr. Sutton and the Jay Peak Investors for “how farfetched” their expectations were for the VRC to monitor, oversee, or otherwise review financial documents relating to the Jay Peak Projects. Raymond did say that the VRC “does many things to monitor projects,” but omits what any of those things were. The only “assistance” Raymond provided to Mr. Sutton consisted of the recommendation that he research the Revised Uniform Partnership Act of 1997.

181. On June 30, 2014, Brent Raymond made it clear that the VRC was abandoning the Jay Peak Investors by stating “I highly recommend that you begin communicating directly with both [William Stenger and Ariel Quiros] . . . I reiterate that [the VRC is] not a party to the PPM or limited partnership so we are unable to assist . . . .” This stood in direct contradiction to years of assurances, the duties that the VRC had been cultivating for a decade, and the VRC active role and involvement with the investors and the Jay Peak Projects.

182. In the same June 30, 2014 communication, not only did Raymond make it clear that the VRC abandoned the Jay Peak Investors, he and the VRC began working against them.

183. Illogically, and in an appalling betrayal, Raymond and the VRC used the Jay Peak Investors’ inability to acquire the Jay Peak Projects’ source-and-use of investor funds as an obstacle to investigate their claims. Plainly, Raymond claimed that the Jay Peak Investors had not supplied any evidence to support their allegations of fraud and would not investigate until such evidence was presented to the VRC. Since the Jay Peak Investors were asking the VRC for help in acquiring such evidence, it became apparent that the VRC would not be investigating.

184. Raymond and the VRC Team turned against the Jay Peak Investors by reneging on VRC's duties and state oversight, claiming they were powerless to assist, and ultimately abusing the power of the state to obstruct the Jay Peak Investors' pursuit of their claims. This was all done to protect the VRC's Jay Peak partners.

**4. Even well-intentioned state officials were duped into submitting investor complaints to the wrongdoers**

185. By July 4, 2014, or thereabouts, making no progress with the VRC, the Jay Peak Projects, the Jay Peak Investors began to complain to the Vermont Secretary of State, Jim Condos.

186. On or about July 8, 2014, Secretary of State Condos responded and expressed concern for Mr. Sutton given the magnitude of the claims. Specifically, Secretary of State Condos's concerns centered on the unilateral conversion of the Jay Peak Investors' equity interests without their notice or consent.

187. Secretary of State Condos circulated the complaints to the appropriate governmental and executive agencies, including the DFR.

188. However, as Secretary of State Condos's office occupies a purely ministerial role in state government, he could only assist by searching for the most appropriate agency for Mr. Sutton and the Jay Peak Investors to submit their complaints.

189. Unfortunately, after checking with the Attorney General's Office and DFR, Secretary of State Condos was informed to refer Mr. Sutton and the Jay Peak Investors back to the ACCD and VRC.

190. The next day, on July 9, 2014, with options running out, Mr. Sutton contacted Jay Peak's Manager of Partnership Accounting, Heather Whipkey, requesting partnership and financial documents – which were his right as a limited partner – to verify the expenditure of Jay Peak Investors' funds.

191. With a well-intentioned state official now aware of the Jay Peak Investors' complaint, on July 10, 2014, William Stenger contacted Mr. Sutton insisting that the Jay Peak Projects had "exhaustive accounting records on all the items [Mr. Sutton] requested and nothing, nothing exists that [the Jay Peak Projects] wish to hide or conceal." William Stenger went on to represent that he would begin compiling the information and send it to Mr. Sutton. However, William Stenger never provided the information to Mr. Sutton.

192. Left with no state recourse, on or about July 15, 2014, Mr. Sutton and the Jay Peak Investors exercised their rights as limited partners by enlisting the help of a nationally-renowned forensic accountant and certified fraud examiner, Dr. Michael Crain, for an exhaustive review of the Jay Peak Projects' financial records.

**5. The VRC acts to functionally obstruct Jay Peak Investors' certified fraud examiner from inspecting the Jay Peak Projects' financial records**

193. In an email to William Stenger, on or about July 15, 2014, Mr. Sutton – on behalf of the Jay Peak Investors – requested to review the following sets of records:

- (i) partnership's transactions/operational records/general ledgers;
- (ii) all amendments to the Partnership Agreement; (iii) records reflecting the status/movement/use over time of the funds [the Jay Peak Investors] invested; (iv) records reflecting the source of funds dedicated to repaying [the Jay Peak Investors], (i.e., whether . . . principal will be repaid from subsequent investors funds or from operational profits); (v) all financial statements for the partnership during the time [the Jay Peak Investors were] . . . owner[s] of the hotel; and (vi) all bank statements - particularly the trial balance and year-end books and financial statements - generated during the period of [Jay Peak Investors'] investment (this requested review is collectively referred to herein as the "Requests").

194. On July 16, 2014, William Stenger stated that he would be "happy to cooperate" with the Requests and would give Dr. Crain full access and would follow-up on July 18, 2014 confirming the logistics of Dr. Crain's visit to the Jay Peak Projects.

195. Unsurprisingly, like most dates and deadlines agreed to by William Stenger and the Jay Peak Projects, July 18, 2014 came and went with no follow-up.
196. In a predictable about-face, on or about July 24, 2014, William Stenger reneged on his acquiescence to Dr. Crain's review claiming that the Requests were unreasonable and that sufficient information had already been submitted to the Jay Peak Investors.
197. Additionally, William Stenger conveyed that his in-house attorneys and accountants claimed that the Jay Peak Investors had no right to the information contained in the Requests.
198. Fed up, on or about August 2, 2014, Mr. Sutton and the Jay Peak Investors dictated to William Stenger that Dr. Crain would arrive at the Jay Peak Projects on August 11, 2014 or August 18, 2014 to examine the Requests. As a result, William Stenger once again feigned his agreement to schedule a visit with Dr. Crain.
199. However, for approximately the next three (3) months, William Stenger kept delaying Dr. Crain's visit for a myriad of unsubstantiated excuses.
200. William Stenger was biding his time to coordinate with the VRC to hide the misappropriation of Jay Peak Investor funds.
201. Given the difficulties in scheduling a meeting to review the Requests, Dr. Crain asked William Stenger to advance certain documents in support of the review of the Requests. These documents included: (i) all annual and interim financial statements (balance sheets, income statements, cash flow statements); (ii) all federal income tax returns including all schedules and exhibits; (iii) detailed general ledgers (annual preferred); and (iv) journal entries and related supporting documentation. However, these documents were never received and the delays continued.

202. On October 3, 2014, Mr. Sutton contacted Brent Raymond for assistance in acquiring the Requests. Unfortunately, Brent Raymond and the VRC continued to neglect their oversight duties and compounded the bad-faith delay.
203. Specifically, Brent Raymond intentionally delayed by suddenly needing written authorizations from the nineteen (19) other Jay Peak Investors attesting that Mr. Sutton was their representative. Brent Raymond also claimed that he was unaware of any of the Requests in spite of receiving complaints from the Jay Peak Investors.
204. After the protracted delays, extended by the VRC's "assistance," William Stenger only permitted Dr. Crain to review a portion of the Requests, but upon one prohibitive condition.
205. William Stenger conditioned the disclosure of his findings on the execution of a non-disclosure agreement (the "NDA") containing, *inter alia*, the following: (i) Dr. Crain could only share his findings upon William Stenger's written permission; (ii) the requirement for a protective order in the event of disclosure prompted by legal action; and (iii) a disclaimer of any legal liability regarding the representations contained within the financial reports. William Stenger claimed that the NDA was necessary per the legal advice of the Jay Peak Projects' in-house attorneys.
206. Frustrated with William Stenger's obstruction, Mr. Sutton once again – reluctantly – sought the VRC's assistance to ensure that no obstacles existed to prevent Dr. Crain's unfettered review of the Requests and to override the NDA.
207. Brent Raymond and the VRC completely ignored the VRC's oversight duties and instead deferred to the legal advice of the Jay Peak Projects' "in-house attorneys" (of which, there were none). Thus, neither Dr. Crain nor the Jay Peak Investors were ever able to review the Requests.

**6. The VRC acts as conduit to tip-off Jay Peak and dead-end all investor complaints**

220. Rather than assist the Jay Peak Investors with the Requests, Brent Raymond and the VRC

Team concocted a narrative to deflect attention away from the VRC's protection of the Jay Peak Projects. In bad faith, Brent Raymond claimed that the true nature of the Jay Peak Investors' complaints against the VRC were due to delayed responses to Jay Peak Investor concerns and the unauthorized communication of those concerns to Ariel Quiros and William Stenger.

