UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16426

RECEIVED
MAY 21 2015
OFFICE OF THE SECRETARY

In the Matter of

Accelerated Acquisitions XIV, Inc., *et al.*,

Respondents.

DECLARATION OF NEIL J. WELCH, JR. IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

NEIL J. WELCH, JR., pursuant to 28 U.S.C. § 1746, declares:

1. I am a Senior Investigations Counsel with the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"), and counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division's Motion for Summary Disposition.

2. Attached hereto as Exhibit 1 is a true copy of an excerpted Form 10 registration statement filed October 10, 2008 by respondent Alternate Energy Holdings, Inc. ("Alternate Energy") that was downloaded from EDGAR on May 19, 2015.

3. Attached hereto as Exhibit 2 is a true copy of a printout from the Nevada Secretary of State's website on the corporate status of Alternate Energy as of May 21, 2015.

4. Attached hereto as Exhibit 3 is a true copy of a delinquency letter from the Division of Corporation Finance to Alternate Energy dated September 14, 2014, and a return receipt signed for by Alternate Energy on September 23, 2014.

5. Attached hereto as Exhibit 4 is a true copy of a printout from EDGAR showing all filings by Alternate Energy as of May 21, 2015.

6. Attached hereto as Exhibit 5 is a true copy of a printout from the www.otcquote.com database showing the trading status for Alternate Energy's stock (symbol "AEHI") as of May 21, 2015.

7. Attached hereto as Exhibit 6 is a true copy of the Order Granting Plaintiff Securities and Exchange Commission's Motion for Final Judgment as to Defendants Alternate Energy Holdings, Inc. and Donald L. Gillispie, filed December 3, 2014 in *SEC v. Alternate Energy Holdings, Inc.*, Case No. 1:10-CV-00621 (D. Idaho), downloaded from the U.S. Courts' PACER system.

8. Attached hereto as Exhibit 7 is a true copy of the Memorandum Decision and Order, filed May 13, 2014 in *SEC v. Alternate Energy Holdings, Inc.*, Case No. 1:10-CV-00621 (D. Idaho), downloaded from the U.S. Courts' PACER system.

9. Attached hereto as Exhibit 8 is a true copy of the Amended Complaint, filed July 29, 2011 in *SEC v. Alternate Energy Holdings, Inc.*, Case No. 1:10-CV-00621 (D. Idaho), downloaded from the U.S. Courts' PACER system.

10. Attached hereto as Exhibit 9 is a true copy of Nev. Rev. Stat. ¶78.330.15.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2015.

Neil J. Welch, Jr.

Neil J. Welch, Jr.

<DOCUMENT>
<TYPE>10-12G
<SEQUENCE>1
<FILENAME>aehiform10.txt
<TEXT>

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10
GENERAL FORM FOR REGISTRATION OF SECURITIES
Pursuant to Section 12(b) or (g) of the Securities
Exchange Act of 1934

ALTERNATE ENERGY HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Nevada	20-5689191
State or other jurisdiction of incorporation or organization	IRS Identification No.

911 E. Winding Creek Dr., Suite 150, Eagle, ID 83616
Address of principal executive offices) (Zip Code)

Issuer's telephone number: (208)939-9311

Securities to be registered under
Section 12(b) of the Act:

Title of each class to be so registered	Name of each exchange on which each class is to be registered
Not Applicable	Not Applicable

Securities to be registered under Section 12(g) of the Act:

COMMON STOCK
(Title of class)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check One).

Large accelerated filer	[___]	Accelerated filer	[___]
Non-accelerated filer (Do not check if a smaller reporting company)	[___]	Smaller reporting company	[_X_]

<PAGE>
<TABLE>
<CAPTION>
TABLE OF CONTENTS

</TABLE>

<PAGE>

ITEM 1. BUSINESS

GENERAL

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: October 1, 2008

ALTERNATE ENERGY HOLDINGS, INC.

/s/Donald Gillispie

Donald Gillispie, President, CEO, COO and Director

/s/Gregory E. Kane

Gregory E. Kane, Vice President and Director

/s/John Franz

John Franz, Vice President and Director

/s/Rick J. Bucci

Rick J. Bucci, Chief Financial Officer

/s/Jennifer Ransom

Jennifer Ransom, Vice President of
Administration and Corporate Secretary

/s/Leon Eliason

Leon Eliason, Director

/s/James M. Taylor

James M. Taylor, Director

/s/Kenneth A. Strahm, Sr.

Kenneth A. Strahm, Sr., Director

/s/Ralph Beedle

Ralph Beedle, Director

</TEXT>
</DOCUMENT>

height="0" width="0" style="display:none;visibility:hidden">

MARKET ACTIVITY

- Quote & Company Info
- Current Market
- Closing Summary
- Market Maker Data
- News & Reports
- Corporate Actions
- Pending Actions

NEED HELP?

- Help with This Page
- Main Help Page
- Contact Us

QUOTE & COMPANY INFO Print

Alternate Energy Holdings, Inc. (AEHI: Grey Market)

0.0002 0.00 (0.00%) At: May 18, 2015

Volume: 0 CUSIP: 02147K105 PS ID: 114760 Piggyback Qualified: No

Quote | Time & Sales | Charts | Company Profile | News | Filings and Disclosure | Short Sales | Insider Transactions | Research

Trade Data Summary | Time & Sales

Last Sale	0.0002 — May 18, 2015	**Daily Range**	N/A — N/A
Change	**+0.00 (+0.00%)**	**52wk Range**	N/A — 0.009
Prev Close	0.0002	**Volume**	0
Opening Price	N/A	**Dividend (Yield)**	N/A (N/A)

[1]Trade data delayed 15 minutes

[2]Trade times are in ET (Eastern Time). All trade/quote prices in USD.

Real-Time Level 2 Montage Refresh All Data

MMID	Bid Price	Shares	Date/Time (EST)	MMID	Ask Price	Shares	Date/Time (EST)

Real time as of Thu, May 21, 2015 09:32:22 AM (EST)

Refresh All Data

All quotes displayed here are published by market makers on OTC Link, OTC Markets Group Inc.'s electronic inter-dealer quotation system for OTC securities.

Please see Terms of Service and Risk Warning for more information.

MMID — Market maker quotation published in OTC Link that meets the Inside market

MMID — Market maker quotation published in OTC Link

cMMID — Closed quote

U — Unpriced quote in OTC Link

MMIDu — Unsolicited market maker quotation published in OTC Link

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

September 16, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Peter Honeysett
President
Alternate Energy Holdings, Inc.
PO Box 894
Boise, ID 83701

Re: Alternate Energy Holdings, Inc.
File No. 0-53451

Dear Mr. J. Peter Honeysett:

We are writing to address the reporting responsibilities under the Securities Exchange Act of 1934 of the referenced company. For ease of discussion in this letter, we will refer to the referenced company as the "Registrant".

It appears that the Registrant is not in compliance with its reporting requirements under Section 13(a) of the Securities Exchange Act of 1934. If the Registrant is in compliance with its reporting requirements, please contact us (through the contact person specified below) within fifteen days from the date of this letter so we can discuss the reasons why our records do not indicate that compliance. If the Registrant is not in compliance with its reporting requirements, it should file all required reports within fifteen days from the date of this letter.

If the Registrant has not filed all required reports within fifteen days from the date of this letter, please be aware that the Registrant may be subject, without further notice, to an administrative proceeding to revoke its registration under the Securities Exchange Act of 1934. This administrative proceeding would be brought by the Commission's Division of Enforcement pursuant to Section 12(j) of the Securities Exchange Act of 1934. If the Registrant's stock is trading, it also may be subject to a trading suspension by the Commission pursuant to Section 12(k) of the Securities Exchange Act of 1934.

Finally, please consider whether the Registrant is eligible to terminate its registration under the Securities Exchange Act of 1934. If the Registrant is eligible to terminate its registration, it would do so by filing a Form 15 with the Commission. While the filing of a Form 15 may cease the Registrant's on-going requirement to file periodic and current reports, it would **not** remove the Registrant's obligation to file all reports required under Section 13(a) of the Securities Exchange Act of 1934 that were due on or before the date the Registrant filed its Form 15. Again, if the Registrant is eligible to terminate its registration under the Securities Exchange Act of 1934, please note that the filing of a Form 15 would not remove the Registrant's requirement to file delinquent Securities Exchange Act of 1934 reports – the Registrant would still be required to file with the Commission all periodic reports due on or before the date on which the Registrant filed a Form 15.

