UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
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DIVISION OF
ENFORCEMENT

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September 3, 2015

BY EMAIL/UPS

The Honorable Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 1090
Washington, DC 20549

Re: ***Matter of Michael W. Crow, et al.*, File No. 3-16318**

Dear Judge Patil:

I write regarding the Division's post-hearing Findings of Fact ("FOF/COL") and Brief dated August 31, 2015. In reviewing these voluminous submissions, we noticed some inadvertent typographical errors and incorrect citations, and respectfully request the opportunity to file corrected submissions.

I have attached to this letter a list of our corrections to the FOF/COL and Brief dated August 31, 2015. We are filing with this letter corrected versions of the FOC/COL and Brief, which are dated September 3, 2015, which incorporate the edits on the attached list.

We respectfully request that the Court substitute today's filings for those dated August 31, 2015. We apologize to the Court and to the Respondents for any inconvenience this has caused.

Respectfully submitted,

/s
David Stoelting

cc: Mark C. Perry
Michael W. Crow

Encl.

In the Matter of Michael Crow et al.
AP File No. 3-16318
Division's Proposed Findings of Fact; Post-Hearing Brief
List of Corrections dated September 3, 2015

Findings of Fact

Para #	ORIGINAL	CHANGED TO
COVER PAGE	DIVISI●IN	DIVISION
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65	three	four
118	2102	2012
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198	not	not know
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220	5.4.12 Clug to Menge email	5.5.12 Lana to Menge email, Crow and
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263	which we "broken down."	which were "broken down."
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290	43-110	43-101
295	"inferred	to "inferred
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344	19, 2014	9, 2014
344	Id.	Div. Ex. 3A-25 (Yanez Exhibit 20)
345	Div. Ex. 3A-24	Div. Ex. 3A-25
347	After "During Crow's testimony…" is under seal and should be redacted for OS	
352		October
354, line 6		
358	"any pay	and
363, 364, 365, 366	Delete – should read: 363-366. Deleted.	
369	Agreement signed by Clug on 24	Agreement dated January 21
376		
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436	was terminated	
472	and to PanAm	and not to PanAm
557	a Citibank account controlled by Crow and	Citibank accounts controlled by Clug
558	less and	less than

Post-Hearing Brief

Page 20 – Citation form corrected:
SEC v. Pittsford Capital Income Partners, L.L.C., No, 06 Civ. 6353, 2007 WL 2455124 *11 (W.D.N.Y. Aug. 23, 2007), *aff'd, in part and app. dismissed in part*, 305 Fed.Appx. 694 (2d Cir. 2008)

Page 31 – Citation form corrected:
SEC v. Teo, 746 F.3d 90, 104 (3d Cir. 2014), *cert. denied*, 135 S. Ct. (2014).

Page 20 – Citation to *Kowal v. IBM* deleted (incorrect quote).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16318

In the Matter of

MICHAEL W. CROW,
ALEXANDRE S. CLUG,
AURUM MINING, LLC,
PANAM TERRA, INC., and
THE CORSAIR GROUP, INC.,

Respondents.

DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Dated: Sept. 3, 2015
[as corrected from August 31, 2015 submission, per Division's letter dated September 3, 2015]

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Pursuant to Commission Rule of Practice 340 and the Post-Hearing Order dated July 31, 2015, the Division of Enforcement respectfully submits its Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACTS

I. CROW'S 1998 AND 2008 DISTRICT COURT JUDGMENTS AND INDUSTRY BARS IMPOSED IN ADMINISTRATIVE PROCEEDINGS

1. On September 24, 1996, the SEC filed a complaint in the U.S. District Court for the Southern District of California against Michael W. Crow. Div. Ex. 684 at 1 (1996 Complaint). The 1996 Complaint alleged that Crow, as President and Chairman of the Board of Wilshire Technologies, Inc., a public company, had "caused Wilshire to materially overstate its earnings, to issue materially misleading press releases and to file materially misleading periodic financial reports with the Commission." Div. Ex. 684 at 2. The 1996 Complaint further alleged that Crow, "while in possession of material, non-public information regarding Wilshire's overstatement of earnings, sold Wilshire shares and thus avoided losses that he would have incurred if the market had received accurate information about Wilshire." Div. Ex. 684 at 2-3.

2. On April 16, 1998, the District Court entered a *Judgment of Permanent Injunction and Other Relief Against Defendant Michael W. Crow* ("1998 District Court Judgment"), which, among other things, provided that "Crow . . . is permanently barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o]." Div. Ex. 685 at 5-7. In addition, the 1998 District Court Judgment permanently enjoined Crow from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities

Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 12b-20, 13a-13, 13b2-1 and 13b2-2 thereunder. Div. Ex. 685 at 3-5.

3. The 1998 District Court Judgment further required Crow to "pay disgorgement in an amount of $1,248,444 . . . [and] prejudgment interest on the amount of the disgorgement in the sum of $225,773." Div. Ex. 685 at 7. It did not, however, require Crow to pay such disgorgement because of the payment by Crow, in the form of a stock transfer, to settle a related class action lawsuit, *In re: Wilshire Technologies Securities Litigation,* 94-cv-0400-B (S.D. Cal.), against Crow and Wilshire Technologies, Inc. *Id.* Crow consented to the entry of the 1998 District Court Judgment without admitting or denying the allegations in the 1996 complaint. Div. Ex. 685 at 2-3.

4. On April 22, 1998, the Commission issued an *Order Instituting Proceedings*, with Crow's consent, denying Crow the privilege of appearing or practicing before the Commission as an accountant. Div. Ex. 800 (Joint Stipulation of Facts) at 3.

5. On May 15, 2007, the Commission filed a complaint in the U.S. District Court for the Southern District of New York against Crow and others alleging that, among other things, Crow acted as an unregistered principal of Duncan Capital LLC, a registered broker-dealer, in violation of Section 15(a) of the Exchange Act. Div. Ex. 687 (2007 Complaint); Div. Ex. 688 (8.17.07 Amended Complaint).

6. On November 5, 2008, after a seven-day bench trial, the District Court made certain findings of fact, including the following:

> There is no assurance that Crow can be trusted in the future to comply with securities laws. Crow has not acknowledged any wrongdoing. He had been enjoined once already and has acted in breach of the terms of that consent agreement with the SEC. In his actions at the Duncans, he has demonstrated a willingness to disregard the advice of counsel and he took steps to cover up what he was actually doing. His conduct was egregious and he acted with scienter. In addition, he perjured himself in this court.

Div. Ex. 689 at 4.

7. On November 13, 2008, the District Court issued a *Final Judgment as to Defendants Michael W. Crow, Robert David Fuchs, Duncan Capital LLC, Duncan Capital Group LLC and Relief Defendants* ("2008 District Court Judgment"). The 2008 District Court Judgment enjoined Crow from aiding and abetting violations of Sections 15(a), 15(b)(1), 15(b)(7) of the Exchange Act and Rules 15b3-1 and 15b7-1 thereunder; and ordered Crow to pay $6,996,103.87 in disgorgement and prejudgment interest, jointly and severally with others, along with a civil monetary penalty of $250,000. Div. Ex. 690.

8. Crow never made any payments toward the disgorgement, prejudgment interest and civil penalty owed under the 2008 District Court Judgment.

9. On December 12, 2008, the Commission issued an *Order Instituting Proceedings* against Crow. Div. Ex. 692 at 1. Following a motion for summary disposition filed by the Division of Enforcement, the Administrative Law Judge issued an *Initial Decision as to Michael W. Crow* dated April 22, 2009 (the "2009 Initial Decision"), which stated that:

> Crow's actions were egregious on their face, a fact affirmed by the findings [of the District Court] following a lengthy bench trial, and the almost five-and-a-half million dollars in disgorgement [the District Court] ordered, exclusive of prejudgment interest. Based on evidence from Crow and others, [the District Court] found that Crow acted with scienter and that he perjured himself in court. Crow's actions were not isolated, but continued for over a year, and followed separate proceedings in 1998 where a federal district court enjoined him from future antifraud violations and barred him from serving as an officer or director of a public company, and the Commission, in an administrative proceeding, denied him the privilege of appearing before the Commission as an accountant. Crow's conduct demonstrates that he is an unreformed recidivist who poses a serious future threat to the investing public.

Div. Ex. 692 at 5 (2009 Initial Decision).

10. Based on its findings of fact and conclusions of law, the 2009 Initial Decision ordered that "Michael W. Crow is barred from association with any broker, dealer or investment adviser." *Id.*

11. On May 29, 2009, after Crow's time for filing a petition for review expired, the 2009 Initial Decision became "the final decision of the Commission with respect to Michael W. Crow." Div. Ex. 693. (Notice That Initial Decision Has Become Final).

II. CROW'S JANUARY 2010 CHAPTER 7 BANKRUPTCY FILING

12. On January 22, 2010, Crow filed a Voluntary Petition in the U.S. Bankruptcy Court for the Southern District of California under Chapter 7 of the Bankruptcy Code. Div. Ex. 691.

13. Crow's Voluntary Petition listed assets of only $27,997.81 in "personal property" and liabilities of $11,516,291. Div. Ex. 691 at 4. Crow's listed liabilities – in addition to the $7.2 million owed under the 1998 District Court Judgment – include:

a. "business judgment" for $500,000;

b. "judgment on business loan guaranty" for $502,140;

c. "judgment on guaranty of business loan" for $1 million;

d. two "guarant[ies] of business line of credit" totaling $300,000;

e. "judgment on guaranty of business real property lease for $80,000;

f. an "alleged business loan" of $30,000;

g. three "business loans" totaling $330,000;

h. "alleged sales tax owed by ZipDirect, Inc." of $10,000 owed to the State of Calif.;

i. "personal property tax" of $68,000 owed to San Diego County;

j. "income tax" of $96,000 owed to the Franchise Tax Board;

k. $677,000 in legal fees to several law firms; and

l. "spousal support, child support" of $472,000 owed to Crow's first two wives.

Div. Ex. 691 at 16, 19-26.

14. On January 20, 2012, the Bankruptcy Trustee filed a Complaint for Avoidance and Recovery of Fraudulent Transfers, Preferences, Post-Petition Transfers, Turnover of Property of the Estate and Disallowance of Claims. Div. Ex. 804. Crow, Corsair and the M.W. Crow Family L.P. were named as defendants. Div. Ex. 804 at 3-4. An Amended Complaint was filed on June 13, 2012. Div. Ex. 806.

15. As of August 28, 2015, Crow's Bankruptcy Petition had not been discharged, and the Trustee's fraudulent transfer proceeding against Crow had not been resolved.

III. CLUG WORKED UNDER CROW AT CROW'S NEW YORK-BASED FIRM FROM 2005 THROUGH ITS LIQUIDATION IN 2009

16. Alexandre Clug graduated from the United States Military Academy at West Point in 1991 with a degree in Electrical Engineering, and completed his military service in 1995. Tr. 1462:18-25; 1464:10-16.

17. In 1999, Clug obtained an M.B.A. from the Anderson School of Management at UCLA, and then worked in Venezuela for several years for a telecommunications company. Tr. 1463:3-4; 1463:14-1464: 7.

18. In 2005, Clug, who "always wanted to get into private equity finance," was introduced to Crow. Tr. 1465:1-10. Clug relocated to New York to become Chief Operating Officer of DC Associates, which Clug testified was "the management company that managed [an] offshore-onshore master feeder structure." Tr. 1466:1, 4-9.

19. Clug reported to Crow at DC Associates. Tr. 1467:5-6. During this time, Crow told Clug about the 1998 District Court Judgment. Tr. 1469: 10-15 (Clug: I do remember Mr.

Crow explaining briefly to me what it was about, that it was a consent decree. He was going through a divorce at the time. And it was neither agree, nor disagree type decision. And also, of course, he couldn't be a director or officer of a public company.").

20. After the 2008 District Court Judgment, Crow resigned from DC Associates. Tr. 1471:18-25 (Clug: "I do think [Crow] might have disclosed that [the 2008 District Court Judgment] as part of the reason he resigned, to let the company and me focus on liquidating without being distracted because of [the 2008 District Court Judgment].")

21. Clug testified that he "stayed around to help liquidate whatever was left and distribute pro rata to all of the investors. . . . until basically there was zero left in the account and then just closed out everything." Tr. 1468:5-9.

22. In 2009, Clug moved to Miami to "continue finishing the liquidation of DC Associates." Tr. 1472:18-1473:2.

IV. IN EARLY 2010, CROW AND CLUG TEAMED UP AGAIN

23. Shortly after his bankruptcy filing in early 2010, Crow sent to Clug a "Memo to Alex . . . to get us started again." Div. Ex. 810. According to Crow's written proposal, Clug would "act as my right hand man in most matters with emphasis on making sure deals are tracking and being fulfilled, operations, so we have recurring revenue. MC will concentrate more on sales and deals." *Id.*

24. Crow concealed his bankruptcy filing from Clug. Tr. 1474:22-1475: 4 (Clug: "Q. At this time, were you aware that in January 2010, Mr. Crow had filed a personal Chapter 7 bankruptcy petition in the bankruptcy court in California? A. No, I was not. Q. He didn't tell you that? A. I think I found out later. I just don't think I knew at that time.").

25. Clug testified that Crow did not tell him about the bankruptcy until "about the time just before I got deposed in his bankruptcy." Tr. 1475:12-13. Clug's deposition in the bankruptcy took place in January 2012. Div. Ex. 805-16 (Bankruptcy Docket 131 dated January 12, 2012: Application for an Order to take Clug's deposition); Tr. 1475:16-18 (Clug: "Q. You gave testimony in the context of Mr. Crow's adversary proceeding right? A. Bankruptcy proceeding.").

26. In April 2011, Crow and Clug formed Aurum Mining LLC ("Aurum"), a Nevada limited liability company. Div. Ex 62 at 3 (Aurum LLC Agreement).

27. Aurum's nonvoting Class A Membership Units were offered to investors from 2011 through 2013. Aurum's Class B Membership Units have all of the voting rights. The Class B Units were held by Crow through his company Raven Holdings LLC, and Clug through his company Dolphin Group LLC. Div. Ex. 62 at 27, 29 (LLC Agreement).

28. The PPMs identify Crow, Clug and Lana as the Managers of Aurum. The PPMs state that "[t]he Managers are responsible for the management of the Company and have discretionary investment authority over the Company's assets." Div. Ex. 68 at 7 (August 2011 PPM). *See also* Div. Ex. 62 at 12 (Aurum LLC Agreement: "The business and affairs of the Company shall be managed by the Managers.").

29. In April 2011, Crow and Clug formed The Corsair Group, Inc. ("Corsair"), a Florida corporation. Crow and Clug owned and controlled Corsair. Div. Ex. 800 at 2.

30. In an Advisory Agreement dated June 1, 2011, Aurum engaged Corsair "to act as financial and management consultant to [Aurum]." Resp. Ex. 7. The Advisory Agreement required Aurum "pay to Corsair a monthly retainer fee" of $25,000 "while the Company's

operations are not generating revenue." Resp. Ex. 7 at 3. Crow signed the Advisory Agreement as Chairman of Corsair and Clug signed as CEO of Aurum. Resp. Ex. 7 at 8.

31. From February 2012 through November 2013, Aurum paid $625,000 to Corsair. Div. Ex. 2A at 17 (Celamy Ex. 12).

V. CFO ANGEL LANA'S PRIMARY ROLE WAS TO RAISE FUNDS FOR AURUM

32. Angel E. Lana ("Lana") is 57 years old and lives in Boca Raton, Florida. Tr. 808:15-18. In 1980, Lana graduated from Florida State University with a B.S. in Accounting. Tr. 808:23-25. In 1981, Lana became a Certified Public Accountant ("CPA") in Florida. Tr. 808:25-809:1. After a few years working at CPA firms, Lana started a solo practice preparing tax returns. Tr. 809:18-810:6.

33. Prior to 2010, Clug knew Lana as the CPA who prepared his father's tax returns for more than 20 years. Tr. 814:14-23 (Lana: "Q. [U]nder what circumstance did you [] first meet Mr. Clug? A. I'm the tax preparer for his father for many years, and I met him, basically, through his father.").

34. In late 2010, Lana and Clug met at The Cheesecake Factory in Boca Raton. Tr. 815:19-21. Clug explained to Lana his plans for "an investment having to do with agricultural real estate in South America," and Clug asked Lana if he "would be willing to be part of the company . . . perhaps a CFO role." Tr. 816:4-9. Lana told Clug he was interested. Tr. 816:18-20.

35. Sometime thereafter, Clug told Lana about Aurum, which Clug described to Lana as "a gold mining operation in Latin America, primarily involved with tailings and/or surface mining." Tr. 818:4-8.

36. Before Lana became Chief Financial Officer ("CFO") of Aurum, Lana had never been CFO of any public or private company and had never worked in the finance department of any company. Tr. 816:11-17 (Lana: "Q. Up until that point, had you ever been Chief Financial Officer of any company, public or private? A. No. Q. Have you worked -- ever worked in the finance department under a CFO of any company public or private? A. No").

37. Lana neither asked for nor received compensation for serving as Aurum's CFO. Tr. 895:13-21. (Lana: "Q. [W]ere you ever compensated monetarily for your work as CFO for Aurum Mining? A. No. Q. Did you ever receive any compensation for all the investors that you brought in to Aurum Mining LLC? A. No. Q. Did you ever ask for any compensation? A. No.").

38. Lana knew nothing about mining or geology. Tr. 818:9-16 (Lana: "Q. [U]p until that point, did you have any background in mining? A. None. Q. Or geology? A. None. Q. Had you ever studied or read anything at all about mining or geology? A. Not prior to that.").

39. Lana never went to South America. Tr. 851:15-17 (Lana: "Q. Did you ever go to Brazil or Peru between 2010 and now? A. I've never been in those countries.").

40. Despite being CFO of Aurum, Lana had no control over its bank accounts. Div. Ex. 2A-21 (Celamy Ex. 16); Tr. 831:24-25; 832:8-10 (Lana: "I never had any signing authority over any bank account." "Q. Did you have any authority on your own to transfer funds in or out of any Aurum bank account? A. I did not.").

41. Crow and Clug had exclusive control of Aurum's bank accounts. Div. Ex. 2A-21 (Celamy Ex. 16); Tr. 832:1-7 (Lana: Q. [W]ho controlled the bank accounts for Aurum Mining? A. Well, to the best of my knowledge, Alex and Michael. Q. Okay. Anyone else? A. Not that I know of.").

42. Lana had no authority to pay debts or invoices of Aurum. Tr. 834:1-7 (Lana testimony).

43. Clug told Lana about Crow's 2008 District Court Judgment. Div. Ex. 751 (4.11.11 Clug to Lana, forwarding the 2008 SEC press release as to Crow: "FYI – admin issue, no fraud"); Tr. 819:12-820:12.

44. Lana testified that "[a]t some point I remember being told about [Crow's Chapter 7 bankruptcy filing]." Tr. 820:13-18 (Lana testimony).

45. When Clug was preparing Aurum's first private placement memorandum, Clug told Lana about the $1 million raise and that "[w]e're going to need to raise the money . . . perhaps you [Lana] can present this to some of your clients, your accredited investor clients." Tr. 821:4-11 (Lana testimony).

46. Lana had never before given any of his tax clients investment advice; nevertheless, Lana agreed to speak with his clients about investing in Aurum. Tr.821:15-822:1 (Lana testimony).

47. Crow and Clug did not initially expect that Lana's clients would be the primary investors in Aurum. In a June 27, 2011 email to Clug, Crow listed various sources that he expected to contribute millions to Aurum:

> Damato group could do full million... 1,000k
> mickelson 500k (this could be a lot higher if we want)
> your guys with angel 100k from last round plus 150k new
> carlos and a few key guys 250k
> total 2mm
>
> wild cards
> carlos investors can do 1-10mm
> friedland capital 1-10mm
> Corinthian capital 1-10mm
> other groups i am starting [to] ask with more on corsair pitch but gold interests everyone.

Div. Ex. 64 at 1 (6.27.11 Crow to Clug email).

48. None of the potential sources listed in Crow's June 27, 2011 email invested in Aurum. Div. Ex. 2A at 4 (Celamy Ex. 1) (list of Aurum investors).

49. Clug emphasized to Lana the importance of securing "strategic investors," which meant investors who could recommend Aurum to other investors. Div. Ex. 64 at 2 (6.27.11 Clug to Crow email: "Let me see again how strategic Angel's guys are . . . and let's review as it make more sense to allocate more to them than $100K"); Tr. 826:19-21 (Lana: "I think strategic investor we were referring to an individual who may know other people who would be willing to invest.").

50. Lana relied primarily on Clug for information about Aurum. Tr. 843:1-4 (Lana: "Q. Who were your primary -- who were your sole contacts at Aurum Mining in terms of what was happening with the company in South America? A. Well, it was primarily Alex.").

51. Lana's knowledge of Aurum's business was provided by Crow and Clug. Tr. 851:18-22 (Lana: "Q. Did you have any personal knowledge yourself, apart from what you heard from Alex and Michael about production at the -- at what they were calling the mine? A. No."); Tr. 1168: (Crow: "Q. [T]he only information that Angel had about Aurum Mining came from information provided by you and Alex, right? A. That and the financial statements which he would, I believe, would get directly from -- I guess that was from Alex too as part of the process.").

52. On April 28, 2011, for example, Lana emailed a potential investor about the Brazil "Gold Project," stating that "[t]hese are the representations made to me by my client," that:

1. Use of proceeds – (a) $1 million for 1st line of equipment (for 20 tons per hour of production) (b) $3 million for remaining lines of equipment (for 80 tons per hour of production) (c) $1 million for working capital. None of the proceeds go to the principals.

. . .

2. Total amount invested by the principals – approximately $750,000.

3. Commencement for production – approximately 3 months from the funding date.

Div. Ex. 45 (4.28.11 Lana to "Walter" email, then forwarded to Clug "[p]er our discussion I answered the items below for Walter"). *See also* Tr. 822:24-823:7 (Lana: "Q. When you say Walter, these are the representations made to me by my client, who is your client that you are referring to? A. Well, the client was, I guess, Aurum Mining and Alex. Q. So those points, one, two, three, what you're saying here is, those things were told to you by Mr. Clug? A. Yes.").

53. On May 31, 2011, Lana emailed Clug a list of eight "investors I have attained." Div. Ex. 59. Lana identified Simon Stern as "very well connected and therefore a 'strategic' investor" and Mitchell Melnick as "a 'strategic' investor as he knows many potential investors." *Id.*

54. On a regular basis from 2011 through early 2014, Lana kept Crow and Clug informed regarding his contacts with investors and potential investors. Div. Ex. 73 (8.23.2011 Lana to Clug: "I am holding $70,000. On Friday I will obtain an additional $35,000. Early next week I will have another $13,000. So $118,000 is assured. I have a 75% chance of another $25,000 with a client that I will meet next week."); Div. Ex. 218 (1.11.2012 Lana to Clug, Crow re "three pending" investors due to sign "Acceptance of PPM"); Div. Ex. 429 at 1 (7.5.12 Lana to Clug email: "Met two new potential investors today. They appear to want to invest at least $150,000-$300,000 in Aurum. They are very serious, this is not iffy."); Div. Ex. 517 (6.12.12 Lana to Clug, Ross email: "I have commitments from 2 individuals (previous investors) for

$25,000 each, must move fast"); Div. Ex. 533 (1.4.13 Lana to Clug/Crow email: "I just made a new contact with a possible investor for Aurum Mining, LLC.").

55. Lana organized meetings of his tax clients so that Clug could pitch Aurum to them. Tr. 131:6-14 (Stern: "[Lana] explained to me that there was going to be a meeting in Boca Raton at the Holiday Inn and a number of people were going to be there that were clients of his plus these people that were starting a business in the mining of gold and [Lana] said he would like me to come").

56. In 2013, Lana was "feeling good" about Aurum because he "thought we were going into production." Lana's belief, he testified, was "based primarily on representations from Alex." Tr. 880:13-22.

57. On July 25, 2012, Crow emailed Lana that Molle Huacan had "more than $2 million ounces," and that "[w]e are confident. Very. We will be mining there []in 30 days and by year[end] will start major production. Time to invest is now." Div. Ex. 441. When Lana asked Crow or Clug why this did not happen, they told him the issue was "[j]ust a series of delays for operational reasons . . . things were coming along, but slower[.] No problem . . . nothing to be concerned about." Tr. 883:25-884:13.

58. Crow and Clug told Lana that the geological reports for the Peru properties looked "very promising. . . very good." Tr. 884:14-22 (Lana: "Q. Did they ever say anything to you about the geological reports that they were receiving on the Peru properties? A. Yes. Q. What did they say? A. Very good. I mean, very promising. Q. Anything else? A. No. That they were very good. I mean, nothing to be concerned about.").

59. An NI43-101 report is a technical report prepared by a qualified independent geologist "describing all aspects of a mineral property" and that is required to be publicly filed

on SEDAR by mining and mineral exploration companies listed on the Canadian exchanges "for any property of merit." Div. Ex. 1 at 54; Tr. 720:6-13 (Moran testimony).

60. Lana understood that a NI 43-101 report "was critical" and that Clug wanted a NI 43-101 report "because it would enhance the credibility of the project." Tr. 885:24-886:4 (Lana testimony).

61. When Daubeny's NI 43-101 report was issued, Clug told Lana that the report's finding was that Molle Huacan "was a mine of interest. But in order to get . . . [an] inference of gold and everything, it would require more extensive 43-101 program, which would cost a lot more money." Tr. 885:15-20 (Lana testimony).

62. Lana told Melnick in the first half of 2013 that the results of the NI 43-101 were "disappointing" and "didn't confirm previous geological reports." Tr. 81:5-22 (Melnick: "Q. [Y]ou . . . recall[] the discussion with Mr. L[a]na subsequent to the January 2013 investment regarding a 43101 on [Molle Huacan]? A. Yes. . . . [Lana] told me that he had found out, at least verbally, that the -- in his mind anyway, the results were disappointing. They didn't confirm previous geological reports. . . .Q. And this conversation with Mr. Lana . . . [was] sometime in the first half of 2013? A. Yes.").

63. In early 2013, Lana had several conversations with Richard Weissman about Aurum. In those conversations, Lana "was consistent that [Aurum] was going to produce cash flow very quickly, that they were going to do a public offering in Canada, that it would create liquidity for the investors, but in the worst case, it was going to be a tremendous amount of cash flow from the investment." Tr. 307:18-308:1 (Weissman testimony).

64. Weissman testified that "Angel was very clear that they were doing mining at the time we were even considering the investment [January 2013]. . . . it was only a matter of time to produce gold." Tr. 308:22-309:1.

VI. REPRESENTATIONS BY CROW AND CLUG TO AURUM INVESTORS AND POTENTIAL INVESTORS

65. In numerous communications from 2011 through 2013 – including emails, a Term Sheet, four PPMs, Business Plans and Quarterly Reports – Crow and Clug told investors and potential investors in Aurum that: the first $1 million offering would not close unless certain conditions were satisfied; that gold reserves in Brazil and Peru had been identified; that land and mining rights in Brazil had been obtained by Aurum; that gold production and "cash flow" was imminent; that a public offering or merger was in the works; and that Aurum would comply with NI 43-101 reporting standards.

66. In addition, Crow and Clug provided investors gigantic profit projections. They told investors, for example, that investors could expect to "double your money" (FOF ¶72); receive "17x the original investment" (FOF ¶106); or receive 30 or 40 times the original investment (FOF ¶¶114, 117).

67. These representations (FOF ¶¶ 65, 66), contrasted sharply with the facts known to Crow and Clug at the time. As detailed below (FOF ¶¶167-367), Crow and Clug knew that their projections were baseless; that the closing conditions in the August 2011 PPM were not met; that land and mining rights in Brazil were never obtained; that their properties in Brazil and Peru were nothing more than unexplored lots, not actual mines; that significantly more exploration and testing was necessary before any gold resources could be established; that independent geologists had raised serious concerns about Aurum's in-house testing methods; and that their

hopes of any merger, IPO or joint venture were practically nil due to a negative NI 43-101 report.

68. Aurum investors believed that the representations in the PPMs, the Quarterly Reports and the Business Plan were truthful and accurate. Tr. 1548: 1-10 (Hollander relied on as accurate and truthful Crow and Clug's written information discussions); 1558: 25 – 1559: 5 (Hollander: "Q. When you made the investment, you reviewed that document [the PPM]? A. The entire thing, yes. Q. Did you at the time believe all the representations in it were truthful and accurate? A. Yes."); Tr. 60:17-23 (Melnick: "Q. [Y]ou understood that this PPM contains important information regarding your investment in Aurum Mining? A. Yes. Q. Did you believe that the PPM contained accurate and truthful information at the time? A. Yes. Q. Did anybody ever tell you that there was anything in this PPM that was not truthful and accurate? A. No.").

69. The funds invested in Aurum included "pension money" (Div. Ex. 356 - 4.27.12 Lana to Crow, Clug email re Menendez); retirement account funds (Tr. 1568:2-5, Paul Hollander); and, in one case, funds intended to benefit an investor's grandchildren (Tr. 176:8-11,_Stern).

A. Crow's and Clug's Emails

70. On March 29, 2011, Crow emailed a potential investor, Simon Leach, copying Clug, that he was "looking for an early bridge partner" and that he and Clug had "put [in] $120,000 cash ($60,000 left)." Div. Ex. 39.

71. Crow's email to Leach also stated that "[r]esults [in Brazil] are 4 grams/ton with a 49% interest having reserves of $440 million (using just 1 gram/ton)." Div. Ex. 39.

72. On April 25, 2011, Crow emailed Leach about "the gold deal" and stated that the deal carried "little risk and [an] ability to double your money each deal. Liquidity will vary but range would be from 6-18 months." Div. Ex. 42.

73. On May 21, 2011, Clug emailed another prospective investor, Chris Curtin, "a Term sheet outlining the investment" and a "short Aurum summary." Div. Ex. 55 at 1. The "short Aurum summary"– an early version of the Business Plan (*see* FOF ¶¶ 137-146) – stated that Aurum's Brazilian partner (Arthom) "owns and operated the gold mining land"; that "[w]e have indicated reserves of 105 tons on the property", which "equates to over $5 billion dollars worth of gold"; that "projected returns for investors . . . are estimated to be over 30 to 1 in six years. For example, a $100,000 investment, if the current projections are achieved, would return net cash of over $3,000,000 to the investor during the six year life of the mine." Div. Ex. 55 at 8-9.

74. The "short Aurum summary" attached to Clug's May 21, 2011 email also stated that "[w]e have no market risk in this project. All Aurum JV gold will be sold at market, payable immediately in cash, with the available cash distributed quarterly." Div. Ex. 55 at 9.

75. On May 25, 2011, Clug emailed Arnold Ferolito to solicit an investment in Aurum. Clug stated that Aurum would be "extracting and selling gold"; that Ferolito could expect "a return of over $5 million" from his $100,000 investment based on initial testing results of 1 g/t, but that "our testing has consistently shown results of 4.8 g/t, not 1 g/t, so . . . your $100K could return $48 million." Div. Ex. 56 at 1.

76. On May 27, 2011, Ferolito, who purchased a Senior Secured Convertible Note for $100,000, emailed Clug that "there are many scams going on in Brazil in regards to Gold mines." Div. Ex. 57 at 1. Clug responded that "I am indeed very aware of scams in Brazil . . .

Our funds are also being used to directly purchase the mining equipment and not going to any Brazilians etc." *Id.*

77. On May 31, 2011, Crow emailed Mitchell Manoff, a principal of Corinthian Partners (a broker-dealer), regarding "the gold deal we discussed." Div. Ex. 60 at 1. Crow further stated that "[w]e are putting in $200k to finish the reports, start initial work, and form the JV. The $1mm will go all for equipment to start production." Div. Ex. 60 at 1.

78. Crow also emailed Eric Donsky, a potential investor, on September 9, 2011, to say that "[t]he Aurum Deal is very strong and we would be very comfortable having you as a partner with a significant stake of $500k. We are very confident and will start closing after we get final test results and legal opinion on all matters." Div. Ex. 80 at 1.