221. As a result, the VRC's "assistance" in pursuing the Requests came in the form of acquiring Mr. Sutton's approval to forward the Requests to Ariel Quiros or William Stenger. Brent Raymond claimed this was necessary so that the VRC could let the Jay Peak Projects "know that [the VRC] has been contacted by an Investor Representative requesting Regional Center assistance."

222. Remember, out of the blue, Brent Raymond questioned Mr. Sutton's assertion that he represented the group of disgruntled investors. As a result, Raymond had required written authorizations from each investor attesting to Mr. Sutton as their representative. This request came after all of the Jay Peak Investors represented by Mr. Sutton had submitted individual complaints against the Jay Peak Projects to the VRC. It was evident that the VRC Team was abusing the power of the state in bad faith to shield its partner, the Jay Peak Projects, rather than protect Jay Peak Investors.

223. In disbelief over Raymond's concocted narrative of improper communication with the Jay Peak Projects, on or about October 10, 2014, Mr. Sutton wrote a detailed summary of the VRC's oversight failures, in addition to the obstacles the Jay Peak Projects presented to the Jay Peak Investors in acquiring the requests.

**D. ULTIMATELY AND UNWITTINGLY, THE VRC CONCEDES TO NEGLIGENCE AND  
WRONGDOING FOR OVER A DECADE**

**1. With the fraud spiraling out of control, the VRC renounces all oversight, financial control, and administration of the Jay Peak Projects**

224. On or about October 10, 2014, Patricia Moulton responded to Mr. Sutton's complaint by completely disclaiming all responsibility to the Jay Peak Investors.

225. Unbelievably, Patricia Moulton claimed that the VRC Team did not have legal authority to vet the Jay Peak Projects because the VRC Team "has no authority to rescind seemingly allowable action by [William Stenger] . . . [and] [n]o basis for determining a violation of the agreements could be found."

226. Continuing, Patricia Moulton claimed that the only reporting required of the Jay Peak Projects "relate[d] to meeting federal EB5 program objectives" and "neither you, nor any of the investors, have identified a violation of any of the federal laws and regulations governing the EB5 program."

227. It is odd for Patricia Moulton to claim that Mr. Sutton had not identified a violation of the federal law and regulations governing the EB-5 program because the laws require the VRC to "promote . . . job creation, improved regional productivity, and increased domestic capital investment" by "using forms designated for this purpose" and a regional center will be shut down when it no longer serves that purpose. *See* 8 C.F.R. 204.6(m)(6)(i)(B), (6)(ii)(B) (attached hereto as **Composite Ex., Bates Stamp 433**; *see also* the I-924 Instructions (attached hereto as **Composite Ex., Bates Stamp 4-29**).

228. Clearly, the federal regulations and ACCD's designation as a regional center not only provided the VRC the authority to vet the Jay Peak Projects, but required it to do so. A failure to abide by these mandates is well outside any authority granted by USCIS in



designating the VRC as a regional center. *See generally* USCIS Designation letter (attached hereto as **Composite Ex., Bates Stamp 64-68**).

229. Finally, Patricia Moulton discounted the Jay Peak Investors' concerns about the misappropriation of their investment by claiming it was "not only unreasonable, but impossible, to expect reporting of where individual dollars are spent in a multi-investor project" in spite of years of conduct demonstrating that the VRC possessed the ability, and voluntarily assumed the duty, to track investor funds to and from escrow. Further, none of the auditing or monitoring was "impossible" or "unreasonable," in fact, it was a baseline and standard duty of the VRC, which had been simply neglected for years.

230. Once again, the VRC assumed duties relative to the monitoring, oversight, and management of the Jay Peak Projects. Such authority is derived from contract and the USCIS Designation of the ACCD as a regional center, much like any other privately-run regional center in the country, and not from any authority derived from ACCD or VRC-related legislation.

231. In spite of this betrayal from the VRC, Mr. Sutton and the Jay Peak Investors compiled the limited financial documents in their possession, and outlined a detailed complaint of the Jay Peak Projects, highlighting the fraudulent sale of the Penthouse Suites, improper margin loans, and the general misappropriation of Jay Peak Investor funds.

232. Accordingly, on or about November 14, 2014, Mr. Sutton and the Jay Peak Investors submitted this complaint to Raymond James & Associates, Inc., in addition to the VRC.

233. On November 18, 2014, the General Counsel for the VRC, John Kessler, acknowledged receipt of the email notification but indicated no desire to act pursuant to its regional center duties and investigate Mr. Sutton's detailed outline of fraud at the Jay Peak Projects.

234. Rather, in consistent fashion, John Kessler only requested Mr. Sutton's permission to forward the complaint to the Jay Peak Projects.

235. During this time, the VRC took absolutely no action and engaged in no measures to protect investors from leaving their home countries and liquidating their assets based on the promises at the Jay Peak Projects.

236. This included the named plaintiffs, Wang, Feng, Xiong, Hetma, Mbah, Giraldo, and Pham, along with their fellow AnCBio and QBurke investors who signed on from 2014 through 2016, putting their families' futures and their life savings into the growing hole and straight forward fraud at the Jay Peak Projects.

237. During this time, Jay Peak Investors persisted in submitting complaints to Brent Raymond and the VRC Team; all to no avail; all without resulting inquiry; all without any notice to those who continued to invest; and all without any oversight whatsoever.

**2. The VRC Partners with the Vermont Department of Financial Regulation in further effort to provide cover, and in further unwitting admission that the VRC omitted its oversight of Jay Peak for over a decade**

238. Within its responsibilities to the Jay Peak Projects, the VRC was supposed to conduct quarterly reviews and site visits to ensure USCIS and SEC compliance and project progress. A quarterly report to ensure USCIS and SEC compliance would reveal whether or not EB-5 immigrant investor funds are "fully at risk" and also whether they were being used in accordance with the various Jay Peak Projects' offering documents. As such, had the VRC meaningfully followed through on this base level obligation, the fraud at the Jay Peak Projects would have been uncovered. The quarterly compliance reports would have revealed that the EB-5 immigrant investor funds were misappropriated as early as 2006,

from the very inception of the Jay Peak Projects and the purchase of Jay Peak Resort by Ariel Quiros.

239. However, throughout its relationship with the Jay Peak Projects, the VRC failed to conduct any quarterly reports in spite of clearly established law and duties embodied in the MOUs, the USCIS Designation, and federal regulations mandating such oversight. *See* Email from Brent Raymond, Exec. Dir. of the VRC to a Jay Peak Investor (July 16, 2014) (stating that “[t]he [V]RC does not prepare quarterly reports on projects so we have no reports to provide you.”) (attached hereto as **Composite Ex., Bates Stamp 122**). Had VRC performed as it as supposed to, Jay Peak’s endeavors would have been shuttered nearly from inception and the Plaintiffs’ damages would not have occurred.

240. The VRC did not engage in the state oversight marketed to EB-5 businesses and investors alike. Functionally, the VRC Team acted as the agents for and in concert with the Jay Peak Projects.

241. Until the end, the VRC functionally operated in such a manner as to provide cover for the Jay Peak Projects.

242. Even as late as July 24, 2014, or thereabouts, in a memorandum to William Stenger and Ariel Quiros, John Kessler affirmed that the VRC was actively working in a way so as to to cover up the wrongdoing and fraud, rather than simply performing the VRC duties of oversight.

243. With Jay Peak Investor complaints and media coverage building, on December 22, 2014, or thereabouts, the DFR and ACCD signed a memorandum of understanding (the “DFR MOU”) whereby the DFR became a principal administrator and partner of the VRC to assist the VRC in its responsibilities. However, nothing changed.