If you should have a particular question in regard to this letter, please contact the undersigned at [redacted] or by fax at [redacted]

Sincerely,

Marya D. Simpson
Special Counsel
Office of Enforcement Liaison
Division of Corporation Finance

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. Peter Honeysett
President
Alternate E[redacted] Holdings, Inc.
[redacted]

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Receiv[redacted] C. Date of Delivery

D. [redacted] different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BOISE ID 83701 SEP 23 2014 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7013 2630 0002 2663 5507

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Securities and Exchange Commission

EDGAR Search Results

EDGAR Search Results BETA View

ALTERNATE ENERGY HOLDINGS, INC. CIK#: 0001421874 (see all company filings)

SIC: 1540 - GENERAL BUILDING CONTRACTORS - NONRESIDENTIAL BUILDINGS
State location: ID | State of Inc.: **NV** | Fiscal Year End: 1231
(Assistant Director Office: 6)
Get **insider transactions** for this **issuer**.

Business Address
911 E. WINDING CREEK DRIVE SUITE 150 EAGLE ID 83616 208-939-9311

Mailing Address
911 E. WINDING CREEK DRIVE SUITE 150 EAGLE ID 83616

Filter Results: Filing Type: | Prior to: (YYYYMMDD) | Ownership? ○ include ◉ exclude ○ only | Limit Results Per Page: 40 Entries | Search | Show All

Items 1 - 40 RSS Feed

Next 40

Filings	Format	Description	Filing Date	File/Film Number
UPLOAD	Documents	**[Cover]**SEC-generated letter Acc-no: 0000000000-14-007363 Size: 36 KB	2014-02-12	
8-K/A	Documents	**[Amend]**Current report, items 4.01 and 9.01 Acc-no: 0001437749-14-001745 (34 Act) Size: 236 KB	2014-02-07	000-53451 14584999
UPLOAD	Documents	**[Cover]**SEC-generated letter Acc-no: 0000000000-14-004067 Size: 129 KB	2014-01-27	
UPLOAD	Documents	**[Cover]**SEC-generated letter Acc-no: 0000000000-13-067717 Size: 156 KB	2013-12-12	
NTN 10Q	Documents	Notices of Late Filings of Form 10-Q or 10-QSB Acc-no: 0001437749-13-015871 (34 Act) Size: 27 KB	2013-12-11	000-53451 131270543
8-K	Documents	Current report, items 4.01 and 9.01 Acc-no: 0001437749-13-015869 (34 Act) Size: 113 KB	2013-12-11	000-53451 131270538
UPLOAD	Documents	**[Cover]**SEC-generated letter Acc-no: 0000000000-13-065045 Size: 133 KB	2013-11-26	
8-K	Documents	Current report, item 5.02 Acc-no: 0001437749-13-012315 (34 Act) Size: 19 KB	2013-09-26	000-53451 131116367
NTN 10Q	Documents	Notices of Late Filings of Form 10-Q or 10-QSB Acc-no: 0001437749-13-010999 (34 Act) Size: 30 KB	2013-08-16	000-53451 131044484
UPLOAD	Documents	**[Cover]**SEC-generated letter Acc-no: 0000000000-13-041987 Size: 157 KB	2013-07-31	
NT 10-Q	Documents	Notification of inability to timely file Form 10-Q or 10-QSB Acc-no: 0001437749-13-005852 (34 Act) Size: 37 KB	2013-05-13	000-53451 13836378
8-K	Documents	Current report, item 5.02 Acc-no: 0001437749-13-004012 (34 Act) Size: 24 KB	2013-04-04	000-53451 13743522
NT 10-K	Documents	Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405 Acc-no: 0001437749-13-003860 (34 Act) Size: 39 KB	2013-04-02	000-53451 13735140
8-K	Documents	Current report, items 5.02 and 9.01 Acc-no: 0001437749-12-011947 (34 Act) Size: 42 KB	2012-11-19	000-53451 121214427

10-Q	Documents	Interactive Data	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-12-011768 (34 Act) Size: 7 MB	2012-11-14	000-53451 121206732
10-Q/A	Documents	Interactive Data	**[Amend]**Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-12-009344 (34 Act) Size: 5 MB	2012-09-11	000-53451 121085134
10-Q	Documents		Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-12-008498 (34 Act) Size: 1 MB	2012-08-14	000-53451 121033835
10-Q	Documents	Interactive Data	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-12-005126 (34 Act) Size: 6 MB	2012-05-15	000-53451 12846111
8-K	Documents		Current report, item 1.02 Acc-no: 0001437749-12-004191 (34 Act) Size: 27 KB	2012-04-26	000-53451 12784515
8-K	Documents		Current report, items 1.01 and 9.01 Acc-no: 0001437749-12-003504 (34 Act) Size: 218 KB	2012-04-06	000-53451 12748352
10-K	Documents	Interactive Data	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001437749-12-003278 (34 Act) Size: 6 MB	2012-04-03	000-53451 12737470
NT 10-K	Documents		Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405 Acc-no: 0001437749-12-003216 (34 Act) Size: 33 KB	2012-04-02	000-53451 12732246
8-K	Documents		Current report, item 1.01 Acc-no: 0001437749-12-002775 (34 Act) Size: 35 KB	2012-03-26	000-53451 12715137
8-K	Documents		Current report, item 5.02 Acc-no: 0001437749-12-002498 (34 Act) Size: 22 KB	2012-03-19	000-53451 12700085
8-K	Documents		Current report, items 5.02 and 9.01 Acc-no: 0001437749-12-002250 (34 Act) Size: 55 KB	2012-03-14	000-53451 12688279
8-K	Documents		Current report, items 5.02 and 9.01 Acc-no: 0001437749-12-001645 (34 Act) Size: 56 KB	2012-02-23	000-53451 12631818
8-K	Documents		Current report, item 8.01 Acc-no: 0001437749-12-000828 (34 Act) Size: 28 KB	2012-01-26	000-53451 12546501
10-Q	Documents	Interactive Data	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-11-008890 (34 Act) Size: 5 MB	2011-11-22	000-53451 111219921
NT 10-Q	Documents		Notification of inability to timely file Form 10-Q or 10-QSB Acc-no: 0001437749-11-008675 (34 Act) Size: 31 KB	2011-11-15	000-53451 111206596
10-Q/A	Documents	Interactive Data	**[Amend]**Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-11-006554 (34 Act) Size: 4 MB	2011-09-02	000-53451 111072470
10-Q	Documents		Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-11-006270 (34 Act) Size: 1 MB	2011-08-22	000-53451 111049327
8-K	Documents		Current report, items 1.01 and 9.01 Acc-no: 0001437749-11-006101 (34 Act) Size: 53 KB	2011-08-16	000-53451 111040424
NT 10-Q	Documents		Notification of inability to timely file Form 10-Q or 10-QSB Acc-no: 0001437749-11-006086 (34 Act) Size: 36 KB	2011-08-16	000-53451 111039516
8-K	Documents		Current report, items 1.02 and 9.01 Acc-no: 0001437749-11-004118 (34 Act) Size: 51 KB	2011-06-17	000-53451 11918367
8-K	Documents		Current report, item 5.02 Acc-no: 0001437749-11-004035 (34 Act) Size: 22 KB	2011-06-14	000-53451 11909926
8-K	Documents		Current report, items 5.02 and 9.01 Acc-no: 0001437749-11-003734 (34 Act) Size: 46 KB	2011-06-01	000-53451 11885976
10-Q	Documents		Quarterly report [Sections 13 or 15(d)] Acc-no: 0001437749-11-003353 (34 Act) Size: 1 MB	2011-05-17	000-53451 11851119
NT 10-Q	Documents		Notification of inability to timely file Form 10-Q or 10-QSB Acc-no: 0001437749-11-003345 (34 Act) Size: 32 KB	2011-05-17	000-53451 11850623
10-K	Documents		Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001437749-11-002121 (34 Act) Size: 1 MB	2011-04-06	000-53451 11743351
NT 10-K	Documents		Notification of inability to timely file Form 10-K 405, 10-K, 10-KSB 405, 10-KSB, 10-KT, or 10-KT405 Acc-no: 0001437749-11-002016 (34 Act) Size: 33 KB	2011-04-01	000-53451 11730785

Next 40

http://www.sec.gov/cgi-bin/browse-edgar

U.S. Securities and Exchange Commission

EDGAR Search Results

EDGAR Search Results BETA View

ALTERNATE ENERGY HOLDINGS, INC. CIK#: 0001421874 (see all company filings)

SIC: 1540 - GENERAL BUILDING CONTRACTORS - NONRESIDENTIAL BUILDINGS
State location: ID | State of Inc.: **NV** | Fiscal Year End: 1231
(Assistant Director Office: 6)
Get **insider transactions** for this **issuer**.