79. Also on September 9, 2011, Crow emailed Eric Rice that "[t]he Aurum Mining gold deal is looking for $1.5mm, buying gold at about $30 an ounce equivalent with actual $1,800 an ounce (we have over 23 tons on first property). We put $100,000 inv receives first money back, then % return, such that its over $1,700,000 for that $100,000. . . Your money managers and families and celebs can easily put $100k each in and take a nice piece of this deal." Div. Ex. 79. Crow forwarded this email to Clug shortly after sending. *Id.*

80. In October 2011, Crow told potential investors that Aurum owned mines in Brazil that were in production. Div. Ex. 101 (10.7.2011 email from Ana Maria Rodriguez of JP Morgan Asset Management, copying Crow, stating: "... mining in South America . . . is exactly what Michael [Crow] is doing. I believe he already owns a couple of land parcels that are either in the process or already mining minerals out of Brazil.").

81. Crow emailed Ross on November 7, 2011, that he "ha[d] the Brazil Batalha deal done." Div. Ex. 129.

82. On November 7, 2011, Crow emailed Jeff Knepp that "[o]ur mining deals in Brazil are proceeding well and I am getting the balance sheet information we discussed. Our finance needs will be more modest to go into production – perhaps 2.5 million euros each. We have one property in Brazil and one in Peru that are permitted, owned, and NI 43101 technical reports in process (Canadian standard)." Div. Ex. 128 at 1.

83. On March 7, 2012, Crow emailed Cody Price that "our bus model is spot on at aurum. We closed on first Peru deal last week. One more in process . . . at least $1mm committed and in process, with big money conversations going on too." Div. Ex. 272.

84. On March 22, 2012, Clug emailed Price the Aurum PPM and stated that the PPM "obviously does not reflect the acquisition of our first mine in Peru.... They are both quick to production properties and we plan on moving to extracting gold there within several months. The PPM does not reflect recent negotiations that Michael has done during his recent trip to Brazil, improving our position there....The Independent Qualified Geologist already examined our first Peru project [Cobre Sur] and is now working on the NI 43-101 industry standard report. Div. Ex. 297.

85. On March 29, 2012, Clug solicited an investor using Aurum's December 2011 PPM stating: "[I]t (PPM) obviously does not reflect the acquisition of our two mines in Peru. They are both quick to production properties and we plan on moving to extracting gold there within several months. The PPM does not reflect recent negotiations that Michael has done during his recent trip to Brazil, improving our position there." Div Ex. 332 at 1-2. On April 5, 2012, in response to the investor's request for the geological reports, Clug wrote to the investor , cc Lana, Crow: "The [NI-43101] report for our first Peruvian property [Cobre Sur] should be ready within 3 weeks... The second report for our latest Peruvian acquisition [Molle Huacan]

should be ready within 6 weeks. Once we have these, we expect that the valuations for our assets/Aurum Mining to significantly increase." Div. Ex. 332 at 2.

86. On July 6, 2012, Crow emailed Price that "Aurum will agree to use the proceeds of the appx $430,000 you are looking to invest in this private placement, exclusively for the flotation and cyanide plants, which are important part of the Aurum Mining LLC business model and integral to the cash flow realization. We will account for the expenditures and send them to you quarterly to verify that the funds were used as agreed." Div. Ex. 430.

87. On July 25, 2012, Lana emailed Crow about "a new potential investor with significant funds to invest . . . how much can we accept from this investor? He implied that he would consider up to $500,000." Crow responded to Lana 13 minutes later: "WE could take up to the $500,000 no more. The Molle Huacan property alone is looking like more than $2 million ounces . . . We are confident. Very. We will be mining there []in 30 days and by year[end] will start major production. Time to invest is now." Div. Ex. 441 at 1.

88. Crow and Clug repeatedly told investors that gold production and cash flow would occur in the near future. Div. Ex. 535 (1.17.13 Ullrich to Lana: "I was just wondering about how the mining was progressing? On our last conversation, we were saying about how they were going to start mining at Thanksgiving [2012].")

89. In separate emails sent July 10, 2013, Clug told two investors that "[w]e are working hard here to get into production and processing and thus positive cash flow asap! We will try to send the next update fairly soon, especially as we finish the building of our on-site plant and start mining and processing... and selling gold[.]" Div. Ex. 592 at 1, 2.

90. On February 18, 2013, Crow emailed Bruce Hollander, copying Clug, that "we are asking for the $500,000 in additional equity from our members." Crow, referring to the 4th Quarter 2012 Report, said that "[e]verything is going well, just a bit delayed." Div. Ex. 554.

91. Crow and Clug repeatedly told investors that a stock listing or IPO was in the works. Div. Ex. 559 (3.3.13 Crow to Lana email: "when and if Aurum gets its stock listed public[ly]").

B. The May 2011 Term Sheet

92. The May 2011 Term Sheet sought to raise funds for the Batalha gold project in Brazil ("Batalha JV") which was intended to be a joint venture between Aurum and a Brazilian entity named Arthom Participacoes, Ltda. ("Arthom"). Div. Ex. 51.Arthom was owned by Arthur Ribeiro and Thomas Raiss. Div. Ex. 800 at 2; Tr. 288:11-18 (Palacio testimony re Arthom structure).

93. Crow and Clug drafted the May 2011 Term Sheet sent to prospective Aurum investors. Div. Ex. 48 (5.8.11 Crow to Clug email: "will send you my term sheet and thoughts"; 5.9.11 Clug to Crow email: "I'll do Gold Term sheet if you don't have time"); Div. Ex. 50 (5.10.11 Clug to Crow email: "I went ahead and made changes to Term sheet per our discussion and drafted the actual Note doc."); Div. Ex. 696 (Proposed Term Sheet).

94. The Term Sheet raised Aurum's first $250,000 through the sale of nine "Senior Secured Convertible Notes" in June 2011. Div. Ex. 2A at 10 (Celamy Ex. 6). Of the $250,000 raised through the Notes, $165,577 – 66%– went directly to benefit Crow and Clug. *Id.*

95. The Notes purported to be "[s]ecured by all assets" of Aurum, but it did not state that Aurum had no assets at the time. Div. Ex. 51 at 1. Aurum had no bank account until May 31, 2011. Div. Ex. 2A at 6-7 (Celamy Exs. 3A and 3B).

96. Interest on the Notes was "8% accrued annually and paid all at maturity," and maturity was "[n]ine months or earlier upon Conversion event." Div. Ex. 51 at 1.

97. The Notes' conversion option was that "[u]pon the financing and closing of the acquisition on the land and rights for the gold deal known as Batalha event (the 'Close'), the principal and all accrued but unpaid interest may be converted, at the election of the Holder, into the underlying common stock or LLC units at the offering price contained herein less a 50% discount." Div. Ex. 51 at 1.

98. The Term Sheet stated that the note proceeds would be used to "complete due diligence including final report from engineers, legal, travel and costs related to the land purchase and startup operations." Div. Ex. 51 at 1-2.

99. The Term Sheet also stated that Aurum "will have a 49% interest in the JV that owns the land and rights to the gold property. . . [Aurum] has a binding royalty agreement in place with International Mining Rights in recognition of the assignment of its membership units representing 100% of the company." Div. Ex. 51 at 1.

C. The Private Placement Memoranda (Aug. 2011, Dec. 2011, Sep. 2012, and Jan 2013)

1. The August 1, 2011 PPM (August 2011 PPM)

100. Crow and Clug drafted the August 1, 2011 PPM. Div. Ex. 64 at 2 (6.27.11 Clug to Crow email: "Please look at PPM draft when you have time. Attached with my comments after a quick review.").

101. The August 1, 2011 PPM sought to raise a minimum of $1 million (200,000 Units) and a maximum of $2 million (400,000 Units) through the sale of non-voting Class A membership Units at $5 per Unit. The minimum investment was $25,000 and the offering closed on December 31, 2011. Div. Ex. 547 at 6. The PPM stated under "Method of Offering and

Expenses" that "[n]o subscription will be accepted unless gross proceeds of at least $1,000,000 have been realized in the Offering." Div. Ex. 68 at 11.

102. Lana gave the August 2011 PPM to potential investors. Tr. 829:4-13 (Lana: "Q. What is [Div. Ex. 68]? A. This is a private offering memorandum for 200,000 to 400,000 units at $5 per unit for Aurum Mining LLC. Q. Did you use this document at all in the course of approaching your clients for investments? A. Yes. Q. How did you use it? A. I gave it to them and asked them to read it and get back to me.").

103. Only $115,000 was raised under the August 2011 PPM. Div. Ex. 2A at 6-7 (Celamy Exs. 3A and 3B).

104. The August 1, 2011 PPM contained the following "Closing Conditions":

> The Class A Membership Units will be offered until October 31, 2011 (unless extended by the Managers to a date no later than December 31, 2011). No subscriptions will be accepted until gross proceeds of US$1,000,000 have been realized in the Offering and the Closing Conditions described below have been satisfied. Thereafter, all funds received from subscriptions will be immediately available for use by the Company.
>
> The initial closing will not occur, the money will be kept in a Company segregated bank account serving as an "escrow", and no subscriptions will be accepted, until the following conditions (the "Closing Conditions") have been satisfied:
>
> Aurum Mining LLC and Arthom (Brazilian joint venture partners) have formed the Batalha JV on terms substantially the same as are reflected in this Memorandum.
>
> A geological report has been received from Charles George Pereira Da Silva Schalken, or other qualified and licensed geologist, attesting to his opinion regarding the average and/or total gold content of the tailings in the Initial Parcel. Management will then make the decision to go forward or not with initial operations.
>
> An opinion of Brazilian legal counsel has been received stating that:
> a. Batalha JV has been duly formed under Brazilian law and Aurum Mining LLC, or its wholly owned subsidiary is necessary to comply with Brazil law, owns a minimum of 49% in the JV subject to the required full funding of US$2.5 million;
> b. Batalha JV owns or has irrevocable rights to the land and mining rights to the Initial Parcel;
> c. Batalha JV has received the licenses from the Brazilian government required to carry out its business plan with respect to the Initial Parcel.

Div. Ex. 68 at 5-6. *See also* Div. Ex. 69 at 15 (August 2011 PPM: "We will not close this offering unless Da Silva Schalken or other qualified licensed geologist delivers an acceptable report, in the sole opinion of the Managers, attesting to the average and/or total gold content of the tailings in the Initial Parcel.").

105. The PPM explained the consequences of failing to satisfy the closing conditions in the section of the PPM entitled "Subscription Procedures": "If the Company is unable to satisfy the Closing Conditions prior to the termination of the Offering . . . , all funds received with respect to that subscription will promptly be refunded to investors without interest or deduction for commission or expenses." Div. Ex. 68 at 38.

106. Under the heading "Financial Projections," the August 1, 2011 PPM stated that "[t]he projections indicate a return of a potential $100,000 Class A capital contribution as $1,700,000 which is 17x the original investment, over 6 ½ years with no value given to the residual value of the assets or property." Div. Ex. 68 at 12.

107. In a section entitled "Cash Flow Projections," the PPM predicted that an initial investment of $100,000 would return "Total Cash" of $1,706,940, an "Internal Rate of Return" of 165%. Div. Ex. 68 at 20.

108. The August 2011 PPM stated in several sections that testing results were positive. Div. Ex. 68 at 14 (August 2011 PPM: "Arthom purchased a 3,740 hectare site, containing 21.8 million tons of tailings, along with the associated mining rights. . . . Gold Concentration – sampling suggested a high amount of gold in the tailings on the site."); Div. Ex. 68 at 14 ("In April 2010, members of the management team went to Batalha with a group of professionals and took 126 samples from different areas within the 3,740 hectare site to check on gold content over

the whole area and verify the consistency of the initial tests. . . [T]he results were positive, showing an average of just over 5 grams per ton.").

109. The August 2011 PPM represented that "Arthom purchased the property and mining rights in June 2010[.]" Div. Ex. 68 at 14. *See also* Div. Ex. 69 at 11 ("Arthom owns a parcel of 3,740 hectares of land in the Tapajos region of Brazil"); Div. Ex. 68 at 14 (8.1.11 PPM: "Arthom purchased a 3,740 hectare site, containing 21.8 million tons of tailings, along with the associated mining rights[.]").

110. The statement that Arthom owned mining rights was reiterated in the August 2011 PPM as follows:

> Brazil grants two types of mining licenses:
>
> 1. The first is designed for low investment operations. This type of right can only be granted to Brazilian born citizens.
>
> 2. The second is granted to larger Brazilian or foreign mining concerns and allows for more extensive and deeper mining.
>
> ***Arthom has obtained the first type of license*** for the entire parcel that it will contribute to the Batalha JV, and the second type for 220 hectares. We can begin mining immediately and apply for the second type of license, obtained from the Brazilian Mining Department's branch for licenses (DNPM – Departamento de Pesquisas Minerais).

Div. Ex. 68 at 16 (emphasis added).

111. The PPM also represented that equipment had been purchased." Div. Ex. 68 at 15 ("To date, Arthom has purchased for Batalha JV a tractor, a generator and miscellaneous equipment."); Div. Ex. 68 at 15 ("The initial contribution of $750,000 from the Company to Batalha JV is intended to purchase the equipment for this micro plant, which will be equipped with a 20 ton/hour single production line. Our financial plan contemplates that we will install the micro plant during the fifth month after the initial closing of this offering. After finalizing our process design based on the experience of the micro plant, we plan that in the 11th and 12th

month after the initial closing, we will scale up operations to process 550 tons of tailings per hour.").

2. The December 31, 2011 PPM (December 2011 PPM)

112. Crow and Clug drafted the December 2011 PPM. Div. Ex. 124 (11.6.11 Crow to Clug email: "I went thru the whole PPM"); Div. Ex. 125_(11.7.11 Clug to Crow: "Been working on the PPM - still needs work"); Div. Ex. 732 (2.29.12 Crow to Clug email re "draft ppm": "Attached my revisions.")

113. The December 2011 PPM sought to raise a maximum of $2 million (400,000 Units) through the sale of non-voting Class A membership Units at $5 per Unit. The minimum investment was $25,000 and the offering could be extended to December 31, 2012. Div. Ex. 346 at 6; Div. Ex. 314 at 6; Div. Ex. 301 at 13.

114. Under the heading "Financial Projections," the December 31, 2011 PPM stated that "[t]he projections indicate a return on the Initial Investment of a potential $100,000 Class A capital contribution as 40 times, or $4 million, over 7 years with no value given to the residual value of the assets or property. There is also no consideration for other properties anticipated to be licensed, developed or acquired by Aurum." Div Ex. 346 at 12; Div. Ex. 314 at 12.

115. The December 2011 PPM included a section called "Cash Flow Projection – Peru" which stated that "current estimates for the returns on Aurum's Peruvian projects are believed to exceed the returns obtained on its Brazilian Initial Property, because of the quick-to-production nature and high gold concentration on those mines . . . Aurum is in the process of acquiring several properties and completing the geology." Div. Ex. 346 at 20; Div. Ex. 314 at 20.

116. In a section entitled "Summary of Projected Returns on Investment," the December 2011 PPM projected a "Dividend Distribution" of $4,000,000 from an initial investment of $100,000, which represented a "Multiple Returned on Investment: 40x." Div. Ex. 346 at 21; Div. Ex. 314 at 21.

117. Melnick noticed the PPM's projection of a 40 times initial investment when he made his investment. Tr. 61:12-19. Melnick was never told that the 40 times projection was inaccurate, and Melnick hoped to receive some multiple of his initial investment as a return. Tr. 61:25-62:7.

118. By early 2012, when Crow and Clug completed the December 31, 2011 PPM, they knew that the Batalha project in Brazil had collapsed. Nevertheless, this PPM contained extensive representations about Batalha being a viable project.

119. In a section entitled "Cash Flow Projection – Brazil," the December 2011 PPM contained a detailed table projecting "Cash Flow after Investments and Taxes – Cumulative" of $7,067,262 in Year 1, $45,833,531 in Year 2 and $63,837,721 in Year 3. Div. Ex. 346 at 19; Div. Ex. 314 at 19.

120. The December 2011 PPM, like the August 2011 PPM, represented repeatedly that Arthom owned the land and mining rights to the Batalha property. For example, it states that "Arthom owns a parcel of 3742 hectares of land in the Tapajos region of Brazil," that "Arthom purchased the property and mining rights in June 2010" and that "Arthom has contributed its 3,742 hectares to Batalha[.]" Div. Ex. 346 at 11-12, 15; Div. Ex. 314 at 11-12, 15. *See also* Div. Ex. 346 at 14; Div. Ex. 314 at 14 ("Arthom purchased a 3,740 hectare site, containing 21.8 million tons of tailings, along with the associated mining rights. . . . Gold Concentration – sampling suggested a high amount of gold in the tailings on the site."); Div. Ex. 346 at 8; Div.

Ex. 314 at 8 ("The rights and land on the Initial Parcel were owned or controlled by Arthom Participacoes Ltd.").

121. This PPM stated that "[n]o subscriptions will be accepted until gross proceeds of US$250,000 for Class A Membership Units have been realized and the Closing Conditions described below have been satisfied." Div. Ex. 314 at 6. Unlike the August 2011 PPM, however, the December 2011 PPM did not specify any actual Closing Conditions.

122. The December 2011 PPM stated that the offering proceeds would be "used to purchase equipment on the first project to extract gold located in a parcel of 3,742 hectares of land in the Tapajos region of Brazil that have been contributed to Batalha by Arthom in exchange for a 50% ownership in Batalha. Aurum intends to expand its operations beyond the tailings processing on the Initial Parcel, by acquiring additional mining rights in other gold-bearing parcels in Brazil and Peru. The first parcel, the 3,740 hectares owned by Batalha which in turn is 50% owned by Aurum, is ready to initiate processing. . . Aurum is currently negotiating final terms for the acquisition of three properties in Peru." Div. Ex. 346 at 6; Div. Ex. 314 at 6.

123. The PPM stated that Crow and Clug, through their entities, Dolphin and Raven, would own all of Aurum's Class B voting units "in consideration of the efforts of the Corsair Group in organizing Aurum Mining, advancing all the costs and time, formulating its business plan, and contributing the Letter of Intent and the rights attached to Aurum Mining LLC[.]" Div. Ex. 346 at 14; Div. Ex. 301 at 14.

3. The September 15, 2012 PPM (September 2012 PPM)

124. The September 2012 PPM sought to raise a maximum of $1 million (200,000 Units) through the sale of non-voting Class A membership Units at $5 per Unit. The minimum investment was $25,000 and the offering sunset date was December 31, 2012. Div. Ex. 469 at 4.

125. The PPM represented that Aurum, through its 80% owned Peruvian subsidiary called Aurum Mining Peru, S.A., owned Molle Huacan. *Id.* at 6. It provided "highlights" on Molle Huacan, including that: "we have now uncovered at least 10 significant gold veins and one in which we know there is a lot of copper. The veins have initially tested as high as 24g/ton. Our senior geologist, Elias Garate, is becoming increasingly convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold." Id. at 9. The PPM also represented: "Our goal is to be able to initiate mining of the ore from Molle Huacan by the end of Q3 of 2012 and process ourselves by Q2 of 2013." *Id.* at 11.

126. In addition, the PPM represented that Aurum, through its 80% owned Peruvian subsidiary called Alta Gold, S.A., owned a 505-hectare property in Peru known as Alta Gold. Id. at 6. It also represented that Alta Gold consisted of "two mountains, one of which is a very large disseminated gold ore body" and that "[t]hese concessions encompass two mountains which we have named Base Mountain for its base metals and Alta Mountain for its large gold deposit....Our plan is to map, test, reopen the elaborate tunnel systems, obtain the Glencore drilling and mining data we have been told we can obtain, and work towards an NI 43-101 resource report. This large property may well be suited to be a very large open pit gold mine with elaborate tunnels that allow for silver and zinc to be mined at lower levels on Alta Mountain, and with Base Mountain suitable for underground mining of silver, platinum and zinc. " *Id.* at 9-10. "We may however sell or JV one or more of the mountains on the concessions, which could have a large value, especially for a public company given the type of large disseminated ore body and potential for open pit mining of gold." *Id.*

127. The PPM also represented that, through its 100% owned Peruvian subsidiary called Oceano Pacifico Minerales, S.A., Aurum had "purchased certain assets in contemplation

for a processing plant to be built. Div. Ex. 469 at 6. It further stated that Aurum had purchased "new mineral processing equipment" for $250,000 including "three excellent mills, two 100 ton large mills that can be used in a flotation or cyanide plant and one 50 ton mill that can also be used in any plant type and can be used to service a smaller concession. The rest of the equipment we purchased is needed for flotation, a required process for copper and frequently for silver and for gold depending on metallurgy. Our initial metallurgy tests on Molle Huacan show over 82% recovery for flotation of gold, which is very good news.....We expect the purchase of the equipment...will enable us to build the Molle Huacan processing plant as well as start another plant in the North of Peru near Trujillo where we have been approached and begun discussions on processing 3rd party materials." *Id.* at 11. "In addition to processing our own ore from our concessions, initially from Molle Huacan, any remaining capacity may be utilized to process the production from other sources, which will generate further cash flow to Aurum. This gives our processing plants the ability to ramp up with our production and process material from others at a high profit margin. *Id.* at 10.

128. The PPM also referred investors to an online data room for additional information stating: "Much of the data room contents may change over time as the business evolves and develops and the data room updated. *Id.* at 7.

4. The January 1, 2013 PPM (January 2013 PPM)

129. The January 2013 PPM sought to raise a maximum of $1 million (200,000 Units) through the sale of non-voting Class A membership Units at $5 per Unit. The minimum investment was $25,000 and the offering sunset date was December 31, 2013. Div. Ex. 577 at 5.

130. Consistent with the Quarterly Reports sent to investors in latter part of 2012, the January 2013 PPM focused on the two Peru projects: Molle Huacan and Alta Gold.

131. The January 2013 PPM represented that Molle Huacan had significant gold deposits: "Along with our geologists we have now uncovered at least 10 significant gold veins. The veins have initially tested as high as 24 g/ton. Our senior geologist, Elias Garate, is becoming increasingly convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold. This would be consistent with what we are told is happening in the large drilling programs that are contiguous to our properties." Div. Ex. 577 at 10.

132. The January 2013 PPM stated that Molle Huacan contained "ore" and that production was imminent: Our goal is to be able to initiate mining of the ore from Molle Huacan by the end of Q1 of 2013 and process on site." Div. Ex. 577 at 12.

133. The January 2013 PPM also touted the Alta Gold property, and stated that it "was named Alta Gold because it basically consists of two mountains, one of which is a very large disseminated gold ore body. . . . These concessions encompass two mountains which we have named Base Mountain for its base metals and Alta Mountain for its large gold deposit." Div. Ex. 577 at 11.

134. Alta Gold was presented as an attractive merger or joint venture target to other companies: "This large property may well be suited to be a very large open pit gold mine with elaborate tunnels that allow for silver, zinc and lead to be mined at lower levels on Alta Mountain, and with Base Mountain suitable for underground mining of silver, platinum and zinc. This property will not go into production before Aurum has a working mine, processing plants and all approvals, and is cash flowing strongly. We may however sell or JV one or more of the mountains on the concessions, which could have a large value, especially for a public company given the type of large disseminated ore body and potential for open pit mining of gold. Large

trading companies such as Mitsui, Sumitomo and Glencore as well as China itself, will be interested in obtaining physical control of large industrial metals for their trading and international operations. This fits the Base mountain profile." Div. Ex. 577 at 11.

135. The January 2013 PPM also promoted Aurum's "processing plants" which would allow Aurum to "ramp up with our production and process material from others at a high profit margin." Div. Ex. 577 at 11. Aurum expected to "have this business run as a separate Peruvian company under the Aurum Mining LLC structure" and that "[t]here will likely be several plant locations to serve our concessions and for processing for other 3rd parties." Div. Ex. 577 at 12. To these ends, the PPM states that Aurum spent $250,000 on "an opportunistic purchase of new mineral processing equipment... ." Div. Ex. 577 at 12.

136. The processing business was touted as a way to generate further "cash flow": "We have been building relationships ensuring us plenty of capacity and our permits will give us a legitimate place to make these opportunistic deals. In addition to processing our own ore from our concessions, initially from Molle Huacan, any remaining capacity may be utilized to process the production from other sources, which will generate further cash flow to Aurum." Div. Ex. 577 at 11.

D. The Aurum/Corsair Business Plan (Business Plan)

137. Crow and Clug drafted the Business Plan, which they circulated in different forms during 2012 and 2013. Div. Ex. 153 (11.21.11 Crow to Ross email re "[c]lose to final" version of Business Plan); Div. Ex. 208 (1.6.12 Clug to Crow email: "'Final' version for your review attached.").

138. Crow and Clug also drafted a briefer version of the Business Plan, referred to as the "Short Intro." Div. Ex. 732 at 1 (2.29.12 Clug to Crow email: "Went through it. . . Attached

is the word version of the short intro"; Crow to Clug email: "Attached my revisions"). *See also* Div. Ex. 301 at 1 (3.22.12 Lana to potential investor email attaching "Short Intro").

139. The Short Intro, circulated in early 2011 and 2012 stated that: "Aurum is aiming to acquire and develop a minimum 3 suitable properties per year with a goal of acquiring for production, 150,000 ounces of gold, all with official [JORC or NI 43-101] measured reserves. Testing on our first property in Brazil has so far shown gold reserves of approximately 271,000 ounces." Div. Ex. 301 at 2.

140. The Short Intro also stated that Batalha had "inferred total gold reserves of 271,000 ounces in tailings alone," that these would qualify as "measured reserves" under NI 43-101 standards, and that "[t]his equates to approximately $407 million dollars worth of gold at a price of $1,500 per ounce." Div. Ex. 301 at 3;

141. Regarding Peru, the Short Intro stated that "Aurum estimates that it will acquire 3 properties per year which, on average, will each have a total production of 50,000 Oz of gold that will be fully extracted in 5 years," and that these were "only an average" and future acquisitions "have higher projected gold reserves." Div. Ex. 301 at 4

142. Crow and Clug also sent to investors the 38-page Business Plan, which projected as the "Cash Available to Distribute to Aurum Members" a total of $173.3 million for "Molle Huacan only": $3.8 million in Year 1, $14.5 million in Year 2, $29.7 million in Year 3, $50.9 million in Year 4, and $74.2 million in Year 5. Div. Ex. 373 at 13; Div. Ex. 351 at 8; Div. Ex. 360 at 8. *See also* Div. Ex. 373 at 24; Div. Ex. 351 at 18; Div. Ex. 360 at 19. ("Total cash available for distributions to Aurum Unit Holders is estimated over the initial five years, to be over $170,000,000.").

143. "Aurum anticipates putting the first two Peru properties [Molle Huacan and Cobre Sur] into production in 2012." Div. Ex. 373 at 22; Div. Ex. 351 at 17; Div. Ex. 360 at 17.

144. The Business Plan stated: "When in production as we expect these properties to be in 2012, the values may best be valued at $135 [per ounce] for both Molle Huacan and Cobre Sur. Total value of Aurum Mining Assets would then be $91,125,000 . . . . If one considers the multiples given to cash flow which are generally a multiple of 7.5x year 1 cash flow for producing companies . . . . This equates to $30.41/Unit (Class A Member paid $5 share)." Div. Ex. 373 at 27.

145. In October 2012, Crow and Clug again revised the Business Plan. Div. Ex. 490 (10.17.12 Clug to Crow email: "Business Plan you just sent has your additional changes to mine but all our changes are still showing").

146. The revised Business Plan was sent to investors in early 2013. Div. Ex. 552 (2.18.13 Crow to Bruce Hollander email).

E. The January 2012 Update

147. Crow and Clug drafted the January 2012 Amendments and Updates to Private Placement Memorandum dated August 1, 2011 ("January 2012 Update") Div. Ex. 196 (12.31.2011 Clug to Crow email with draft); Div. Ex. 202 (1.5.2012 Clug to Crow email attaching "draft update letter for our original Bridge Investors for your review").

148. The January 2012 Update stated that:

> We have been busy at Aurum Mining LLC in 2011 and wanted to give you an update on our progress. As you know, we started 2011 focused on acquiring an interest in Batalha, a 3,742 hectare property in northern Brazil with our partners there. We additionally wanted to complete the initial tests and geology to ascertain the reserves.
>
> We have completed all of this successfully.

* * *

We are pleased to announce the following accomplishments:

1. Closed on acquiring the 50% interest in Batahla, our Brazil gold project. Over 200 test holes have been completed and analyzed and we expect final 'official' reserve reports in the range of 271,000 ounces or $407 million of gold at projected long term price of $1,500 per ounce. (Note: as of 01/05/2012 gold's price is $1,622 per ounce.

2. Reached terms on the acquisition of two gold properties in Peru. These reserves are currently estimated to range from 50,000 to 200,000 ounces each. These are quick to production properties and geological testing is easier due to the current informal mining activity on them. ....

3. Built out a management team in Peru and Brazil to capitalize on these opportunities.

4. Began the process for NI-43101 mining independent reports for all the properties.

5. Developed a mining plan around both Peru and Brazil mining properties.

6. Initiated discussions on raising and or merging the operations with large gold institutions interested in our properties at substantial multiples of prices Aurum is paying.

7. We have satisfied the conditions of closing on the Aurum original PPM.

* * *

As part of our updating you, we need you to confirm certain aspects of you investment into Aurum Mining LLC and your subscription documents.

After you review of the PPM, please acknowledge the following to us so we may proceed to close on the initial round as per the Amended PPM:
1. I have reviewed the Amended Private Placement Memorandum dated December 31, 2011 in its entirety and have consulted with my advisors as I may deem appropriate.
2. My subscription document and investor questionnaire is still accurate in its entirety.
3. I wish to continue my investment and receive my Class A Membership Units in Aurum Mining LLC.

Div. Ex. 218 at 3.

149. The January 2012 Update was sent by Crow, Clug and Lana as the Managers of Aurum. Div. Ex. 218 at 3.

150. Based on the January 2012 Update, the nine Convertible Noteholders all chose not to exercise their contractual rights to receive their principal plus interest at maturity. Tr. 847:13-15 (Lana: "Q. Do you recall generally what [the Note] investors did in terms of the conversion option? A. I believe all of them converted."). Instead, they became equity Unit holders in Aurum.

F. The Quarterly Update Reports (Quarterly Reports)

151. The Quarterly Reports were drafted by Crow and Clug. Div. Ex. 326 at 1 (4.3.12 Clug to Crow email re draft 1st Quarter 2012 Report: "We can go over again tomorrow and then sent to Angel for his review."); Div. Ex. 444 at 1 (7.27.12 Clug to Crow, Lana re draft 2nd Quarter 2012 Report: "Thank you for your input. I have accepted your suggestions and the attached should be our final letter ready for distribution"); Div. Ex. 438 at 1 (7.16.12 Crow to Clug, Lana re 2nd Quarter 2012 Report: "A[l]ex did you make any changes to what I did? Guys, this is important. I left my vacation and did first draft a week ago so we could keep capital momentum. . . . There is nothing anyone is doing that is more important. We need this out this week"); Div. Ex. 551 at 1 (2.12.13 Clug to Lana, Crow email re draft Annual 2012 Update: "Hopefully attached is final!!!! Please check one last time.").

152. Clug instructed Lana to send out the Quarterly Reports to the investors. Tr. 1804: 24-1805:16 (Clug: "Usually . . . Angel and Leoncia [distributed the Quarterly Reports] since they had to have completed investor list with all the emails and database to please send it out to everyone . . . it was for Angel to distribute to everyone"); Div. Ex. 760 (4.5.12 Clug to Lana, Crow email: Angel, we need to get this [1Q 2012 Report] out to our investors ASAP.").

153. Crow knew that Aurum investors were sent the Quarterly Reports. Div. Ex. 448 (8.6.12 Crow to Clug, Lana email: "Please confirm that all the investors have received the update

letter now. I just met with Bruce Hollander and he did not receive his yet."); Div. Ex. 430 (7.6.12 Crow to Price, Clug email: "We expect to have our second quarter update letter ready by the end of next week as well."); Tr. 1382:7 (Crow: "We tried to do update letters every quarter.").

154. Clug emailed the Quarterly Report directly to two investors (Ferolito and Barone) who Clug testified were his "direct investors . . . the only two people I dealt with directly." Tr. 1804:24-1805:16.