244. After the DFR MOU, the VRC approved – and the VRC promoted – the continuation of the investor raise for the QBurke and AnCBio phases of the Jay Peak Projects. It would later be found that the AnCBio phase of the Jay Peak Project was a complete fraud.
245. Shockingly, after all of the complaints, beginning on or about January 9, 2015, Brent Raymond and the VRC Team approved the Jay Peak Projects to solicit investors for QBurke and AnCBio.
246. However, before and after green-lighting these projects, the VRC never exercised any authority to acquire the documents that the Jay Peak Investors had been so desperately seeking. Rather, the VRC merely requested the Jay Peak Projects supporting documentation to fast-track approvals of the private placement memoranda and readily accepted what the Jay Peak Projects provided to them.
247. Consequently, in April 2015, or thereabouts, the VRC willingly approved the Jay Peak Projects to solicit prospective investors for the fraudulent Jay Peak Projects at QBurke and AnCBio.
248. The VRC/DFR approved the investor raise for AnCBio even though absolutely nothing was done to obtain approval from the U.S. Food and Drug Administration for the AnCBio research center's products – a base level pre-requisite for the operation of AnCBio and the use of the Plaintiffs' investment funds.
249. These approvals were given despite the fact that, in or about May 2012, the Jay Peak Projects "misappropriated approximately \$7 million in AnCBio investor funds to purchase Burke Mountain Resort," a misappropriation that was known to the VRC, or should have been known to the VRC were the VRC to have engaged with any of its oversight duties.

250. Thus, the VRC and DFR continued promoting its “crown jewel” EB-5 project with Jay Peak’s principals and new phases that turned out to be complete frauds.

**E. AS MEDIA COVERAGE OF THE VRC TEAM/JAY PEAK PROJECTS FRAUD GREW, THE VRC TEAM BEGAN TO DEPART STATE SERVICE TO AVOID ACCOUNTABILITY BY ACQUIRING HIGH-LEVEL EMPLOYMENT WITH THE VERY EB-5 PROJECTS THEY WERE CHARGED TO REGULATE**

251. Utilizing the information acquired through the public records requests, along with the fraudulent marketing materials brazenly left in the public domain by the VRC and Jay Peak Projects (*via* their websites and EB-5 marketing materials), investigative reporters began to piece together the years-long fraud for publication.

252. As the evidence and pressure of the fraud continued to build, the VRC Team members looked to new improper leverage and profit arising from their positions, seeking to gain high-level employment within other VRC EB-5 projects throughout the state.

253. Using the notoriety gained through their Jay Peak Projects involvement, government officers and the VRC Team members began to spin-out of their roles and into lucrative roles in the private sector, most notably with the very EB-5 projects that they were supposed to be monitoring.

254. As a telling example of the private leverage that drove the VRC Team’s complicity with the fraud at the Jay Peak Projects, a top aide to the Governor’s office, Alexandra MacLean, departed state service and acquired a senior management position with the Jay Peak Projects.

255. Setting up Alexandra MacLean’s lucrative transition, in 2013, then-Governor Shumlin traveled with Jay Peak CEO, William Stenger, to Miami to pitch a new phase of Jay Peak Projects.

256. At a press conference, Governor Shumlin stated his purpose of the trip, as follows: “I’ll be going on the road with them to assure investors that when they have choices about what EB-5 program to choose across America – and there’s a lot of them – they ought to choose this program in the Kingdom.”
257. Further stated by the Governor, “we’re the only statewide EB-5 program in the nation, we’re the only EB-5 program where the state acts as a sort of auditor in the program, which gives investors added confidence that they’re investing in something that is real.”
258. As the Governor’s office did not have direct responsibility for the Jay Peak Projects, the origins of these statements came from the only state actors who had an actual contract with the Jay Peak Projects – the VRC.
259. Governor Shumlin’s trip was paid for by administrative fees levied on existing EB-5 investors – fees that were first paid to the Jay Peak Projects and then given to the State of Vermont to pay for the promotion and sale of the Jay Peak Projects and its securities.
260. Moreover, Governor Shumlin had an improper motive to ensure the continued promotion of the Jay Peak Projects and its securities; he used Quiros’s multi-million dollar apartment in Manhattan – paid for with misappropriated Jay Peak Investor money – for improper personal use.
261. Thus, Quiros possessed compromising and damaging information on Governor Shumlin (considering then-Governor Shumlin’s purported guests at the Manhattan apartment).
262. The Governor’s comments in this regard reflect the public face of the VRC and that presented by the VRC Team to other projects, specifically, that the VRC provided auditing, oversight, and unmatched credibility that would enable a partnering project to raise necessary funds for pre-approved projects.

263. In contradiction to the State’s representations, the VRC’s mandate, the VRC’s obligations to the region, and its obligations to other projects within the EB-5 program, Brent Raymond (and others) only promoted EB-5 projects that paid for a significant part – if not all – of his opulent promotional travel, while excluding those entities that did not participate in the pay-to-play arrangement. Indeed, Brent Raymond refused to travel for other VRC projects that refused to pay for his lavish travel.

264. Given the growing fraud within the VRC, in early 2015 or thereabouts, Brent Raymond further pursued his self-interest by soliciting a Vermont EB-5 project (at the Morristown-Stowe State Airport) for a job, but Brent Raymond was rebuffed because of the obvious conflict of interest and breach of general ethics that it would represent. Undeterred by such things, Brent Raymond found employment at Mt. Snow, a ski resort with an active EB-5 project.

**F. THE FRAUD AT JAY PEAK WAS COMPLETELY SHIELDED FROM SCRUTINY UNTIL THE JAY PEAK INVESTORS SUBMITTED EVIDENCE TO THE U.S. SECURITIES AND EXCHANGE COMMISSION**

265. Since the very perpetrators at the VRC departed state service to protect themselves amid the swirling suspicious arising from the release of the public records requests, in July 2015, or thereabouts, Mr. Sutton and the Jay Peak Investors submitted another comprehensive and well-documented complaint to the DFR, who was now working with the VRC.

266. In spite of Mr. Sutton’s comprehensive complaint, the DFR requested that each individual investor submit redundant complaints to “follow legal process.”

267. However, Mr. Sutton – understandably wary of any Vermont State actor – informed the DFR that he and the aggrieved investors would not only comply with their “legal process,” but would also submit their complaint to the SEC.

268. Unfortunately delay tactics may have resulted in the destruction of pivotal evidence to the Plaintiffs' claims, as particularly illustrated by the the Shumlin Administration's pursued deletion of archived emails from five (5) former staffers employed by the Governor a mere five (5) days before securities fraud lawsuits were filed by both the U.S. Securities and Exchange Commission (again, the "SEC") and the DFR. *Infra* ¶¶ 266-269, at 55-56. One of those staffers was Alexandra MacLean, who, once again, transitioned to a lucrative role at Jay Peak after she and Governor Shumlin used Quiros's Manhattan apartment – paid for by Jay Peak Investor funds. *See supra* ¶¶ 251-254, at 52-53.
269. With the investor complaints mounting beyond a containable level, a few short months later, in April 2016, the suspicions and complaints of fraud raised by Mr. Sutton and the Jay Peak Investors, were finally confirmed when the United States Securities and Exchange Commission (again, the "SEC") filed a securities fraud lawsuit (the "SEC Complaint") against Jay Peak developers, Ariel Quiros and William Stenger.
270. The SEC Complaint makes clear that the Jay Peak Projects were mired in long-standing securities fraud, wire fraud, and mail fraud, and it had been for years on end, from the beginning. The SEC Complaint also makes clear that that the Jay Peak Investors and representatives who had been raising concerns were completely ignored and pushed back by the VRC Team, because the VRC was working hand-in-hand within the fraud.
271. The history of complaints and of the VRC's active promotion of the Jay Peak Projects against the backdrop of exemplary state oversight makes it absolutely clear that the VRC had engaged in both malfeasance and nonfeasance in regard to their celebrated administration and oversight of the Jay Peak Projects in Vermont.



272. The VRC, and its officials – Candido, Raymond, Kessler, Moulton, and Miller – who traveled to tradeshow and investor conferences at home and abroad to peddle the Jay Peak Projects’ securities, touted that the VRC as independent overseer of the Jay Peak Projects, with duties of tracking investor funds to-and-from escrow, the status of investor capital, and requiring quarterly reports from the Jay Peak Projects; these VRC officials also engaged in misconduct by failing to engage in the mandated oversight duties.

273. Indeed, Candido, Raymond, Kessler, Moulton, and Miller violated federal laws and regulations when they submitted the I-924s and I-924As to USCIS, signed under the pains and penalties of perjury, claiming that they conducted such oversight when they knew it to be untrue, which is in derogation of any authority – state or federal – they claimed to be acting under.

274. The VRC’s oversight was designed to induce foreign investors to join the VRC and its crown jewel, the Jay Peak Projects, and, in this regard, the VRC failed completely.

275. Due to these actions, behavior, and representations by the VRC, the Jay Peak Investors each left their home countries, liquidated their assets, displaced their families, and turned over their life savings to the fraud at the Jay Peak Projects.