Business Address
911 E. WINDING CREEK DRIVE SUITE 150 EAGLE ID 83616 208-939-9311

Mailing Address
911 E. WINDING CREEK DRIVE SUITE 150 EAGLE ID 83616

Filter Results: Filing Type: | Prior to: (YYYYMMDD) | Ownership? ○ include ◉ exclude ○ only | Limit Results Per Page: 40 Entries | Search | Show All

Items 41 - 74 RSS Feed

Previous 40

Filings	Format	Description	Filing Date	File/Film Number
10-K/A	Documents	**[Amend]**Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001437749-11-001950 (34 Act) Size: 295 KB	2011-03-31	000-53451 11725879
8-K	Documents	Current report, item 5.02 Acc-no: 0001437749-11-001184 (34 Act) Size: 26 KB	2011-03-01	000-53451 11650436
8-K	Documents	Current report, item 5.02 Acc-no: 0001437749-11-000747 (34 Act) Size: 25 KB	2011-02-09	000-53451 11585609
D	Documents	Notice of Exempt Offering of Securities, item 06 Acc-no: 0001144204-10-065138 (33 Act) Size: 11 KB	2010-12-07	021-151488 101236396
8-K	Documents	Current report, items 1.01, 3.02, and 9.01 Acc-no: 0001144204-10-063431 (34 Act) Size: 5 MB	2010-11-24	000-53451 101214666
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001144204-10-061035 (34 Act) Size: 1 MB	2010-11-15	000-53451 101194247
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001204459-10-001933 (34 Act) Size: 438 KB	2010-08-16	000-53451 101019800
DEF 14C	Documents	Other definitive information statements Acc-no: 0001204459-10-001751 (34 Act) Size: 371 KB	2010-07-29	000-53451 10978746
PRE 14C	Documents	Other preliminary information statements Acc-no: 0001204459-10-001686 (34 Act) Size: 370 KB	2010-07-19	000-53451 10958752
8-K	Documents	Current report, item 3.02 Acc-no: 0001204459-10-001358 (34 Act) Size: 7 KB	2010-06-08	000-53451 10883828
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001204459-10-001175 (34 Act) Size: 331 KB	2010-05-17	000-53451 10838951
10-K	Documents	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001144204-10-017400 (34 Act) Size: 2 MB	2010-03-31	000-53451 10718959
8-K	Documents	Current report, items 5.03 and 9.01 Acc-no: 0001144204-10-009654 (34 Act) Size: 1 MB	2010-02-24	000-53451 10629077
8-K	Documents	Current report, items 1.01 and 9.01 Acc-no: 0001144204-09-065085 (34 Act) Size: 26 KB	2009-12-17	000-53451 091246658
		Current report, items 7.01 and 9.01	2009-11-	000-53451

8-K	Documents	Acc-no: 0001065949-09-000215 (34 Act) Size: 9 KB	13	091181180
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001065949-09-000212 (34 Act) Size: 79 KB	2009-11-13	000-53451 091180294
8-K/A	Documents	**[Amend]**Current report, items 4.01 and 9.01 Acc-no: 0001072588-09-000404 (34 Act) Size: 8 KB	2009-10-15	000-53451 091120050
8-K/A	Documents	**[Amend]**Current report, items 7.01 and 9.01 Acc-no: 0001072588-09-000384 (34 Act) Size: 8 KB	2009-09-29	000-53451 091091997
8-K	Documents	Current report, items 7.01 and 9.01 Acc-no: 0001072588-09-000383 (34 Act) Size: 5 KB	2009-09-29	000-53451 091091957
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001065949-09-000146 (34 Act) Size: 79 KB	2009-08-14	000-53451 091014527
8-K	Documents	Current report, items 7.01 and 9.01 Acc-no: 0001065949-09-000123 (34 Act) Size: 8 KB	2009-06-24	000-53451 09906462
8-K	Documents	Current report, items 7.01, 8.01, and 9.01 Acc-no: 0001072588-09-000248 (34 Act) Size: 9 KB	2009-06-10	000-53451 09883088
8-K	Documents	Current report, items 5.02, 7.01, and 9.01 Acc-no: 0001065949-09-000116 (34 Act) Size: 9 KB	2009-06-01	000-53451 09864507
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001065949-09-000104 (34 Act) Size: 75 KB	2009-05-15	000-53451 09831048
10-K	Documents	Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001065949-09-000080 (34 Act) Size: 204 KB	2009-03-31	000-53451 09717797
SC 13D	Documents	General statement of acquisition of beneficial ownership Acc-no: 0001065949-09-000070 (34 Act) Size: 12 KB	2009-03-26	005-84480 09706319
10-Q	Documents	Quarterly report [Sections 13 or 15(d)] Acc-no: 0001065949-09-000032 (34 Act) Size: 75 KB	2009-02-06	000-53451 09575892
SC 13D	Documents	General statement of acquisition of beneficial ownership Acc-no: 0001065949-09-000031 (34 Act) Size: 13 KB	2009-02-06	005-84480 09574711
SC 13D	Documents	General statement of acquisition of beneficial ownership Acc-no: 0001065949-09-000014 (34 Act) Size: 13 KB	2009-01-23	005-84480 09540964
SC 13D	Documents	General statement of acquisition of beneficial ownership Acc-no: 0001065949-09-000012 (34 Act) Size: 14 KB	2009-01-16	005-84480 09531701
SC 13D	Documents	General statement of acquisition of beneficial ownership Acc-no: 0001065949-09-000011 (34 Act) Size: 14 KB	2009-01-16	005-84480 09531697
8-K	Documents	Current report, item 5.02 Acc-no: 0001065949-08-000269 (34 Act) Size: 4 KB	2008-12-08	000-53451 081235484
10-12G	Documents	Registration of securities [Section 12(g)] Acc-no: 0001065949-08-000197 (34 Act) Size: 12 MB	2008-10-08	000-53451 081114817
REGDEX	Documents	**[Paper]**Notice of Sale of Securities [Regulation D and Section 4(6) of the Securities Act of 1933], item 06 Acc-no: 9999999997-08-017600 (34 Act) Size: 1 KB	2008-03-31	021-116681 08044224

Previous 40

http://www.sec.gov/cgi-bin/browse-edgar

height="0" width="0" style="display:none;visibility:hidden">

MARKET ACTIVITY

- Quote & Company Info
- Current Market
- Closing Summary
- Market Maker Data
- News & Reports
- Corporate Actions
- Pending Actions

NEED HELP?

- Help with This Page
- Main Help Page
- Contact Us

QUOTE & COMPANY INFO Print

Alternate Energy Holdings, Inc. (AEHI: Grey Market)

0.0002 0.00 (0.00%) At: May 18, 2015

Volume: 0 CUSIP: 02147K105 PS ID: 114760 Piggyback Qualified: No

Quote | Time & Sales | Charts | Company Profile | News | Filings and Disclosure | Short Sales | Insider Transactions | Research

Trade Data Summary | Time & Sales

Last Sale	0.0002 — May 18, 2015	**Daily Range**	N/A — N/A
Change	**+0.00 (+0.00%)**	**52wk Range**	N/A — 0.009
Prev Close	0.0002	**Volume**	0
Opening Price	N/A	**Dividend (Yield)**	N/A (N/A)

[1]Trade data delayed 15 minutes

[2]Trade times are in ET (Eastern Time). All trade/quote prices in USD.

Real-Time Level 2 Montage

Refresh All Data

MMID	Bid Price	Shares	Date/Time (EST)	MMID	Ask Price	Shares	Date/Time (EST)

Real time as of Thu, May 21, 2015 09:32:22 AM (EST)

Refresh All Data

All quotes displayed here are published by market makers on OTC Link, OTC Markets Group Inc.'s electronic inter-dealer quotation system for OTC securities.

Please see Terms of Service and Risk Warning for more information.