155. The Quarterly Reports directly solicited investments in Aurum, which caused some investors to make additional investments. Melnick, for example, after reviewing the 3rd Quarter 2012 Report, emailed Lana and Clug: "Thank you for the recent quarterly update. In response to the section in the update that mentions a new offering of $500,000, presumably at $5 per Unit, please note that I would like to purchase an additional 10,000 Units for $50,000. Let me know what the next steps are to conclude a purchase of additional Units."). *See also* Tr. 77:8-77:23 (Melnick: "Q. What did you do after reading [the 3rd Quarter Report]? A. I offered to supply more money. Q. And how much did you decide to offer? A. 50,000. Q. And that was the direct result of reading this [3rd Quarter 2012] update report? A. Yes."). Melnick's business partner, Arthur Weinshank, also made an investment as a result of the 3rd Quarter 2012 Report. Tr. 79:17-80: 4; Div. Ex. 2A-4 (Celamy Ex. 1).

156. Melnick testified that he received the Quarterly Reports by email, that he read them upon receipt, that he believed them to be substantially truthful and accurate, and that nobody from Aurum ever told him that anything in the Quarterly Reports was not truthful and accurate. Tr. 74:13-75:4.

157. Stern testified that he received the Quarterly Reports, that "they did matter" in deciding to invest money in Aurum, and that he believed the Quarterly Reports were accurate because "I don't believe that Alex, whom I have a high regard for, would have lied." Tr. 151:24-152:1-2.

I. 1st Quarter 2012 Report (dated April 16, 2012)

158. The 1st Quarter 2012 Report stated that the geology reports were promising, that "cash flow" was imminent, and investors were urged to "increase their stake." Div. Ex. 373. The 1st Quarter 2012 Report stated:

a. Our initial tests indicated grades ranging from 4g/t on a very large deposit, to 38g/t on smaller veins. Div. Ex. 373 at 3.

b. Our own local geologists estimate that Molle Huacan has at least 500,000 ounces of gold that can be mined near the surface. If this is correct, . . . Molle Huacan is worth $42.5 million (at $85 per ounce, the most conservative valuation . . .) and, if fully mined would cash flow $800 million over the subsequent years"). Div. Ex. 373 at 3.

c. We anticipate the mine will be cash flow positive within 3-4 months of opening. Div. Ex. 373 at 3.

d. Please note that our first full 12 months of production at Molle Huacan, ramping up from zero to 75 tons a day, is estimated to generate approximately $2 million in cash available for distribution to Aurum Mining LLC. In the second year this increases to $5.4 million. However, with additional capital investment it is possible to increase production up to 350 tons/day under the permit process we plan on filing. Div. Ex. 373 at 3.

e. [A] property adjacent to [Cobre Sur] is operating at what we believe is about 700 tons a day with similar grades. We anticipate that our mining results will be in line with those of these adjacent properties, which would make [Cobre Sur] very attractive to mine on a larger scale or to be bought by a major producer as we go into production and establish our reserves through additional testing and evaluation. Div. Ex. 373 at 4.

f. Cash flow projections for [Cobre Sur] are very similar to those for Molle Huacan. Approximately $2 million in cash available for distribution to Aurum Mining LLC over the first 12 months of production and $5.4 million for the second year are reasonable expectations, assuming testing and engineering evaluations underway return acceptable results. Div. Ex. 373 at 4.

g. [U]ntil we initiate production at Molle Huacan, we will not likely move forward on starting [Cobre Sur]. Our plan is to have [Molle Huacan] in production and cash flowing before we bring [Cobre Sur] on line, which we anticipate will be achieved by the fourth quarter of 2012. Other potential acquisitions are presently on hold until we move these two properties into production or until we have additional capital that allows Aurum to make additional acquisitions. Div. Ex. 373 at 5.

159. The 1st Quarter 2012 Report represented that Batalha could still become "operational": "We are in discussions with our Brazilian partner to amend the joint venture agreement so that we would have absolute control over the key operational, financial and legal aspects of this business moving forward and possibly increasing our ownership in the project. In the mean time, we will concentrate our efforts on developing the Peruvian properties as they are quick to production and cash flowing, which the Brazilian project will take longer to make operational." Div. Ex. 373 at 5. However, in the draft version, they wrote: "Our Batalha JV has had several operation and partner challenges" and "some of the testing from the second set of geology work completed came back with lower results in the tailings fields than the original tests." Div. Ex. 326 at 4.

160. The 1st Quarter 2012 Report urged investors to "increase their stake": "Aurum is continuing to raise its initial $2 million from its private placement. . . . If you or anyone else desires to increase their stake, now is the time to do so." Div. Ex. 373 at 6.

161. The 1st Quarter 2012 Report concluded with the statement that "[w]e remain very optimistic about Aurum[.]" Div. Ex. 373 at 7.

2. 2nd Quarter 2012 Report (dated July 24, 2012)

162. The 2nd Quarter 2012 Report touted the "excellent results" from Molle Huacan," the "large disseminated gold content" at Alta Gold, and the prospect of "cash distributions" to the investors. Div. Ex. 450. A photograph caption in the report stated "[i]nitial testing of Alta

Gold shows large disseminated gold content." Div. Ex. 450 at 6. The 2nd Quarter 2012 Report stated:

a. We believe our proposed processing plants will be able to process the production from our mines and still provide us with excess capacity that we can opportunistically use in buying concentrate and ore, thus generating cash flow at minimal risk for Aurum. Div. Ex. 450 at 3.

b. Along with our geologists we have now uncovered at least 10 significant gold veins and one in which we know there is a lot of copper. The veins have initially tested as high as 24 g/ton. Our senior geologist, Elias Garate, is becoming increasingly convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold. Div. Ex. 450 at 3.

c. Our testing on [Cobre Sur] has been disappointing. . . . Given our excellent results at Molle Huacan and several promising deals in the works, such as Alta Gold, we are working with our team to see if we want to continue to explore this property or pass on it and focus on our better assets. Div. Ex. 450 at 4.

d. Alta Gold . . . basically consists of two mountains, one of which is a very large disseminated gold ore body. . . These concessions encompass two mountains which we have named Base Mountain for its base metals and Alta Mountain for its large gold deposit." Div. Ex. 450 at 4-5.

e. We have not yet been able to resolve our differences with our local Brazil partner. They did not put up their share of the capital . . . The Brazil partners did not disclose to us all the salient facts regarding the property, some of which make it more expensive to mine the tailings. Div. Ex. 450 at 6-7.

f. In addition to processing our own ore from our concessions, initially from Molle Huacan, any remaining capacity may be utilized to process the production from other sources, which will generate further cash flow to Aurum. This gives our processing plants the ability to ramp up with our production and process material from others at a high profit margin, with little risk. Div. Ex. 450 at 7.

g. Our initial metallurgy tests on Molle Huacan show over 82% recovery for flotation of gold, which is very good news. Div. Ex. 450 at 8.

h. Our goal is to be able to initiate mining of the ore from Molle Huacan by the end of Q3 of 2012 and process ourselves by Q2 of 2013. In the meantime we are evaluating ways to process our ore during our plant and permit build outs. Div. Ex. 450 at 8.

i. We are nearing completion of the private placement. Our projections continue to be that we will be able to place the first mine into production in 2012 and fully build out the mining and processing to support the operation. Div. Ex. 450 at 8.

j. Our assets are becoming very valuable and we may want to look for liquidity event opportunities in 2013 that would allow us to ramp up more quickly and/or give our Members cash distributions. Div. Ex. 450 at 9.

3. 3rd Quarter 2012 Report (dated Nov. 5, 2012)

163. The 3d Quarter 2012 Report did not mention the October 2012 Steven Park report on Molle Huacan, completed one month prior, which concluded that "[g]iven the low average grade and small tonnage potential, [Molle Huacan] is not ready for production." Div. Ex. 484 at 7 (Park Report). Instead, the 3rd Quarter 2012 Report told investors of "our internal estimate of 1.254 million ounces of gold," the "projected 2013 net cash flow" for Molle Huacan of $9 million," and a request that investors "increase your stake" by November 30, 2012. The 3rd Quarter 2012 Report stated:

a. Completed all metallurgy tests, exploration modeling and mining plan. Metallurgy results have been excellent and indicate high recovery rates at lower costs. Div. Ex. 503 at 1.

b. Completed geological analysis along lines of a NI 43101. Tests results helped to ascertain our internal estimate of 1.254 million ounces of gold on just the Monica ore/vein body. Div. Ex. 503 at 1.

c. Developed a mining plan to use benching and heap leaching on site. This allows for a faster ramp up of 2013 volume and cash flow. Div. Ex. 503 at 1.

d. Building a heap leaching processing plant on site for volume processing of our gold. Div. Ex. 503 at 1.

e. First day of operational mining projected to be November 25, [2012,] with processing and cash flow starting by January 2013. Div. Ex. 503 at 1.

f. Our goal is to get Molle Huacan into production and cash flowing while continuously mapping and exploring our gold resource. Div. Ex. 503 at 2.

g. We may discuss outsourcing the production ramp-up to firms that have extensive management, equipment, capital and experience in operating mines of over 1,000

tons a day. We will need to drill and better define a resource before contracting with such a firm. Div. Ex. 503 at 2-3.

h. The Molle Huacan operational business plan . . . is the basis of our discussions with potential funding sources and our potential JV partners that are looking at investing $10 million cash for a minority partnership interest, the % of which will be based on the results of an independently produced 43-101 mining report. Div. Ex. 503 at 3.

i. The projected 2013 net cash flow for this mine ONLY is over $9,000,000. Obviously there are certain key variables and conditions that can affect this outcome. We are confident that these numbers are achievable and have all the required equipment, management and systems in place to manage this operational growth at Molle Huacan. Div. Ex. 503 at 3.

j. Alta Gold . . . basically consists of two mountains, one of which is a very large disseminated gold ore body. Div. Ex. 503 at 3.

k. We expect that [Alta Gold] will be very substantial . . . It is a six month development plan which will give us the information to ascertain the proper path to liquidity. This is a big project and has a big upside. Div. Ex. 503 at 5.

l. We have decided to increase our liquidity on hand from approximately $800,000 now to $1,300,000 and this need to raise an additional $500,000. This minimal dilution is necessary in order to have sufficient cash on hand to put Molle Huacan into production, process at Molle Huacan using heap leaching, and finish the development work at Alta Gold. . . . Given the excellent upside and valuation now per membership unit, we are first offering this to our existing members. If you wish to increase your stake please do so by November 30, 2012. If not, we will seek the funds from other investors. We wish to close by December 31, 2012. Div. Ex. 503 at 5.

m. Our view is that the large gold companies have low-cost low-return business models and are under pressure from shareholders to justify their capital expenditures. . . . Our apparently unique approach of focusing on lower-risk quick-to-production gold mines will be a very attractive solution for these larger companies. It is better for them to buy gold production rather than develop it internally. In the meantime, our focus is on production along with development and cash flow. Div. Ex. 503 at 6.

n. We remain optimistic about Aurum Mining LLC and are very appreciative of your support. Div. Ex. 503 at 6.

4. 4th Quarter 2012 Report (undated)

164. The undated 4th Quarter 2012 Report, which was circulated in early 2013, focused on "going public in Canada, and other markets," and told investors that Aurum's value "could be in the range of $484 million," that the NI 43-101 report that had been started would "independently confirm our gold reserves," that there was a "$50 million estimated IPO valuation for the Molle Huacan mine alone," and that investors should "consider making an additional investment." Div. Ex. 552 at 31-39. The 4th Quarter 2012 Report stated:

a. Initial plant has been increased to 400 ton a day capacity up significantly from prior plans. Completed additional sampling and geology testing in accordance with NI 43-101 standards (Canadian world-wide standard for independent geological appraisals.) Div. Ex. 552 at 31.

b. Test results have been excellent and have helped to increase our internal estimate of 1,254,000 ounces of gold. Given the new veins, higher grades, and larger ore structure, the gold estimate appears to be significantly higher, perhaps as much as double. Div. Ex. 552 at 31.

c. Developed a final mining plan to simultaneously use benching and tunneling on site. This allows for a faster ramp-up of 2013 volume and cash flow. Increased initial production estimate 380 tons a day. Div. Ex. 552 at 31.

d. Initial production now expected by March 15, 2013 due to delays in permits, equipment and facilities build out. Due to the delays and some additional costs which were unexpected, Aurum is low on working capital. Div. Ex. 552 at 31.

e. We have evaluated our financing options to raise the needed $500,000 plus required to place the mine into production and process the ore into gold/carbon concentrate, and then sell it[.] Our conclusion is to pursue several options at once. We have executed a letter of intent to complete an Initial Public Offering (IPO) in Canada on the Toronto market (TSX or CNSX) for our Molle Huacan property with a $10-$15 million cash funding included. . . . Upon showing additional reserves with a drilling program and/or 2015 EBITDA, the valuation could be in the $200-$400 million range. . . . The valuation and funding would allow us to return the cash capital from our Class A members upon the IPO funding. Div. Ex. 552 at 34.

f. [I]n addition to our members' receiving the return of their entire investment at the IPO, the achievement of our aforementioned year 2014 operational target goals could result, based on reasonable industry valuation metrics, in a per membership unit value of the Public Company stock ranging from $45 to $90 per share. Div. Ex. 552 at 35.

g. Based on an in-situ value of $135 per ounce (see business plan in data room for further details) and assuming estimated gold reserves of 2 million ounces, then the Company could be valued at $270 million. . . . our estimated resources [] should significantly increase that valuation. In that case the valuation could be in the range of $484 million. Div. Ex. 552 at 35.

h. Alta Gold . . . consists of two mountains, one of which is a potentially large disseminated gold ore body. . . . Will need drilling tests to provide [] confirmation. Div. Ex. 552 at 36.

i. We have decided to increase our liquidity on hand from approximately $200,000 now to a minimum of $700,000 and thus need to raise an additional $500,000. . . . Given the excellent upside and valuation now per membership unit, we are first offering this to our existing members at the original price per membership unit. If you wish to increase your stake please do so by February 28, 2013. If not, we will seek funds from other investors. We wish to close by March 31, 2013. We are talking to several groups that may make an offer to pre-buy the gold concentrate, or loan the funds, with the terms uncertain and perhaps expensive. Aurum Mining will be in a better position to negotiate terms on financing if we have the required additional $500,000 in equity from our current members. Div. Ex. 552 at 38.

j. Our only concern is having the sufficient funds on hand to make sure we can move Molle Huacan into production and cash flow from there on. Div. Ex. 552 at 38.

5. 1st Quarter 2013 Report (undated)

165. The 1st Quarter 2013 Report stated that Aurum's "focus was now on the two properties of Molle Huacan and Alta Gold," and that Aurum remained committed to "concentrating on quick to production and lower risk properties in areas known to contain precious metals." Div. Ex. 592 at 3. A photograph in the 1st Quarter 2013 Report purported to show a "1,000 ton leaching vats under construction." Div. Ex. 592 at 5. The 1st Quarter 2013 Report stated:

a. The leach processing plant is "expected to be operational by August 1, 2013. Plant capacity has been increased to 1,500 tons a day capacity (up from the initial estimate of 350 tons a day). Div. Ex. 592 at 3.

b. We started and completed the independent NI 43-101 with a geologist from Canada to independently confirm our project as a project of merit. Copy of this large report in in our data room. Div. Ex. 592 at 3.

c. Developed a mining plan to simultaneously use benching and tunneling on site. This allows for a faster ramp-up of volume and cash flow beginning August 1, 2013. Div. Ex. 592 at 4.

d. The first year production goal reflected in our Forecasted Statement of Operations (presented later in this Report) is approximately 900 tons a day, increasing to approximately 1,245 tons a day in year 2 and subsequent years. Div. Ex. 592 at 4.

e. Initial production and processing now expected by August 1, 2013. Delays in permits, equipment and facilities build out pushed us to this date. Div. Ex. 592 at 4.

f. We continued our geological sampling and metallurgy testing. Although testing results vary with location and technique, the overall results indicate that our mineral is ideal for a high volume operation and a good fit for the leaching process plant that we are building. Div. Ex. 592 at 4.

g. A section entitled "Cash Flow Analysis" states that "[o]ur first year cash flow projections for the Molle Huacan mine remain strong. The Molle Huacan mine has the potential for very good production volume, although we will not know for sure until we drill and also mine the property and develop the levels below the surface. We will be working on these objectives for the duration of 2013. Div. Ex. 592 at 8.

h. [W]e elected to focus our resources, people and capital, on Molle Huacan in order to promote it production, processing and cash flow phases. Div. Ex. 592 at 9.

i. Under the Forecasted Statement of Operations, Molle Huacan was projected to produce and process 182,940 ounces of gold and receive net income of $109,423,818. Div. Ex. 592 at 9.

j. Alta Gold "basically consists of two mountains, one of which is a potentially large disseminated gold ore body. ... Will need drilling tests to confirm our initial estimates of the potential. Div. Ex. 592 at 9-10.

k. We plan to have Molle Huacan funded and in operation and then use some of the cash flow expected to be generated by the Molle Huacan operation to finish the Alta Gold operation. Div. Ex. 592 at 10.

l. As of June 10, 2013 we have raised a total of $662,715 [based on the January 2013 PPM]. We would like to finish the placement and then have one of the gold

lenders we are talking to pre-buy or loan against future delivery of gold. These conversations with lenders are currently underway. Div. Ex. 592 at 12.

m. We expect to be able to make dividend distributions after some ramp up period and reserves are established to support the operation. Although difficult to predict, -- we – hope to make significant dividend distributions toward the end of the first year of production. Div. Ex. 592 at 13.

n. [W]e have been mining the Molle Huacan property and are proceeding into production. After the completion of the first full year of production, we expect to have more resources and reserves established and we will weigh our options to maximize valuation for our investors. Div. Ex. 592 at 13.

VII. CROW AND CLUG KNEW THAT LAND AND MINING RIGHTS WERE NEVER OBTAINED; THAT THE CLOSING CONDITIONS IN THE AUGUST 2011 PPM WERE NOT SATISFIED; AND THAT GIVEN THE POOR TESTING RESULTS THEIR ENORMOUS PROFIT PROJECTIONS WERE BASELESS

A. No Mining or Land Rights Were Obtained; Aurum's Investment in Brazil was Minimal; and No Equipment Was Purchased

166. Crow and Clug knew that Arthom never purchased any land and never obtained any mining rights. Tr. 1594:19-1595:18 (Raiss: "Q. [A]t the time you worked with Michael Crow and Alex Clug on the Batalha project, were the mining licenses to the Batalha property ever obtained from the government? A. No, they were not obtained.....Q. So you're saying at the time you formed the joint venture, they [Crow and Clug] understood that the mining rights to the Batalha property could not be transferred or sold? A. They could not be transferred at that moment, yes, they knew it.") Tr. 187:20-188:2 (Palacio: "Q. So at the time you met in Miami with Michael Crow and Alex Clug [in October 2011], who owned the mining rights to Batalha? A. It was a Brazilian man call Mr. Jose Barbosa de Lima. Q. Did Michael Crow and Alex Clug know that as well? A. Yes they did.").

167. Arthom never purchased the Batalha property. Tr. 1593:3-6 (Raiss: "Q. Did you ever tell Michael Crow and Alex Clug that your company, Arthom, had purchased the land covering the Batalha property? A. No. Because we did not purchase the land.") Tr. 210:22-

211:3 ("Q. Mr. Palacio, are you aware of any purchase of the Batalha land by the company called Arthom? A. No, I'm not. Q Are you aware of any purchase of the Batalha land by Aurum [or by either Michael Crow or Alex Clug]? A. No, I'm not.").

168. The mining rights to property in Brazil are publicly available through a web site maintained by a government agency called DNPM. Tr. 188. Palacio reviewed the DNPM web site and "it was clear to see that Mr. Jose Barbosa de Lima was the one who owned the application for a research permit." Tr. 190:11-13.

169. The application for a research permit did not bestow any mining rights. Tr. 190:24-191:1 (Palacio: "Q. [I]s an application for a research permit an actual mining right? A. No, it is not."); Tr. 213:21-214:2 (Palacio: "A. [A]ll we could do was to wait for the Brazilian Government to grant the permit, the research permit. Q. How far did you get[?] A. Didn't get any far. We were not granted any license."); Tr. 192:4-6 (Palacio: "Q. [T]here was no mining rights granted by the Brazilian government? A. No, there wasn't.").

170. Palacio testified that Crow and Clug "clearly knew" that Barbosa's rights were not transferrable. Tr. 218:21-23 (Palacio: "They needed to get a research permit before they could transfer it to the Batalha project or anybody else"); Tr. 1766:14-16 (Clug: "Q. And who is Mr. Barbosa? A. Mr. Barbosa had the title to the– in his name to the mining rights there.").

171. As shown by numerous emails, Crow and Clug knew that the Batalha JV never obtained any mining rights. Div. Ex. 181 (12.14.2011 Raiss to Crow, Clug email: "Arthur and I can only sign through our power of attorney that the rights, once obtained are Batalha's"); Div. Ex. 179 (12.15.11 Palacio to Clug email describing the steps to obtaining a mining license in Brazil).

172. On March 2, 2012, Crow emailed Raiss, copying Clug, that "[w]e just got off the phone with our law firm in Brazil . . . they keep telling us the rights are not in Arthoms name right now and it's a third party"). Div. Ex. 270 at 1.

173. On March 8, 2012, Azevedo Sette, the Brazilian law firm hired by Crow and Clug, advised them that "[w]e still have no proof that Batalha has mining right and land nor that it has the right to acquire such mining rights and land. We don't recommend any further investment at this point." Div. Ex. 274 at 1. *See also* Div. Ex. 310 (3.27.12 email from Azevedo Sette to Crow and Clug attaching "Due Diligence Report on the Mining and Land Rights related to the Batalha Project," stating: "All Mining Rights are held by Mr. Jose Barbosa de Lima, who is not a quotaholder of Arthom.")

174. Crow then emailed Raiss that "[o]ur law firm can not find evidence that you have the mining rights." Div. Ex. 282 at 1. Raiss responded that "we never said we owned the mining rights." Div. Ex. 283 at 1.

B. Aurum Never Contributed Funds to the Joint Venture or Purchased Equipment

175. On December 12, 2012, Crow and Clug signed the Joint Venture Operating Agreement of Batalha Mineradora Ltda. The JV Agreement stated that "Aurum will secure a loan in the amount of $750,000 [] . . . primarily for the purchase of the requisite equipment." The JV Agreement also required Arthom to transfer "all mining rights . . . within the formats that are legal in Brazil." Div. Ex. 163 at 2.

176. Palacio testified that "Aurum or Corsair . . . was supposed to invest and Arthom, Thomas Raiss and Arthur Ribeiro. they were the ones who were supposed to run the project, run the operations." Tr. 195:11-14.

177. No mining equipment was ever purchased. Tr. 250:4-6 (Palacio: "Q. Now, was any equipment purchased for the Batalha project? A. No. Never."); Tr. 220:12-19 (Palacio: "I was supposed to elaborate the plant design to process the tailings and recover the gold. But for that I would need gold assays from the laboratory and . . . laboratory scale tests for this same equipment that we were to put on the plant. Q. Was that equipment ever acquired? A. No. Never.")

178. Aurum never invested any funds in the Batalha project, as it promised to do in the JV Agreement. The only funds Aurum spent in Brazil was $14,689 to a law firm, which advised Crow and Clug that Arthom had no mining or land rights (FOF ¶¶ 172-174); $36,200 transferred as a loan to Arthur Adiron Ribeiro, which was never paid back, Div. Ex. 89 at 1-2 (promissory note between Ribeiro and Aurum), and approximately $6,200 in other payments. Div. Ex. 2A at 5 (Celamy Ex. 2).

C. Testing at the Batalha Site Showed Poor or Inconclusive Results

179. As Crow and Clug recognized in a series of September 2011 emails, the testing for the Batalha property was inconclusive at best. Div. Ex. 81 (9.17.11 Raiss email to Crow, Clug, Palacio: "Its obviously nerve wrecking . . . I did have 2 very high results . . . and the other results are low"; "total testing results are in . . . Not as expected . . . Will have to wait for other results to see why of such a big difference to earlier 3 samplings"); Div. Ex. 87 (9.22.11 Palacio to Crow, Clug: "These [testing] results are definitely not reliable;" Clug to Palacio, Crow: "Bruno, thanks for your help and hard work in sorting through the recent bizarre test results etc"); Div. Ex. 92 (9.26.11 Palacio to Crow and Clug: "The first samples collected were not GPS marked and only represented a certain area within the tailings. . . . we still need the geologist to confirm his data . . The first samples, where [Raiss] originally tested, are not enough

representative."); Div. Ex. 119 (11.4.11 Crow to Clug email: "so we throw out last drilling results because geologist was crooked"); Div. Ex. 134 (11.13.11 Crow to Palacio, Clug email: "Can someone please put drilling and results together in [some kind] of format, data table, analysis, etc. so we can make sense of the results so far? There have been so many tests and it is hard to know where [sic] they were, and what they said, so we can draw results and conclusions."); Div. Ex. 87 (9.22.11 Crow to Palacio email: test results were "[v]ery strange, disappointing, and yet so far off it cant be right").

180. Palacio testified that as of September 2011 no opinion about the viability of the project could be made. Tr. 224:10-15 ("There's no way you can form an opinion about the viability of a project based on only a few test results. This could show something, but as we knew, the geologist had not collected the samples properly. So couldn't join conclusions based on it.").

181. In an October 16, 2011 email to Crow and others, Clug commented that a map he had received "shows ZERO gold in most of tailings area." Div. Ex. 105 at 1.

182. In an October 22, 2011 email to Crow and Clug, Palacio said that "the geologist we hired is a criminal and made us lose 2 and a half months work" and Palacio estimated total content at only 24,576 ounces, an estimate he described as "not 100% wrong, but they are not reliable either." Div. Ex. 112 at 1.

183. On December 12, 2011, Palacio emailed to Clug testing results showing the possibility of only 30,084 ounces of gold, and a negative EBITDA of $1,727,601. Div. Ex. 162 at 5.

184. Palacio never determined the total gold content for the Batalha property. Tr. 226:21-24 ("Q. Were you able to come up with a total gold number for the Batalha property that you were comfortable? A. No. Never.").

D. Crow and Clug Knew the Closing Conditions in the August 2011 PPM Were Not Met

185. As of June 2011, two months before finalizing the August 2011 PPM, Crow and Clug knew that the closing conditions for the first PPM would be used. Div. Ex. 64 (6.27.11 Crow to Clug email: "I think we put all in escrow and break at 1mm if we have (1) good final reserve and metallurgy report – both needed, and (2) final jv and rights are vested . . . we can put extra money in as needed which it will be for working capital.").

186. Throughout the Fall of 2011, Crow and Clug knew that under the August 2011 PPM they had to meet the stringent Closing Conditions or return the money raised under that PPM. Tr. 1055:8-18 (Crow: "Q. [Th]e closing conditions [in the August 2011 PPM], you are familiar with these closing conditions to this offering, right . . . You were at the time? A. At the time of the [August 2011] offering memorandum, sir? Q. Yes. . . . A. Yes, I was generally aware of most of these conditions, yes."); Tr. 1607:12-14 (Clug: "Q. You were aware of those closing conditions, though, correct? A. Yes, I was. In August [2011], yes.").

187. Palacio testified that he talked about the need to get total gold number certified by an independent geologist "quite extensively" with Crow and Clug. Tr. 226:10-16 (Palacio: "we would need to do extensive testing on the property and all followed by a certified geologist that would sign . . . the report under the JORC standard, which is Australian standards for mining reporting or gold or any mineral reserves. And the NI 43-101, which is a Canadian standard.").

188. Numerous emails from the Fall of 2011 show Crow and Clug's knowledge of the closing conditions in the August 2011 PPM. Div. Ex. 108 (10.20.2011 Crow to Clug email:

"How will all this testing work with respect to getting the independent geology report certifying gold reserves."); Div. Ex. 107 (10.20.11 Clug to Crow email: "Angel's investors ($115K) are pushing him for info on closing"); Div. Ex. 112 (10.22.11 Clug to Palacio email: "total gold numbers . . . will still need to be signed off by geologist then put into JORC/NI43-101 standards"); Div. Ex. 131 (11.8.11 Clug to Palacio, Crow email: "As you know, we do need, asap, a total gold report signed off by an independent geologist . . . Do you think you can give us an update on the status/timing of all the testing completed and to be completed, and process for geologist review/sign off(and who the geologist will be)."); Div. Ex. 114 (11.1.12 Crow to Clug, Palacio, Raiss email: one of the "conditions to funding" was the "independent certification of reserves and/or 43101 report.").

189. Crow and Clug never obtained the "geological report" from a "qualified and licensed geologist," attesting to his opinion regarding the average and/or total gold content." Tr. 226:17-20 (Palacio: "Q. [W]as there any certification of the total gold numbers in Batalha by an independent geologist? A. No, not to my knowledge.").

190. At the hearing, Crow was unable to identify any "geological report" that Aurum received pursuant to the Closing Conditions. Tr. 1058:7-19 (Crow: "Q. The geological report that's referred to here, attesting to the geologist's opinion regarding the average and/or total gold content. Did you ever receive such a geological report? A. We received several reports . . . I don't think there was one specific opinion or anything that was done."); Tr. 1060:2-7 (Crow: "Q. There's no one specific document you can point out at this point in time to say, ah-ha, here's the geological report required under this closing condition? A. Not that I recall.").

191. Clug testified the "geological report" described in the Closing Conditions was never received. Tr. 1609:9-11 (Clug: "Q. That written [geological] report, as described in the August 2011 PPM, was never received by you, correct? A. No, it wasn't.").

192. Crow knew that Aurum never obtained an "opinion of Brazilian legal counsel, as required by the Closing Conditions. Tr. 1961:2-7 (Crow: "Q. [Y]ou never received any [legal] opinion attesting to those three [closing] conditions, did you? A. A written opinion? Q. Yes. A. No.").

193. The joint venture also was not formed as required in the Closing Conditions. Azevedo Sette, Aurum's Brazilian law firm, advised Crow and Clug on April 4, 2012 that "Arthur and Arthom are in breach of the JV Agreement since they have not incorporated Batalha (at least not as it is described in the JV agreement, having Aurum as shareholder) nor have they transferred any mining rights so far." Div. Ex. 334 (4.5.12 Joao Carlos Horta to Crow Clug email).

194. Crow and Clug did not create an escrow account. Tr. 831: 14-18 (Lana: "Q. Now, do you remember around this time creating a segregated bank account to serve as an escrow? A. To the best of my knowledge, there was no escrow bank account.").

195. Crow testified that he spoke with Robert Brantl, Aurum's lawyer, "about the escrow concept and about how difficult it was to get escrow companies to do these kinds of things," and that Brantl advised that if Aurum "kept a savings account and didn't use it for anything else and didn't touch the money, it would serve the same purpose and that's what was decided to do." Tr. 1056: 4-14 (Crow testimony).

196. Crow and Clug nevertheless told investors in the January 2012 Update that "[w]e have satisfied the conditions of closing on the Aurum original PPM." Div. Ex. 217 at 1 (January 2012 Update signed by Melnick); Div. Ex. 218 at 2 (January 2012 Update signed by Melnick).

197. Crow testified that Aurum's attorney Robert Brantl inserted the line "[w]e have satisfied the conditions of closing on the Aurum original PPM" into the January 2012 Update. Tr. 1064:23-1065:1 ("there is line in there Mr. Brantl included saying the conditions were met. I'm not sure if he's refer to the old private placement or the new private placement. But that line was included.").

198. Crow testified that he did not know why the line "[w]e have satisfied the conditions of closing on the Aurum original PPM" was included in the January 2012 Update but that it "slipped through out process." Tr. 1065:20-166-1 (Crow: "I don't know why [Brantl] included that last sentence down there. I don't understand why it was included like that.").

199. Clug told Lana that the closing conditions in the August 2011 PPM were satisfied. Tr. 836:5-12 (Lana: "Q. Did you ever have any understanding yourself as to whether these closing conditions in the August 1st, 2011, PPM were satisfied? A. It was my understanding that they were satisfied. Q. How did you obtain that understanding? A. I believe it was based on representations from Alex.").