**G. THE VRC FUNCTIONALLY ACTED AS BOTH PROMOTER AND REGULATOR, CREATING A CONFLICT OF INTEREST THAT WOULD ENABLE THE LARGEST FRAUD IN EB-5 HISTORY**

276. The VRC Team acted simultaneously as both promoter and regulator; an untenable conflict of interest that spawned a years-long cover-up in which the VRC Team – and subsequently the DFR – perpetrated the largest fraud in the history of Vermont, as well as the largest fraud in the history of the EB-5 program.

277. Because of the marketing, and assurances provided by the Defendants’ over the course of nearly a decade, the named Plaintiff and countless other immigrant investors put their hard-

earned money (a half-million per investor) into the largest fraud in Vermont history, the largest fraud in EB-5 history, and the only fraud to involve a set of state-salaried employees who were working hand-in-hand with the fraudsters.

278. The damages in this cause of action arise out of Defendants administering, promoting, marketing, and, in the end, the VRC Team's profiting from the largest EB-5 fraud in history.

279. From the beginning of this fraud, the VRC Team worked hand-in-hand with their Jay Peak partners and principals within its projects that were a high-functioning Ponzi-scheme.

280. For years the VRC ignored investor complaints, as well as engaging in behavior that illegitimately discredited those who took issue with the wrongdoing at the Jay Peak Projects and within the VRC. Regardless, throughout its tenure, the VRC represented and marketed itself as an effective, independent, and diligent overseer of EB-5 projects, which ultimately fueled and kept the Ponzi-scheme alive.

281. The VRC touted its duties to inspire entrepreneurial confidence, and to encourage would-be investors to select the VRC as a safe and secure partner in the EB-5 investor world.

282. The VRC Team engaged in no oversight of the Jay Peak Projects and, in fact, the VRC Team acted as agents and partners within those projects.

283. Hundreds of investors followed the oversight of the VRC to Vermont.

284. At one level the EB-5 program represents a traditional investment in a for-profit endeavor.

285. At the same time, the program represents an opportunity for many to live and work here in the United States.

286. For many, taking part in the EB-5 program involved the liquidation of lifesavings, acclimating children to a new language and culture, and securing employment and schooling in a foreign country.
287. To these investors, the false promises of the VRC Team and the decade long cover-up up the Jay Peak fraud, have thrown all that they invested and sacrificed into an abyss, with many of them wondering how long until they and their families are forced out of this country to start over in the countries they left behind.
288. On August 14, 2017, after investigating the VRC, USCIS issued a “Notice of Intent to Terminate” the VRC (the “Termination Notice”). USCIS’s Termination Notice confirms that the VRC/DFR committed multiple serious violations by explicitly stating the VRC “failed to properly engage in management, monitoring and oversight for many years, as required by the [EB-5] Program.”
289. The twenty-seven (27) page Termination Notice clearly shows that the VRC’s failure to provide adequate oversight and monitoring of the Jay Peak Projects allowed the malfeasance by Quiros and Stenger to occur and jeopardize the VRC’s ability to promote economic growth within EB-5 Program requirements, as well as the Jay Peak Investors’ investments. Indeed, the Termination Notice states that the ultimate responsibility for compliance with the relevant statutes and regulations remains with the VRC and it failed in that responsibility.
290. The Termination Notice explains that as late as April 2015, the VRC allowed Phase VII – AnCBio – to continue to collect funds that they knew, suspected, or should have known were in jeopardy of not being used in compliance with EB-5 Program requirements.

291. For instance, three (3) I-526 Petitions for Phase VII were submitted between January and April, 2016, after VRC knew of the problems with this project. Further, USCIS has no record that the VRC informed USCIS of these concerns on any of its annual filings or in any other correspondence. Thus, VRC allowed marketing to occur for a project suspected of serious malfeasance. This also allowed these funds to be invested, even though (i) they may not have been able to be used for their intended purposes for some time, due to legal concerns and other problems; and (ii) it might jeopardize and at minimum delay investors' goal of attaining U.S. permanent residency, in line with EB-5 Program requirements.
292. The Termination Notice also states that between April 21 and June 13, 2016, three (3) I-526 Petitions were submitted for Q-Burke – Phase VIII – which was improper (and late), because the SEC complaint alleges that Quiros wrongly used about \$7 million from a margin loan backed by EB-5 investor funds to purchase Q-Burke.
293. In fact, two (2) of these Phase VIII I-526 Petitions were submitted one (1) to two (2) months *after* the SEC and DFR Complaints were made public. Thus, this pattern of (in)action by the VRC is a microcosm into the decade-long fraud and cover-up as it clearly violated the relevant statutory and regulatory requirements and jeopardized Jay Peak Investors' eligibility for EB-5 classification.
294. On September 14, 2017 ACCD responded to the Termination Notice asking to be allowed to wind down its operations.
295. On July 3, 2018 USCIS terminated the VRC (the "Termination Decision") because it did not demonstrate that it continued to serve the purpose of promoting economic growth (**Composite Ex., Bates Stamp 444-503**).

296. In the Termination Decision, USCIS found that: (i) in violation of the EB-5 program requirements the VRC failed to engage in proper monitoring and oversight of the capital investment activities and jobs created and, accordingly, no longer served the purpose of promoting economic growth; (ii) the project MOUs required developers to submit quarterly reports which did not happen in violation of the MOUs and USCIS expectations; (iii) The ACCD was aware of false and misleading information submitted to the USCIS and when it became aware it took no corrective action; (iv) the discrepancies and misrepresentations cast doubt on the credibility of ACCD's regional center filings and call into question the legitimacy of its operations; and (v) The ACCD's regional center lack of management and oversight has jeopardized immigrant investors' ability to obtain EB-5 classification through their investments.

297. On September 4, 2018 ACCD appealed the USCIS termination (the "ACCD Appeal") essentially arguing that it engaged in adequate supervision, had consistently made comprehensive and accurate representations in its filings, and that USCIS decision is not grounded in federal law or USCIS guidance documents.

298. In the ACCD Appeal, ACCD did not dispute the misuse and misappropriation of substantial sums of money but asked USCIS to allow it to just wind down operations.

299. On October 1, 2019 USCIS' Administrative Appeals Office (AAO) denied the ACCD appeal (the "AAO Denial") (**Composite Ex., Bates Stamp 504-514**).

300. In the AAO Denial, the USCIS determined that the negative factors ("an ongoing, massive eight-year fraudulent scheme" that "systematically looted more than \$50M" and "misused more than \$200M EB-5 funds.") outweigh the positive factors (ACCD has taken steps to oversee and monitor projects; and that it has engaged in a sufficient level of oversight and

monitoring), and found that the facts do not support ACCD's contention that its oversight and monitoring were sufficient.

301. The AAO also found that the representations made by the ACCD in their annual Form I-924A filings, as those filings relate to specific amounts of EB-5 funds deployed in the Jay projects were inaccurate.

302. AAO specifically also found that ACCD's oversight and monitoring efforts had been insufficient to prevent, or timely recognize, misuse and misappropriation of EB-5 capital.

303. On April 9, 2020, USCIS issued a Request for Evidence (the "Vieira RFE") for Plaintiff Felipe Accioly Vieira's I-829 application (**Composite Ex., Bates Stamp 515-544**).

304. In the Vieira RFE, USCIS noted that it has determined that the uses of investor funds were not in accord with the offering documents, and/or a significant portion of investment capital was transferred to a separate entity and pooled with other investor capital in other entities associated with the VRC and for other uses not associated with job creation.

305. Essentially, the Ponzi scheme within the ACCD fraud and misrepresentations will prevent Felipe from receiving his permanent green card.

306. On May 26, USCIS denied Plaintiff Giraldo's 526 immigration petition. USCIS essentially stated that the terminated VRC's approved Burke business plan is neither credible nor comprehensive. And, that various promised projects such as the aquatic center and tennis complex have not been built with no evidence of funding to finish this enterprise and create the requisite number of jobs. Plaintiffs Mbah and Pham were issued similar denials on June 2, 2020 (**Composite Ex., Bates Stamp 545-582**).

307. The Phase VIII business plan provided a budget of \$104.7M while the amount raised was \$59.5M leaving a shortfall of \$45.2M to build the aquatic center and tennis complex.

USCIS also noted that the resort may have been purchased by Quiros and Stenger using misappropriated funds from other Jay projects.