MMID — Market maker quotation published in OTC Link that meets the inside market

MMID — Market maker quotation published in OTC Link

cMMID — Closed quote

U — Unpriced quote in OTC Link

MMIDu — Unsolicited market maker quotation published in OTC Link

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ALTERNATE ENERGY HOLDINGS, INC., DONALD L. GILLISPIE, and JENNIFER RANSOM, Defendants, and BOSCO FINANCIAL, LLC, ENERGY EXECUTIVE CONSULTING, LLC, and BLACK & LOBELLO LLC, Relief Defendants.	Case No. 1:10-cv-621-EJL-REB **ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR FINAL JUDGMENT AS TO DEFENDANTS ALTERNATE ENERGY HOLDINGS, INC. AND DONALD L. GILLISPIE**

INTRODUCTION

Before the Court in the above entitled matter is the Securities and Exchange Commission's (the "SEC") Motion for the entry of Final Judgment as to Defendant Alternate Energy Holdings, Inc. ("AEHI") and Defendant Donald L. Gillispie. The SEC bases its Motion on the Court's prior order granting summary judgment as to the SEC's First, Second, and Sixth claims for relief. (Dkt. 281.) In conjunction with the Motion the SEC has filed supporting materials. The Defendants have not responded to the Motion and the time for doing so has now expired. As such, the Court has reviewed the materials filed in relation to the Motion as well as the entire record herein and finds as follows.

DISCUSSION

1. Permanent Injunction

To obtain a permanent injunction, the SEC bears the burden of showing there is "a reasonable likelihood of future violations of the securities laws." *SEC v. M & A West, Inc.*, 538 F.3d 1043, 1055 (9th Cir. 2008) (quoting *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980)). The Court evaluates the likelihood of future violations based on (1) past violations, (2) the degree of scienter involved, (3) whether the present violation was isolated or recurrent, (4) whether the defendant recognizes the wrongful nature of his conduct, (5) "the likelihood, because of defendant's professional occupation, that future violations might occur," and (6) "the sincerity of his assurances against future violations." *Murphy*, 626 F.2d at 655. The inquiry is based on "the totality of the circumstances surrounding the defendant and his violations." *Id.* The SEC argues a permanent injunction is needed in this case because the Defendant Gillispie's actions suggests a repeated pattern of illegal and fraudulent conduct carried out with a high degree of scienter. (Dkt. 299 at 4.) Additionally, the SEC argues Defendant Gillispie has attempted to shift blame and deny any wrongdoing, not taken any efforts to mitigate harm from his past conduct, and has continued to influence the company even after resigning from the board. (Dkt. 299 at 6.)

In the Court's Order granting summary judgment, the Court concluded that Defendants AEHI and Gillispie violated Sections 5(a) and (c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) & 77e(c), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5(b), and Section 17(a)(2) of the Securities Act, 15 U.S.C. §§ 77q(a) & 78j(b); 17 C.F.R. § 240.10b-5(b). (Dkt. 281.) In addition, the Court granted the SEC's request to freeze some $2 million dollars that the Defendants transferred to a third party and which are subject to this enforcement action. (Dkt. 281.) The Court incorporates its findings

from that Order herein and agrees that a permanent injunction is appropriate in this case as the Defendants are likely to commit future securities law violations.

The Defendants' violations of the securities laws included repeated and multiple acts spanning several years. Their activities included providing false, misleading, and inaccurate material information in several public announcements issued in connection to securities offerings. (Dkt. 281.) These violations occurred with the requisite level of scienter. Further, the Defendants were evasive in their conduct even after this action was filed showing little sincerity or recognition for the wrongfulness of the conduct. Based on the factors noted above, the Court finds there is a reasonable likelihood of future violations of the securities laws by the Defendants. Accordingly, the Court will grant the requested permanent injunction.

2. Disgorgement

The SEC also asks that the Court order the equitable remedy of disgorgement against the Defendants. (Dkt. 299 at 11.) District courts have "broad equity powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 (9th Cir. 1998)); *see also SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1113 (9th Cir. 2006). The calculation of disgorgement amounts is subject to the district court's discretion. *JT Wallenbrock*, 440 F.3d at 1113. The amount of disgorgement should include all proceeds obtained from the securities violations and is not limited to only those proceeds the defendant personally benefitted from. *JT Wallenbrock*, 440 F.3d at 1113-14; *Platforms Wireless*, 617 F.3d at 1097. Disgorgement need only be a "reasonable approximation of profits causally connected

to the violation" or "reasonably approximates the amount of unjust enrichment." *Platforms Wireless*, 617 F.3d at 1096; *First Pac. Bancorp*, 142 F.3d at 1192 n. 6. The SEC bears the burden of showing the causal relationship between the wrongdoing and the funds. *SEC v. Loomis*, 17 F.Supp.3d 1026, 1030 (E.D. Cal. 2014) (citations omitted).

Additionally, the "SEC 'bears the ultimate burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment.'" *Platforms Wireless*, 617 F.3d at 1096 (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989) and citing *First Pac. Bancorp*, 142 F.3d at 1192 n. 6). "Once the SEC establishes a reasonable approximation of defendants' actual profits...the burden shifts to the defendants to 'demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.* (citing cases). "[W]here two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds." *Id.* at 1098 (quoting *First Pac. Bancorp*, 142 F.3d at 1191).

In this case, the SEC has calculated the total amount of funds raised by the Defendants subject to disgorgement to be $14,567,030.00 as that amount represents the total funds raised by the Defendants from the securities violations. (Dkt. 300.) The funds raised by Defendants were by way of the sale of unregistered common stock in violation of the securities laws. (Dkt. 281.) Thus, the Court agrees that the entire amount of the funds received by the Defendants from the stock sales are all proceeds from the securities violations and a reasonable approximation of the amount of the unjust enrichment obtained by the Defendants in this case. The Defendants have not contested this approximation.

Furthermore, Defendant Gillispie was the central figure in the operations and decisions of the entity Defendant, AEHI. (Dkt. 281.) For all intents and purposes, Defendant Gillispie was the

controlling person at AEHI and responsible for the securities violations. Thus, the two defendants had the requisite "close relationship" in engaging in the violations of the securities laws needed to impose joint and several liability for the disgorgement of the illegally obtained proceeds. For these reasons and based on the entire record herein, the Court finds the disgorgement proceeds calculated by the SEC to reasonably approximate the amount of the unjust enrichment. Further, the Court finds disgorgement is warranted in this case as it will deprive the wrongdoers of unjust enrichment from the ill-gotten gains and serve to deter others from violating securities laws by making violations unprofitable. *See Platforms Wireless, supra.*

3. Prejudgment Interest

The SEC has submitted the Declaration of Susan F. Lamarca in support of its Motion which calculated prejudgment interest as $245,036.00 based on the application of the statutory rate found in 28 U.S.C. § 1961. (Dkt. 300.)

"In general, '[t]he decision whether to grant prejudgment interest and the rate used if such interest is granted are matters confided to the district court's broad discretion,' taking into consideration '(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court.'" *SEC v. Olins*, 762 F.Supp.2d 1193, 1198-99 (N.D. Cal. 2011) (quoting *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996)). Section 1961, which the SEC used in its calculation here, is generally used to compute interest on money judgments in civil cases, and is used "unless the equities of a particular case demand a different rate." *Platforms Wireless*, 617 F.3d at 1099 (quoting *In re Nucorp Energy, Inc.*, 902 F.2d 729, 734 (9th Cir. 1990)). The Ninth Circuit, however, has calculated prejudgment interest in securities violation cases based on the

tax underpayment rate set forth in 26 U.S.C. § 6621 instead of the rate found in 28 U.S.C. § 1961 stating:

> We conclude, however, that Section 1961 provides an inappropriate interest rate in this case. The treasury-bill rate in Section 1961 reflects the interest rate paid for lending money to the U.S. Government, not for borrowing money. It is therefore "not an appropriate measure of prejudgment interest to charge in remedial proceedings, where the purpose of the prejudgment interest is to deny a wrongdoer any economic benefit from his violations." By imposing a lower interest rate than the one reflected in Section 6621, the defendants would benefit from their unlawful conduct by obtaining their $1.75 million "loan" from investors at a below-market rate.

Id. (citations omitted). Regardless, the Court finds an award of prejudgment interest and the calculation made under § 1961 to be appropriate in this case and the Court will order the same.

4. Civil Penalty

As with the permanent injunction, civil penalties are imposed to deter the wrongdoer from similar future violations. Both the Securities Act and the Exchange Act allow the Court to impose a civil penalty against those who violated it by establishing three tiers of penalties limiting the maximum amount to be awarded in any given case. *See* 15 U.S.C. §§ 77t(d) and 78u(d)(3). The Court may order a "first-tier" penalty "in light of the facts and circumstances" of the case. *Olins*, 762 F.Supp.2d at 1199. A higher, "second-tier," penalty is only warranted for a violation "involv[ing] fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." *Id.* Finally, a "third-tier" penalty is warranted only where there is a further showing that "such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." *Id.* (citation omitted). "The specific amount of the civil penalty imposed within each tier is, however, discretionary." *Id.* (quoting *SEC v. Moran*, 944 F.Supp. 286, 296–97 (S.D.N.Y. 1996)). The appropriate amount of any civil penalty is determined by evaluating the *Murphy* factors listed above.