200. The Secured Convertible Noteholders agreed to convert their Notes into Class A Membership Units in Aurum, rather than received their principal plus interest, based on the representations in the January 2012 Update. Div. Ex. 226 (1.10.12 Clug to Lana, Crow: "Great! 3 down, 3 to go," forwarding Lana to Melnick email, "Subject: AURUM MINING LLC – UPDATE LETTER – NEEDS TO BE SIGNED IF CHOOSING TO GO FORWARD WITH INVESTMENT"); Div. Ex. 217 at 1 (January 2012 Update signed by Melnick); Div. Ex. 218 at 2

(January 2012 Update signed by Melnick); Tr. 1067:7-15 (Crow: Q. [W]asn't the investors' -- all of those investors' decisions, a dozen or so convertible note investors, wasn't their decision to convert into equity premised on, in part, on the assumption that the closing conditions were, in fact, satisfied? A. I think it's fair to say in part they were. You know, I do in part. I don't know which part, I didn't deal with them. Angel dealt with them. I think that's fair.").

201. After their failure to meet the August 2011 Closing Conditions, Crow and Clug resolved not to include such conditions in future PPMs, or at least to include less stringent conditions. *See* Div. Ex. 125 (11.7.11 Clug to Crow email: "In [next] PPM we still should have 'closing conditions' even if they are much less than before"); Div. Ex. 346 at 6 (12.31.31 PPM: "No subscriptions will be accepted until . . . the Closing Conditions described below have been satisfied"; no Closing Conditions described in PPM).

E. Crow and Clug Abandon Batalha by early 2012

202. On February 24, 2012, Raiss emailed Crow that "I have come to the end of my financial resources and am unable to continue and . . . am not willing to continue[.]" Div. Ex. 261 at 1.

203. Crow then accused Raiss of "poor results and misappropriated funds" and threatened to "engage lawyers." Div. Ex. 264 at 1.

204. On February 29, 2012, Crow emailed Clug that "the brazil project is really a problem now." Div. Ex. 732 at 1. *See also* Div. Ex. 316 (3.29.12 Crow to Raiss, Clug email: "Batalha has been a disaster so far and we are trying to save it").

205. Palacio withdrew because he "couldn't see any – any progress. . . . I didn't see any money coming in to conduct the test works and analysis. So I didn't see it going forward anywhere." Tr. 241:19-25.

206. On April 5, 2012, Raiss emailed Palacio and Ribeiro to state that he had "just agreed with [Crow] on the non-continuation of participation of Aurum in batalha or any other project." Div. Ex. 335 at 1.

207. No production ever occurred at the Batalha property. Tr. 1076:11-16 (Crow: "Q There was certainly no production going on in the Batalha property, correct? A. That's correct. Q. There never was any production from the Batalha property, right? A. No. We didn't put it in production, no.").

VIII. CROW AND CLUG KNEW THAT THE PERU PROPERTIES WERE EXPLORATION SITES AND NOT READY FOR PRODUCTION

208. Crow and Clug traveled to Peru in November 2011, and Paul Luna Belfiore, a Peruvian contact, scouted several properties. Div. Ex. 186 (12.2.11 Luna to Crow, Clug email: "Dear Michael and Alex, nice for you coming down here, taking a look at the projects here in Peru.")

209. Luna recommended against investing in Molle Huacan "[d]ue to Low Gold grade (4-6 grs) it will have to be a Heap Leach operation capable of treating High volume . . . Molle Huacan (Providencia concessions) will need a much larger investment." Div. Ex. 186 at 2. Instead, Luna recommended that Crow and Clug invest in a property called Maria Luz because it was "more suitable for what Corsair group is trying to do . . . [because] of gold operations, Low investment and risk." *Id.*

210. Crow and Clug had difficulty paying the Molle Huacan concession holders, Jorge Carrasco and Kenny Jhoel Carrasco. Div. Ex. 540 (1.25.13 Clug to Crow: "You ok w paying the $12.5K we owe him now?"); Div. Ex. 539 (1.25.13 Crow to Clug: "Lets get [Carrasco] used to slow payments.").

211. Crow and Clug made numerous statements in PPMs and Quarterly Reports that it "owned" the Peru sites. Div. Ex. 374 at 3 (1st Quarter 2012 Report: Molle Huacan "owned by Aurum Mining Peru"); Div. Ex. 577 at 10 (1.31.13 PPM: Molle Huacan "owned by Aurum Mining Peru"; Div. Ex. 372 at 11 (Business Plan: referring to "Aurum's two owned mines").

212. As Crow and Clug know, however, Aurum's Peru properties were short-term permits to mine that required regular payments (and Aurum was always in arrears on these payments to the property owners. Div. Ex. 561; Div. Ex 581 at 8 (NI 43-101 Report). *See also* Div. Ex. 326 (4.3.12 Clug to Crow email attaching mark-up of draft of 1st Quarter 2012 Report, commenting on portion stating that Molle Huacan was "owned" by Admirals Cove that its interest was "technically an option??!"); Div. Ex. 299 (Clug to Luna, Castillo, Crow email: Cobre Sur Agreement "looks like a Sales agreement, it really is an Option agreement as we can walk away at any time and the Seller cannot sue us for any remaining payments").

A. Geologist Steven Park Tested Cobre Sur and Molle Huacan

213. Steven L. Park, an "independent consulting geologist residing in Lima, Peru, . . . has spent over 30 years on mineral exploration experience in various geological environments throughout the Americas and is a Qualified Person as defined by NI43-101 by virtue of his qualifications, experience and professional registration as Certified Professional Geologist with the American Institute of Professional Geologists[.]" Resp. Ex. 105 (Park Alta Gold Report).

214. On February 13, 2012, Park submitted a proposal to Crow and Clug "for writing a 'first phase' NI 43-101 compliant technical report that would include a Measured and Indicated Resource statement on the Molle Huacan property in Arequipa for which you are currently negotiating." Div. Ex. 252.

215. A Consultant Agreement dated February 13, 2012, between Aurum Mining Peru S.A. and Park states that Park will prepare "a technical report compliant with NI 43-101 (CIM) standards on Aurum's mining prospect Molle Huacan located in the Department of Arequipa, Peru[,]" at a cost of $15,000. Div. Ex. 246 at 1.

216. Park also testified that Crow and Clug asked him "to do a sampling program across the gold vein that was the primary feature of [Cobre Sur]." Tr. 521: 10-18. The purpose was to determine "[i]f there was enough . . . gold grade to make . . . it a viable project." Tr. 523: 8-11.

217. On April 16, 2012, Park emailed Clug re "Cobre Sur prelim results" and told him that "[t]he 9 samples that I took on the visit to Cobre Sur with you came back really low, highest was 0.9 g/t Au." Div. Ex. 347.

218. On April 17, 2012, Park emailed Crow, Clug and Paul Luna that: "The 52 channel sample results from Cobre Sur are attached here. I had a meeting with the engineer group that was going to do resource calculation – it was decided to shelve the project for lack of grade" and that it was "pointless to proceed with a resource calculation." Div. Ex. 604 at 3.

219. Undeterred by these negative findings, Clug emailed Park on April 28, 2012 and asked him whether he would be able to produce a 'project-of-merit' type report for Cobre Sur. Div. Ex. 604 at 4; Div. Ex. 361. Park declined, due to Cobre Sur's "poor results." Div. Ex. 604 at 1.

220. Despite knowing that the Cobre Sur results were "really low," Crow and Clug emailed Lana and potential investors the 1st Quarter 2012 Report and the Aurum/Corsair Business Plan dated May 2012, which presented highly optimistic "cash flow projections" for Cobre Sur and Molle Huacan. Div. Ex. 367 (5.3.12 Crow to Clug, Lana email); Div. Ex 373

(5.5.12 Lana to Menge email, Crow and Clug copied). Lana then provided the materials to investors. Div. Exs. 372, 374. (5.5.12 Lana email to Keith Ullrich). Ullrich invested $50,000 in Aurum after getting these materials. Div. Ex. 2A-4 (Celamy Ex. 1).

221. On May 15, 2012, Clug emailed Crow: "Looks like Cobre Sur may be a complete write-off! Need to find other mine ASAP"). Div. Ex. 382 at 1 (5.15.12 Clug to Luna, Crow email).

222. On May 16, 2012, Park emailed Crow and Clug regarding the testing results for Cobre Sur, and concluding that "I don't see a way to save Cobre Sur other than to take the risk to explore for more veins." Resp. Ex. 42.

223. Clug then forwarded Park's email, to Crow, also on May 16, 2012, and wrote: "No surprise based on our sampling...Looks like a write off. Hope Elias also understands that we can't make this kind of mistake again." Div. Ex. 384 (5.16.12 Clug to Luna, Crow email).

224. After stating that Cobre Sur was a "write off," Clug emailed the 1st Quarter 2012 Report, with its optimistic cash flow projections for Cobre Sur, to a potential investor, and stated in his cover email that "we would love to have you be part of Aurum, and what we believe will be great returns." Div. Ex. 385 (5.16.12 Clug to Dabrowski, cc Crow, email).

225. Park testified that his work at Molle Huacan was to "make a field visit to the property, look at the vein, look at the mineralizations on the property, take reference samples in order to get an idea of, in general, what the grade of the vein was on the property." Tr. 531:23-532:5.

226. Park visited Molle Huacan with Paul Luna and Elias Garate. Park testified that "[w]e walked the length of the, I believe what is now being referred to as the Monica Vein in the primary zone where most of the sampling and work has been done, where there are past small

miner workings. We took -- at that time, I took several rock of samples, rock of samples during that one-day visit." Tr. 532:22-533:4.

227. Park took "10 to 12" samples. Another geologist with Park took another "40 or 44 samples," but due to computer problems the "location data" of these additional could not be recovered. Tr. 536:11-22.

228. Park testified that Garate "did have some good sample results" but that his results were not as high as Garate's. Tr. 537:18-22.

229. Park's written report, dated October 8, 2012, was entitled Preliminary Exploration Report on the Molle Huacan Property. Div. Ex. 484.

230. Park's findings differed from Garate's in material respects. Park testified that he estimated the Monica vein to be "approximately 700m meters long" which "contrast[ed] with the estimation of Mr. Garate that it's over 1,800 meters." Tr. 545:20-546:2. *See also* Tr. 1278:22-1279:4 (Park: "I was surprised at [Garate's] estimation of the length of the vein and also the width of the vein, because . . . in my report I gave it a 700 or 800-meter-long strike length and I was quite surprised at the estimation of the average width of 18 meters.").

231. Park, testifying as Respondent's expert, also stated that he disagreed with Garate's finding of "inferred mineral resources" at Molle Huacan. Tr. 1281:8-11 (Park: "[F]rom what I had seen and from the Aurum geologist and their mapping and their sampling, I would say that there was not enough information to state inferred mineral resource.").

232. Park also could find no support for Garate's finding that there was a portion of the vein "greater than 30 meters of width and his sampling gave an average of 2.38 grams per ton across that width." Tr. 547:21-548:1. Park, however, found this area to be "shear zone" or "a

significant quantity of unmineralized wall rock, [] wall rock is a term geologists use to call the rock that holds the vein, basically. It's unmineralized rock." Tr. 548:2-17.

233. Garate told Park that his sampling had shown "a width of greater than 30 meters, averaging 2.3 grams a ton across 30 meters." Park, however, testified that he never saw "the sample map specifically at this point that supported that conclusion." Tr. 548:18-549:2 (Park: Q [I]n the first sentence of what Mr. Garate described, that's -- I'm going to read it. Having a width of greater than 30 meters, averaging 2.3 grams a ton across the 30 meters. Did he do, to your knowledge, some type of channel sample or to go across the 30 meters to come up with that number? A. [Garate] told . . . me that they had done the sampling that -- that resulted in this calculation. I never did see the sample map specifically at this point that supported that conclusion.").

234. Garate was a shareholder in Aurum Mining Peru. Tr. 1722:8-12 (Clug: "Q. Is it also true that Elias Garate also had shares in the operation. So he had the same aligned interest as the Aurum people? A. Yes. He owned shares in Aurum Mining Peru."). Tr. 1722:8-12.

235. Aurum paid Garate's expenses, and Clug testified that Garate was "incentivized to make this work . . . We had discussions about [Garate] being paid a salary once we reached production. So . . . we even more incentivized [Garate] to get to cash flow." Tr. 1722:18-22,1723:10-15.

236. Park testified as to his conclusions on Molle Huacan: "[O]verall from the samples that were taken, the average of all was fairly low. And the average width of the vein did not lead to a large tonnage potential or it actually came out to be a fairly small tonnage potential, so in my opinion, as I said, the property would not be ready for production, but it would be a good exploration target that would need to be further explored." Tr. 550:25 – 551:7 (Park testimony).

237. Park communicated his findings to Crow and Clug months before they received his report. Tr. 1184:2-4 (Crow: "[H]e verbally had told us about it even though we didn't get the report we knew what he had recommended and what we had paid for.")

238. Park emailed his Molle Huacan report to Crow and Clug on October 7, 2012. Div. Ex. 614 (10.7.12 Park to Crow, Clug email: "Alex and Michael, You should have been sent an invitation to download my Molle Huacan report from Drop Send. Now that it's delivered I trust that the Inspectorate Lab bill can be paid off.").

239. Ten days after receiving the Park report, October 17, 2012, Crow and Clug had an email exchange in which they decided not to disclose the report or its findings to investors:

> CROW TO CLUG: any reason we shouldn't attach full steve parks report and elias report with the [business] plan? Parks is just a project of merit anyway...more work needed to move it into reserves or inferred
>
> CLUG TO CROW: You know the audience this is going to better than I do so your call. I only worry that an unsophisticated viewer would see one of Park's conclusions as rather negative. Specifically: Given the low average grade and small tonnage potential, this Property is not ready for production. It should be considered as an exploration target that will require significant expenditure in field work in order to discover and locate sufficient resources to move to the production stage.
>
> CROW TO CLUG: that's what I was worried about [a]s well...suggest we keep it back...we can have him amend his report inexpensively with new test data and samples in channel along wide vein...cheap and worth it.
>
> CLUG TO CROW: Agreed.

Div. Ex. 490 (10.17.12 Crow/Clug emails).

240. After receiving Park's report, Crow and Clug never asked Park to amend his report or to conduct further testing. Tr. 1317:25:1318:3: (Park: "Q. Did [Crow and Clug] ever follow[] up ever with you to ask to amend your result or conduct further testing or revise it? A. No.").

B. Peter Daubeny's May 2013 NI 43-101 Report

241. Peter Daubeny is a Canadian geologist. Daubeny has a bachelor's degree from the University of British Columbia in 1994 and a master's degree in mineral exploration from Queen's University in Kingston, Ontario. Tr. 356-357 (Daubeny testimony). He received his professional accreditation in 2004 with the Association of Professional Engineers and Geoscientists of British Columbia. Tr. 356:7-11; 357:6-16 (Daubeny testimony).

242. In January to early February 2013, Richard Evans of RwE Growth Partners asked Daubeny to evaluate Molle Huacan from a geological perspective and to prepare an NI 43-101 report. Tr. 359:22-360:2. "A 43-101 dictates how scientific and technical information on mineral properties will be reported for publicly listed companies [in Canada]." Tr. 361:13-17.

243. Prior to going to Peru, Daubeny was told that Molle Huacan "was very close to production, within a matter of a very small number of months from production. . . . So given that that's what I was told, I would have expected to see documentation that that was, in fact correct. And to get a property ready for production, generally millions of dollars worth of work over a many-year period is required to prove up an ore body. And I saw no indication whatsoever in that data room that . . . that work had been undertaken or documents." Tr. 370:18-371:5.

244. As Daubeny testified, an "ore body" is "a mineralized body that is economic to extract. That means the ore body will produce revenue that will pay for its exploration and development and acquisition costs. It will pay for its extraction costs. . . . [and] for the closure of the mine, post production. And that means environmental remediation. . . . So an ore body must pay for all of that. And implicit in that is that an ore body would return an adequate return on investors' money. To get an ore body, it requires a very vast amount of work. And I saw no indication that that work had been undertaken or, as I said, documented." Tr. 371:10-372:6.

245. In accordance with NI 43-101 standards, Daubeny asked for all documents relating to mineral exploration on Molle Huacan. Tr. 363. Daubeny testified that Clug gave him "[v]ery little that I could use in the report. It seemed to me there were gaps in the history of the property that was not being provided to me." Tr. 363:12-15.

246. Clug gave Daubeny a report written by Elias Garate. Div. 662. The report, which was in English even though Garate did not speak English, "mangles geological terms." Tr. 365.

247. Clug did not give Daubeny the report prepared by Steven L. Park dated October 8, 2012. Tr. 366:19-22 (Daubeny: "Q. So this document [the park report] was not provided to you by either Mr. Crow or Alex Clug prior to your trip to Peru? A. No, it wasn't.")

248. The Park Report was, as Daubeny testified, "a sort of document that I needed to write my own report. It's the sort of document that I would have expected to be given to me when I asked for it, or asked for this type of document, prior to my trip to Peru. And at the very latest it should have been given to me afterwards." Tr. 366:3-9 (Daubeny testimony).

249. Daubeny saw the Park report for the first time when Daubeny gave investigative testimony during the investigation leading to this proceeding. Tr. 366:10-18 (Daubeny: "Q. When did you first see this document [the Park report]? A. When you [Mr. Bah] showed it to me some time ago. . . Q. Do you recall that this document was shown to you during an investigative testimony provided to the SEC? A. Yes, actually, yeah."). Tr. 365:15-23 (Daubeny: (" Q. Mr. Daubeny, do you recognize Division Exhibit 484 [the Park report]? A. Yes, I do. It's a report that you [Mr. Bah] showed me for the first time.").

250. As Park testified, all prior geological reports on a particular property are given to a geologist preparing a NI 43-101 report on that property. Tr. 1322:6-9 (Park: "Q. [I]s it typical

when you do a 43-101 report that you receive all of the geological reports and testing that had been done before on the property? A. Yes.").

251. Crow and Clug never asked Park to provide his report to Daubeny. Tr. 1318:4-7 (Park: "Q. [In 2013] were you ever asked to provide your report to Peter Daubeny about your findings? A. No.").

252. Daubeny testified that the conclusions in Park's report were "very accurate." Tr. 367:7-22 (Daubeny: "Q. Mr. Daubeny, I'm going to direct your attention to the very last bullet point on this page, where it states, Given the low average grade and small tonnage potential, this property is not ready for production. It should be considered as an exploration target that will require significant expenditure and field work in order to discover and locate sufficient resources to move to the production stage. . . . Q. When you first saw the [Park] report and it was shown to you, did you form any impression as to Mr. Park's conclusion? A. I believe that the conclusion is very accurate.").

253. Daubeny reviewed material in the data room "[o]n a number of occasions." Tr. 368. In the data room, Daubeny found "a dearth of technical information." Tr. 368:12.

254. Daubeny saw nothing in the data room that disclosed Crow's prior SEC cases or bankruptcy. Tr. 370:4-12 (Daubeny: "Q. Did you see anything in the data room that disclosed Michael Crow's bankruptcy? A. No, I didn't. Q. Did you see anything in the data room that disclosed Michael Crow's SEC background? A. No, it didn't. Q. In general, what was your impression of the data room? A. It was promotional.").

255. Daubeny did find some metallurgical results but concluded that "metallurgical testing was not justified at that stage . . . [because] to undertake metallurgical testing of a mineralized body that is approaching – approaching ore status, and there was no indication that I

was shown that there was anything approaching the definition of an ore body at Molle Huacan." Tr. 369:10-11, 19-23.

256. As Daubeny testified, the metallurgical report "were immaterial [because] there was no mineralized ore body defined on the property[.] [I]f a mineralized body or an ore body was ever discovered . . . metallurgical testing would have had to have been done on . . . that mineralized body to determine its characteristics[.]" Tr. 382:1-80.

257. Daubeny also reviewed sampling results and believed that "the samples had been poorly documented." Tr. 369:13-14.

258. The photographs of Molle Huacan that Daubeny examined "showed that the property looks to be at the very earliest stages of exploration." Tr. 370:1-3.

259. Daubeny travelled to Peru on February 13-14, 2013. Tr. 375:7-18. Upon arrival in Peru, Daubeny met with Crow and Clug in Lima. Crow and Clug told Daubeny that Molle Huacan would be in production in the second quarter of 2012. Tr. 376:3-15. Crow and Clug told Daubeny that they were expecting him to write a favorable report on the property, but Daubeny testified that "given that I hadn't seen any data backing up some of the claims to date, I was skeptical." Tr. 377:1-14.

260. Crow and Clug did not use the term "ore body" in their initial discussions with Daubeny, but Daubeny testified that "the fact that they're talking about production in the near term, in the second quarter, they're talking about producing from an ore body. There's no other way to produce." Tr. 377:15-21.

261. Crow and Clug also told Daubeny about their "quick to production" business model. Tr. 377:22-378:20. Daubeny testified that quick to production was "not a term that I was

familiar with, and I discounted it because . . . there [are] no shortcuts or quick to production model." Tr. 378:3-7.

262. Daubeny visited Molle Huacan with Clug, Elias Garate and Paul Luna Belfiore. Tr. 379. Molle Huacan appeared to Daubeny to be "a mineral exploration project in the very earliest stages of exploration." Tr. 379:2-5. Molle Huacan could not even be called a mine, Daubeny testified, because "[t]here was none of the infrastructure in place or evidence that would be required to mine. . . it was just a green fields or grass roots exploration project." Tr. 379:12-20.

263. Daubeny was provided with "a crude geological map," and he also saw a loader and a tractor, both of which were "broken down." Tr. 379:21-380:6. He saw no evidence of construction of a processing plant. Tr. 380:12-14.

264. Daubeny noticed that the worker has "shiny new apparel that . . . was a little bit out of place. These hard hats and these vests are all new . . . they haven't seen any serious work conducted in them." Tr. 384:19-23.

265. Daubeny took samples at Molle Huacan that were analyzed by "[a]n accredited laboratory in Vancouver." Tr. 385:15-386:2. Daubeny testified that he was "surprised when I got the results. Because the results showed much less gold in them than I had expected." Tr. 386:8-12.

266. Daubeny saw no evidence supporting the statement in the 3rd Quarter 2012 Report that there was "1.254 million ounces of gold on just the Monica ore vein/body." Tr. 381:8-14.

267. Clug asked Daubeny to include a statement in the NI 43-101 report that Aurum "had planned to start production and a small pilot plant of 80 tons a day in the near future." Daubeny, "somewhat exasperated," refused to insert the statement "because it was not true."

"There was no possibility of that. There was no ore body defined. No indication on site of any of the infrastructure that would be needed to sustain that type of production per day. So none of that was in place." Tr. 392:20-393:16.

268. Daubeny testified that he "believed that some of the assay results that I was provided with were fabricated. . . . the samples . . . may have deliberately had gold added to them after they were collected." Tr. 462:15-16, 463:2-4.

269. When Daubeny went to Peru, "the property was represented to me as being on the verge of production. . . A property approaching production would have a vast amount of data supporting that, and I expected to see that data. . . . It turns out the reason the data wasn't provided was because – it was never shown to me or quite likely it didn't exist. . . . [Molle Huacan] wasn't a developing stage company. The property was . . . at an initial stage of exploration. It was a grass roots property." Tr. 460:1-3, 9-11; 461:1-3, 7-10.

270. On March 11, 2013, Crow had a heated email exchange with John Marcus Payne, an associate at RwE Growth Partners, in which Payne stated: "It was only after we visited your site, that we knew that your mine is clearly not as big as had been portrayed to us....You are not in production in any manner that could be sold to ....any major investor." Div. Ex. 566.

271. Park had no major criticisms of the Daubeny NI 43-101 report. Tr. 1313:23-1314:3 (Park: "Q: Did you read [the Daubeny report]? A. Yes, I did. Q. Okay. And . . . did you have any major criticisms of the Daubeny's report? A. No, I did not.").

C. The Division's Expert, Allan Moran, Like Daubeny and Park, Concluded that Molle Huacan Was an Exploration Potential Site; and that its Gold Content was Purely Conceptual and therefore Not Ready for Production

272. Since receiving his B.S. in Geological Engineering from the Colorado School of Mines, Golden, CO, in 1970, Allan Moran has been continuously employed as a geologist in the

mining and mineral exploration business. Div. Ex. 1 at 66. Moran is a Certified Professional Geologist and, by virtue of his education, professional affiliation and work experience, is a "qualified person" under National Instrument 43-101. Div. Ex. 1-66, 68-77.

273. Moran has more than 20 years of experience "in the gold business . . . working on evaluations of gold properties[.]" Tr. 669: 2-4. Moran has also "worked in Peru a little bit . . . and the work that [he] did in Peru was looking at gold." Tr. 668:16-17; 669:4-6.

274. Moran's experience in gold mining has run the "full gamut from small artisanal to small scale mining on the veins, to large deposits that are either open pits or amenable to open pit mining. . . Various types of deposits from vein deposits to low grade disseminated deposits, various things." Tr. 669:11-20.

275. Moran reviewed all the geological data and materials relating to Molle Huacan. Div. Ex. 1 at 10-11, 59-63; Tr. 672:18-23.

276. Moran testified as to the differences among the terms mineral potential, mineral resources, and mineral reserves:

> A mineral exploration potential is a set of numbers that a geologist would apply to an exploration target. An exploration target having a mineral potential is a conceptual target. In other words, it's the best that the geologist thinks might be present in the ground.
>
> And it would be defined by determining the length of the mineralization that you see on the surface, the width of the mineralization that you see on the surface, the average grade of the samples that you see on the surface, and the projecting into the ground some arbitrary depth, which you think the mineralization might go. You don't know because you don't have the information. So that's a conceptual target.
>
> A mineral exploration potential has no value because it's conceptual in nature. It's totally distinct from a mineral resource. A mineral resource is actually something that's defined in the ground. It's measured because you have a number of sample points usually through drilling into the subsurface versus -- in addition to sampling on the surface so that you can actually measure how deep into the ground the mineralization is.

> And you go through the process with all the data that you gather in drilling and surface information to generate a mineral resource estimate. And that's an estimate of the tons and grade and distribution of grade within this body of mineralization below the surface. That would be a mineral resource estimate.
>
> The gap between a mineral potential and a mineral resource is basically time and money. To do the exploration to get from which you think is there to what you've measured is there. A mineral reserve is merely that portion of the mineral resource that is economic to extract.

Tr. 678:14-679:25.

277. After a mineral potential is identified, such as what happened at Molle Huacan, "then you generate an exploration program to go define whether or not there is anything there." Tr. 680:20-22. As Moran noted, this is what Daubeny proposed. Tr. 681:1-4.

278. The definitions are of potential, resource and reserve are well-known. Tr. 689:3-11 (Moran: "Q. And the difference between potential resource and reserves is that a distinction that's well known among people familiar with the mining industry? A. Yes, it is. Q. Or is it something that only somebody like you, a geologist with 40 years of experience would know about? A. No, it's pretty common.").

279. Moran testified that he has experience working for companies that have raised funds from investors when there was nothing more than a "conceptual target" and also for companies that had identified a mineral resource and "were going to raise more funds to take it to the next step and do a feasibility study . . . to determine whether or not it's minable." Tr. 682:4-19.

280. In Moran's experience, "[i]t's easier to raise money for something that has a resource because that resource has value in the ground. Investors typically can see that there's value in the ground if you have a mineral resource." Tr. 683:4-7.

281. Companies can also raise funds for "exploration of early stage properties that just have potential, but typically they're raising a lesser amount of funds." Tr. 683:11-14. Moreover, investors in early stage properties are "told that it's an exploration property that has potential, but that's it." Tr. 684:16-21.

282. Once a resource is identified that "could possibly be economic[ˈ] [y]ou still have to go through all the process of feasibility to prove that it is [economic to extract]."). Tr. 689:22-24.

283. It is common for a resource to be identified but then, for various reasons, it becomes uneconomical to extract. Tr. 690:3-14 (Moran "Q. Have you ever seen a situation where a resource was identified, but because it was uneconomical to extract, they could not be labeled reserves? A. Absolutely. Q. What kind of situation does that happen in? A. A common one is you've defined a mineralized body so you have a mineral resource, but it turns out that the metallurgy on it is difficult that you can't get the gold from the rock. So ... it's too costly to extract the gold, therefore, it becomes noneconomic.").

284. Moran's report concluded that "Molle Huacan is not a gold mine, it is an early stage exploration property that has not been drilled." Div. Ex. I at 34. Moran testified that "[t]here's no information to support that it's anything other than the early exploration stage." Tr. 698:5-10.

285. For Molle Huacan to advance beyond the exploration stage to the production and development stage, "a significant amount of exploration and development costs and time are required, on the property, to advance an early stage project such as Molle Huacan to mine development." Div. Ex. 1 at 36.

286. Moreover, advancing to the production stage "assumes there will be continued success at each stage of the project['s] exploration and development, an assumption that cannot be made." Div. Ex. 1 at 36; *see also id.* at 37 (Figure 7.2: Table depicting Corporate Planning, Costs and valuation of a Project Similar to Molle Huacan); Tr. 685:10-687:25 (Moran testimony explaining Figure 7.2).

287. The phrase "quick to production," Moran's report stated, "has no specific meaning in the mining industry." Div. Ex. 1 at 37. Based on Aurum's action, Moran concluded that Aurum meant "to bypass the mid-stage and advanced-stage exploration activities, and to bypass conducting a Feasibility Study, to proceed directly to funding of production at Molle Huacan, with nothing more than early exploration stage sampling." Div. Ex. 1 at 37.

288. In Moran's 44-year career in the mining industry, he has never seen a company go from the early exploration stage right to the production stage. Tr. 688:1-4 ("Q. And your experience have you ever seen a company skip the drilling and the resource definition stage and jump from early exploration to production? A. No, I have not.). *See also* Tr. 692:2-6 (Moran: "Q. And would it have been possible for Molle Huacan or any similar type company to move to the mine production stage and skip over the drilling stage? A. No, I don't believe so.").

289. Moran has extensive experience preparing NI 43-101 reports. Tr. 693:25-696: 4 (Moran testimony on his experience and qualifications re NI 43-101 reports).

290. Moran reviewed Daubeny's NI 43-101 report and testified that it "seems fairly accurate to me." Tr. 696:5-12.

291. Moran's report, at Table 7.4, summarizes Aurum's statements in the Quarterly Reports, Business Plan and PPMs relating to production rates and project economics. Noting that Aurum's production estimates "increase dramatically" over time, Moran testified that such

production estimates were inappropriate and unjustified for an early exploration site such as Molle Huacan. Div. Ex. 1 at 41 (Table 7.4: Aurum Statements related to Mining and Economics of Molle Huacan); Tr. 698:11-25 (Moran: "Q. And the statements that you list here, over time to the predictions of ton per day and production increase or decrease? A. Well, they increase dramatically. Essentially in a year it went from 50 tons a day to 1500 tons a day. That's what it looks like. Q. And is it -- is it justified for a site that merely has exploration potential to be making predictions about production level? A. No. Q. Why not? A. Production from what? They haven't defined a deposit yet. At best those would be conceptual numbers and conceptual numbers based on what, I found no evidence to support.").

292. Moran's Table 6.3 lists various statements from Aurum PPMs, Quarterly Reports, the Park and Daubeny reports, and internal reports attributed to Elias Garate and Ciro de la Cruz. Div. Ex. 1 at 30.

293. In Table 6.3 and in his hearing testimony, Moran highlights Elias Garate's report of January 11, 2013, finding a "mineral potential of 2,842,443 ounces of gold," and the statement three weeks later in the Business Plan that "[w]e estimate that the Molle Huacan property currently has inferred gold mineral resources of a minimum 2,842,000 ounces, calculated solely on the Monica vein using a length of 1,700 meters and a depth of 500 meters." Tr. 701:3-13.

294. Moran found that "Garate's estimates are highly exaggerated and not supported by Aurum's own data[.]" Div. Ex. 1 at 31.

295. Moran found the leap from "mineral potential" in the Garate report to "inferred gold mineral resources" in the Business Plan inexplicable and unjustified:

> Q. What would you expect to see in terms of the jump from having a potential to having a resource here where on January 11th Garate identifies the potential for that amount of gold and then in the business plan that's prepared three weeks later . . . that number is

suddenly identified as a resource. Is it possible for that to happen in three weeks?

> A. No, I can't see how it could happen in three weeks . . . There's just no way you could -- what you would need to get from a mineral potential to a mineral resource, as I explained previously, is a lot of drilling to actually measure what's in the ground. And that never happened. So how it went from a mineral potential to an inferred mineral resource in less than a month, I can't explain.

Tr. 701:19-702: 12.

296. As Moran notes, both statements by Garate and the Business Plan are inconsistent with Ciro de la Cruz's report from February 2013, which stated that "[t]here is no geological information as to the depth of the Monica vein, the gold grades, the volume of reserves, resources, etc." Div. Ex. 1 at 30; Div. Ex. 802 at 4 (Ciro de la Cruz report).