308. Not only has the VRC violated federal statutory and regulatory requirements, it has also disclaimed any enforceable duty owed to the Jay Peak Investors, further jeopardizing their EB-5 immigration statuses.

309. In the end and in short, the ACCD/VRC's failures have caused the collapse of the Plaintiffs' investment and immigration pursuits.

## **V. THE CLASS ACTION ALLEGATIONS**

### **THE CLASS SATISFIES THE REQUIREMENTS OF RULES 23(A) AND 23(B)(3) OF THE VERMONT RULES OF CIVIL PROCEDURE**

310. In this case, the class satisfies the requirements of the Vermont Rules of Civil Procedure.

311. The Class satisfies the numerosity requirement. There were hundreds of investors in the Jay Peak Projects. The membership of the Class is so numerous as to render joinder impracticable. The precise number of Class members remains indeterminate and can only be ascertained through discovery, but Plaintiffs believe it is in the hundreds.

312. Typicality is also satisfied. The losses suffered by the named Plaintiffs was caused by the same events, patterns of practice, and courses of conduct that give rise to the claims of the other members of Class. The named Plaintiff is a member of the Class and the losses to the named Plaintiff is based on the same legal theories.

313. The common questions requirement is also satisfied as the numerous predominant questions of law and fact that are common to the Class include the following:

- a. Whether Defendants are liable to the Plaintiff Class as the result of, inter alia:
  - i. Failing to perform adequate due diligence before selecting the Jay Peak Projects as a partner for the VRC;

- ii. Failing to perform adequate due diligence before promoting the Jay Peak Projects as a sound investment to the world-at-large and Plaintiffs;
  - iii. Failing to monitor the Jay Peak Projects on an ongoing basis to any reasonable degree;
  - iv. Failing to take adequate steps to confirm the Jay Peak Projects' purported accounts, transactions, and appropriation of Jay Peak Investor funds;
  - v. Failing to conduct adequate due diligence and monitoring with respect to the Jay Peak Projects' compliance with USCIS and SEC laws, rules, and regulations.
  - vi. Failing to monitor the appropriation of Jay Peak Investor funds;
  - vii. Failing to follow-up on red flags, as discussed above, that would have caused Defendants to discover that the Jay Peak Projects were conducting a Ponzi-scheme;
  - viii. Improperly relying on the financial statements of the Jay Peak Projects because, among other things, Defendants were not qualified, willing, or able to audit the Jay Peak Projects in accordance with accepted auditing and oversight standards, and to provide the oversight as promised uniformly throughout the class;
- b. Whether Defendants breached a contract that is uniform across the proposed class;

314. The class includes all persons who purchased securities under the EB-5 program in the Jay Peak Projects using the services and in reliance upon the Vermont Regional Center and the Defendants, as described herein.



315. The class is so numerous and geographically dispersed that joinder of all members is impracticable except by means of a class action.

316. The Plaintiffs assert claims that are typical of the claims of the entire class. Plaintiffs, like all members of the class, were injured by Defendants' unlawful and deceptive conduct.

317. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs have no interest antagonistic to those of the class. Plaintiffs have retained counsel who is competent and experienced in complex litigation.

## **VI. CAUSES OF ACTION**

### **COUNT 1**

#### **BREACH OF CONTRACT AGAINST DEFENDANT ACCD**

318. Plaintiffs incorporate the allegations throughout this Complaint as if fully set forth hereunder.

319. In the MOUs included in each of Plaintiffs' offering documents, Defendant agreed to monitor, oversee, manage, administer, and ensure the legal/regulatory compliance of the Jay Peak Projects for the specific benefit of Plaintiffs to pursue a path to citizenship in the U.S.

320. In their administration of the VRC, Defendant undertook specific oversight obligations to monitor the number and status of Plaintiffs' I-526 Petitions, to monitor the status of alien investor capital in escrow and transfers therefrom, and to ensure compliance with relevant regulatory or administrative requirements in support of Plaintiffs' individual I-526 Petitions.

321. The Defendant, hoping to gain the benefits of investments in the Jay Peak Projects, offered to undertake "specific oversight obligations" if plaintiffs invested, and then, after plaintiffs performed by investing, Defendant breached the resulting contractual obligation.

322. Defendant offered to plaintiffs that if they invested in the Jay Peak Projects, it would provide "oversight, administration, management, and regulatory compliance of the Jay Peak Projects for the specific benefit of Plaintiffs." As part of the oversight Defendant pledged to undertake, Defendant promised to enforce the Jay Peak Projects' financial-reporting requirements under the MOUs. The Defendant wished to receive the benefit of investments in the Jay Peak Projects, so Defendant offered to Plaintiffs that if they made the requisite investment, it would provide financial oversight over the Projects. Plaintiffs accepted Defendant's offer by performing: they invested in the Projects. At that point, a contract obligating Defendant to fulfill the promises formed. The Defendant subsequently failed to provide any of the promised oversight, breaching its contractual obligations to plaintiffs.

323. Defendant's promise of the oversight, administration, management, and compliance of the Jay Peak Projects for the specific benefit of Plaintiffs acted as consideration for Plaintiffs' to act to their detriment and commit a \$500,000.00 investment to the Jay Peak Projects, \$50,000.00 in administrative fees to the Jay Peak Projects for use by the VRC, and \$1,500.00 to \$3,000.00 in fees directly to the VRC for such oversight services that were not performed, and for such services that were falsely represented to have been performed.

324. For good and valuable consideration, Defendant agreed to provide such oversight, administration, management, and regulatory compliance services on Plaintiffs' behalf, and

for Plaintiffs' benefit, by ensuring their investment in the Jay Peak Projects and path to citizenship were safe while knowing, and explicitly understanding, that the investment funds would be in part accepted and used for the VRC's operations, payroll, travel, meals, and personal income for the VRC Team, among many other benefits.

325. Defendants breached the contract with Plaintiffs by failing to provide such oversight, administration, management, and regulatory compliance services that were contracted for and by falsely representing those services.

326. As a consequence of Defendant's breach(es), Plaintiffs suffered and continue to suffer harm and damages in an amount to be determined at trial.

**COUNT 2**  
**BREACH OF GOOD FAITH AND FAIR DEALING AGAINST DEFENDANT ACCD**

327. Plaintiffs incorporate the allegations throughout this Complaint as if fully set forth hereunder.

328. At all relevant times, the parties were bound to execute their agreement for oversight, management, administration, and compliance services consistent with the covenant of good faith and fair dealing.

329. Plaintiffs expended money and resources to both pay and assist Defendant in its obligations and duties to oversee, manage, and administer the projects, and to ensure compliance with the obligations of the MOUs, in addition to performing the oversight intended to track investor funds.

330. Plaintiffs reasonably expected that the money and expenditure of time and resources were being used by Defendant to engage in oversight, administration, management, and compliance services on Plaintiffs' behalf, and for Plaintiffs' benefit, by ensuring their investment in the Jay Peak Projects and path to citizenship were safe.

331. In fact, Plaintiffs' money, time, and resources were not being used for Defendant's oversight, administration, management, and compliance services on Plaintiffs' behalf, and for Plaintiffs' benefit; rather, such resources were being funneled to a fraudulent Ponzi-scheme filled with false efforts, false information, and the fraudulent appearance of responsive services.

332. As a consequence of Defendant's wrongful acts, conduct, and breach(es), Plaintiffs have suffered and continue to suffer harm and damages.

**COUNT 3**  
**GROSS NEGLIGENCE AGAINST DEFENDANTS CANDIDO AND RAYMOND**

333. Plaintiffs incorporate the allegations throughout this Complaint as if fully set forth hereunder.

334. Candido and Raymond— as state overseers, managers, principal administrators, and overall regulators of the USCIS Immigrant Investor Program in Vermont, and acting as promotional agents with discretionary control over the Jay Peak Projects – had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the oversight and administration of Plaintiffs' assets in the Jay Peak Projects, and in the selection and monitoring of the Jay Peak Projects' managers and sub-custodians. Candido and Raymond knew or should have known that Plaintiffs were relying on the VRC, Candido, and Raymond to oversee, manage, administer, and ensure the compliance of the investments entrusted to the Jay Peak Projects with reasonable care, and Plaintiffs did reasonably and foreseeably rely on the Defendants to exercise such care by entrusting their assets to the Jay Peak Projects.