In this case, the SEC asks the Court to impose the highest level penalty, third tier, arguing the Defendants' conduct in this case involved fraud or deceit and the conduct created a significant risk of substantial losses to other persons. (Dkt. 299 at 14.)

Having reviewed the record in this matter, the Court finds the securities violations are such that the Defendants are subject to third tier penalties. The Defendants actions here involved fraud, deceit, manipulation, or deliberate and/or reckless disregard of a regulatory requirement. The Defendants engaged in a scheme of illegal offerings of securities to numerous public investors using misleading information. (Dkt. 281.) The public and investors were misled by these fraudulent and deceptive misrepresentations. As a result of their deceptive practices, the Defendants amassed over $14 million from approximately 850 investors most of which is now gone. These losses are substantial. Accordingly, the Court finds third tier civil penalties are warranted in this case.

For third tier violations, the amount of the penalty for each such violation "shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation...." 15 U.S.C. §§ 77t and 78u(d)(3)(B)(iii).[1] The appropriate amount of the penalty is determined based on the facts and circumstances of a particular case. *See* 15 U.S.C. § 78u(d)(3)(B)(i). In making this determination, courts generally consider: (1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of defendant's professional occupation, that future violations might occur; (5) and the sincerity of his assurances against future violations. *SEC v. CMKM Diamonds, Inc.*, 635 F.Supp.2d 1185, 1192 (D. Nev. 2009) (citation omitted). A court may also

[1] The applicable Code of Federal Regulations, 17 C.F.R. § 201.1004, adjusted the civil penalty amounts for conduct occurring in or after 2009. Under this adjustment, the maximum amounts for a third tier violation the maximum amounts are $130,000 for a natural person and $650,000 for any other person. The conduct giving rise to the securities violations in this case began in 2006 and continued through much of 2010.

examine a defendant's ability to pay the civil fine in determining the appropriate amount. *See SEC v. Jasper*, 883 F.Supp.2d 915, 931–32 (N.D. Cal. 2010). Civil penalties are intended to punish the wrongdoer and deter future violations. *See SEC v. Tourre*, 4 F.Supp.3d 579 (S.D.N.Y. 2014).

Here, the Court finds a penalty against Defendant Gillispie in the amount of $75,000 is appropriate. Defendant Gillispie was centrally involved in the recurrent securities violations which this Court has already concluded were done with the requisite degree of scienter. Additionally, Defendant Gillispie's conduct suggests little recognition of the wrongful nature of his conduct and/or sincerity of any assurances he may make against future violations. Further, as previously stated, the Court finds there is a likelihood that Defendant Gillispie may commit future violations.

As to the Defendant AEHI, the Court finds a civil penalty in the amount of $300,000 is appropriate. Again, the securities violations were repeated, intentional, and ongoing for approximately four years. Further, the nature of AEHI's business necessitates securing investors and gives rise to a likelihood of future securities violations.

5. Conclusion

Based on the foregoing, the Court finds the SEC has supplied sufficient evidence to show that the Defendants AEHI and Donald L. Gillispie have engaged in conduct in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. § 77e(a) & 77e(c) and 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78(j); and Rule 10b-5, 17 C.F.R. § 240.10b-5, and unless restrained and enjoined would likely engage in future violations of these provisions. As such the requested permanent injunction is appropriate in this case. Additionally, the Court finds the Defendants AEHI and Donald L. Gillispie obtained ill-gotten gains from their violations of the above provisions in an amount of approximately $14,567,030, and that with the

appropriate pre-judgment interest thereon of approximately $245,036, the Defendants should together be jointly and severally liable for disgorgement of $14,812,066. Additionally, the Court finds the imposition of civil penalties against both Defendants is appropriate as stated herein. Accordingly, the Court will grant the Motion for Entry of Judgment as follows.

ORDER

Plaintiff's Motion for Final Judgment as to the First, Second, and Sixth Causes of Action against the Defendants AEHI and Gillispie (Dkt. 298) is **GRANTED** and based thereon it is HEREBY ORDERED THAT:

1. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:

A. employing any device, scheme, or artifice to defraud;

B. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

2. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of

them, are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

A. Employing any device, scheme or artifice to defraud;

B. Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

C. Engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

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

3. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly, in the absence of any applicable exemption:

A. Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

B. Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

C. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of

any prospectus or otherwise any security, unless a registration statement has been filed with the SEC as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h;

in violation of Section 5 of the Securities Act, 15 U.S.C. § 77e.

4. Defendants AEHI and Donald L. Gillispie, and each of them, are jointly and severally liable for disgorging ill-gotten gains of $14,567,030, together with prejudgment interest thereon in the amount of $245,036, for a total disgorgement of $14,812,066. Defendants shall make payment of the total amount within thirty (30) days of the date of this Order. Defendants may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald L. Gillispie and/or Alternate Energy Holdings, Inc. as defendants in this action; and specifying that payment is made pursuant to this Final Judgment. In making such payment, Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds

shall be returned to Defendant. The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

5. Defendant Donald L. Gillispie shall pay a civil penalty in the amount of $75,000 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). Defendant shall make this payment within thirty (30) business days after entry of this Final Judgment by the same means set forth above (Paragraph IV). The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

6. Defendant AEHI shall pay a civil penalty in the amount of $300,000 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). Defendant shall make this payment within thirty (30) business days after entry of this Final Judgment by the same means set forth above (Paragraph IV). The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

7. Pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), Defendant Donald L. Gillispie is permanently prohibited as of the date of entry of this Order 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. § 78*l*, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

8. Pursuant to 15 U.S.C. §§ 77t(g) & 78u(d)(6), Defendant Donald L. Gillispie is permanently barred, as of the date of entry of this Final Judgment, from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any

penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. 240.3a51-1.

IT IS FURTHER ORDERED that the SEC shall file a written notification with the Court as to how it intends to proceed on the remaining claims in this case on or before **December 22, 2014**.

DATED: December 3, 2014

Edward J. Lodge
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ALTERNATE ENERGY HOLDINGS, INC., DONALD L. GILLISPIE, and JENNIFER RANSOM, Defendants, and BOSCO FINANCIAL, LLC, and ENERGY EXECUTIVE CONSULTING, LLC, Relief Defendants.	Case No. 1:10-CV-00621-EJL-REB MEMORANDUM DECISION AND ORDER

INTRODUCTION

On April 13, 2013, United States Magistrate Judge Ronald E. Bush issued a Report and Recommendation ("Report"), recommending that default be entered against Defendant Alternate Energy Holdings, Inc. and that Plaintiff's Motion for Summary Judgment be granted in part and denied in part. (Dkt. 242.) In the same document, Magistrate Judge Bush issued an Memorandum Decision and Order ("Order") regarding Plaintiff's Motion to Strike, Motion to File Supplemental

Amended Complaint, Motion for Order to Show Cause and Freeze, and Motion to Seal. (Dkt. 242.)

Any party may challenge a magistrate judge's proposed recommendation by filing written objections to the Report within fourteen days after being served with a copy of the same. *See* 28 U.S.C. § 636(b)(1); Local Civil Rule 72.1(b). The district court must then "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* The district court may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate judge. *Id.*; *see also* Fed. R. Civ. P. 72(b).

Defendant Donald L. Gillispie filed objections to the Report arguing it incorrectly concluded as a matter of law that summary judgment should be granted as to Plaintiff's First and Second Claims for Relief. (Dkt. 244.) Plaintiff, the Securities and Exchange Commission ("SEC"), also filed objections to the Report arguing the Court should enter summary judgment on its Sixth Claim for Relief and that this Court should order that certain assets be frozen as requested. (Dkt. 243.) The matter is now ripe for the Court's consideration. *See* Local Civil Rule 72.1(b)(2); 28 U.S.C. § 636(b)(1)(B).

FACTUAL AND PROCEDURAL BACKGROUND

The SEC, initiated this action by filing a Complaint raising allegations of federal securities law violations against Defendants Alternate Energy Holdings, Inc. ("AEHI"), its founder and Chief Executive Officer, Donald Gillispie, and its

Senior Vice-President of Administration and Secretary, Jennifer Ransom. (Dkt. 1, 87.) Also named are the Relief Defendants Bosco Financial, LLC ("Bosco") and Energy Executive Consulting, LLC ("Energy Executive").