297. Moran noted that Ciro de la Cruz's finding is supported by Daubeny's conclusion several months later that "[t]he Molle Huacan property does not contain any known mineral resources or reserves." Div. Ex. 581 at 25 (Daubeny report); Tr. 703:1-4 (Moran: "Q. And is the statement of Mr. Ciro de la Cruz there consistent with the ultimate conclusion of the Daubeny report, which came out three months later? A. Yes, it is.").

298. Moran reviewed the statements in the 1st Quarter 2013 Report that "[p]lant capacity has been increased to 1,500 tons a day," and that, under the Forecasted Statement of Operations, Molle Huacan would produce and process 182,940 ounces of gold and receive net income of $109,423,818. Div. Ex. 592 at 3, 9. Moran found that these representations were "simply not based on any supporting documentation for Molle Huacan." Div. Ex. 1 at 41 (Moran Report).

299. Moran also reviewed the RwE Growth Partners valuation report. Div. Ex. 1 at 43-45. Although Moran is not a certified valuation expert, he testified that he has "worked with certified mineral appraisers . . . providing [] information on the validity of [] resources or

reserves to the certified mineral appraiser, who would then go through the process similar to what RWE did in terms of assessing the quote, value of those resources or reserves." Tr. 703:10-21.

300. Moran criticized the RwE report for purporting to base itself on Daubeny's conclusion that Molle Huacan had no ore body and no mineral resource, and then nevertheless basing its valuation on Aurum's forecasted results:

> Q. And given that the RWE report specifically referenced the Daubeny report. What was the significance of the Daubeny report, which said no ore body, no resource in terms of how that would be taken into account in valuing Aurum Mining?
>
> A. Well, a number of things that were important about the RWE report. One, they clearly state . . . they relied on Daubeny's report, and in doing so they acknowledge that drilling needed to be done as Daubeny had stated. They acknowledge that there are no mineral resources defined as Daubeny had stated. And then they went on to value the property in the manner in which they did and one of things they did is they used – they relied on the company's– I think it's called forecasted mineral resource of 2.8 million ounces. I think the term they used is forecasted. They used that in their valuation.
>
> Q. And was that appropriate?
>
> A. In my opinion, no.
>
> Q. Why not?
>
> A. CIMVal, . . . basically states you have to be careful how you use valuation of . . . forecasts, if you will, for a company. And I'm not an expert in valuation in terms of I'm not certified to do the valuation, but I certainly have made input and been involved in the process of valuation and on the properties that I've been involved with, there's no way you would use a forecasted number ... in the valuation.
>
> And there's one other aspect of that is they use that number as -- it appears as if they use that number as a resource in saying, this is a resource that the company has and they compared the company with that forecasted resource then with companies who have resources. And they did this company comparable analysis. And the companies that they listed, I'm familiar with most of them, and those companies actually have drilled defined resources in the ground. So it appears to me they're making an apples and oranges and wouldn't be valid by my standards.

Tr. 703:22-705:12.

301. Moran, based on his experience "[f]or early stage properties, in dealing with valuation experts," estimated that a more appropriate valuation would be $100,000 to $200,000 based on "what it would cost to replicate the work that's been done on the property." Tr. 705:13-706:10; Div. Ex I at 45.

302. Steven Park, testifying as Respondents' expert, stated that he found Moran's report to be "very thorough" and that he "[didn't] really have any general objections to his report." Tr. 1274:11-17 (Park: "Q. In your opinion do you have any exceptions or issues with [Moran's] testimony or report with respect to the way he uses terminology or his conclusions with large mining companies? A. No, I don't. I found his report to be very thorough and I don't really have any general objections to his report.").

303. Park also agreed with Moran's conclusion that Garate's estimate of mineral exploration potential as inferred mineral resources was "incorrect and misleading":

> JUDGE PATIL: Division 1, could you bring that up. . . . and go to page Division Exhibit 1-49. I think that's 49. . . It is the second page of summary conclusions. Could you highlight the second complete paragraph that begins Aurum's management. . . . it says, Aurum's management has presented Elias Garates' estimate of mineral exploration potential as inferred mineral resources, which is incorrect and misleading. Aurum's management provides no documentation of the parameters used to define inferred mineral resources. What can you say about your agreement or disagreement with that statement?
>
> THE WITNESS [PARK]: Well, I would generally agree. The definition of inferred mineral resources does require a substantial amount of sampling to back it up to support it. . . .

Tr. 1279:22-1280:19.

304. Park also agreed with Moran's estimate the Molle Huacan only had at best 30,000 to 40,000 ounces of gold, and that the site could only be categorized as potential:

> JUDGE PATIL: I'm just going to ask you about the first sentence to read the following sentence as well. Says, my estimate of mineral exploration potential. Using Aurum's sampling program information, is from 30,000 to 40,000 ounces of gold in a narrow vein

zone. So based on your work in the case what can you say about your agreement or disagreement about that statement?

THE WITNESS [PARK]: Well, I would agree. And using the term mineral exploration potential, it sounds as though Mr. Moran and I are a little bit -- have a little bit different opinion of where we draw the line of mineral potential and inferred resource, but again, given the presentation of Aurum's sampling and the as far as plotting on a map and defining the vein, I would probably defer to Mr. Moran and call it to -- as the mineral -- put the mineralization in the category of potential.

Tr. 1283:4-21.

305. Park also agreed that Garate's estimate of close to 3 million ounces of gold at Molle Huacan had no basis:

JUDGE PATIL: What can you say about the reasonability on the one hand of this estimation of mineral exploration potential 30 to 40,000 ounces and on the other hand, the Garate estimate of mineral exploration potential of almost 3 million ounces? What can you say about the reasonability of either of those statements?

THE WITNESS [PARK]: Well, it seems as though Mr. [Garate] was very optimistic in his estimation and, again, I, from the information that I have seen, I don't see any basis for his statement.

Tr. 1283:24-1284:11. *See also* Tr. 1335:12-15 (Park: "[B]ased on what you sampled at Molle Huacan, would your conclusions have supported an estimate of 1 million ounces of gold as an inferred mineral resource? A. No, it would not.").

306. Park also agreed with Moran's conclusion that the RwE valuation of Molle Huacan misrepresented the value of Aurum:

JUDGE PATIL: [Div. Ex. 1 at 49] says, "[i]t is a misrepresentation to conduct a valuation of the Molle Huacan property on any basis other than as an exploration property without a mineral resource. And the valuation should be in the range of $100,000 to $200,000. The cost to replicate the land position, an onside project geological and is geophysical information. A valuation based on estimated future production from a mineral resource that has not been established is misleading and should not be relied upon. . . ." [C]an you tell me about the extent of your agreement or disagreement with that statement.

THE WITNESS [PARK]: Well, I would have to generally agree because you would not be able to value the property based, on based on the gold resource contained, because you would not have that information basically. You would have not established a gold

resource.

Tr. 1287:12-1288:8.

307. Park also testified that Aurum could not have gone straight into production without first identifying an established mineral resource because Aurum was not a "small scale" company in that Crow and Clug planned to produce more than 50 tons a day: "Aurum apparently had the idea that they could [go] straight into the vein and start production. I don't see how this could have been, as they were saying, a larger scale of production more than 20 or even 50 tons a day[.]" Tr. 1289:15-20.

308. Park testified that the statement in Aurum's 1st Quarter 2013 Report that "[t]he first year production goal . . . is approximately 900 tons a day, increasing to approximately 1,245 tons a day in year 2 and subsequent years" (Div. Ex. 592 at 4) is "significantly higher than what I characterized as a small scale of operation." Tr. 1312:16-21 (Park testimony).

309. Park was also critical of the "benching," or surface mining, approach recommended by Aurum's Peruvian geologists, and said that he had never seen that approach in any other gold operation anywhere:

> JUDGE PATIL: How would your recommendation take into account the difference between what's being called benching or surface mining and under ground mining by contrast?
>
> THE WITNESS [PARK]: The benching I would have to say that's very uncommon to do on a vein.
>
> JUDGE PATIL: Why?
>
> THE WITNESS [PARK]: Because you have a limited vertical extent to the benching, because if you go five meters on a vein and you go down another five meters, then you start to have the walls that need to be supporting and probably you know deeper than 30 meters, then you have to start pushing back the wall, so it's a support question. So you are limited if you're going from surface you're limited to maybe, you know, 20-meters at the most going down. It's my understanding that the[ir] idea for benching, what their Peruvian engineer had recommended again something that I think is a little bit

unorthodox, but he recommended going on a probably five-meter section down on the vein and just taking off that top layer. I don't know along what length of the vein he was recommending, but as I say, that would have a limited vertical extent.

I think it would be better to go start underground, rather than doing anything from surface. . . .

JUDGE PATIL: In your experience in Peru, how often have you seen that sort of five-meter benching?

THE WITNESS [PARK]: No, I have not seen that in a gold operation, a gold vein operation.

JUDGE PATIL: To what extent have you seen it in other --

THE WITNESS [PARK]: I've seen it in an iron vein, a vein made of magnetite. Along the coast of Peru south of the town of Onesca, there's a form of occurrence of iron ore in the form of veins where that those veins are four meters wide or so and I know that that hadn't been drilled prior to that exploitation of those veins. It's different because iron is more consistent in grade than would be a gold vein. Because gold is notoriously erratic along the vein. You might have a rich pocket here and then nothing here and then another rich pocket here. So the iron vein is more continuous in grade and.

JUDGE PATIL: Outside of your direct experience with mines, what professional knowledge do you have about any place anywhere companies benching five meters to mine gold?

THE WITNESS [PARK]: Again, well, I have not seen that in any other gold operation in gold vein operation, no.

310. Tr. 1295:12-1297:24.

D. Reports Prepared by Aurum's In-House Mining Consultants

311. According to Moran, the terminology used on Garate's PowerPoint (Resp. Ex. 68b) "doesn't meet any international standard, not just Canadian or 43101." Tr. 733: 11-19 (Moran: "Q. Is it fair to say Mr. Garate and others were using some terms that perhaps in your definition did not meet some of the standards of the Canadian 43101 and the geological standards that are done with the public mining companies? A. No, it's fair to say that the

terminology that he's using here or that's used here doesn't meet any international standard, not just Canadian or 43101.").

312. The July 2013 "Mining Plan, " which states a "potential" of 1,082,951 total ounces, contains a chart stating that the Monica Vein is 18 meters long and 1,925 meters long. Resp. Ex. 66b at 2. No documentation exists, however, to support these numbers. Tr. 748:8-16 (Moran: "Q. And do you see his calculation using the same type of formula that Mr. Garate was using? A. He does and he has a width of 18 meters, and I don't know where that comes from. I haven't seen any documentation to support that either. Q. And what is the length that he is using, sir? A. I don't know where that is coming from either. I've haven't seen the document for that.").

313. The Ciro de Ia Cruz report contains contradictory statements:

> Considering only a vein length of 60 m (outcrop), 23 m in width and the block height of 30 m we are talking about slightly more than 100,000 t. in reserves. Div. Ex. 802 at 3.
>
> There is no geological information as to the depth of the Monica vein, the gold grades, the volume of reserves and resources etc. . . . No gold grades throughout the entire outcrop of the Monica vein. Div. Ex. 802 at 4.

314. No documentation exists to support the Ciro de Ia Cruz's statement about "more than 100,000 t. in reserves," as Moran testified:

> Q. [D]o you have any basis for assessing these two apparently completely contradictory statements that . . . there is no geological information as to depth of the Monica vein, the gold grades, etcetera, and the statement on the previous page that there is slightly more than 100,000 tons in reserves?
>
> A. I don't know how to assess the reserves part of it. I mean, again, if I'd seen some more definitive documentation that says this is how the reserves were calculated that provides the details of cutoff grade and demonstrating that it's all oxide and it's all recoverable. That's what the reserve would be. I haven't seen any documentation that proves that there is reserves of any kind of the property so I don't know how to deal with it if I can't have any sort of backup documentation. One of the common problems I find in Latin America is mixing of resources and reserves by some of the locals.

Q. ... Can you just briefly describe what kind of documentation would you expect so see?

A. It would be something to a feasibility document that said we looked at this volume of rock. We have -- here's how it's defined. This is how we define as a resource. We've applied this kind of a mine plan to it, this is kind of a cutoff, this is the production schedule for the life of that deposit. This is the recovery in the metallurgical information based on this volume of material. Here's the economic analysis of the material that demonstrates that it's economic.

All that would do into all those aspects of feasibility study. And it doesn't have to be a 2,000 page document. I mean, we're talking about a small volume of material here, but I didn't see any documentation that says here's the feasibility that demonstrates reserves.

Q. Okay. And as between the statement referring to 1,000-ton in reserves the other statements toward the end that refer also to production assessing that statement against this statement that says there's no geological information as to the depth of the Monica vein, et cetera. Which statement based on what you reviewed seemed closer to the actual facts?

A. [T]here's no information as to the depth extent of mineralization, therefore there's no resources. And I say that because that's what other independent people have also said. I can't reconcile how you can have no information on the depth and then have reserves as well.

Tr. 786:10-788:13.

E. The November 26, 2013 Aurum Investor Meeting In Coral Gables, FL

315. Lana testified that the purpose of the November 26, 2013 meeting was "[t]o update investors on what was happening in Peru." Tr. 897:5-7. Clug led the meeting, which lasted "at least a couple of hours." Tr. 896:25-897:4.

316. At the November 2013 meeting, Clug told Aurum investors that he and Crow did not receive compensation. Tr. 322:14-22 (Weissman: At November 26, 2013 meeting, "I do remember asking . . . how much they were taking out. That was another question I did ask. And they did reply to that question, that they had not received any money out of the partnership. They weren't taking anything out of it.").

317. Richard Weissman asked Clug "how much cash they had left?" and Clug responded "about half a million dollars." Tr. 319:15-16. In fact, at this time Aurum had barely any cash: the Citibank (US) accounts totaled $63,301; and the two Aurum Peru accounts had $344 and S./2,890 Peruvian soles (approximately $1,070). Div. Ex. 2A at 6-7 (Celamy Exs. 3A, 3B); Div. Ex. 3A at 6, 8 (Yanez Exs. 2, 4).

318. Investors complained about the lack of production and lack of information. Tr. 1567:21-25 (Hollander: "Q. At the meeting in Coral Springs, . . . do you remember some investors complaining about the lack of production and the lack of information? A. That was probably part of the conversation.").

319. Clug told investors that "production would commence in December [2013]," and that there had been no production up till that point because "everything always takes longer than one anticipates[.]" Tr. 897:23-898:13. *See also* Tr. 902:4-1 (Lana: "Q. All of the responses from Mr. Clug [at the 11.26.13 meeting] were along the lines of very soon and by the end of the year, essentially? A. Yeah. I don't know if he used the term 'by the end of the year.' Very soon. As you can see, we're finalizing our plant. As soon as we get it finalized, we can commence the production. The implication was very near, in the near term.").

320. At the November 26, 2013 meeting, Clug did not tell investors about either Daubeny's NI 43-101 report or Steven Park's October 2012 report. Tr. 898:15-25 (Lana: "Q. Do you remember Mr. Clug saying at this meeting that . . . earlier in 2013, he had received the NI 43-101 report that told him there was no resource ore body on the Molle Huacan property? A. No. Q. Did Mr. Clug tell investors at that meeting that he had received a report from a geologist in Peru named Steven Park a year before who said that the Molle Huacan property was

not ready for production? A. No.").

F. In 2014, Crow and Clug Finally Disclose Molle Huacan's Failure

321. In December 2013, Aurum processed its first and only piece of gold, a "dore bar" that was sold, according to Clug, for "a little less than $5,000." Tr. 1910:7-10. Clug was disappointed in the results. Tr. 1909: 2-7 (Clug: "Obviously I think Angel Lana, you know, I gave him the call when the results came in. This is not how a perfect dore bar should look. It should look -- this is probably 80, 90 percent copper and . . . some silver and maybe 5, 10 percent gold -- when it should be the reverse.").

322. In January 2014, Clug told Lana in a telephone call that "unfortunately, they did process product and that the results were very poor, that, you know, the expectations were absolutely not met, and that the amount of gold that was extracted was very minimal." Tr. 903:21-904:6.

323. Lana was "devastated" to hear from Clug that the Molle Huacan results were "very minimal" because he "was always expecting good results . . . [and] when the results weren't good, it was terrible." Tr. 904:7-13.

324. Lana told Clug that an investor meeting should be convened to tell them about these results, but Clug "didn't want to hold a meeting[.]" Tr. 904:18-905:3.

325. Lana told most of his investors about the results, and the investors were "extremely disappointed." Tr. 905:18-906:1.

326. On January 30, 2014, Crow received an email from an investor, Bruce Hollander, asking Crow: "Have we sold any gold yet & at what price? These are questions that everyone is looking for answers. Lastly, where in time do we realistically stand on your forecast?" Div. Ex. 627.

327. Crow responded to Hollander, also on January 30, 2014, that: "[]he actual geology in production was way below what independent geologist and our people said. Marginal mine. But good news is [w]e have sever! mines in area that we can buy mineral and process in our place while we find solution to our problem in the mine. Basically too much dilution when we mine the veins and it dilutes our grade by 80 percent. Not what we expected. This will be a steady cash flow business [i]dea now is to take alta gold (old peru bar mine) and use it as a vehicle to do merchant banking here. We are offered a nice deal in Europe to take it public and have capital. And stay out of USA." Div. Ex. 627.

328. Emails from early 2014 show Crow and Clug losing control of Molle Huacan. Div. Ex. 628 (1.31.14 Crow to Clug email: "Alex You need to call Carrasco and tell him to back off. He is stalling and thinks he can take the plant and use it"); Div. Ex. 629 (2.3.14 Crow to Clug et al. email: "Need armed guard at camp. Will move the equipment and make another plant somewhere if carasco causes problems"); Div. Ex. 637 at 1 (3.4.14 Crow to Clug email: "got sunat [Peru tax authority] in here now grabbing things to pay their debts").

329. By April 15, 2014, as acknowledged in the Master Agreement among Crow, Clug and Aurum, "the mining concession [at Molle Huacan had] reverted to its owner." Div. Ex. 799 at 1 (Master Agreement).

330. On April 17, 2014, Lana emailed Richard Weissman that Clug had told him (Lana) that "approximately 2,000 tons of material were processed. The results were horrible." Div. Ex. 651 at 1.

G. Activity in Crow-Controlled Peruvian Accounts in 2013-2014

331. Starting in 2013, Crow opened a total of 15 bank accounts under his name, jointly with his Peruvian girlfriend, Ines Temple, and under the names of Grupo Alta, Alta Mining and

Alta Terra (Peruvian entities Crow owned or controlled). Tr. 1220; 1224:2-4. Shortly thereafter, he began depositing large sums of monies into these accounts. During the period April 2, 2013 through November 29, 2014, Crow's Peruvian bank accounts received approximately $2.3 million in deposits. The accounts were held mostly at Banco de Credito del Peru ("BCP") and consisted of US-denominated and Peruvian Soles-denominated accounts. Div. Ex. 3A at 24-26 (Yanez Ex. 20).

332. Most of the deposits into these accounts are from unknown sources. Crow testified that he did not recall the source of many of these deposits. Tr. 1229:19-Tr.1230:5. At times, he attributed the deposits to investor loans or Ines Temple and her business, Dinamica Profesional, also known as DBM LHH ("DBM"). Tr. 1228:2-1229:18; 1231:16-25.

333. Crow's deposits or funding for his personal bank accounts and other Peruvian business bank accounts do not appear to be solely loans from Temple and/or DBM, or the two individuals in Peru, Ursula Clarke and Jaime Reusche, who provided funds to the Grupo Alta BCP account ending in 0238. The Division could not fully determine the source of the $2.3 million in deposits that were made into Crow and Peruvian bank accounts that he controlled during the period April 2, 2013 through November 29, 2014. Temple and the DBM notes, appear to total about $463,613. $725,000 was provided by Clarke in October 2013 and $300,000 was provided by Reusche for a total of $1,025,000. Div. Ex. 3A at 24 (Yanez Ex. 20). Thus, these three loans amounted to about $1,488,613. As a result, there is over $800,000 in additional unknown cash deposits made by Crow, for which Crow did not reveal the source.

334. Sandra Yanez testified that a large portion of withdrawals from Aurum Mining Peru's two largest bank accounts at BBVA Banco Continental were unknown or unaccounted for. The first Aurum Mining Peru BBVA Banco Continental account, ending in 4686, had

withdrawals or outflows of $613,300.97. Div. Ex. 3A at 5 (Yanez Ex. 1); Tr. 606; 1-5. The second Aurum Mining Peru account at Banco Continental ending in 9735, had withdrawals or outflows of S./897,306.07 soles. Div. Ex. 3A at 7 (Yanez Ex. 4). The unknown withdrawals were represented in Aurum Mining Peru's bank account statements by "specific descriptions...provider payment, check paid, a transfer..." Tr. 615: 5-8; Div. Ex. 3A at 29 (Yanez Ex. 23).

335. Yanez also testified that funds were withdrawn from Aurum Mining Peru's accounts, and that the funds never reached the destination indicated on Aurum Mining Peru's ledgers. "The ledgers (bank ledgers) indicated that they (Aurum) were making a loan to Oceano Pacifico, but it (money) never reached Oceano Pacifico's accounts." Tr. 604:18-605:9. Yanez also testified that there were unaccounted funds of $273,933.93 from the bank account of Oceano Pacifico, of which a total of $250,000 were withdrawn on July 2, 2012. Tr. 605:2-9. Div. Ex. 3A-14, 16 (Yanez Exs. 10 and 12).

336. Regarding the descriptions and entries on the Aurum Mining Peru bank statements, Yanez testified that Aurum Mining Peru had the "ability to populate the description field with a merchant name or payee name. That practice ceased in 2012. So my initial impression was that whomever instructed the bookkeeper to change that practice...chose to keep the entries general." Tr.610:23-611:4.

337. Further, Yanez testified that Aurum did continue making specific bank entries for certain payments "to the SUNAT ...which is the Peruvian tax authority...Luz del Sur, which is the electricity company... to CLARO, which is a cell phone company...DIRECTV, as well as other very specific (entries) that the bank would not know...like purchase of an electric generator or purchasing of four tires." Tr. 611-612.

338. Yanez also testified that she utilized Aurum's bank ledgers to make the classification of mining expenses, thus taking at face value Aurum Mining Peru's classification of mining expenses that were described as such on their ledgers. "[W]here I saw the ledger described a specific mining-related expense, I made the classification accordingly." Tr. 608:9-11.

339. Yanez broke down the mining expenses classification of mining related expenses for both Aurum Mining Peru's bank accounts, ending in 4686 and ending in 9735, which totaled $520,075.15 and S./764,164.57. Div. Ex. 3A-28-29 (Yanez Exs. 22 and 23). Also, Aurum Mining Peru's two bank accounts paid to a total of 269 payees for mining-related expenses, however, only 7 bank entries contained the name of a payee, merchant or business names. *Id.* For the mining expense category, all the bank entries which described the merchant or payee name were made for the period April 17, 2012 through August 31, 2012. *Id.* Yanez testified that the mining related expense merchant names were omitted from the Aurum bank account statement descriptions after August 2012, "those business descriptions ceased...starting August 2012." Tr. 609: 1-8.

340. While Aurum Mining Peru's accounts were dwindling in 2013, Crow received large sums of money into his Peruvian accounts. Div. Ex. 3A-6, 8, 26 (Yanez Exs. 2, 4 and 20).

341. Crow's joint account with Temple at BCP ending in 0969 received about S./305,210 soles from an unknown source during the period April 2, 2013 to July 3, 2014. Div. Ex. 3A-24 (Yanez Ex. 20).

342. Crow's Alta Mining account at BCP ending in 5115 received $128,604 during the period January 31, 2014 through August 4, 2014. *Id.* Crow attributed this amount to a loan from Temple. Tr.1228:7-10.

343. Crow's Alta Mining account at BCP ending in 6738 received S./288,368.88 soles during the period December 27, 2013 and May 23, 2014. *Id.* Crow testified that "I think those are amounts of money that came in in Soles as loans from Ines Temple to me. They were personal loans that I put in the business." Tr. 1228:15-17.

344. Crow's BCP account ending in 6690 received S./180,818.22 soles between March 10, 2014 and July 9, 2014. Div. Ex. 3A-25 (Yanez Exhibit 20). Crow testified: "I believe that is part of Ines Temple...some of it came from her company and some of it came from her personally." Tr. 1229:4-7.

345. Crow's BCP account ending in 6700 received $340,847.39 from DBM (Temple's company). Div. Ex. 3A-25 (Yanez Ex. 20); Tr. 1229:10-18. The deposits were made between July 10, 2013 and February 3, 2014. The same account also received deposits of $89,812 from an overseas account as well as $35,867.48 in deposits from an unknown source. Div. Ex. 3A-25 (Yanez Ex. 20); Tr. 1229:20-Tr.1230:25.

346. Crow's Grupo Alta account at BCP ending in 0238 was opened between October 1, 2013 and January 31, 2014. The account received a total of $1,065,000 from Ursula Clarke and Jaime Reusche and $40,000 in deposits from an unknown source. Div. Ex. 813.

347. Ursula Clarke wired funds to Grupo Alta's account at BCP ending in 0238 from an overseas account and made an initial account opening deposit on Friday, October 4, 2013 for $725,000. Crow testified that Clarke was an investor in the Huamachuco plant. Tr. 1227:7-11. On Monday, October 7, 2013, Crow made a teller withdrawal for $300,000 from Grupo Alta's 0238 bank account. **Redacted**

Redacted

348. Crow testified that about $340,000 in deposits into Grupo Alta account at BCP ending in 0238, were from a loan/equity investment from Jaime Reusche. Tr.1227 18-22. Div. Ex. 813. Reusche deposited $300,000 between December 2013 and January 2014. Div. Ex. 813.

349. From October 7, 2013 to December 27, 2013, Crow withdrew from the Grupo Alta's BCP account ending in 0238 a total of $675,091.85, which consisted of bank transfers to unknown parties and overseas of $620,356.64 and withdrawals to Crow's personal account and the account of Raven Investments for $54,735.21. Div. Ex. 813.

350. From October 7, 2013 to January 24, 2014, Crow directed bank transfers from Grupo Alta's BCP account ending in 0238 to 11 Peruvian bank accounts and one third party transfer for a total of $266,672.14. The bank account incurred in miscellaneous expenses, such as bank fees and other charges for about $8,608.82 and was closed on or about January 31, 2014. Ex. 813.

H. Crow Conducted Secret Side-Business Activities in Peru; Forced to Resign from Aurum in 2014

351. Sometime in 2013, Crow arranged to build a processing plant for himself in Northern Peru, near Trujillo, which became known as the Huamachuco plant. Div. Ex. 606; See also FOF ¶127 (PPM representing that processing plant would be built for Aurum in Northern Peru).

352. In October 2013, Crow and Clug arranged for the purported sale of equipment between Oceano Pacifico and Grupo Alta, SAC (a Peruvian entity owned and controlled by Crow). Div. Ex. 617; Tr. 1221:9-25. Although Grupo Alta never paid the $70,050 for the

equipment, Temple's company, Dinamica Profesional (DBM), deposited $70,050 to Oceano's account. See Div. Ex. 617 at 1-2; Div. Ex. 3A at 13 (Yanez Ex. 9).

353. Crow also arranged for $500,000 secured loan from Clarke using Aurum Mining Peru's assets as collateral. Div. Exs. 596; 597 (8.13.13 Crow to Clug, Mariano Paz Soldan et al.: "Please note that the $500,000 loan will be for additional equipment and items, and will sit largely in cash as we ramp start up production."). A deposit of S./1,380,000 soles ($500,000) was made in Aurum Mining Peru's soles account in August 2013. However, by October 2013, virtually all the money was gone. Div. Ex. 3A-8 (Yanez Ex. 4). Crow testified that it was all spent on "operations." Tr. 1232:11-1233:10.

354. In February 2014, the Aurum investors learned that Crow had been working on developing another site in Peru independent of Aurum Mining. Bruce Hollander, in an email to Crow describing a meeting on February 17, 2014, told Crow that "[e]veryone present was extremely upset with you starting a processing plant. It is felt that it was in direct competition with that which could have been done under the Aurum corporation and therefore is considered a violation of your non-compete. A review of all the reports that were presented to us over the past 2 years was filled with misinformation. We also feel that a management team, acceptable to no one is unacceptable . . . I'm sorry, but investors present at the meeting can't back you under the current situation." Div. Ex. 633.

355. Cody Price, in a letter to Crow dated February 24, 2014, Price said "I want to make it clear that I do have issue with your company taking [Molle Huacan] over before the investors who paid for it to be built are paid back at least."). Div. Ex. 635 at 1.

356. In an email to Clug and Lana dated March 8, 2014, Bruce Hollander stated that "[o]verall Michael sees this as a way out for him to come clean and without any liability or

penalty for mismanagement mis-information, fraudulent use of our equipment as the collateral for a loan in Peru . . . building a processing plant for himself, in clear competition to us, while working for us." Div. Ex. 642 at 1.

357. On March 13, 2014, Clug emailed Price that one of Crow's options was to "build up a war chest and then fight any suits, if needed, from Peru." Div. Ex. 644 at 1.

358. In a Master Agreement dated April 15, 2014, Crow: (a) resigned from his position as a Manager of Aurum Mining LLC; (b) exchanged his equity position in Aurum for a 20% equity position in Alta Gold, S.A., a subsidiary of Aurum; (c) assumed through a subsidiary $800,000 in debt of Aurum Mining Peru; and (d) agreed to operate Aurum Mining Peru and "pay 10% of its revenue to Aurum through December 31, 2015 or until $4,000,000 has been paid." Div. Ex. 799 at 20 (Master Agreement).

359. The Master Agreement also terminated the Advisory Agreement and the Incentive Agreement between Aurum and Corsair. Div. Ex. 799 at 22 (Master Agreement).

360. In the Master Agreement, four investors and Clug released Crow from all liabilities. Div. Ex. 799 at 13-19 (Master Agreement).

361. In September 2014, Standard Tolling, a Canadian company, issued a press release announcing that it had entered into a binding letter of intent with Crow to acquire the Huamachuco plant from Crow's Peruvian company in exchange for substantial cash and equity compensation to Crow and assumption of nearly $1.3 million of Crow's debt obligations. Div. Ex. 808.

362. Despite Molle Huacan's failure, Crow and Clug continued to tell Aurum investors that, either through Alta Gold or through a processing plant, "cash flow for investors could be realized." Tr. 909:21-910:17. In the end, however, "no cash flow was realized." Tr. 910:18-20.

363-366. Deleted.

IX. THE REPRESENTATIONS REGARDING ALTA GOLD

367. Aurum's Quarterly Reports and PPM in 2012 and early 2013 repeatedly described Alta Gold as "two mountains, one of which is a very large disseminated gold ore body." FOF ¶¶ 126, 133, 134, 163j, 164h, 165j.

368. During 2012, Alta Gold, a subsidiary of Aurum, acquired some concessions at the site and "commissioned a field study" at the site. Resp. Ex. 105 at 27, 62 (in 2012, "only 5 rock chip samples were collected"); (Park May 2015 43-101).

369. According to a Memorandum of Agreement dated January 24, 2014, "ALTA GOLD has carried out preliminary studies within THE CONCESSIONS [at Alta Gold property] in order to find mineral to justify its investment . . . however it has not found enough mineral within the study area, but expects to continue evaluating other areas to enable it to fulfill its purpose. Similarly, ALTA GOLD has had multiple problems with the Rural Communities in the place." Div. Ex. 626 at 2.

370. In 2015, Crow and Clug engaged Park to prepare a geological report on Alta Gold, and they told Park that his conclusions would not be released publicly. Without Park's knowledge or approval, Crow and Clug sent Park's geological report to Aurum's investors in June 2015, along with a cover letter from Crow and Clug that described Crow and Clug's litigation positions in the current proceeding. Tr. 1321:7-1322:2 (Park: "Q. And were you told by Mr. Crow that that 43-101 report would then be sent [or] delivered by e-mail to Aurum mining investors with a cover letter . . . discussing this SEC litigation and telling them that, you know, they were fighting the SEC and they were still trying to get money back and here's the 43-

101 from Steve Park? A. No, I had no knowledge of this. Q [T]hey didn't tell you that . . . the [Alta Gold] 43-101 would be delivered to investors in Aurum mining? A. No. He didn't tell me anything about the destination of the report other than I generally knew that it was not going to be presented publicly and for that reason I did not include what is standardly included in these reports when it goes report. I did not include the consent of the author for it to be submitted to a market or be distributed publicly.").