335. Candido and Raymond grossly failed to exercise due care, acted in reckless disregard of their duties in a federally-designated regional center, acted outside of any claimed authority

derived from such regional center designation or capacity as a state official, and thereby injured Plaintiffs. The Defendants failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable state overseer, manager, administrator, or regulator of the Immigrant Investor Program. The Defendants failed to perform the adequate due diligence before selecting the Jay Peak Projects as a partner for the VRC; the VRC, Candido, and Raymond failed to perform the adequate due diligence before promoting the Jay Peak Projects as a sound investment to the world-at-large and the Jay Peak Investors; failed to monitor the Jay Peak Projects on an ongoing basis to any reasonable degree; failed to take adequate steps to confirm the Jay Peak Projects purported account statements, transactions, and appropriation of Jay Peak Investor funds.

336. If Candido and Raymond had acted within their authority in a federally-designated regional center and had not been grossly negligent with respect to Plaintiffs' assets invested in the Jay Peak Projects, they would have discovered that the Jay Peak Projects were a fraud, they would not have continued to sponsor the Jay Peak Projects as the USCIS designated regional center, and the Plaintiffs would not have incurred the damages outlined herein.

337. As a direct and proximate result of Defendants' gross negligence with respect to the state oversight, management, administration, and overall regulation of the Jay Peak Projects, Plaintiffs have lost all, or substantially all, their investment in the Jay Peak Projects, along with the endangerment and/or loss of Plaintiffs' permanent residency in the United States.

338. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiffs.

339. As a consequence of Candido and Raymond's wrongful acts and conduct, Plaintiffs have suffered and continue to suffer harm and damages, and because of the outrageous nature of the Defendants' willful and wanton conduct, Plaintiffs are entitled to punitive damages.

**COUNT 4**  
**NEGLIGENCE AGAINST DEFENDANT ACCD**

340. Plaintiffs incorporate the allegations throughout this Complaint as if fully set forth hereunder.

341. In providing state oversight, administrative, managerial, and overall regulatory services to the Jay Peak Projects, Defendant had a special relationship with Plaintiffs that gave rise to a duty to exercise due care in the performance of its duties. Defendant knew or should have known that Plaintiffs were relying on it to exercise reasonable care in providing state oversight, administrative, managerial, and overall regulatory services to the Jay Peak Projects, and Plaintiffs did reasonably and foreseeably rely on Defendant to exercise such care by investing in the Jay Peak Projects.

342. Defendant negligently failed to exercise due care in its role as state overseer, administrator, manager, and overall regulator, and failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable state overseer, administrator, manager, or overall regulator of the Jay Peak Projects.

343. As a direct and proximate result of Defendant's negligence with respect to the state oversight, management, administration, and overall regulation of the Jay Peak Projects, Plaintiffs have lost all, or substantially all, their investment in the Jay Peak Projects, along with the endangerment and/or loss of Plaintiffs' permanent residency in the United States.

344. As a consequence of Defendant's wrongful acts and conduct, Plaintiffs have suffered and continue to suffer harm and damages.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the following:

1. Certification of this action as a class action proper and maintainable pursuant to Rules 23(a) and 23(b)(3) of the Vermont Rules of Civil Procedure and declaration of the proposed named Plaintiffs as proper Class representatives;
2. Compensatory, consequential, and general damages not less than \$250,000,000;
3. As against Candido and Raymond, disgorgement and restitution of all earnings, profits, compensation and benefits received by them as a result of their unlawful acts and practices;
4. As against Candido and Raymond, punitive damages to the maximum extent available under law on account of the outrageous nature of Defendants' willful and wanton disregard for Plaintiffs' rights;
5. Costs and disbursements of the action;
6. Pre- and post-judgment interest;
7. Reasonable attorneys' fees; and
8. Such other relief as this Court deems just and proper.

## **VIII. JURY TRIAL DEMANDED**

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: September 3, 2020  
Stowe, Vermont

Respectfully Submitted,

BARR LAW GROUP

By: /s/ Russell D. Barr  
Russell D. Barr  
Chandler W. Matson  
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Stowe, VT 05672  
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*Attorneys for Plaintiffs Antony Sutton, Robert Connors, David Wooding, Dirk Kroonen, Charmaine Enslin, William Handley, Stephen Webster, Wei Wang, Xiaofeng Feng, Guangyi Xiong, Felipe Accioly Vieira, Sylvana Carneiro Hetma, HRH Linus Nto Mbah, Lin Thi Thu Pham, and Mauricio Esteban Garcia Giraldo.*



# EXHIBIT J

## Heather Elyse Murray

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**From:** Galloway, Anne <agalloway@vtdigger.org>  
**Sent:** Thursday, August 20, 2020 7:46 AM  
**To:** Kessler, John; Goldstein, Joan; Kurrle, Lindsay  
**Subject:** Public records request for EB-5 records  
**Attachments:** ACCD COMMUNICATIONS\_RECORDS\_REQUEST.docx; MILLER\_RECORDS\_REQUEST\_08.20.20.docx

**EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.**

Dear Secretary Lindsay Kurrle,

I am writing to place two separate public records requests regarding the EB-5 program.

I have cc'd John Kessler and Joan Goldstein.

Please let me know if you have questions. My cell is 802-595-9159.

Best regards,  
Anne

--

Anne Galloway  
Editor, VTDigger.org and Executive Director, Vermont Journalism Trust  
cell 802-595-9159

Dear Secretary Lindsay Kurrle,

Pursuant to Vermont's Public Records Act, 1 VSA §§ 315–20, I am seeking the following information:

Any and all communications between Vermont Agency of Commerce and Community Development employees concerning my records requests, dated June 26, 2015 and December 30, 2016, respectively, which are reproduced below for your reference:

(i) Request dated June 26, 2015

Pursuant to Vermont's public record act I am requesting communication among and between the following individuals regarding rapid USA from February 1 to May 31, 2012:

Lawrence miller  
John Kessler  
James candido  
Bill Kelly  
Bill stenger  
Ariel Quiros  
Ed Carroll  
Mark scribner

(ii) Request dated December 30, 2016

Pursuant to Vermont's Public Records Act, I am writing to request all communication not already provided to VTDigger between and among James Candido and the developers of Jay Peak and their associates, including Ariel Quiros, Bill Stenger, Bill Kelly, George Gulisano and Douglas Hulme.

Because this request is in the public interest, I request that you waive any fees for filling it. If fees are assessed, please notify me before proceeding. If, after that conversation, fees are charged, please provide a detailed receipt explaining the purpose of each fee charged.

If some of this material will take longer to provide than other portions, please provide any segments of the requested information as soon as it is available. If this information is available in electronic format, please provide it in that manner. If any or all of the information can be provided by email, please do so.

Please let me know if you have any questions about this request. I trust you will respond to my request for the records within the timeframe set out in 1 VSA § 318.

Should you deny access to any of the records I am requesting, please provide me with a list of those records, cite the specific exemption that applies to each record or portion of the record being withheld, and provide a description of the material that has been withheld.

If a record has a portion that is exempt from disclosure, 1 VSA § 318(e) requires that only the exempt portion be redacted, and that a copy of the rest of the document be released, together with a notation of the specific exemption that applies to the portion withheld.

If you determine that any record is exempt from disclosure, in whole or in part, please also indicate the name and title of the person responsible for the denial, as 1 VSA § 318(b)(2) requires, inform me of the appeal procedures available to me, and the name of the person to whom an appeal may be made.

Thank you for your assistance and please contact me with any questions.