In the Second Amended Complaint the SEC raises claims for: 1) Violations of Section 17(a) of the Securities Act by AEHI and Gillispie; 2) Violations of Section 10(b) of the Exchange Act and Rule 10b-5 by AEHI and Gillispie; 3) Violations of Section 13(a) of the Exchange Act and Rule 13a-11 by AEHI; 4) Aiding and Abetting Violations of 10(b) of the Exchange Act and Rule 10b-5 by Gillispie and Ransom; 5) Violations of Section 16(a) of the Exchange Act and Rule 16a-3 by Gillispie and Ransom; and 6) Violations of Section 5(a) and 5(c) of the Securities Act by AEHI and Gillispie. (Dkt. 87.)

The claims generally relate to the Defendants' alleged illegal manipulation of the public market price for AEHI stock and defrauding of individuals who purchased the company's stock. (Dkt. 87.) The SEC alleges the Defendants engaged in a "pump and dump scheme" whereby they pumped up the price and volume of AEHI's stock to artificially high levels and then dumped the stock through secret sales. In particular, the SEC alleges the Defendants used mass email distributions of offering documents called Private Placement Memoranda ("PPMs") and other materials to solicit potential investors through supporters, paid promoters, and other finders; inviting them to forward the PPMs on to potential investors. (Dkt. 87 at ¶ 16.) In these solicitations and materials, the SEC alleges, the Defendants made false and misleading statements and/or material omissions all

intended to induce unsophisticated investors into purchasing AEHI stock in violation of the antifraud provisions of the federal securities law.

The SEC filed a Motion for Partial Summary Judgement against AEHI and Mr. Gillispie as to the First, Second, and Sixth Claims for relief. (DKt. 166.) The Report granted summary judgment as to the First and Second claims but not the Sixth Claim. (Dkt. 242.) The SEC also filed Motions to Freeze certain assets that Magistrate Judge Bush denied. (Dkt. 241, 264.) The SEC has asked this Court to set aside the Magistrate Judge's orders and issue an order freezing the assets. The Court finds as follows.

STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." Where the parties object to a report and recommendation, this Court "shall make a de novo determination of those portions of the report which objection is made." *Id.* Where, however, no objections are filed the district court need not conduct a *de novo* review. In *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003), the court interpreted the requirements of 28 U.S.C. 636(b)(1)(C):

> The statute [28 U.S.C. § 636(b)(1)(C)] makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise. As the *Peretz* Court instructed, "to the extent de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties." *Peretz*, 501 U.S. at 939 (internal citation omitted). Neither the Constitution nor the statute requires a district judge to review, de novo,

> findings and recommendations that the parties themselves accept as correct. *See Ciapponi*, 77 F.3d at 1251 ("Absent an objection or request for review by the defendant, the district court was not required to engage in any more formal review of the plea proceeding."); *see also Peretz*, 501 U.S. at 937-39 (clarifying that de novo review not required for Article III purposes unless requested by the parties) . . . .

See also Wang v. Masaitis, 416 F.3d 993, 1000 & n.13 (9th Cir. 2005). Furthermore, to the extent that no objections are made, arguments to the contrary are waived. *See* Fed. R. Civ. P. 72; 28 U.S.C. § 636(b)(1) (objections are waived if they are not filed within fourteen days of service of the Report and Recommendation). "When no timely objection is filed, the Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir.1974)).

In this case, the Court has conducted a *de novo* review of those portions of the Report to which the parties have objected. The Court has also reviewed the entire Report as well as the record in this matter for clear error on the face of the record and finds as follows.

DISCUSSION

I. Default as to AEHI

Footnote one of the Report recommends that default be entered against AEHI for failing to appear after its counsel has withdrawn. (Dkt. 242 at 3 n. 1.) AEHI filed an opposition to the Report asking that it be allowed to appear through new counsel and defend itself on the merits. (Dkt. 254, 255.) The SEC has responded

disputing the procedural history as portrayed by AEHI and arguing that, regardless of the ruling on entry of default, summary judgment should be entered against AEHI. (Dkt. 256.) Further, the SEC asserts that AEHI's actions in failing to retain counsel have delayed resolution of this matter and, in particular, its Motions to Freeze.

The record reflects that counsel for AEHI was allowed to withdraw on September 6, 2012. (Dkt. 211.) In the Order granting withdraw the Court gave AEHI twenty-one days in which to file a written notice as to how it would be represented in the matter and advised that failure to appear in the action could result in default. (Dkt. 211.) Unbeknownst to the Court, AEHI's board of directors apparently decided not to hire new counsel to defend the company until trial. (Dkt. 255 at 4.) Since that time, AEHI has retained new counsel and has filed a notice of appearance of its new counsel - albeit untimely. (Dkt. 253) (Dkt. 255 at 6.) AEHI argues because there is no prejudice or culpable conduct resulting from its failure to file a notice of appearance, default should not be entered and it should be allowed to defend itself on the merits of the claims. (Dkt. 255.)

The Court has reviewed the issue and concludes default need not be entered at this time. New counsel for AEHI has now appeared in the case. Although some prejudice may have occurred due to the delay in new counsel appearing, the Court finds it is most appropriate to resolve the case on its merits. Accordingly, the Court will not enter default against AEHI at this time. Failure to comply with the Court's orders in the future, however, may be met with a different result.

II. Defendants' Objections to Report

Defendants object to the Report's recommendation that summary judgment be granted on the SEC's First and Second Claims arguing reasonable jurors may differ as to whether: 1) the PPMs, press releases, and letter to shareholders were false and/or misleading in light of the total mix of information available to shareholders at the time and 2) the Defendants acted with the necessary scienter under Section 10b and Rule 10b-5 and/or whether Defendants breached a standard of care under Section 17(a). (Dkt. 244.) In response to these objections, the SEC asserts that Defendants have failed to raise a triable issue of fact on either determination and have not offered any evidence to support their arguments. (Dkt. 249.)

The Court has reviewed the Report, the arguments made on these objections, the parties' initial briefing on the Motion and the entire record herein. Having done so, this Court agrees with the Report's conclusions that summary judgment is appropriate on the First and Second Claims. The Magistrate Judge employed the correct standard of law in analyzing the claims and properly applied the facts of this case to the law in reaching his decision. This Court too has reviewed the record and arrived at the same conclusion as that stated in the Report. The Court adopts the Report's conclusions and analysis on this issue. (Dkt. 242 at 11-17.) The public announcements made by Defendants are, at the very least, misleading and possibly false in regards to material information. Further, the Defendants acted with the requisite level of scienter and/or a reckless disregard for the truth when

issuing the public announcements containing the material misstatements in connection with securities offerings of AEHI. Accordingly, for the reasons stated in the Report, the Court will grant the Motion for Summary Judgment as to the First and Second Claims.

III. Plaintiff's Objections to Report

A. Motion for Summary Judgment on Sixth Claim

The SEC objects to the Report's recommendation that the Motion for Summary Judgment be denied as to the Sixth Claim for Relief - violations of Section 5 of the Securities Act. (Dkt. 243.) On this Claim, the Report concluded it had not been shown that, as a matter of law, AEHI's stock offerings were one integrated offering and that they were public offerings. (Dkt. 242 at 5-11.) The SEC does not challenge the law cited in the Report but, instead, argues the application of the record to the law is erroneous. (Dkt. 243 at 1, 5.) The SEC argues the Defendants failed to raise a genuine issue of material fact establishing their offers and sales of securities were exempt from the applicable registration requirement of the Securities Act. The SEC further objects to the Report asserting it improperly shifted the burden by requiring the SEC to disprove the exemption to the registration requirement. (Dkt. 243.) Defendants respond stating the Report properly analyzed the Claim and denied the Motion as to that Claim because a question of fact exists as to whether the stock offerings were private offerings and/or integrated. (Dkt. 248.)

Section 5 of the Securities Act, 15 U.S.C. § 77e, "make[s] it unlawful to offer or sell a security in interstate commerce if a registration statement has not been filed as to that security, unless the transaction qualifies for an exemption from registration." *SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1085 (9th Cir. 2010). "To prove a violation of Section 5, the SEC must demonstrate that: (1) there was not a registration statement in effect as to the underlying securities; (2) the defendants directly or indirectly sold or offered to sell the securities; and (3) the sale or offer was made through interstate commerce or the mails." *SEC v. Phan*, 500 F.3d 895, 902 (9th Cir. 2007). There is no scienter requirement for Section 5 which imposes strict liability on offerors and sellers of unregistered securities. *SEC v. Alpha Telecom, Inc.*, 187 F.Supp.2d 1250, 1258 (D.Or. 2002).