371. Park wrote an NI 43-101 dated May 22, 2015, on the Alta Gold site. Resp. Ex. 105.

372. Park found no evidence of an ore body at Alta Gold. Tr. 1319:13-19, 1321:4-6 (Park: "Q Did you make a finding of an ore body there at that [Alta Gold] site? A. No. It's almost prohibited for a geologist in a sense to say ore in a report like this. . . . [b]ecause that has lots of economic ramifications."). Tr. 1321:4-6 (Park: "Q. To be clear, . . . you did not find any ore body at Alta Gold, right? A. Not as I understand the definition.").

373. Park's report for Alta Gold, which was "based on limited field investigation and relatively small, but sufficient, number of points," found an "Inferred Mineral Resource," which the report defines to mean that "the potential quantity and grade . . . is conceptual in nature and involves far greater uncertainty . . .than the estimation of resource categories of higher levels of confidence. An estimated Inferred Resource should not be assumed to exist or to be economically minable." Resp. Ex. 105. at 63, 69.

374. Park's 2015 report concluded that "a]n exploration program is recommended[.]" Resp. Ex. 105 at 70.

X. THE DATA ROOM WAS AN INADEQUATE TO PROVIDE MATERIAL INFORMATION TO INVESTORS

375. Aurum's disclosures about the data room were not consistent. The Business Plan and the January 2012 Update never mentioned the data room. The PPMs and some Quarterly Reports did refer to a data room; however, an Internet address was not always provided. The PPMs and Quarterly Reports that did give an Internet address never gave the same one; instead, the address changed from document to document, and the 3rd Quarter 2012 Report gave two different Internet addresses:

Document	Data Room Disclosure/Internet Address	Div. Ex.
8.1.11 PPM	www.box.net/shared/5luvee0bu52rztti8ixn	68 at 2,8
12.31.11 PPM	http://www.box.net/shared/xgms312cyem6vdkdegbf	314 at 3, 8-10, 15
1.1.13 PPM	http://box.com/s/oxz1t3d6hl8k9rrx45a5 "password supplied separately"	577 at 3
Business Plan	No reference to data room	373 at 8, 45
Jan. 2012 Update	No reference to data room.	218
1Q 2012 Report	"Our data room continues to be open to you." No Internet address for data room provided.	373 at 7
2Q 2012 Report	"Please review any material in the [illegible]." No Internet address for data room provided.	440 at 8
3Q 2012 Report	www.box.com/s/y5rxgzowxoj4h5ptexuo www.box.xom/s/672u8vktfg6sdyqvrb0c	503 at 1, 3
4Q 2012 Report – Clarification	"Please visit the data room if you wish to see all our source documents ... ." No Internet address for data room provided.	Resp. Ex. 148 at 11
1Q 2013 Report	"Copy of this large report [NI 43-101] in in our data room." www.box.com/s/ophabqqa6y84hochjz7l "The password is cap sensitive and is MolleHuacan253#. Our passwords are regularly changed for security reasons so please contact us should this particular one not work for you. This data room is ONLY for Molle Huacan."	592 at 3, 9

376. In September 2012, Clug emailed Crow that he had received an electronic notification that "[s]omeone has downloaded your 'Press Release SEC Prevails in trial Against

Michael W _Crow for *Unlawfully* Controlling Registered Broker-Dealer." Div. Ex. 470 at 1. Crow responded that "we should secure the data room" and Clug responded that "[m]aybe we add a password that we give to investors and change every month."). *Id.*

377. In January 2013, Richard Weissman emailed Crow and Clug that he "tried the password 5xtimes and it did not work." Div. Ex. 541 at 1. Clug responded that "[o]ne issue that I have seen a few times is that the link does not work well automatically and it is best to copy and paste it instead." *Id.*

378. Weissman testified that "[w]hen I attempted to access the data room, many times, I could not access it." Tr. 309:14-15.

379. After Weissman finally was able to access the data room, he found "[a] lot of stuff in Spanish – or Portuguese, I'm sorry, that I could not read. Pictures, projections." Tr. 312:17-18. Weissman did not see Crow's District Court Judgments in the data room. Tr. 312:19-20.

380. Mitchell Melnick, an investor, never accessed the data room. Tr. 72:13-23 (Melnick: "Q. Did you ever access the data room that's referred to [in the PPM]? A. I don't believe so. Q. Did you ever try to get into it and couldn't or you think you . . . don't recall trying at all? A. I think I tried at least once. I don't remember getting in, but I'm not positive of that. Q. [D]o you have a recollection of getting into the data room and looking at anything? A. No.").

381. Paul Hollander, an investor, testified that he never heard of the data room and he never tried to access any online resource for information about Aurum. Tr. 1548:11-13; 1549:11-16 (Hollander: "Q. Did you ever hear of something called the data room? A. No. . . . [D]o you ever recall going online and accessing an online website that you accessed through a password that Michael or Alex gave you and accessing certain documents about Aurum? A. No.").

382. Simon Stern, one of Aurum's largest investors, did not recall hearing about the data room but testified that he would not have paid any attention because he was "not computer literate." Tr. 167:18-23. *See also* Tr. 157:6-14 (Stern: "Q. Did you ever hear of something called a data room that Aurum Mining had established . . . an Internet website that contained documents about Aurum Mining? A. I don't recall. Q. Do you remember ever-- anyone ever telling you that you needed to look inside the data room in order to see important information about Aurum Mining? A. I don't recall.").

383. Lana accessed the data room "no more than twice" and could only recall seeing "a lot of reports." Tr. 887:4-16 (Lana: Q. Did you ever access the data room? A. I did. Q. What did you see there? A. It's hard to recall, but I know reports – a lot of reports. Q. Were they in English? A. The ones that I looked at were in English. Q. Do you specifically recall anything you saw in the data room? A. No. Nothing specific. It's been a long time. Q. How many times did you access the data room. A. I think no more than twice.").

XI. CROW AND CLUG CONCEALED CROW'S BACKGROUND

384. Clug's military background and West Point credential were given particular credence with Aurum's investors, who relied to a large extent on their perception of "the caliber of people." Tr. 168:168:20-23 (Stern: "it goes back to the caliber of the people . . . I don't think anybody would steal from me, would sell me something that was worthless").

385. Hollander believed that it is important to know the background of Crow and Clug because he was investing in Aurum. Tr. 1561:6-1562:2 (Hollander: "Q. You mentioned the meeting that you and your father had at your house when Mr. Crow came, and you said a family member had learned about his bankruptcy or something and you wanted to have a face-to-face discussion with him, right? A. Yes. Q. That's because you knew that evaluating someone's

background is important in determining whether or not you want to make an investment in a company run by that person? A. That's correct. . . . Q. To say Mr. Crow's background in getting comfortable with his background was an important issue with you and your father when you were deciding to make the investment? A. It was one of the issues, that's for sure.").

386. Stern testified that a person's background is important, especially "their integrity, their honesty, their character." Tr.141:22-142:2.

387. Lana emphasized Clug's background to Melnick, particularly "that he had attended West Point," [was] a captain in the military . . . he had been successful in business and [Lana] believed [Clug] to be an honest and intelligent person[.]" Tr. 42:5-8. Lana "spoke highly of [Clug] and highly of the opportunity to invest in [Aurum]." Tr. 41:17-19. Stern testified that he "listened to [Clug] and I did find him impressive." Tr. 142:6-7.

388. For contacts with investors, Clug took the more prominent role, and Clug's background was always emphasized rather than Crow's. For example, at a pitch meeting in Boca Raton, Stern testified that Crow "introduced himself . . . and then it went to the next person, but I don't recall Mr. Crow saying anything." Tr. 132:19-22. In contrast, Stern said that Clug talked at length about his background, and that he was "absolutely" impressed with Clug. Tr. 133:1-15 ("Q. What did [Clug] say? A. He said that he had been a West Point cadet. He graduated from West Point. He served overseas, I believe it was in Germany. When he was discharged . . . he went to school in California and got a degree in electrical engineering and I think he had something to do . . . with Wall Street[.] Q. And were you impressed with [Clug's] background? A. Oh, absolutely. Q. Did Mr. Crow say anything about his background? A. I don't think Mr. Crow said anything other than I'm Michael Crow, that I remember.").

389. When Lana pitched Aurum to investors, he emphasized Clug's background, but not Crow's. Tr. 827:18-25 (Lana: "Q. Where would you have received any information that you passed along to investors orally? A. Well, the oral information I passed along to them was not -- was not really a specific thing. It was in general, general information about Alex and how I knew him and his background. Q. Anything about Mr. Crow? A. No. I didn't really know much about him."); Tr. 829:15-19 (Lana: "[I told investors] that I knew Alex was, in essence, involved in this project, and, again, my long-term relationship with Alex and that, you know, I believed that he was a good person and was capable.").

390. Stern testified that "Alex would come up here every two or three months . . . and Alex would sort of bring us up to date on what was happening down there." Tr. 169:17-20.

391. The August 2011 PPM provided a detailed description of Crow's professional background, including his designation as a CPA and his work experience prior to becoming President and Chairman of Wilshire Technologies. However, it omitted Crow's role and activities at Wilshire, his history of securities laws violations, his pending bankruptcy, and the fact that his CPA license had expired. Div. Ex. 68 at 20-21. The August 1, 2011 PPM devotes three paragraphs to Crow's biography, in a section entitled "Management of Aurum Mining, LLC," and does not disclose any of his prior SEC cases, the industry bars imposed, or his Chapter 7 bankruptcy filing. Div. Ex. 68 at 20-21.

392. Crow's biographical disclosure in the December 2011 PPM was identical to the August 2011 PPM, and disclosed nothing about Crow's prior SEC charges and bankruptcy. Div. Ex. 314 at 22-23.

393. The September 2012 PPM contained a detailed professional background profile for Crow, Clug and Lana and referred investors to an online data room "for discussion of Mr.

Crow's 2008 litigation with the SEC over an investment and ownership of a broker dealer without the requisite securities license and subsequent bankruptcy following the financial meltdown of 2008. Div. Ex. 469 at 8, 11-13.

394. The January 2013 PPM contained two references to Crow's prior SEC cases. First, under "Risk Factors," it stated that:

> Backgrounds of Messrs. Clug, Lana and Crow can be found in this documents and at http://box.com/s/oxz1t3d6hl8k9rrx45a5 (password supplied separately) including discussion of Mr. Crow's 2008 litigation with the SEC over an investment and ownership of a broker dealer without the requisite securities license and subsequent bankruptcy following the financial meltdown of 2008.

Div. Ex. 577 at 9. Crow's biographical disclosure in the January 2013 PPM replicated the disclosures in the two prior PPMs, but added: "In 2008 Mr. Crow litigated with the SEC regarding an investment, ownership and relationship with a broker dealer. The finding was that the investment and activity required a license and Mr. Crow was ordered to pay a fine and restitution. The details are available at: http://box.com/s/oxz1t3d6hl8k9rrx45a5 (password supplied separately)." Div. Ex. 577 at 13.

395. The January 2013 PPM, like the prior two PPMs, did not disclose Crow's Chapter 7 bankruptcy filing. Div. 577 at 13.

396. The Business Plan contained a lengthy description of Crow's background in a section entitled "Management team of Aurum Mining LLC," but it also had no disclosures relating to Crow's SEC cases and bankruptcy. Div. Ex. 351 at 23-24.

397. The January 2012 Update, and the five Quarterly Reports, contained no disclosures of Crow's background. Div. Exs. 218, 373, 450, 503, 552.

XII. THE BOILERPLATE RISK DISCLOSURES DID NOT DISCLOSE THE REAL RISKS THAT AURUM INVESTORS FACED

398. The PPMs, Quarterly Reports and Business Plan contained risk disclosures that focused on the uncertainties of gold mining in South America. Div. Exs. 68 at 24-27; 346 at 26-29; 469 at 13-16; 577 at 14-17; 552 at 25-28.

399. Hollander testified that Crow and Clug "were very clear that everything was based on a projection and that reality could be different." Tr. 1559:15-17. According to Hollander, Crow and Clug told him that the projections could not be met because of "different parts of the mine had different concentrations of gold" or due to "the small sampling of testing they did." Tr. 1559:18-1560:6.

400. Crow and Clug did not tell Hollander about the negative findings in Park's and Daubeny's reports. On the contrary, Hollander believed that all of the geological reports were positive and that Crow and Clug would not otherwise have continued with the project. Tr. 1560:12-1561:5 (Hollander: "Q. [In discussions with Crow and Clug about risks, did Crow and Clug tell you that] independent geologists are telling us . . . this site is not economically viable, we know that and we want you to invest anyway? A. Well, clearly the conversation wasn't independent geologists are saying this is not viable. Otherwise they wouldn't have gone through with the project and I wouldn't have invested. So there was enough evidence by other geologists that said it was viable for them to go through the project and for us to invest. Q. Okay. So if you had known that two independent geologists said Molle Huacan was not economically viable and in addition to that saying that Garate's sampling methods were suspect, would you have invested? A. I would have done more investigation. I'm not sure. I don't have the answer.").

401. Richard Weissman, an investor, testified that he "didn't like how the prospectus was drafted. I didn't think there was enough disclosure for me to make a logical decision as a wise businessman." Tr. 306:9-11.

XIII. FROM ITS INCEPTION, CROW CONTROLLED PANAM TERRA

402. In mid-2010, Crow and Clug discussed the creation of a public company that purportedly would own South American farmland. Crow's idea was to transform a shell company he controlled, Ascentia Biomedical Corp. (f/k/a Duncan Technology Group), and to rename it PanAm Terra. Crow directed Clug to prepare a "new form 10" for their new company. Div. Ex. 19 at 1 (7.14.10 Crow to Clug email).

403. By November 2010, Crow and Clug were actively planning to launch PanAm as a public company, with Crow and Clug dividing up most of the tasks between themselves. Div. Ex. 28 (11.15.10 Clug to Crow re "to do list" re PanAm Terra); Div. Ex. 30 (12.1.10 Clug to Crow email listing PanAm tasks, including "Form 10 – financial model").

404. On April 29, 2011, PanAm filed its Form 10 – General Form for Registration of Securities Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934. Div. Ex. 708.

405. PanAm's Form 10 went effective by lapse of time 60 days after filing, which was June 28, 2011. Div. Ex. 709 at 1 (5.27.11 letter from Div. of Corporation Finance to Clug). On that date, PanAm became subject to the reporting requirements under Section 13(a) of the Securities Exchange Act of 1934. *Id.*

A. As With Aurum, CFO Lana's Primary Role Was to Raise Funds

406. Lana worked as CFO of Aurum and PanAm for no monetary compensation. Tr. 812:16-20, 816:4-9.

407. On October 1, 2011, PanAm and Lana entered into a Compensation Agreement, effective January 1, 2011, in which PanAm agreed to deliver to Lana 750,000 shares to restricted stock for Lana's services as CFO. Div. Ex. 712 at 1.

408. Clug told Lana about Crow's 2008 case. Div. Ex. 751 (4.11.11 Clug to Lana, forwarding the SEC press release announcing the 2008 Final Judgment as to Crow: "FYI – admin issue, no fraud.").

409. Crow and Clug were frequently critical of Lana's performance as CFO of PanAm, especially Lana's difficulty in filing PanAm's periodic reports on time. Div. Exs. 394, 413, 414, 459.

410. The $400,000 raised by PanAm investors came mostly from Lana's clients. Div. Ex. 556 at 1 (2.26.13 Mooney to Ross, Clug email: "Let's be clear with angels investor base, that they are fronting monthly operating expenses, not building equity.").

B. Crow Selected One of PanAm's Two Independent Board Members

411. Crow recruited and selected candidates for PanAm's board of directors, including Chad Mooney. On October 13, 2010, Crow emailed Clug that "Chad has agreed to join the Board of PanAM terra." Mooney responded that "michael has been speaking to me for some time re Pan Am Terra." Div. Ex. 741. *See also* Div. Ex. 27 at 1 (11.12.10 Crow email to Daniel Najor re "board seat": "do you really want to be involved with pan Am Terra?").

412. In December 2010, Mooney emailed Clug that he was "very proud of what you/michael/we are building."). Div. Ex. 744 at 1.

413. PanAm Board member Chad Mooney emailed Crow in July 2012 "[i]ts great to be in business with you michael." Div. Ex. 446 at 2.

C. Crow Negotiated on Behalf of PanAm and Took Part in Policy-Making

414. Crow negotiated with John Coogan on behalf of PanAm. Div. Ex. 34 (1.23.11 Coogan to Clug: "Michael had discussed my involvement with PanAm Terra. He basically talked about giving me 100,000 shares for my efforts thus far.").

415. Crow negotiated on behalf of PanAm with the Mickelson Group. Div. Ex. 43 at 1 (4.26.11 Crow to Clug: "on phone with mickelson group guys for hr and half.. very good results after initial issues were overcome").

416. Throughout 2012, Crow continued to negotiate with Mickelson Capital on behalf of PanAm Terra. Div. Ex. 376 ("MTV went very well. They will lead term sheet and go for min 100 mm. Howard is great and top expert in farmland. . . . Using panam as mgt co is correct plan."); Div. Ex. 464 (9.12.12 Crow to Ross email: "I would like to set up the meeting with Mickelson Capital in Oceanside with you to introduce you and discuss how they want to participate in the investment in farmland. They had talked about leading the $250 million. I may have another meeting or two for you, working on them.").

417. On November5, 2012, Simon Leach wrote to Ross that he and Crow spoke about the PanAm-Mickelson deal and "we are pretty close to agreement." Div. Ex. 504 at 2; 512 at 5.

418. In November 2011, Crow had "a great two hour meeting" with Jeff Dyment regarding "fund raising and capital formation" for PanAm. Div. Ex. 150. Crow stated, "I will draft a term sheet for a starting point."

419. In late 2011, Crow was involved in fundraising: "Michael, let's work on term sheet to send Henry [Gewanter]." Div. Ex. 190. Crow also was involved in pricing discussions. Div. Ex. 225 (1.12.12 Crow/Clug emails on term sheets and warrant strike price).

420. Clug promptly emailed to Crow anything regarding PanAm. Div. Exs. 47; 100; 135; 166; 184; 248 (Feb. 2012 Uruguay); 249 (Crow participation in Uruguay conf call); 250; 412 (Clug/Gewanter emails re Board meeting).

421. Crow was involved in communications between officers and directors of PanAm. Div. Exs. 447; 479; 787.

422. In late February 2013, Crow urged the board to get the stock listed. With no money to pay Mickelson even the $5,000 monthly fee, Crow advised the board that the "[c]urrent path of Pan am makes little sense as Mickelson will take months to get a large investor." Div. Ex. 558 at 1-2.

D. Crow Closely Monitored PanAm's Public Filings

423. Clug always kept Crow informed on the status of PanAm's filings. Div. Ex. 75 (9.7.11 Clug to Crow email: "On PanAm we need 10Q done, SEC review finished, symbol, and agreement/pipeline from FMS."); Div. Ex. 91 at 1 (9.25.11 Clug to Crow email: "Angel says 10Q definitely finished tomorrow"); Div. Ex. 394 (5.22.12 Clug to Lana, Crow email: "Angel, as discussed, and as you know, this lack of progress is out of control for the CFO of a public company."); Div. Ex. 459 (8.27.12 Clug to Lana, Crow email: "We have been extremely late in our SEC filings. This obviously has tremendous negative repercussions on all our plans.").

424. Lana also regularly reported to Crow on the status of PanAm's filings. Div. Ex. 768 (5.12.12 Lana to Crow, Clug: "Hello Alex & Michael: ... 1. 10-K: The financial statements are completed. The notes will be completed today and by the end of the day all will be submitted to the auditors. 10-Q: The accounting for the 1st quarter has been completed. I will prepare the financial statements tomorrow. It will be sent to the auditors on Monday."); Div. Ex. 381

(5.15.12 Clug to Lana, Crow agenda for upcoming meeting including "PanAm Terra 2011 Tax Return," "PanAm Funding – at what valuation, how much, PanAm 10K/10Q, 15C211.").

425. Crow communicated directly with Lana regarding PanAm filings. Div. Ex. 404 (6.1.12 Crow to Lana: "Status of work on pan am? Lets try to get some meetings for next week on whatever we can."); Div. Ex. 774 (6.1.12 Lana to Crow: "I was out today but I did receive the NOBO list that the market-maker says is required for FINRA. . . Tomorrow I WILL work on PanAm Terra, Inc. so that I can complete the F/S for 10-K and 10-Q."); Div. Ex. 408 (6.3.12 Crow to Lana: "How did you do on your Pan am work?"); Div. Ex. 411 (6.5.12 Lana to Crow re "10k status": "I will complete it today and call you"; Crow to Lana: "cant wait! impt for all of us.").

426. Crow knew about the SEC contacts on its filings. Div. Ex. 135, 192.

427. In June 2012, Crow threatened to fire Lana. Div. Ex. 412 (6.2.12 Clug to Crow, Lana: "Angel, what is status of 10K and 15c211?"); Div. Ex. 414 (6.6.12 Crow to Lana: "Now you wont take my calls? This is just not acceptable. . . .If you cant get the work finished on everything it is really best if we move the work and limit the damage"); Div. Ex. 415 (6.6.12 Lana to Crow: "Hello Michael. I do not want to appear to be rude, but I am not picking up the phone until I finish the 10-K. I am on a roll now and I will definitely finish it today."); Div. Ex. 413 (6.6.12 Crow to Salsavilca, Lana, Clug: "We really are frustrated, disappointed, unhappy. . . .I hope it doesn't come to this but if the work isn't done before Monday we are out of time and patience. And we need a smooth transition[.]").

E. Crow Chose Steve Ross to Replace Clug as PanAm's CEO

428. Crow and Ross worked together in 2005 to 2011 in connection with Dyntek and National Investment Managers, where Ross served as CEO and Crow had substantial involvement. Tr. 1617:2-21, 1618:20-1621:6.

429. Crow began touting Ross in late 2011 as "an excellent public co CEO" and that "we have built several companies together." Div. Ex. 128 at 1.

430. On October 19, 2011, Ross asked Crow "[a]re you still planning on getting me started this week?" and Crow responded, "Yes. Myg [sic] with Alex tomorrow. All good." Div. Ex. 380; Div. Ex. 397 (5.26.12 Crow to Ross: "Just talked toalex. Yes. All good. He sent employment contract. Need to do termination deal plus new corsair agreement as well.").

431. Crow was unhappy with PanAm's progress and with Clug's performance as CEO. Tr. 1658:10-12 (Clug: "Mr. Crow was very upset with me on the late filings as an investor, and I think he wanted liquidity in his shares.").

432. Crow drafted Ross's employment agreement with PanAm. Div. Ex. 395 (5.22.12 Crow to Clug: "You asked me to take a draft first shot at the steve ross employment agreement and I did so.").

433. Crow told Clug to review his draft of the Ross employment agreement "after the 15c211 is finished as well as 10k and 10q." Div. Ex. 395.

434. Crow had been friends with Ross and they socialized together. Crow arranged for Ross's son Braden to do some work for Aurum in Peru. Div. Ex. 464 (9.12.12 Ross to Crow: "Braden is beyond excited about Peru.").

435. Crow handled the negotiations with Ross on behalf of PanAm. Div. Ex. 398 (5.31.12 Crow to Ross: "Contract for you is set and being incorporated into board package. Alex

resigns etc. He is looking at pan am board meeting in Miami with you and board on Friday July 6. Would that work? Contract effective with meeting but has July 1 start date. Consulting for June of 5k can be paid when you get back and have call with Alex to start handoff.").

436. On July 6, 2012, Clug resigned as CEO and became Chairman of the Board of Directors, and Steven Ross became Chief Executive Officer. Div. Ex. 431 (Board Resolution); Div. Ex. 432 (Employment Agreement).

437. Ross looked to Crow for guidance in his role as CEO. Div. Ex. 454 (8.9.12 Ross to Crow: "I'm a quick study, but I still need support from Alex/you."); Div. Ex. 508; Div. Ex. 512 (11.14.12 Crow to Ross: "Think you need to make the deal. Only way to move forward.")

F. Crow Also Controlled PanAm Through Corsair

438. PanAm paid monthly rent to Corsair under a Services Agreement, signed by Crow for Corsair and Lana for PanAm, to provide "executive office space" to PanAm. Div. Ex. 337.

439. On July 6, 2012, the same day that Ross became CEO and Clug resigned as CEO and became Chairman, PanAm and Corsair entered into an Advisory Agreement in which PanAm engaged Corsair "to act as a financial and management consultant to the Company and to provide recommendations to the Company in connection with management issues, equity or debt financing as well as with other financial matters." Div. Ex. 434 at 1. The Advisory Agreement required PanAm to pay Corsair $5,000 per month, and higher amounts if certain fundraising projections were met. *Id.* at 3.

440. Under the Advisory Agreement, Crow took a more active and visible role than Clug, even though the Advisory Agreement required that Corsair's services would be provided primarily by Clug. Div. Ex. 439 at 1 (7.18.12 Crow to Clug, Ross: "I can make the intro to Steve anywhere on behalf of Corsair per the consulting company/contract"); Div. Ex. 452 (8.9.12

Gewanter email to Mooney, Ross, Clug, Crow on "raising money"); Div. Ex. 461; Div. Ex. 462; Div. Ex. 787 (10.11.12 Mooney to Clug: "Michael said he would give me a credit card to use for air, car rental, etc.").

G. Crow Participated in the July 2012 PanAm Board of Directors Meeting

441. Henry Gewanter was one of two "independent directors" on PanAm's board. Div. Ex. 197 at 49, 52 (Form 10-K).

442. PanAm's board of directors only met once, on July 6, 2012, Miami, FL. Div. Ex. 431; Tr. 1830:11-15 (Gewanter: "Q. And did you have any other board meetings other than this one board meeting you mentioned in Miami? A. That was the only board meeting that I attended.").

443. Gewanter testified that Crow "joined us [as an external advisor] briefly to give a presentation about various aspects of agricultural land in Latin America. . . . [Crow] gave a factual presentation about agricultural and financial aspects of land[.]"). Tr. 1829:4-7, 25-1830: 1.

444. After the board meeting, Crow met informally with the board. Tr. 1833: 11-23 (Gewanter: "after our board meeting, I think it was after – it might have been before . . . I did go out socially with Alex and Michael and Chad [Mooney] – I believe some, if not all, of the board member joined us . . . during which time I knew that [Crow] . . . had been or was getting divorced and was facing financial difficulties because of the divorce.").

H. Crow and Clug Concealed Crow's Role from PanAm's Board

445. Gewanter testified that Crow "had nothing to do with the company . . . Mr. Crow never had anything to do with running the company." Tr. 1831: 22-23, 1834:6-7.

446. Gewanter did not know that Crow had been barred from being an officer or director of a public company. Tr. 1833: 5-10 (Gewanter: Q. [W]ere you aware that Michael Crow had been barred from being an officer or director for a public company? A. No. I don't recall. I don't recall being advised of that, no.").

447. Gewanter testified that he "was not aware of any [Crow] bankruptcy." Tr. 1833: 25.

448. Gewanter did not know that Crow billed expenses to PanAm. Tr. 1838: 3-5 (Gewanter: Q. Now, are you aware of Michael Crow billing his expenses to PanAm Terra? A. No, I'm not aware of that.").

449. Gewanter was not aware of Crow's role in Ross' hiring as CEO. Tr. 1836: 1-4 (Gewanter: "Q. Were you aware of any involvement of Michael Crow in hiring Steven Ross as CEO of PanAm Terra? A. No, I was not aware of any connection between Michael Crow and Steve Ross.").

450. Gewanter knew that Corsair had "a modest consultancy contract to advise PanAm Terra" but did not know that Crow was an owner of Corsair. Tr. 1836: 16-22.

451. Gewanter also was unaware of Crow's prominent role in the Mickelson Capital deal. Tr. 1836:12-15 (Gewanter: "Q. Were you aware of any involvement by Michael Crow in PanAm's negotiations with Mickelson Capital? A. No.").

452. Gewanter testified that he "was not aware of [Crow] being a shareholder" of PanAm, and was "not aware of any convertible notes" issued to Crow. Tr. 1838: 20-24; 1841: 11-17).

I. PanAm Paid Crow's Expenses

453. PanAm paid Crow's expenses when he travelled on PanAm business, for example, his trips to California negotiating with the Mickelson Group. Div. Ex. 393 (5.21.12 Clug to Lana: "Attached is Michael's expense report. Half has been paid by Aurum, the other half by PanAm."); Div. Ex. 511 (11.14.12 Crow to Clug, Lana: "If you want to allocate some % of the SD trip to PanAm, I would estimate it to be about $1,000 of the cost for the trip with steve Ross and the Mickelson Capital deal.").

454. Lana testified that PanAm paid Crow's expenses. Tr. 878:4-11: "Q. Do you remember paying -- did you ever receive expense reports from Michael Crow in connection with expenses he incurred in connection with PanAm Terra services? A. I think so. Q. Would you pay those? A. Well, not me. I didn't pay any bills. But they would be paid."). *See also* Tr. 912:15-16 (Lana: "I somewhat recall some expense reports being submitted by Mr. Crow to PanAm.").

455. Clug submitted Crow's expenses to attend an agricultural conference in New York in April 2012. Div. Ex. 392 at 2.

XIV. CROW, IN NEED OF $75,000 TO PAY CHILD CUSTODY ARREARS, ORCHESTRATED A SCHEME TO SECRETLY CONVERT HIS NOTE AND SELL PANAM SHARES TO THREE INVESTORS

456. On March 10, 2011, PanAm, under its former name Ascentia Biomedical Corp. f/k/a Duncan Technology Group, issued an on demand convertible note to Pacific Trade, Ltd ("Pacific Trade"), a Crow-owned company, purportedly in exchange for the $25,000 loan from Crow. Div. Ex. 746 (Note). The note was to mature on September 10, 2012. *Id.*

457. On March 15, 2011, PanAm issued another on demand convertible note to Pacific Trade purportedly in satisfaction of an invoice for services in amount of $28,156 from Pacific

Trade dated February 21, 2011. Div. Ex. 747 (Note). The note was to mature on September 15, 2012. *Id.*

458. Effective April 15, 2011, PanAm's board approved a 1 for 100 reverse split of its common stock. Div. Ex. 197 at 43 (Form 10-K). As a result, the $25,000 note held by Crow became convertible into 1,935,284 shares and the $28,000 note became convertible into 473,204 shares.

459. A letter from the SEC's Division of Corporation Finance to Clug dated May 27, 2011 asked whether the holder of the $25,000 and $28,000 convertible notes (Pacific Trade) was a related party. Div. Ex. 709-6. Clug's responded that the holder was not a related party. Div. Ex. 710-16.

460. On March 16, 2012, the Division of Corporation Finance again wrote to Clug to ask him to "identify the natural person that beneficially owns the convertible notes. Considering the substantial nature of the convertible note, please revise to discuss the relationship between Mr. Clug and Pacific Trade Ltd. And its control person." Div. Ex. 830 at 1 (Division of Corporation Finance letter).

461. Clug's response to the Division of Corporation Finance stated: "Michael Crow has sole control over the voting and disposition of shares owned by Pacific Trade Ltd." Div. Ex. 831 at 3.

462. Clug's response also stated that "Pacific Trade may not convert the Notes into shares that would cause the aggregate number of shares owned by Pacific Trade Ltd. And its affiliates to exceed 4.99% of the Company's outstanding shares. That limitation is contractual only, and could be waived by the Company. Absent that limitation, the Notes could, in

aggregate, be converted into 2,408,487 shares, which would represent 32.4% of the outstanding shares." Div. Ex. 831 at 3.