Anne Galloway

Dear Secretary Lindsay Kurrle,

Pursuant to Vermont's Public Records Act, 1 VSA §§ 315–20, I am seeking copies of the following public records on behalf of the Vermont Journalism Trust:

1. Any and all communications to, from or copying Lawrence Miller from January 1, 2011 until December 31, 2014 concerning:
  - a. the AnC Bio Vermont project
  - b. the EB-5 consulting firm Rapid USA Visas
  - c. the Hotel Jay project, including but not limited to the offering memoranda provided to the Jay Peak Hotel Suites L.P. investors and to the Jay Peak Hotel Suites Phase II L.P. investors and the memoranda of understanding between the EB-5 Regional Center and the following: (a) Jay Peak Hotel Suites L.P. and (b) Jay Peak Hotel Suites Phase II L.P.
  - d. the Jay Peak Penthouse Suites L.P. project, including but not limited to the offering memorandum provided to Jay Peak Penthouse Suites L.P. project investors and the memorandum of understanding between the EB-5 Regional Center and Jay Peak Penthouse Suites L.P.
  - e. William Stenger, Alexandra MacLean or Douglas Hulme
2. Any and all communications to, from or copying Lawrence Miller and the following individuals from January 1, 2011 until December 31, 2014:
  - a. William Stenger, including from the following email:  
[bstenger@jaypeakresort.com](mailto:bstenger@jaypeakresort.com)
  - b. Alexandra MacLean, including from the following emails:  
[Alex.MacLean@state.vt.us](mailto:Alex.MacLean@state.vt.us); [allymac9@gmail.com](mailto:allymac9@gmail.com);  
[amaclean@jaypeakresort.com](mailto:amaclean@jaypeakresort.com); [alex@asm-strategies.com](mailto:alex@asm-strategies.com); and  
[alex@advancehumanity.com](mailto:alex@advancehumanity.com)
  - c. Douglas Hulme, including from the following emails:  
[hulmedouglas@yahoo.com](mailto:hulmedouglas@yahoo.com); [rapidusa@gmail.com](mailto:rapidusa@gmail.com); [rapidvisa@gmail.com](mailto:rapidvisa@gmail.com); and  
[rapidusavisa@predictiveresponse.net](mailto:rapidusavisa@predictiveresponse.net)

Because this request is in the public interest, I request that you waive any fees for filling it. If fees are assessed, please notify me before proceeding. If, after that conversation, fees are charged, please provide a detailed receipt explaining the purpose of each fee charged.

If some of this material will take longer to provide than other portions, please provide any segments of the requested information as soon as it is available. If this information is available in electronic format, please provide it in that manner. If any or all of the information can be provided by email, please do so.

Please let me know if you have any questions about this request. I trust you will respond to my request for the records within the timeframe set out in 1 VSA § 318.

Should you deny access to any of the records I am requesting, please provide me with a list of those records, cite the specific exemption that applies to each record or portion of the record being withheld, and provide a description of the material that has been withheld.

If a record has a portion that is exempt from disclosure, 1 VSA § 318(e) requires that only the exempt portion be redacted, and that a copy of the rest of the document be released, together with a notation of the specific exemption that applies to the portion withheld.

If you determine that any record is exempt from disclosure, in whole or in part, please also indicate the name and title of the person responsible for the denial, as 1 VSA § 318(b)(2) requires, inform me of the appeal procedures available to me, and the name of the person to whom an appeal may be made.

Thank you for your assistance and please contact me with any questions.

Anne Galloway

# EXHIBIT K

## Heather Elyse Murray

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**Subject:** FW: PRA Request re 2015-16 Period

**From:** "Kessler, John" <[John.Kessler@vermont.gov](mailto:John.Kessler@vermont.gov)>

**Date:** August 25, 2020 at 9:21:44 PM EDT

**To:** "Galloway, Anne" <[agalloway@vtdigger.org](mailto:agalloway@vtdigger.org)>

**Cc:** "Kurrle, Lindsay" <[lindsay.kurrle@vermont.gov](mailto:lindsay.kurrle@vermont.gov)>

**Subject:** PRA Request re 2015-16 Period

Anne

I'm writing to follow up on Lindsay Kurrle's acknowledgement of our receipt of the two public records requests you emailed last Thursday, August 20, 2020, pertaining to the State records related to Jay Peak Resort's EB-5 projects.

In summary, you attached two separate requests to your email, one involving seeking all communications between ACCD employees concerning two records requests you made – one in 2015 and one in 2016. The second attached request involves records of communications regarding Jay Peak Resorts EB-5 project on which Lawrence Miller was included in 2011-14. A copy of your email request is attached for reference.

### First Attached Request

The first part seeks all communications between ACCD employees on the subject of your June 26, 2015 request that had sought communications concerning Rapid USA from February 1 to May 31, 2012 among and between the individuals listed below:

Lawrence Miller  
John Kessler  
James Candido  
Bill Kelly  
Bill Stenger  
Ariel Quiros  
Ed Carroll  
Mark Scribner

The second part seeks all communications between ACCD employees on the subject of your December 30, 2016 request that had sought communications not already provided to VTDigger concerning Rapid USA from February 1 to May 31, 2012 among and between James Candido and the developers of Jay Peak and their associates, including Ariel Quiros, Bill Stenger, Bill Kelly, George Gulisano and Douglas Hulme.

### Second Attached Request

This separate request also has two parts covering 2011-14. The first part seeks all communications on which Lawrence Miller was included concerning a number of Jay Peak Resort EB-5 projects. The second part seeks all communications on which Lawrence Miller was included concerning three persons tied to Jay Peak Resort EB-5 projects.

The first part seeks all communications on which Lawrence Miller was included concerning:



1. the AnC Bio Vermont project
2. the EB-5 consulting firm Rapid USA Visas
3. the Hotel Jay project, including but not limited to the offering memoranda provided to the Jay Peak Hotel Suites L.P. investors and to the Jay Peak Hotel Suites Phase II L.P. investors and the memoranda of understanding between the EB-5 Regional Center and the following: (a) Jay Peak Hotel Suites L.P. and (b) Jay Peak Hotel Suites Phase II L.P.
4. the Jay Peak Penthouse Suites L.P. project, including but not limited to the offering memorandum provided to Jay Peak Penthouse Suites L.P. project investors and the memorandum of understanding between the EB-5 Regional Center and Jay Peak Penthouse Suites L.P.
5. William Stenger, Alexandra MacLean or Douglas Hulme

The second part of this request seeks all communications on which Lawrence Miller was included concerning:

- a. William Stenger, including from the following email: [bstenger@jaypeakresort.com](mailto:bstenger@jaypeakresort.com)
- b. Alexandra MacLean, including from the following emails: [Alex.MacLean@state.vt.us](mailto:Alex.MacLean@state.vt.us); [allymac9@gmail.com](mailto:allymac9@gmail.com); [amaclean@jaypeakresort.com](mailto:amaclean@jaypeakresort.com); [alex@asm-strategies.com](mailto:alex@asm-strategies.com); and [alex@advancehumanity.com](mailto:alex@advancehumanity.com)
- c. Douglas Hulme, including from the following emails: [hulmedouglas@yahoo.com](mailto:hulmedouglas@yahoo.com); [rapidusa@gmail.com](mailto:rapidusa@gmail.com); [rapidvisa@gmail.com](mailto:rapidvisa@gmail.com); and [rapidusavisa@predictiveresponse.net](mailto:rapidusavisa@predictiveresponse.net)

The records identified in your request are relevant to pending litigation concerning ACCD and its administration of the State's EB-5 program which are the subject of the plaintiffs' claims in *Sutton v. Vermont Regional Center, et al.*, Supreme Court Docket No. 2018-158. As this case is still open, the records you request are exempt from public disclosure under 1 VSA 317(c)(14), provided that they shall otherwise be available as allowed under the Public Records Act upon termination of the litigation, or earlier if ruled discoverable by a court.

As you are likely aware, the determination that pending litigation exception to public disclosure applies is a decision that you may appeal to the head of the agency, Secretary Lindsay Kurrle, pursuant to 1 VSA 318(c)(1). If you have any additional questions, please feel free to call me to discuss them.

Thank you.

JK

# EXHIBIT L

## Heather Elyse Murray

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**Subject:** Appeal of Aug. 25, 2020 denial  
**Attachments:** 2020.9.8\_Response to Public Records Act Denial (1).pdf

**From:** Anne Galloway <[agalloway@vtdigger.org](mailto:agalloway@vtdigger.org)>  
**Date:** September 15, 2020 at 7:20:39 AM EDT  
**To:** "Kurrle, Lindsay" <[lindsay.kurrle@vermont.gov](mailto:lindsay.kurrle@vermont.gov)>, "Kessler, John" <[John.Kessler@vermont.gov](mailto:John.Kessler@vermont.gov)>  
**Subject:** Appeal of Aug. 25, 2020 denial

Dear Commissioner Kurrle and General Counsel Kessler:

Please find the attached appeal to the ACCD denial of VTDigger's Aug. 25, 2020, records request.