Here, the parties do not dispute that the SEC has shown its prima facie case for a Section 5 violation. "Once the SEC introduces evidence that a defendant has violated the registration provisions, the defendant then has the burden of proof in showing entitlement to an exemption." *Platforms*, 617 F.3d at 1086 (quoting *SEC v. Murphy*, 626 F.2d 633, 641 (9th Cir. 1980) (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953))).

Section 4(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." 15 U.S.C. § 77d(2). Section 4(2)'s applicability "should turn on whether the particular class of persons affected need the protection of the [Securities] Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.'"

Platforms, 617 F.3d at 1090 (quoting *Ralston Purina*, 346 U.S. at 125). "Stated another way, a limited distribution to highly sophisticated investors, rather than a general distribution to the public, is not a public offering." *Id.* at 1090-91.

To qualify for the Section 4(2) exemption, the parties agree, that courts must consider four factors: 1) the number of offerees; 2) the sophistication of the offerees; 3) the size and manner of the offering; and 4) the relationship of the offerees to the issuer." *Western Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9th Cir. 1984); *Murphy*, 626 F.2d at 644-45. These factors are to be considered in a flexible manner and Section 4(2) is to be "construed narrowly in order to further the purpose of the Act: 'To provide full and fair disclosure of the character of the securities, and to prevent frauds in the sale thereof.'" *Murphy*, 626 F.2d at 641; *see also Platforms*, 617 F.3d at 1086. Qualification for an exemption under § 4(2) is generally "a question of fact dependent upon the circumstances of each case." *Doran v. Petroleum Management Corp.*, 545 F. 2d 893, 902 (5th Cir. 1977).

The Court finds that the Report may have improperly shifted the burden of proof to the SEC in regards to proving the Section 4(2) exception applies. (Dkt. 242 at 10.) Here, the Defendants do not dispute that they directly or indirectly sold or offered to sell the unregistered securities or that the sales and/or offers were made through interstate commerce. Instead, Defendants counter that the exception found in Section 4(2) applies because the offers were not public. That being the case, the burden is upon Defendants to show entitlement to the exception. *See Platforms*, 617 F.3d at 1086 (Once a prima facie violation has been established, the

defendant then has the burden of proof in showing entitlement to an exemption.); *Murphy*, 626 F.2d at 641; *Ralston Purina*, 346 U.S. at 126. Accordingly, this Court has reviewed the record *de novo* and finds as follows on this issue.

1. Integration

Here, when considering the four Section 4(2) factors, the parties dispute whether the offerings should be considered as distinct and separate offerings or as one integrated offering. *Murphy*, 626 F.2d at 645. In making the integration determination, courts look at: 1) whether the offerings are part of a single plan of financing; 2) whether the offerings involve issuance of the same class of securities; 3) whether the offerings are made at or about the same time; 4) whether the same kind of consideration is to be received; and 5) whether the offerings are made for the same general purpose. (Dkt. 242 at 6-7) (citing *Murphy*, 626 F.2d at 645.) The Report concluded that a question of fact exists as to whether the offerings were integrated and whether they were public offerings. (Dkt. 242 at 8-10.) Defendants agree with this conclusion noting each of the particular PPMs identify different projects they were intended to raise money for and, therefore, they were not an integrated offering. (Dkt. 190) (Dkt. 239 at 50-52) (Dkt. 248 at 6.)[1]

The SEC disagrees, arguing the PPMs purported to finance AEHI's nuclear energy pursuits and were one integrated public offering that was required to be

[1] At the hearing before the Magistrate Judge, Defendants disputed that all of the PPMs relied upon by the SEC were actually sent out. (Dkt. 239 at 54.) Instead, Defendants submitted the Declaration of Jane E. Nilan which contains the PPMs Defendants agree were sent out. (Dkt. 191, Ex. B-X.)

registered. (Dkt. 167 at 11, n. 2) (Dkt. 200 at 8-9.) The SEC goes on to argue that the § 4(2) exemption factors of size, scope, and methods of distribution, do not support a finding that the offerings were purely private. (Dkt. 243 at 6-13.) Defendants maintain that material questions of fact exist and urge the Court to follow the Report's recommendation. (Dkt. 248 at 7-8.)

This Court has reviewed the record *de novo* in considering whether the offerings in this case were integrated. In their initial briefing on the Motion, the parties raised essentially the same arguments as made in their objections to the Report. Defendants argued that the offerings were distinct and, thus, not integrated; maintaining the PPMs each related to a limited set number of shares to be sold for a certain price and they each related to raising money for distinct business ventures and different stages of such ventures. (Dkt. 189 at 16.)[2] Defendants dispute the SEC's claim that the PPMs were all issued for the same purpose of raising money for any one project but, instead, argue they made twenty-three individual private offerings for varying purposes over the course of four years. (Dkt. 189, 190, 197.)[3]

---

[2] Defendants Gillispie and Energy Executive Consulting filed a response to the summary judgment Motion that incorporated and relied upon the responsive briefing and documents submitted by AEHI. (Dkt. 197 at 6 n. 1.) In this Order the Court refers to AEHI's briefing collectively as the arguments of all the Defendants.

[3] Defendants go on to argue the SEC makes no claim that any of the separate PPM offerings by themselves violated Section 5 and that determining integration is a disputed factual issue precluding summary judgment. The Defendants do not point to any particular evidence in their initial briefing on this point but rely instead upon AEHI's briefing. (Dkt. 197 at 6 n. 1.) Alternatively, in its objections, although it does not agree with such a conclusion, the SEC addresses the question of whether the stock offerings, when viewed separately, were private offerings. (Dkt. 243 at 8.) In doing so, the SEC offers a chart of the PPMs reflecting the number and proceed amounts of the shares sold

(continued...)

The SEC countered that a conclusion of integration is not necessary for its case because the record shows that the offerings were public. Regardless, the SEC maintains that the offerings were all made for the same purpose of building a new nuclear power plant and the numerous stock offerings were one continuous offering. (Dkt. 200 at 10.)

Defendants have not contested the second or fourth factors of the integration test – that the class of securities and consideration received were the same. (Dkt. 189 at 9-12) (Dkt. 242 at 7.) Thus, the Court will consider the first, third, and fifth factors of the integration test.

a. Singular Plan of Financing

Defendants' initial briefing on the Motion for Summary Judgment challenged the SEC's assertion that there was a single plan of financing arguing that the PPMs "respective financing objective varied widely" and that "[e]ach offering related to a limited set number of shares to be sold for a certain price, and the PPMs' terms disclose that each was intended to raise money for differing groupings of individual and distinct business ventures and different stages of such ventures." (Dkt. 189 at 16.) In their response, Defendants offered an exhibit which, they

---

[3](...continued)
during each of the PPMs effective dates. The SEC argues the chart reveals that 1) even considering each PPM as a singular offering, several were so large that they could not have been considered private for purposes of Section 4(2); 2) the PPMs overlapped such that effectively there was no time between the offers; and 3) hundreds of thousands of shares were sold during each PPM. Defendants oppose this argument noting it was not raised before the Magistrate Judge and the question of whether the securities were exempt is a question of fact for the jury. (Dkt. 248 at 8-9.) In light of the Court's ruling in this Order, the Court need not reach this question as to whether separately the offerings qualify for the registration exemption.

argue, shows the many different projects for which the numerous offers were made. (Dkt. 191-1, Ex. A.) This chart shows fifteen different projects which were listed on the various PPMs. The SEC counters that the chart is misleading and maintain that the PPMs all seek capital for AEHI's purported nuclear project with the twenty most recent PPMs referring to "Idaho Energy Complex." (Dkt. 200 at 12.) Further, the SEC points out that the PPMs describe all of the projects under the same general heading of "Business of the Company" and refer specifically to profitability of a nuclear plant. (Dkt. 200 at 12 n. 6.)