463. On August 27, 2012, Crow emailed Clug about a sudden "problem":

> Connecting through Chicago and just found out my passport renewal and new pages is being held pending old 2008 arrears in child support/alimony to sandy crow. I am stuck in the USA until I get this resolved.
>
> I guess there is a federal law that stops passport with any outstanding balance. No on[e] ever gave me any notice. . . .
>
> I am working to see what my options are with my atty in San diego. Looks like following:
>
> . . . My plan was to use Pan Am stock but angel has effectively killed me on this. I would have to borrow it from an investor or Aurum or ?
>
> * * *
>
> . . . I could sell it to Angel and take payment plan on some basis. . Would need some money fast to handle this. .
>
> I obviously need to get to Peru. We have a lot at stake and it needs both of us.
>
> I will keep working on other ideas but this is where Angel has put me in a real bind with my investment in Pan am and I don't want to spook investors I know that we want to [use] for Aurum.
>
> Need to make some money and get these last few things behind me. Very close.

Div. Ex. 796.

464. Two days after telling Clug about his "problem," Crow emailed Lana with a proposal to "get my arrears handled so my passport is renewed." Div. Ex. 460. Crow's email to Lana, which described "structure that is easy and straightforward," would, as Crow stated, result in $100,000 net to me." *Id.*

465. Crow's proposal to Lana in his August 29, 2012 email was as follows: "The Pacific Trade Note which was from the $25,000 early investment is convertible into about 1.8 million shares. The note matures soon so I either have to convert it or the company will have to

extend it. In the meantime, I can convert in part into common shares and sell them in a direct private deal to accredited investor. I suggest a price of 25 cents with 5 cents to whomever is helping with the trade (ie angel) so I net 20 cents." *Id.*

466. Crow's email stated that "[PanAm attorney] Bob Brantl can oversee everything." *Id.* Crow, however, did not copy Brantl on this email or any others relating to this transaction. No evidence exists that Brantl was consulted or gave legal advice about the conversion, the sale, or the nondisclosure of the transaction.

467. On September 13, 2012, Crow emailed Lana asking "[p]lease see if you can at least get me that 25k ASAP." Div. Ex. 465.

468. On September 14, 2012, Crow emailed Lana again "to summarize the structure we discussed on sale of Pan am shares at .25 cents. I will take my convert note and convert into common shares as much as needed. The simple private sale agreement between me and you will call for sale at 25 cents for xx shares. . . . this does not involve PanAm Terra in any way other than if you are the CFO of record it is a purchase or sale by you. [D]on't think you are the official CFO but not sure." Div. Ex. 468.

469. Lana understood that the shares Crow intended to sell would come from the conversion of Crow's $25,000 convertible note. Tr. 919:6-10 (Lana: "Q. How is Mr. Crow going to receive those shares? A. He would have to convert. He would have to convert at least a portion of the note in order to receive those shares.").

470. On September 14, 2012, Crow emailed a "letter for investors to sign," providing for the purchase by the investor of PanAm shares, to Lana with the instructions "the attached letter should be what you are looking for. If ok just drop in the amount of shares or prices if different." Div. Ex. 467 at 1-2.

471. Lana solicited three Aurum investors, Mitchell Melnick, Simon Stern and Elisa Ramirez, to purchase the 100,000 PanAm shares each for $0.25 per share. *See* Div. Ex. 466 (9.14.12 Melnick to Lana email attached executed PanAm stock purchase letter).

472. Lana asked Melnick, Stern and Ramirez to pay the $25,000 purchase price to him, through his personal checking account at Bank of America, and not to PanAm. Div. Ex. 484 at 2; Tr. 925:12-926:11 (Lana test.).

473. After receiving the $75,000 in his checking account from the three investors on September 17 and 21, 2012, Lana wired the funds to Crow's personal account on September 18 and 24, 2012. Div. Ex. 485 at 3 (Lana's Bank of America statement); Tr. 926:14-18 (Lana: "Q. [Y]ou wired that money out of your personal account, that $75,000 to Mr. Crow's account, correct? A. Yes. Q. This was all in connection with the conversion transaction[?] A. Yes.").

474. Lana did not tell the three investors – Melnick, Stern and Ramirez– that their funds used to purchase the PanAm shares was transferred to Crow and not to PanAm. Tr. 927:3-13 (Lana: "Q. Did the investors, Mr. Melnick, Mr. Stern, and Ms. Ramirez, did they know their three separate $25,000, totaling $75,000, . . . was being wired out to Michael Crow's personal bank account? A. They did not. Q. You did not tell them that, did you? A. I did not. Q. Why not? A. I was just interested in getting them stock at a good price.").

475. Mitchell Melnick testified that he believed that his $25,000 was going to fund PanAm's business operations. Tr. 69:5-12 (Melnick: "Q. And at the time, that $25,000, did you believe that money was going to fund the operations of PanAm Terra? A. Yes. Q. Did Mr. Lana ever tell you that that $25,000 was going to be transferred to Michael Crow's personal bank account? A. No.").

476. Simon Stern believed that his $25,000 would go to PanAm's business operations because he knew PanAm "would need money to get [off] the ground." Tr. 158:15-20 (Stern testimony). *See also* Tr. 159:3-159:7, 20-22 (Stern: "Q. Did Angel Lana or did anyone ever tell you that $25,000 that you invested in PanAm Terra went into Michael Crow's personal bank account and not into the company's bank account? A. No, sir. . . . Michael Crow's name was never discussed in [terms of] putting money in his personal account.").

477. Lana knew that the $75,000 transferred to Crow for PanAm shares could have been used by PanAm for business operations. Tr. 927:14-16 (Lana: "Q. Wasn't that $75,000 money that could have been utilized for business operations by PanAm Terra? A. Yes.").

478. Between September 2012 to December 2012, PanAm's Citibank account balance dropped from $119,349 to $22,405. Div. ex. 2A at 14 (Celamy Ex. 9B).

479. Given PanAm's dwindling bank account balance, the $75,000 transferred to Crow was needed by the company. Div. Ex. 536 (1.31.13 Ross to Lana email: "I don't need to tell you how critical that $25,000 is to us. Please at least deposit the $10,000 regardless so we have something to work with."); Div. Ex. 549 (2.11.13 Ross to Lana email: "Is there any update on the $25,000 check? I have held off Mickelson as long as I can without damaging the relationship, and really need to get them the $6000 for January's retainer right away").

480. Clug knew about the transfers to Crow and that the $75,000 was routed through Lana's personal bank account. On September 18, 2012, Clug emailed Crow to say that "[Lana] says your $25k from Ramirez on track." Div. Ex. 472. When Crow responded that "angel cant find the wires . . not sure he is capable of administration," Clug responded: "He told me yesterday that both wires into his BofA accnt had come in." *Id.*

481. On September 20, 2012, two days after the $75,000 transfers, Lana emailed Clug that "I was preparing the 'on-demand convertible note payable' confirmation for the audits and an issue arose. I just spoke to Michael Crow about it. The $25k note matured on 9/10/2012 and the $28K note matured on 9/15/2012. The Company did not pay the notes and the holder did not convert them into stock. Michael told me that he spoke to you about it and there was a verbal agreement to extend the notes maturity dates by at least one year and possibly more. I spoke to [PanAm's auditor] Nathan Hartman about this . . . he would like to see something in writing prior to the issuance of the financial statements that an extension has been agreed to[.]" Clug responded that "[w]e had agreed to a 3 year extension and I though the paperwork had been done."). Div. Ex. 475 (9.20.12 emails between Clug and Lana, cc Crow, Ross).

482. On September 25, 2012, Crow signed confirmation form requests for both the $25,000 and $28,000 convertible notes and emailed the signed forms to Hartman, copying Lana, with the cover message: "Nathan and Angel, [h]ere you go...Let me know if you want original mailed or anything else. Michael." Div. Ex. 477 at 1-3. Tr. 487:18-22 (Hartman: Div. Ex. is a "confirmation form for this particular note that we would have required management to prepare, so that we could confirm the balance of this particular note, as of December 31, 2011").

483. On October 4, 2012, Lana emailed Crow to request that Crow submit the names of the three investors to the transfer agent so they could receive their shares. Crow responded: "can you give me transfer agent information to use on address of letter." Div. Ex. 480.

484. Hartman emailed Lana and Ross on October 18, 2012, to ask whether the Pacific Trade notes had "been officially extended." Hartman's email was forwarded to Clug, who responded to Lana and Ross that "I will take care of the note extension w Pacific Trade." Div. Ex. 493. Clug then created backdated extension agreements for the notes and signed them on

behalf of PanAm as CEO, which he no longer was (Steve Ross was the CEO). Div. Exs. 494, 496. After receiving Crow's signature, Clug sent the executed notes extension agreements to Lana and Ross. Div. Ex. 497.

485. On November 9, 2012, Clug, Lana and Ross received a letter from Crow containing "information to be submitted to the Transfer Agent: Restricted common shares are to be transferred to each of the people mentioned below. This will be from the conversion of the note in the amount of $25,000 plus interest representing 1,935,284 common shares when converted." Div. Ex. 506 at 2.

486. The list of names attached to Crow's letter included Melnick, Stern and Ramirez, for 100,000 common shares each. *Id.*

487. PanAm reported Crow's $25,000 convertible note in its periodic filings as a note payable. Tr. 480:16-25 (Hartman: "Q. In the work for PanAm Terra, did you become aware of two convertible notes that PanAm Terra had issued? A. Yes. Q. Were those notes disclosed in the financial statements? A. Yes. Q. How were they considered in the financial statements; in other words, assets or liabilities? A. Liabilities."). *See also* Div. Ex. 836 at 12 (Form 10-Q for period ended 3.31.12); Div. Ex. 838 at 13 (Form 10-Q for period ended 6.30.12; Div. Ex. 839 at 14 (Form 10-Q for period ended 9.30.12); Div. Exs. 717, 835 at 38-39 (Form 10-K for year ended 12.31.11).

488. PanAm filed its Form 10-Q for the period ended September 30, 2012 on January 23, 2013. Div. Ex. 839, 724. In the disclosure regarding the $25,000 convertible note, this Form 10-Q stated that "[o]n September 10, 2012, the [] note was modified to extend the maturity and note conversion deadline dates to September 10, 2015." Div. Ex. 724 at 14; 839 at 14. See also

Tr. 489:20-23 (Hartman: "Q. [D]oes [Div. Ex. 724 at 14] reflect the extension of these two convertible notes? A. Yes.").

489. PanAm's 10-Q reported as a "Subsequent Event" a note issuance and a stock sale that took place in December 2012. Div. Ex. 724 at 19; 839 at 19. Crow's conversion and the stock sales to the three investors were not reported in the Subsequent Events section of the 10-Q.

490. Hartman testified that Crow's conversion was not disclosed to him, that the conversion was a material transaction, and that Peterson Sullivan would have withdrawn as PanAm's auditor had it known of the transaction:

> Q. Did anyone at PanAm Terra ever tell you in . . . that Michael Crow exercised the conversion option on the $25,000 note in September 2012?
>
> A. No.
>
> Q. Is that something that would have been material for you to know?
>
> A. Yes.
>
> Q. Did anyone ever tell you that he exercised the conversion feature on the $25,000 note and received the 1.9 million shares and that 300,000 of those shares were sold to three investors and that the $75,000 proceeds from that sale was then transferred to Michael Crow's bank account through the personal account of the CFO?
>
> A. No.
>
> Q. Was all that information, information that would have been material to you as PanAm Terra's auditor?
>
> A. Yes.
>
> Q. If you had found out about that transaction, . . . what would Peterson Sullivan have done?
>
> A. The transaction should have been disclosed, first of all. But in any event, if that was what had happened, and we knew about that, we would have withdrawn.
>
> Q. Withdrawn as the company's auditor?

A. Correct.

Q. Is it possible Mr. Lana had had a conversation with you where he told you the $25,000 note had been converted and the sale happened, and there's just no e-mail or written document reflecting that?

A. Not that I recall.

Q. Is that something you would have remembered?

A. I would have remembered that, because it would have required disclosure[.]

Tr. 489:24-491:12.

491. The conversion of Crow's note and the sale of PanAm stock to the three investors was never disclosed.

492. On May 1, 2013, PanAm withdrew its registration as an SEC reporting company. Div. Ex. 841 (Form 15).

493. Clug, as PanAm's Chief Executive Officer, executed Rule 13a-14 certifications of PanAm's SEC filings, including the Form 10-Q for the period ended June 30, 2011. Div. Ex. 824 at 22, 24, and its Form 10-Q for the period ended September 30, 2011. Div. Ex. 825 at 22, 24.

XV. PANAM'S REPRESENTATIONS TO INVESTORS

494. On September 22, 2011, Crow emailed a potential investor about "our farmland vehicle Pan Am Terra," and Crow represented that "we are an asset class for our investors, in that we own the farmland and collect rents and appreciation, but do not actually manage the farming operations." Div. Ex. 82.

495. In June 2011, Crow emailed Simon Leach that he was "looking forward to launching this with you" and emailed him the PanAm term sheets. Div. Ex. 63 at 1, 2.

496. On April 25, 2011, Crow emailed a potential investor, Simon Leach, the PanAm Terra Term Sheet and called it "a proposal on how we can have your fund take an early loan

stake and then double its money." Div. Ex. 42 at 1. Crow stressed that there would be little risk because Leach would receive "a first [lien] on assets so if nothing ever[] happened you would have a shell which is worth over $250k on the OTCBB." *Id.*

497. PanAm investors signed subscription agreements which stated: " The Subscriber has relied solely upon (a) the information contained in the Executive Brief of PanAm Terra dated May, 2011, and (b) and information furnished in written form by the Company to the Subscriber and signed by the Company." Div. Exs. 122; 145; 168; 170; 189.

498. The PanAm Terra Executive Brief dated December 2010, also referred to as "the business plan," was used initially to solicit investors. Div. Ex. 416.

499. On April 5, 2012, Clug emailed responses to questions from Ashley Dillon at Pennaluna, a market maker, confirming that "PanAm Terra is not currently working with any consultants or public relations firm." Div. Ex. 309 at 4. Clug also attached the May 2011 PanAm Executive Brief as the documents used to solicit investors. Id. at 2, 6.

500. On May 18, 2012, Clug instructed Lana to provide the PanAm Executive Brief dated May 2011 to investors and to "make sure you point out that the business plan is very out of date, including the financial/share projections (they are actually much better now)[.]" Div. Ex. 389 at 1.

501. The Executive Brief stated that PanAm has "new management . . . the name and symbol change to PanAm is in process with a Form 10 and application for listing on the OTCBB submitted on April 29, 2011." Div Ex. 389 at 10. However, no application to the OTCBB had been submitted on April 29, 2011. Resp. Ans. ¶ 66.

502. Crow was not listed in the Senior Management section of the Executive Brief, which did include John Coogan, an investor with minimal involvement in PanAm's affairs. Div. Ex. 389 at 26-27.

503. The Executive Brief stated that "[b]y the end of our third year when we project to own 200,000 hectares with a value of $280 million our company, using the 1.5 multiple, would have an enterprise value of approximately $500 million. This would represent more than six-fold increase in per share price." Div. Ex. 389 at 24.

504. After filing its initial Form 10 with the Commission in April 2011, PanAm filed periodic reports including a 10K for 2011 and several 10Qs that did not disclose Crow's role and involvement with PanAm, his pending bankruptcy and his officer and director and securities industry bars. Div. Exs.835; 824; 825; 836; 838; 839.

505. From January 2011 to March 2013, PanAm raised $400,000 from investors. Div. Ex. 2A-11-12 (Celamy Exs. 7, 8).

506. PanAm also filed a Form D in September 2012 representing that none of the initial $320,000 raised from investors would be used to pay the officers, directors or promoters of PanAm; Clug signed as CEO even though his CEO role had been terminated. Div. Ex. 474 at 4-5; 834 at 5. However, PanAm used a substantial portion of the proceeds to pay Crow, Clug and Ross. Div. Ex. 2A-12 (Celamy Ex. 8).

507. By February 2013, PanAm had spent all of the money raised from investors with nothing to show for it. Div. Ex. 2A at 13-14; Div. Ex. 800 at 3.

508. Stern testified that he was "very impressed with PanAm Terra." Tr. 139:8-11. Stern believed that CEO Steve Ross, who Stern believed was "quite brilliant," "had arranged for financing to the tune of about $100 million in Uruguay. Tr. 139:14-19.

509. In an email dated Feb. 26, 2013, Chad Mooney, "after a long and thorough discussion with Michael," threatened to "resign from the board, effective immediately," due to PanAm's failure. Div. Ex. 556.

510. In late February 2013, Ross emailed the board that "we do not have the money to pay for our auditors to begin their annual audit work, so we have gone as far as we can go with our SEC filings. . . . Angel's investor base is basically tapped out[.]"). Div. Ex. 557 at 2.

511. Gewanter testified that "our hope was to raise many hundreds of million, if not billions of dollars or other currencies in creating this new institutional investment class." Tr. 1838: 14-19.

XVI. CORSAIR ACTED AS AN UNREGISTERED BROKER-DEALER

512. George Charles Cody Price ("Price") was a principal and manager of an unregistered investment adviser called the ABS Manager, LLC ("ABS"). Div. Ex. 199 at 3; Tr. 844:18-23 (Lana: "Q. What was the name of the person that was in charge of the Ginnie Mae fund? A. Cody Price. Q. Do you remember the name of the fund? A. I think it had more than one name, but I think it was the ABS Fund.").

513. Crow knew Cody Price and introduced him and ABS to Clug and Lana. Tr. 1940:10-18 (Clug: "Q. How did the relationship between Corsair and ABS come about? A. It was a contact of Mr. Crow's. He, I guess, met them on West Coast. I think California. I did not go there at any time but I think it's a relationship he developed through someone else, met them.).

514. In January 2012, Crow and Clug drafted a term sheet to enable investors to invest in the ABS Fund's GNMA portfolio and borrow 70% against their ABS investments, through a line of credit, to invest in Aurum. Div. Ex. 201 (1.2.12 Crow to Clug email: "I am working on

the term sheet on how our investors would use this Fund, borrow up to 70% against it, and then invest in a deal with us if they chose"); Div. Ex. 206 (1.5-6.12 Crow/Clug email exchanging drafts on GNMA/ABS term sheet); Tr. 844:2-17 (Lana: "Q. How was this arrangement intended to work? A. The arrangement was intended to work, to the best of my knowledge in the following way: The [Aurum] investors would have the option of investing in this Ginnie Mae [ABS] fund, and the -- the company of the fund had a line of credit. [A]fter investing in the Ginnie Mae fund, they would let them borrow up to 70 percent of the amount of their investment. So if someone invested a hundred thousand dollars, they'd give them the money for the hundred thousand and buy a hundred thousand worth of bonds for that. Then they would elect to borrow up to 70 percent or $70,000. And then if they chose, that money that they borrowed, they would invest in Aurum Mining.").

515. Lana reviewed the draft Aurum/ABS term sheet. Div. Ex. 231 (1.20.12 Lana to Clug, Crow email).

516. On January 5, 2012, Crow sent Clug and Lana "a basic draft of outline for due diligence" and said that he would "coordinate with Angel[.]" Div. Ex. 205 (1.5.12 Crow to Lana email). Clug responded by asking about the need to "get legal sign-off/approval on any marketing materials we distribute?" *Id.*

517. Crow, on behalf of Corsair, signed a Referral Agreement between Corsair and the ABS with an effective date of January 1, 2012. Div. Ex. 199; Tr. 1044:4-10 (Crow: "I recall that Cody was insistent on getting their standard Referral Agreement signed, which we told them needed to be reviewed by our counsel. He was insistent on having it signed. We signed it and later amended it.").

518. The Referral Agreement provided that:

> The Consultant (Corsair) may from time to time introduce potential investors to Manager (ABS) in return for Manager's agreement to compensate Consultant for these services if an investment is made in one or more funds managed by Manager. The Consultant's sole role and responsibility is to serve as an intermediary by introducing potential Fund investors to Manager.
>
> In the event that any Investor makes an investment in any Fund, Manager agrees to pay the Consultant a fixed fee equal to a 3% ("Fee") paid out over 90 days, typically the first 1% after 30 days, the second 1% 30 days after, then the final 1% 30 days after. Every year a client stays in the fund there will be additional fee of 1% paid annually to consultant.

Div. Ex. 199 at 1-2.

519. In February 2012, Cody Price and Jay Cowan made a presentation of ABS Fund investments to Aurum investors at Boca Raton, Florida; Crow and Clug attended. Tr. 131:6-133:22-144:16-23 (Stern test.). Stern testified that Price told investors that they could make an investment in the ABS Fund and get 70% of the amount back and that ABS was "paying a high interest rate of ....around 11%." Tr. 144:16-145:12.

520. After the meeting, Cowan emailed Clug to thank him for "drop[ping] everything to drive us around and introduce us to your valued clients." Div. Ex. 258 (2.20.12 email from Cowan to Clug).

521. Crow believed that the arrangement with ABS would be highly profitable for Aurum:

> Just to give you an idea on what we are thinking we can do between our direct referrals and those we set up and will go thru us, we believe we can introduce for you:
>
> | | |
> |---|---|
> | Q1 2012 | $2,000,000 |
> | Q2 2012 | $4,000,000 |
> | Q3 2012 | $4,000,000 |
> | Total | $10,000,000 |
>
> This is just what we need to execute out plan on what these people might chose to reinvest from their line. WE believe we can do a lot more if you want to scale into it and might be able to get as much as $25 million to you this year. The ability to set up offshore accounts and or structure is important for the bigger money sources we have.

Best,
Michael

Div. Ex. 233 at2-3 (1.17.12 Crow to Price email).

522. Lana recommended the ABS Fund investment – paired with the line of credit feature allowing for additional Aurum investments– to his clients. Div. Exs. 233 at 1 (1.22.13 Lana to Crow, Clug email asking to speak with Price "before advising my clients to invest in this GNMA fund"); Div. Ex. 243 (1.2.12 Lana to Price, Stern, Crow, Clug email); Div. Ex. 262 (2.24.12 Lana to Cowan, cc Clug, Crow, email: "Michael and Ronni Musumeci are currently investing $250,000 in the GNMA fund and they are asking for a $100,000 line of credit that they are requesting be wire transferred to Aurum Mining LLC. There is a strong likelihood that within a week they will free up other funds and invest an additional $100,000 to $150,000 in the GNMA fund and also ask for a LOC distribution to be invested in Aurum Mining LLC of between $30,000 to $60,000.").

523. Clug congratulated Lana on the ABS sales. Div. Ex. 269 (3.1.12 Lana to Clug, Crow email: "I met with Mr. Raul Echeverria until early this morning. He is investing $200k in GNMA and $70k in Aurum"; Clug to Lana, Crow email: "Well done!").

524. Clug and Crow solicited Steven Swirsky's investment in ABS which Swirsky used to borrow funds to invest in Aurum. Div. Ex. 311 at 1-2 ((3.27.12 Crow to Price email: "Alex just saw him again today and he says he is willing and wants to put in 300k GNMA and 100k plus aurum to start, wants to double it within 2-3 months if it goes well.").

525. Clug closely followed the new investor funds coming in to Aurum as a result of the ABS/Aurum deal. Div. Ex. 276 at 1 (3.8.12 Clug to Crow, Lana email: "Good info in attached. Shows $550K so far in GNMA and $210K to come to Aurum (150 already received)".

526. Lana purported to be affiliated with Corsair for the purposes of the ABS transaction. He identified himself as "ANGEL LANA CFO (THE CORSAIR GROUP) in the subject line of an email to Price requesting ABS Fund materials and prospectus to a potential investor; Crow and Clug were copied on the email. Div. Ex. 241. Lana also used his alana@thecorsairgroup.com email address to stream investor referrals to ABS on behalf of Corsair; Crow and Clug were also copied on these emails. Div. Exs. 243, 244, 260, 262. Lana testified that Clug "established an email (alana@thecorsairgroup.com) for me and he insisted I use it." Tr. 854:6-13 (Lana testimony)

527. Clug testified that he "recommended [the ABS] investment to his father[.]" Tr. 1941:9-10.

528. When the Aurum investors began putting money into ABS, and using the borrowing feature to increase their Aurum investments, Price emailed Crow and Clug that they could begin billing him for Corsair's referral fees. Div. Ex. 267 (3.1.12 Price to Crow, Clug and Lana email: "We received a total 350k total as of Today. . . The line of credit will follow as promptly as possible. The 3% consulting fee will be paid over 90 days. 1% every 30 days the client stays in the fund.... Please send an invoice over we can process through accounting from the Corsair Group, to ABS Manager for $3,500.00 in consulting fee"); Div. Ex. 276 (3.7.12 Price to Crow, Clug email: "Bill us $3500 every 30 days for 90 days").

529. Mitchell Melnick and his father Harry Melnick each invested $100,000 into the ABS Fund. Tr. 55:7-16,56:21-22 (Melnick: "Q. [D]id you invest in ABS Fund? A. Yes. Q. Can you just describe how that came about? A. Angel Lana had told me that one of the ways that Aurum was going to be receiving funds was through this investment in this company, that it was designed to be a relatively safe investment compared to the more speculative nature of the

mining operation. And so I spoke to Cody Price, who is a colleague of Jay Cowan and decided to provide funding there with 100,000. . . . Q. What was the amount your father put in? A. The same as me, 100,000.").

530. Gerald Millstein, another Aurum investor (Div. Ex 2A at 4), also invested $100,000 in ABS. Div. Ex. 422 at 2 (6.14.12 Clug to Crow email attached "Aurum GNMA Investor List").

531. The Referral Agreement entitled Corsair to a 3% fee for each referral, which was to be "paid out over 90 days." Div. Ex. 199 at 2. Each $100,000 investment, therefore, entitled Corsair to 3% of $100,000, or $3,000.

532. The $100,000 investments in ABS by Mitchell Melnick, Harry Melnick and Gerald Millstein entitled Corsair to $3,000 per month. This is reflected in the first Invoice dated March 26, 2012, that Corsair sent to ABS:

Description	Amount
Consulting Fee per agreement - $3,000 (M. Melnick) - 1/3 due every 30 days	$1,000.00
Consulting Fee per agreement - $3,000 (H. Melnick) - 1/3 due every 30 days	$1,000.00
Consulting Fee per agreement - $3,000 (Millstein) - 1/3 due every 30 days	$1,000.00
Total	$3,000.00

Div. Ex. 308. *See also* Div. Ex. 266 (February 2012 invoice).

533. Clug drafted the March 2012 invoice and sent it to Crow for his review. Div. Ex. 300 (3.22.12 Clug to Crow email re "ABS Fund invoice": "Gave it a shot FYR, attached").

534. The April 2012 invoice sent from Corsair to ABS was structured identically, and also showed the $3,000 referral fee due Corsair as a result of the $100,000 investment in ABS by Clug's father. Div. Ex. 321.

535. The May 2012 invoice sent from Corsair to ABS, like the previous two invoices, had columns listing by name each Aurum investor, the amount invested in ABS, the statement "1/3 due every 30 days," and the amount due. The total amount due in the "Description" column was 3% of the investors' ABS investment, per the Referral Agreement. Div. Ex. 364.

536. The June and July invoices listed a flat fee of $5,000 per month, and the references to "per agreement," to individual investors. and "1/3 due every 30 days" were deleted. Div. Ex. 425 (June invoice); Div. Ex. 443 (July invoice).

537. The November 2012 invoice summarizes all the payments made by ABS to Corsair, along with the "Invoices From February through December 2012," and shows the change to the $5,000 monthly fee after June 2012. Div. Ex. 500.

538. The November 2012 invoice shows the "total payments" received by Corsair from ABS Management to be $39,563.31. Div. Ex. 500. *See also* Div. Ex 2A at 18 (Celamy Ex. 13) (summary chart showing $39,563 received from ABS by Corsair).

539. Price, in an email to Crow and Clug, called the payments due under the invoices referral fees. Div. Ex. 330 (4.5.12 Price to Clug, Crow email: ". . . I can balance that out with the invoices I owe you guys for ref fees . . ."). Tr. 1093:24-1094:2 (Crow: "What is the phrase 'ref fees' [in Div. Ex. 330]? Does that mean referral fees? A. I'm not sure. It might. I'm not familiar with this e-mail. So I'm just reading it.").

540. Clug testified that Price proposed the "success-fee-based compensation" structure, and that "[m]aybe a few payments may have started that way." Tr. 1942:7-10. However, Clug testified that counsel advised that "it's better to be safe than sorry . . . We recommend success fees not be paid. . . cancel anything to do with success fees." Tr. 1942:9-21 (Clug testimony).

541. Crow also testified that the switch to the flat fee resulted from a review by a lawyer, but Crow did not recall whose lawyer or why the switch was made. Tr. 1052:6-18 (Crow: "Q. What was the reason that the payment was switched [to a] . . . essentially flat fee? A. Yes. [] I don't recall if it was Mr. Price's counsel or it was our counsel, but there was some review of the documents, and they decided to switch it to a flat fee and not any other basis of compensation. Q. Was it because you knew that these invoices seemed to indicate a per customer referral payment? A. I don't recall the specific reason. I just know that they changed it, and it was implemented to be a flat fee regardless of what investors did or didn't do. I don't know.").

542. In June 2012, Crow, on behalf of Corsair, signed an Advisory Agreement between Corsair and ABS. Div. Ex. 61 (the "June 1, 2011" date on the Agreement should be "June 1, 2012," *see* Tr. 1948:21-1949:2 (Clug testimony)); Div. Ex. 500 (Statement referring to "[c]onsulting per contract on June 1, 2012"). Under Advisory Agreement, ABS engaged Corsair "to act as financial and management consultant to the Company (ABS) and to provide recommendations to the Company (ABS)." Div. Ex. 61 at 1. The Advisory Agreement set a fixed-fee of $5,000 per month due from ABS to Corsair through December 2012. Div. Ex. 61 at 2.

543. No evidence exists of any consulting services performed by Corsair for ABS, other than the referral of Aurum customers to ABS. Tr. 1042:19-1043:4 (Crow: "Q. Are you aware of any universe of documents that relates to, you know, engaging in the type of consulting arrangements that you're describing? A. Well, that was during the time that Alex and I were both in Miami. We hadn't moved to Peru yet. We had offices and we talked frequently because we were next-door to each other. A lot of the e-mailing started to happen when we were in Peru when one of us was traveling or the other was traveling. During that period of time, we had a lot

more face-to-face meetings. Q. Mr. Price lived in San Diego, didn't he? A. Yes, he did.").On February 8, 2013, the SEC sued ABS and Cody Price alleging securities fraud in three funds that they managed, including the ABS Fund; Lana emailed Crow and Clug about suit. Div. Exs. 809, 560.

544. On July 16, 2015, a final consent judgment was entered against ABS and Cody Price enjoining them from further violations of the anti-fraud provisions of the federal securities laws and ordering them to pay a total of $512, 648.83 in disgorgement and civil penalty. Div. Ex. 811.

545. Corsair was never registered as a broker-dealer with the Commission. Div. Ex. 800 ¶¶ 5, 17 (Joint Stipulation). Neither Crow nor Clug was registered as or associated with any registered broker-dealer. *Id.* Clug knew that Crow had been barred from associating with a broker-dealer. Tr. 1469:16-25.

XVII. OVERVIEW OF FLOW OF FUNDS THROUGH AURUM, PANAM AND CORSAIR ACCOUNTS

A. Aurum Mining LLC

546. From June 2011 through November 2013, Aurum raised a total of $3,995,775 from investors. These funds were deposited into Aurum's Citibank (US) account, which Crow and Clug controlled. Div. Ex. 2A at 4 (Celamy Ex. 1), 2A at 21 (Celamy Ex. 16).

547. From February 2012 to February 2014, Crow and Clug transferred $2,724,000 from Aurum's Citibank (US) account to four Peruvian bank accounts they controlled. Div. Ex. 2A at 5 (Celamy Ex. 2); Div. Ex. 2A at 8-9 (Celamy Exs. 2, 4, 5).

548. The transfers from Aurum's U.S. accounts to the Peruvian accounts left a total of $1,271,775 in investor funds that was not transferred out of the U.S. Of this amount, $1,034,271

–.S. accounts to the Peruvian accounts left a total of $1,271,7and their U.S. entities (Corsair or Dolphin). Div. Ex. 2A at 5 (Celamy Ex. 2).

549. Most of the investor funds raised by Aurum – including the $2.7 million transferred from the U.S. account to the Peruvian accounts – paid for Crow and Clug's salary, living expenses, and travel. Div. Ex. 446 at 2 (7.29.12 Crow email: Peru was "[g]oing really really well. I signed one year lease on large 3 bd overlooking pacific ocean. Very nice"). Tr. 1550: 12-13 (Hollander: "Q. What kind of apartment [in Peru] did [Clug] have? A. Two bedroom, nice apartment.").