Best,  
Anne

September 8, 2020

One National Life Drive  
Deane C. Davis Building, 6<sup>th</sup> Floor  
Montpelier, VT 05620-0501

Re: Appeal of Public Record Request Denial Pursuant to 1 V.S.A. § 315 *et seq.*

Dear Secretary Lindsay Kurrle:

I write on behalf of the Vermont Journalist Trust to appeal the Aug. 25, 2020 denial of its public record request for certain communications to, from or copying former Secretary of the Agency of Commerce and Community Development Lawrence Miller. The requested communications involve: (1) EB-5 development projects overseen by William Stenger and Ariel Quiros; (2) an EB-5 consulting firm; or (3) Stenger, Alexandra MacLean or Douglas Hulme. In the denial, Mr. Kessler asserted that all responsive records are exempt from public disclosure under 1 V.S.A. § 317(c)(14), because the records are relevant to pending litigation brought by defrauded EB-5 investors against the ACCD and various state employees. That litigation centers on the State's oversight of EB-5 projects led by Stenger and Quiros and alleged misrepresentations involving those projects. *See Sutton v. Vermont Regional Center, et al.*, Docket No. 2018-158 (Vt.).

The reliance on the litigation exemption here runs counter to the general rule that exceptions to the Public Records Act ("PRA") must be construed "narrowly to implement the strong policy in favor of disclosure." *Finberg v. Murmane*, 159 Vt. 431, 436 (1992). That strong policy in favor of disclosure is particularly apt here, where the requested records would aid VTDigger in its investigative reporting on a matter of critical import to Vermont residents: What the State of Vermont and high-ranking officials overlooked or should have known about the EB-5 projects at issue before it became apparent that they funded an elaborate Ponzi-like scheme that allowed Quiros and Stenger to misappropriate hundreds of millions in investor funds.

The PRA recognizes that "[o]fficers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment." 1 V.S.A. § 315(a). The law expressly acknowledges that balance between personal privacy and government oversight tips in favor of holding government officials accountable for their official actions. *Id.* For example, the Vermont Supreme Court relied on § 315 of the PRA in ordering disclosure of records the Rutland Herald requested to determine whether city police officers had been viewing pornography at work. *See Rutland Herald v. City of Rutland*, 2012 VT 26. The Court found that the public interest in disclosure was particularly relevant "in learning about the operations of a public agency . . . and in having information openly available to them so that they can be confident in the operation of their government" as well as to "an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner." *Id.* at ¶ 35. Here, the Vermont Journalist Trust, like the Rutland Herald, aims to hold government officials accountable with its request for the Miller communications, a goal which goes to the heart of the PRA's purpose.

To that end, the Vermont Supreme Court has cautioned that any assertion of the litigation exemption that would lead to prolonged deprivation of the documents to the press or the public cannot be supported by the purpose of the statute. *See Shlansky v. City of Burlington*, 2010 VT 90, ¶ 14. What the

litigation exemption is designed to do is to avoid “an end-run around discovery rules” and thereby allow a court to retain control over document production issues. *Id.* at ¶ 8. But withholding here doesn’t serve the purpose of the litigation exemption because the Vermont Journalist Trust is not a party to the litigation seeking to do an end-run around discovery rules. It is simply trying to inform the public about what State officials are doing, “so that they can be confident in the operation of their government” going forward. *Rutland Herald*, 2012 VT at ¶ 35.

The litigation exemption is not designed to endlessly thwart the press’s and the public’s right to know what their elected officials are doing while the litigation continues indefinitely. By asserting this exemption in connection with the investors’ litigation against the State in *Sutton v. Vermont Regional Center, et al.*, Docket No. 2018-158, which has been ongoing since 2017, the State is encouraging an indefinite delay in producing these documents that prevents all public accountability of the State’s actions and is, thus, contrary to the intent of the legislature and the stated purpose of the PRA.

I respectfully ask that you reverse the denial of the Vermont Journalist Trust’s public records request. Note that you are required to make a written determination with respect to this appeal within five business days. 1 V.S.A. § 316(a)(3). If that determination is a denial, the determination must include the asserted statutory basis for denial and a brief statement of reasons and supporting facts for denial. 1 V.S.A. § 316(c)(1).

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Galloway", written in a cursive style.

Anne Galloway

# **EXHIBIT M**

## Heather Elyse Murray

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**Subject:** ACCD Decision on Appeal  
**Attachments:** Official Fee Schedule for Copying Public Records.docx

**From:** "Kessler, John" <[John.Kessler@vermont.gov](mailto:John.Kessler@vermont.gov)>  
**Date:** September 29, 2020 at 4:59:32 PM EDT  
**To:** "Galloway, Anne" <[agalloway@vtdigger.org](mailto:agalloway@vtdigger.org)>  
**Cc:** "Kurrle, Lindsay" <[lindsay.kurrle@vermont.gov](mailto:lindsay.kurrle@vermont.gov)>  
**Subject:** ACCD Decision on Appeal

Anne

I am writing in regard to your two separate public records requests dated August 20, 2020 related to the state's administration of the EB-5 program and that were denied by ACCD on August 25, 2020 based on the pending litigation exception in 1 VSA 317(c)(14) and then subsequently appealed by your email dated September 15, 2020.

As explained yesterday to VTDigger's Alan Keays in response to his request concerning the Trapp EB-5 project, all ACCD could do differently than withholding EB-5 records under the pending litigation exception would be to examine each record in the scope of your request to determine if the content falls outside that exceptions and any other that may apply – personal or private financial information under 1 VSA 317(c)(7), trade secrets under 317(c)(9), or executive or attorney-client or executive privilege. Our overarching concern would be the 317(c)(14) exception based on the pending *Sutton* litigation in Vermont Superior Court.

While I could review all of the records within the scope of your request, my concerns are 1) that my time and effort would generate a significant cost to VTDigger under the attached Fee Schedule and 2) any records determined not exempt from production under the pending litigation exception of 317(c)(14) might likely be on matters of no substantive value to your interest or records that have already been made public previously.

At this time, the fairest response we can make is to deny your request as seeking records exempt from public disclosure under 1 VSA 317(c)(14) related to the pending *Sutton* litigation to which the State remains a party and is still actively defending. The specific people and subject matter described in your request involves state and private people who worked on various aspects of Jay Peak EB-5 projects that relate to the operation of the Vermont EB-5 Regional Center. If you would wish to pay the cost of parsing the records yielded by your request and having us produce the potentially very small number not relevant to pending litigation or exempt under any other exception to disclosure, please let me know. Please understand that I do not want to take a disingenuous approach of first generating a significant expense for you by reviewing records which in the end will produce nothing of interest to you.

We will consider this a final decision on your request unless you reply with an offer to pay the costs necessitated by the review and withholding/redaction required to produce records not relevant to the pending *Sutton* litigation or otherwise exempt from disclosure under listed exceptions in the Public Records Act.

Thank you.



## **Official Fee Schedule for Copying Public Records (PDF format)**

Under 1 V.S.A. 316(d) the secretary shall adopt, by rule, a uniform schedule of public record charges for state agencies. The current rule was adopted November 14, 2003 and became effective on December 1, 2003. The schedule also applies, under 1 V.S.A. 316(e), to political subdivisions whose legislative bodies have not adopted a uniform schedule. The schedule does not apply to public records governed by fees otherwise established by law.

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### **UNIFORM SCHEDULE OF PUBLIC RECORD CHARGES FOR STATE AGENCIES**

Pursuant to 1 V.S.A. 316(d) and Acts 1996, No. 159 section 1, the following fees are established as the actual cost of providing a copy of a public record:\*

1. For staff time involved in physically duplicating a record, \$.33 per minute after the first 30 minutes.
2. For senior-level staff time, and information technology specialists' time spent extracting data from databases or performing similar tasks necessary to comply with a request to create a new public record, \$.57 per minute.
3. For any other staff time for which cost can be charged and collected under this section, \$.45 per minute.
4. For photocopies, \$.05 per single-sided page, \$.09 per double-sided page for pages up to 8.5 by 14 inches.
5. For color photocopies, \$1.00 per single-sided page.
6. For computer-generated paper copies, \$.02 per page for pages up to 8.5 by 14 inches.
7. For computer diskettes, \$.28 each for 3.5-inch diskettes.
8. For compact discs, \$.86 each for write-once CD w/case, \$2.31 each for re-writable CD w/case.
9. For audio tapes, \$.81 each.
10. For video tapes, \$1.69 each.
11. For DVD's, \$2.00 each for write-once DVD w/case, \$4.00 each for re-writable DVD w/case.

\* Note: that there are fees for copies of public records that are established by statute that may override the fees established by this schedule.

Please direct all reference questions or research inquiries to:

**VSARA Reference Room Staff**

EMAIL: [archives@sec.state.vt.us](mailto:archives@sec.state.vt.us)

PHONE: 802-828-2308

*This page was last updated on: 2009-03-06.*