550. By early 2013, Aurum's U.S. accounts had steadily dwindled from $158,591 in January 2013; to $9,485 in July 2013; to $8,461 in August 2013; and to $856 in March 2014. Div. Ex. 2A at 6-7 (Celamy Exs. 3A and 3B).

551. Similarly, by January 2014, Crow and Clug had depleted the $2,724,000 they transferred to Peru. Div. Ex. 3A at 6, 8, 10, 12, 14, 16, 18, 20, 22 (Yanez Exs. 2, 4, 6, 8, 10, 12, 14, 16, 18).

552. By early 2014, Lana testified that Aurum had no money. Tr. 907:14-16 (Lana: "Q. Aurum Mining was out of money in February 2014? A. Yes.").

553. Aurum's investors never received any return.

B. PanAm Terra, Inc.

554. Several months after his bankruptcy filing, Crow provided the initial $25,000 funding for PanAm. Crow made three transfers to PanAm's Citibank account in August ($15,000), September ($5,000) and December 2010 ($5.000). Div. Ex. 2A at 11 (Celamy Ex. 7). The first two transfers, totaling $20,000, were from the [redacted]

[redacted]

555. After Crow's initial 2010 deposits, from January 2011 through March 2013, PanAm raised $400,000 from at least twelve investors. Div. Ex. 2A at 11 (Celamy Ex. 7).

556. Virtually all PanAm funds were raised through Lana's contacts, and Lana continued to seek investors for PanAm. Div. Ex. 389 at 1 (5.17.12 Lana to Clug email re PanAm: "I have 2, possibly 3 interested parties @0.50/share").

557. PanAm's funds were held in a Citibank account controlled by Clug. Div. Ex. 2A-21 (Celamy Ex. 16).

558. Crow and Clug, or entities they controlled, received about one-third of the $400,000 raised from PanAm investors in PanAm ($129,788). Of the remaining funds, $93,053 was paid to Steven Ross and his entity (Belcourt Associates), who served as CEO for less than one year, and $93,297 was paid to PanAm's auditors and lawyers. Div. Ex. 2A-12 (Celamy Ex. 8).

559. PanAm never acquired a single asset, and its investors have received nothing. Div. Ex. 800 at 3.

C. The Corsair Group, Inc.

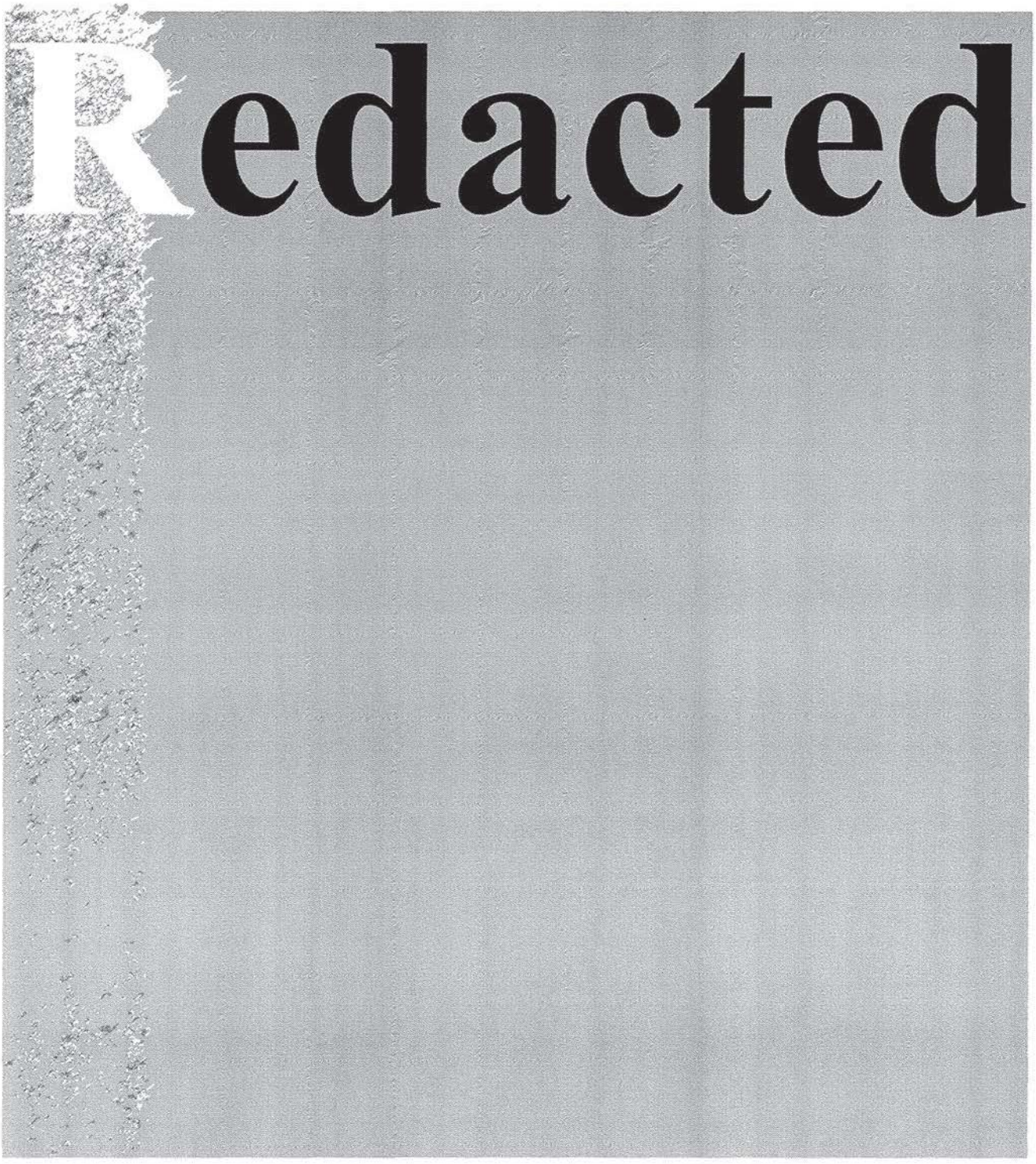
560. Corsair's Citibank account opened on July 8, 2011 and closed on July 31, 2014. Div. Ex. 2A at 16 (Celamy Ex. 11).

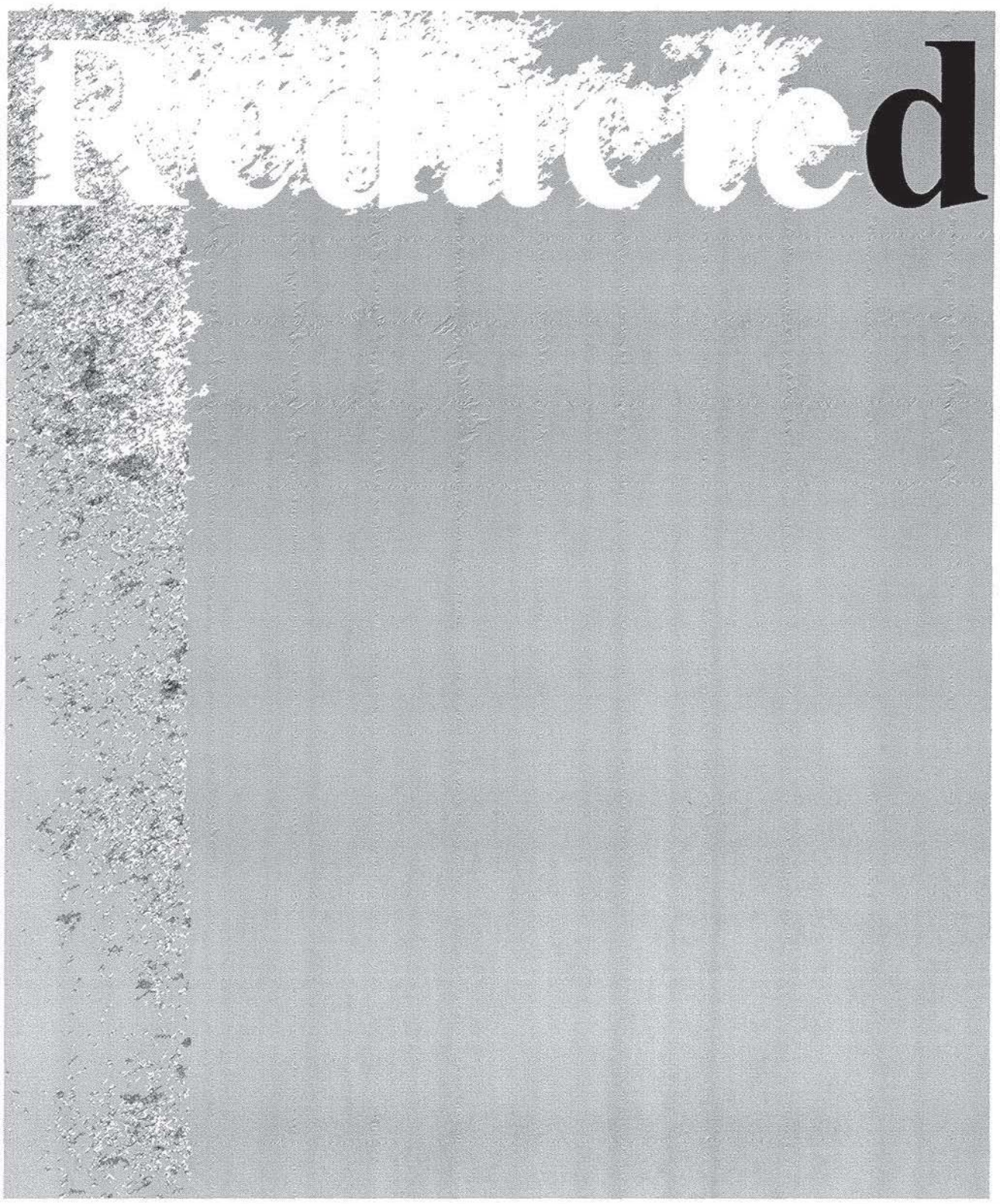
561. Corsair received $625,000 from Aurum during the period February 2012 to November 2013; $40,000 from PanAm during the period July 2012 to February 2013; and $39,563 from ABS Manager during the period April 2012 to November 2012. Div. Ex. 2A at 17, 18 (Celamy Exs. 12, 13).

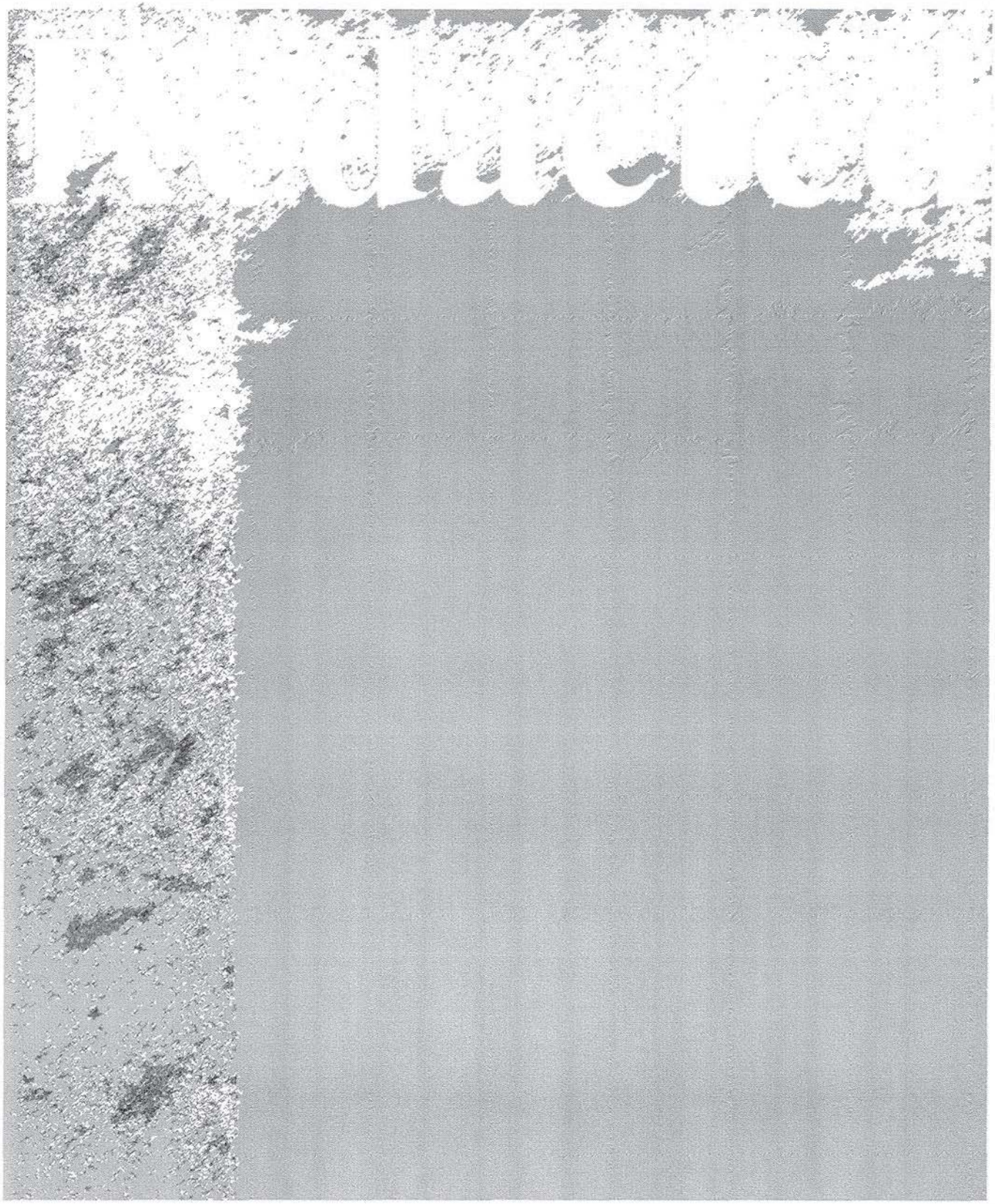
562. Clug testified that "Corsair . . . no longer exists . . . the company doesn't exist anymore." Tr. 1922:10-12.

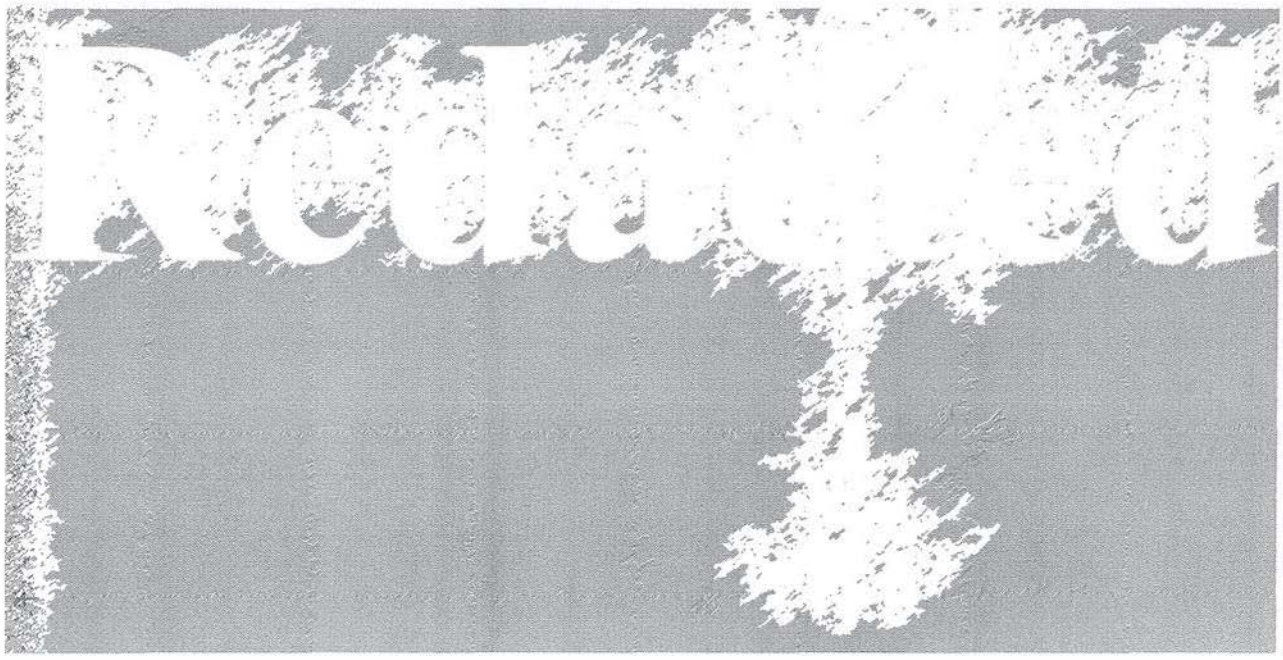
ROW AND CLUG'S EVIDENCE REGARDING THEIR INABILITY TO PAY ISGORGEMENT, INTEREST OR PENALTIES

Crow

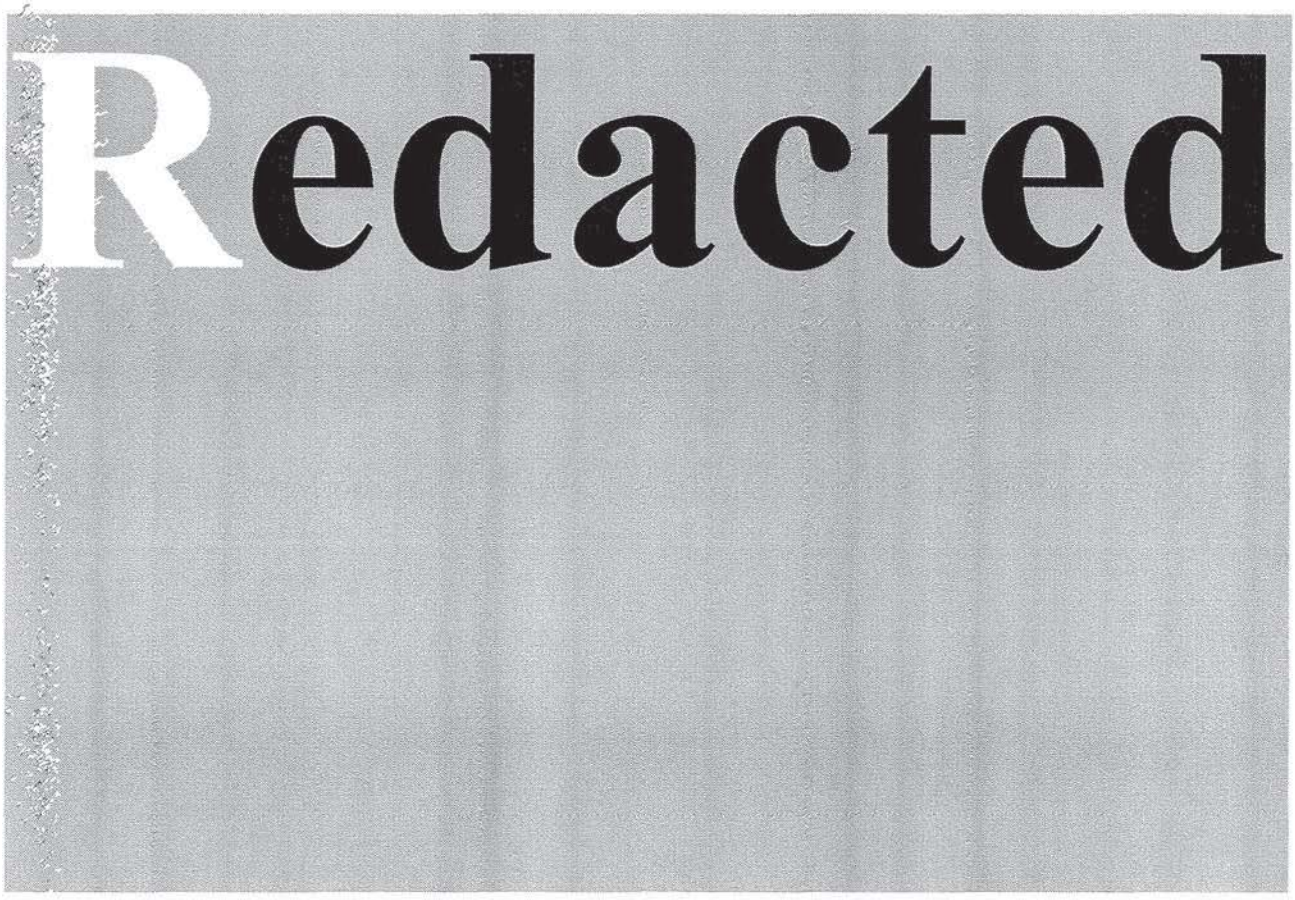



Rejected





B. Clug



XIX. HEARING TESTIMONY OF CROW AND CLUG WAS NOT CREDIBLE

578. Clug testified that he and Crow did not rely on Palacio for advice on geology and testing. Tr. 1774:15-16 (Clug: "[G]eology is not necessarily [Palacio's] strong point."). Crow and Clug's emails from 2011 and 2012, however, show that they relied on Palacio for all geological testing data. Div. Ex. 112 at 2 ("Bruno, when do you think you can give us total gold numbers you are comfortable with"); Div. Ex. 131 at 1 (seeking geological advice from Palacio); Div. Ex. 314 at 25 (12.31.11 PPM: "Palacio has vast experience in all underground mining activities[.]")

579. Clug testified that "overall the most experienced person was [Raiss]." Tr. 2017-23-24. . Clug, however, recognized that Raiss had limited geological knowledge. Div. Ex. 117 at 1 (11.3.2011 Clug to Crow email criticizing Raiss' "complete lack of mining experience and numerous and costly failures for the last year").

580. Crow and Clug blamed Brantl for advising them that the 2011 closing conditions had been met. Brantl, however, was not copied on the emails with the draft, PPMs, update letters. Div. Exs. 196, 203,207.

581. Clug also testified that Brantl "definitely reviewed many of [the Quarterly Reports]. I'm not sure if all of them, but he was usually involved in the process as well." Tr. 1787: 11-18. There is no evidence, however, of Brantl ever reviewing any quarterly reports.

582. Crow and Clug also testified that Aurum's approach was similar to that of artisanal miners. The evidence, however, shows that Aurum large-scale, mechanized approach had nothing in common with artisanal miners. Palacio testified that artisanal miner in Brazil break the rock "with hammers . . . Then they take this rock and grind it further to smaller sizes until they get to the liberation size of the gold and then they pan it with water and they add mercury to it." Tr. 252:17-253:4.

583. According to Palacio, artisanal miners in Brazil are not concerned with drilling or with ore bodies; do not prepare NI 43-101s; and do not generally have permits to mine." Tr. 253:14-25.

584. Moran testified that "[a]rtisal means the kind of mining that's done by people with picks and shovels and they're lucky if they have any equipment, and it's basically hand to mouth type mining. . . . [A]rtisinal mining is small scale mining that might be anywhere from a few tons a day to maybe 10 to 20 tons per day sort of operation[.]" Tr. 669: 21 – 670: 14. *See also* Tr. 692: 7 – 693: 24 (Moran testimony on distinction between artisanal mines, small-scale mines and larger mines and concluding that, based on the 1st Quarter 2913 Report, that "clearly they were stating in 2013 that they were looking at production that was going to start at about 380 tons a day up to 1,000 tons per day and anticipating perhaps even 1,500 tons per day. And that's not small-scale mining.").

585. Crow testified that he did not regard PanAm Terra as a public company; Ross's employment agreement, which Crow drafted, referred to PanAm as "a public company". Div.

Ex. 432. Div. Ex. 39 (3.29.11 Crow to Leach, Rice, Clug: PanAm "form 10 being filed this week for it to return as a US public company.").

586. Crow and Clug testified that they were unfamiliar with mining terminology and therefore, used terms loosely. Div. Ex. 92 at 1 (Crow and Clug took a mining class in Toronto in September 2011, Crow emailed Palacio that "Alex and I are now in class in Toronto and hope to accumulate a bit more knowledge so we can talk like you"); Div. Ex. 92 at 2 (Palacio to Crow: "[y]ou already sound like a mining engineer.").

587. Crow testified that he was "not familiar" with which Aurum investors invested with ABS; that Corsair "did not introduce any investors [to ABS], other than Alex's father; that he was "not part of" the ABS/Aurum structure; that he only signed the Referral Agreement because Cody "was insistent"; and that he did not know that Corsair submitted invoices to ABS for referral fees. Tr. 1047:14-1048:20, 1044:4-10. The evidence shows, however, that Crow drafted the ABS Term Sheet; was deeply involved in every aspect of the ABS/Aurum arrangement and knew that Corsair was being paid referral fees. Div. Exs. 201, 267, 276, 500.

PROPOSED CONCLUSIONS OF LAW

I. Respondents' Violations

1. Crow, Clug, Aurum and PanAm each willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities. Crow and Clug willfully aided and abetted and caused such violations by Aurum and PanAm.

2. Crow, Clug and Aurum made material misrepresentations and omissions in the offer and sale of Aurum securities concerning, inter alia, Batalha and the closing conditions in

Aurum's PPMs; the use of investor proceeds; results and prospects of the mineral properties in Brazil and Peru; and Crow's background.

3. Crow, Clug and PanAm made material misrepresentations and omissions in the offer and sale of PanAm securities concerning, inter alia, Crow's status as a control person and de facto officer of PanAm; Crow's background; the use of investor proceeds; facts about a purported application for listing on the OTCBB; and Crow's sale of restricted PanAm shares.

4. PanAm willfully violated, and Crow and Clug willfully aided and abetted and caused PanAm's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file complete and accurate annual and quarterly reports with the Commission.

5. PanAm failed to identify Crow as a de facto officer or control person in its Form 10, 2011 10K and its 10Q filings with the Commission. Clug, as PanAm's CEO, and Crow, as control person and de facto officer, were primarily responsible for the material misrepresentations and omissions in PanAm's filings with the Commission.

6. Clug willfully violated Rule 13a-14 of the Exchange Act, which requires that principal executive and financial officers of an issuer of a security registered pursuant to Section 12 of the Exchange Act certify to the accuracy and completeness of the issuer's annual and quarterly reports filed with the Commission. Clug signed false certifications under Rule 13a-14 that PanAm's reports did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading.

7. Crow, Clug and Corsair willfully violated Section 15(a)(1) of the Exchange Act, which prohibits any entity from making use of the mails or any means or instrumentality of

interstate commerce to effect transactions in securities without registering as a broker-dealer. Crow and Clug willfully aided and abetted and caused such violation by Corsair.

8. Crow willfully violated Section 15(b)(6)(B) of the Exchange Act for acting as or associating with a broker-dealer while under Commission order pursuant to Section 15(b)(6)(A) of the Exchange Act. Clug willfully aided and abetted and caused such violation by Crow.

II. Relief

A. *Cease and Desist Orders*

9. Section 8A of the Securities Act and Section 21C of the Exchange Act authorize the Commission to order a person who has been found to have violated any provision, rule of regulation of these statutes, to cease and desist from committing or causing violations and future violations of those provision, rules and regulations.

10. Crow, Clug Aurum and PanAm are ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

11. Crow, Clug and PanAm are ordered to cease and desist from committing or causing violations of and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

12. Clug is ordered to cease and desist from committing or causing violations of and any future violations of Rule 13a-14 promulgated under the Exchange Act.

13. Crow, Clug and Corsair are ordered to cease and desist from committing or causing violations of and any future violations of Section 15(a)(1) of the Exchange Act.

14. Crow and Clug are ordered to cease and desist from committing or causing violations of and any future violations of Section 15(b)(6)(B) of the Exchange Act.

B. Disgorgement and Prejudgment Interest

15. Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act authorize the Commission to order disgorgement and reasonable interest in administrative or cease-and-desist proceedings.

16. Crow, Clug and Aurum are jointly and severally liable for $3,995,775, representing ill-gotten gains from the Aurum offering fraud, plus prejudgment interest thereon.

17. Crow, Clug and PanAm are jointly and severally liable for $400,000, representing ill-gotten gains from the PanAm offering fraud, plus prejudgment interest thereon.

18. Crow is additionally liable for $75,000, representing ill-gotten gains from the fraudulent sale of PanAm securities, plus prejudgment interest thereon.

19. Crow, Clug and Corsair are jointly and severally liable for $39,563, representing ill-gotten gains from broker-dealer fees obtained by Corsair, plus prejudgment interest thereon.

C. *Civil Money Penalties*

20. Section 8A(g) of the Securities Act and Section 21B of the Exchange Act authorize the Commission to seek civil penalties.

21. A three-tier system identifies the maximum amount of civil penalties, depending on the severity of conduct. *See* 15 U.S.C. §§ 77h-1(g) & 78u-2(b). First-tier penalties are imposed for each statutory violation. *Id.* Second-tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. *Id.* Third-tier penalties are imposed in cases where such state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act. *Id.*

22. The maximum third tier penalty for each violation occurring after March 3, 2009 and on or before March 5, 2013 is $150,000 (for natural persons) and $725,000 (for entities). *See* 17 C.F.R. 201.1004 (2009 inflation adjustment). For violations occurring after March 5, 2013, the maximum third tier penalty for each violation is $160,000 (for natural person) and $775,000 (for entities). *See* 17 C.F.R. 201.1005 (2013 inflation adjustment).

23. Third-tier penalties are appropriate in this proceeding against each of Crow, Clug, Aurum, PanAm and Corsair.

24. Commission Rule of Practice 630(a) allows a respondent "to present evidence of inability to pay disgorgement, interest, or penalty." 17 C.F.R. § 201.630(a). Commission Rule of Practice 630(b) provides, in part, that: "The financial statement shall show the respondent's assets; liabilities; income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent ... ." 17 C.F.R. § 201.630(b)

25. Respondents have the burden to demonstrate an inability to pay. In re Disraeli, Securities Act Rel. No. 8880, 2007 WL 4481515, at *19, n. 118 (Dec. 21, 2007). Vague and unsubstantiated assertions—including failure to provide all of the information called for by Rule 630 and the Commission's financial disclosures—are insufficient to reduce disgorgement or penalty amounts. Id., 2007 WL 4481515, at *19 ("vague and unsubstantiated nature of [the respondent's] disclosures render them neither adequate nor credible as a basis for reducing disgorgement or penalty amounts.").

26. The Commission has held, "even when a respondent demonstrates an inability to pay, we have discretion not to waive the penalty, particularly when the misconduct is sufficiently egregious." Disraeli, 2007 WL 4481515, at *19, n. 124-25 (collecting cases); see also In re Trautman, Rel. No. 9088A, at 2009 WL 6761741, at *24 (Dec. 15, 2009) ("[T]he egregiousness

of [respondent's] conduct outweighs any discretionary waiver of disgorgement, prejudgment interest, and/or penalties."); In re VanCook, Exchange Act Re. No. 61039A, 2009 WL 4005083, at *19 (Nov. 20, 2009) (finding that late trading constitutes sufficiently egregious conduct "to outweigh any consideration of inability to pay).

27. Respondents have not shown sufficient evidence of their inability to pay. Even if they did, however, their conduct is sufficiently egregious to negate any consideration of an inability to pay.

D. ***Industry Bars***

28. Section 15(b)(6) of the Exchange Act authorizes the Commission to suspend or bar any person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock. Section 9(b) of the Investment Company Act authorizes the Commission to prohibit any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

29. The securities at issue were within the definition of "penny stock" set forth in Section 3(a)(51) of the Exchange Act.

30. Pursuant to Section 15(b)(6) of the Exchange Act, it is in the public interest to bar Crow and Clug from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock.

31. Pursuant to Section 9(b) of the Investment Company Act, it is in the public interest to bar Crow and Clug from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

E. ***Officer and Director Bar Against Clug***

32. Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act authorizes the Commission, in an administrative cease-and-desist proceeding, to prohibit "conditionally or unconditionally, and permanently or for such period of time as it shall determine" any person who has violated Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act from acting as an officer or director of any issuer if the person's conduct demonstrates "unfitness to serve as an officer or director" of an issuer.

33. Pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act, it is in the public interest to bar Clug from serving or acting as an officer or director of an issuer.

Dated: Sept. 3, 2015
[as corrected from August 31, 2015 submission, per Division's letter dated September 3, 2015]

Respectfully submitted,

s/David Stoelting
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