The Court concludes that Defendants have failed to show a genuine issue of material fact exists as to whether or not the offerings were for a single plan of financing. The language of the PPMs themselves make clear that the offerings were for the purpose of raising money for AEHI to finance nuclear power projects. While the PPMs have variations in the names of the projects listed under the "Business of the Company" heading, the description of the business contained in that heading is telling. The "Business of the Company" section of the PPMs consistently states AEHI's purpose or "primary initiative" is purchasing or building nuclear power facilities. *See e.g.* (Dkt. 191, Ex. D.) For example, one PPM's Business of the Company section states: "AEHI is seeking to build nuclear plants in the US and developing companies. AEHI is the only publically traded company west of the Rockies proposing a large advanced nuclear plant." (Dkt. 191, Ex. L.) The section goes on to state AEHI "will continue to look for opportunities for expansion" suggesting that aside from its main purpose in nuclear

energy it may "expand" into other eco-efficient power and energy sources. (Dkt. 191, Ex. L.) That AEHI may have projects with different names does not change the fact that AEHI, as a company, was pursuing nuclear energy power sources as reflected in its Business of the Company section of the PPMs. The Defendants have failed to point to any evidence, aside from the fact that different projects were listed on the various PPMs, that its offerings were for anything other than the plan of financing stated in the Business of the Company section of the PPMs. It is for that purpose that investors purchased the shares.

b. Timing of the Offers

Defendants assert that the PPMs made offerings for different projects over more than four years such that it cannot be said that the offerings were made "at or about the same time." (Dkt. 189 at 17) (Dkt. 197 at 5.) The "separation in time from one system offering to the next" is the relevant period for determining integration, not the total duration of the offerings. *Murphy*, 626 F.2d at 646. Although the offerings here occurred over a period of four years, the offerings themselves were issued approximately every two to three months with there being some shorter and some longer intervals along the way. (Dkt. 191-1, Ex. A.) Moreover, the offerings had overlapping periods between their issue dates, expiration dates, and the issuance of new offerings. (Dkt. 191, Ex. B-X.) Based on the PPMs themselves, there was no separation between the offers and Defendants have not shown a genuine issue of material fact exists to the contrary. This factor weighs in favor of integration.

c. General Purpose

Similar to the first factor, the parties dispute whether or not there was one general purpose for the offerings. Defendants argued in their initial briefing that the PPMs make clear that they were not made for the same general purpose but, instead, were raising money for various projects by the same company. (Dkt. 189 at 18.) The Defendants argue that raising money for various projects of the same company does not equate to making offerings for the same general purpose. (Dkt. 189 at 18.) Defendants maintain that the offerings listed differing projects in each of the PPMs that concerned different businesses in different markets including producing energy-efficient homes, lightening harvesting, ventures in China, and an energy park in Colorado. (Dkt. 189 at 18 n. 8.) The SEC counters that the Defendants have failed to show this element. (Dkt. 200.)

Again, the language of the PPMs themselves rebut the Defendants' argument that the offerings were not for the same general purpose. Although the PPMs vary in some respects as to the projects listed on each, the purpose of the PPMs was not limited to those particular listed projects. Instead, the listed projects were examples of the projects AEHI was pursing in furtherance of its general business purpose as stated in its "Business of the Company" section of the PPMs. For instance, the April 1, 2007 PPM states that AEHI is "actively pursing patents and outside contracts – as applicable – on several current projects, detailed below." (Dkt. 191, Ex. D.) It then lists five different projects. The PPM does not, however, state that the securities offering is to fund only those five projects. Instead, the projects

appear to be examples of the ongoing activities AEHI is pursuing. In fact as to one of the projects on the April 1, 2007 PPM, the Advanced nuclear plant project, the PPM states: "These funds will be in a separate offering plus construction financing." (Dkt. 191, Ex. D at 3.) Indicating that the April 1, 2007 PPM was not for purposes of funding at least that particularly listed project. Instead, the projects listed were examples of the kinds of projects AEHI was pursuing as a company. Thus, the fact that the PPMs listed different projects pursued by AEHI does not make the offerings distinct. The Court finds the Defendants have not pointed to evidence showing the existence of a genuine issue of material fact on this question.

d. Conclusion

In this case, the Report concluded that question of fact existed as to whether the offerings were integrated. (Dkt. 242 at 10.) This Court disagrees. After conducting a *de novo* review of the record, this Court finds that the Defendants have not shown a genuine issue of material fact exists as to the integration question. Even if a genuine issue of material fact were to exist on the integration question, this Court concludes that the Defendants have failed to satisfy their burden of showing a question of fact exists on the issue of whether its offerings were exempt from the registration requirement because they were private offerings.

2. Section 4(2) Registration Exemption

Again, to qualify for the Section 4(2) exemption, Defendants must come forward with specific facts showing the existence of a genuine issue of material

fact as to four factors: 1) the number of offerees; 2) the sophistication of the offerees; 3) the size and manner of the offering; and 4) the relationship of the offerees to the issuer." *Western Fed. Corp.*, 739 F.2d at 1442. In doing so, the opponent to the motion "may not rest on his pleadings; instead, he must offer 'significantly probative' evidence as to any fact claimed to be disputed." *Id.* (citing *Murphy*, 626 F.2d at 640).

In response to the Motion for Summary Judgment, Defendants argued that the offerings were private offerings and, therefore, exempt from Section 5's registration requirements. (Dkt. 189, 197.) The SEC's reply briefing on the initial Motion countered that the Defendants had failed to raise a factual question as to the Section 5 violation because they did not dispute that the *prima facie* case has been shown and failed to come forward with evidence of the Section 4(2) registration exemption. (Dkt. 200 at 6-13.)

The SEC has come forward with evidence that the number of offerees, whether viewed in the aggregate or by individual offerings, was in the hundreds in terms of investors, and thousands to millions in terms of the numbers of stocks sold and dollars received from the sales. Additionally, the SEC notes that the offerings were heavily promoted in general solicitations without limitations. Having come forward with such evidence, it is incumbent upon Defendants, in opposing the summary judgment motion, to rebut that evidence. *Murphy*, 626 F.2d at 645. The Defendants have failed to do so here.

a. Number of Offerees

In addressing the first factor, it is the "number of offerees, not the number of purchasers, [that] is the relevant figure in considering the number of persons involved in an offering." *Doran*, 545 F.2d at 900. "The number of offerees is not itself a decisive factor in determining the availability of the private offering exemption. Just as an offering to few may be public, so an offering to many may be private." *Id.* (citing *Ralston Purina*, 346 U.S. at 125.

Here, the SEC has pointed out that the PPMs made offers to over 850 investors. (Dkt. 200 at 7-10) (Dkt. 243 at 9.) The SEC further notes there was no limit to the number of offers made as the Defendants used general solicitation methods and encouraged others to forward the offerings on to others. (Dkt. 200 at 9.) While disputing the number of investors (850) that the SEC claims have purchased stocks, Defendants failed to present any evidence of the number of offerees. Instead, Defendants rely on there being a factual dispute over integration and argue the SEC has not shown integration to support its figure. (Dkt. 189 at 19.) Regardless of the number, Defendants maintain the 850 purchasers over four years does not establish a public offering.

Even if Defendants are correct that the offerings should not be integrated, they have failed to satisfy their burden at this stage to come forward with evidence that the offerings were exempt from the registration requirements. "A private placement claimant's failure to adduce any evidence regarding the number of offerees will be fatal to the claim." *Doran*, 545 F.2d at 900-01 (citations omitted);

Murphy, 626 F.2d at 645. While there is no fixed limit on the number of offerees to whom an issuer can make a private offering, generally "the more offerees, the more likelihood that the offering is public." *Murphy*, 626 F.2d at 645-46 (In *Murphy*, the court considered the offers to be integrated and concluded that the 400 offers "clearly suggests a public offering rather than private placement.") (citations omitted).

Here, Defendants offer no evidence as to the number of offerees, that the number was small such that it is indicative of a private offering, or that the number of offerees was monitored or limited in any way. Regardless of whether the offerings are considered integrated or separately, the Court finds the Defendants failed to show a genuine issue of material fact exists as to the number of offerees factor and have failed to satisfy their burden on summary judgment to come forward with specific facts showing there remains a genuine issue for trial – particularly since the Defendants offered no evidence to show that the offerings were limited in anyway. *See* Fed. R. Civ. P. 56(e). If the securities offerings were integrated, the numbers suggest that they were clearly public offerings. If, on the other hand, the offerings were not integrated, Defendants have not pointed to evidence giving rise to a genuine issue of material fact that the number of offerees were such that the offerings should be considered non-public. Accordingly, the Court finds this factor weighs in favor of finding the stock offerings to have been public.

b. Sophistication of the Offerees

As to the sophistication of the offerees, the SEC has come forward with evidence that the investors were of the kind for whom the protections of the Securities Act were intended. Defendants claim the exhibits offered by the SEC demonstrate the sales were made to persons who can fend for themselves and who fall under the safe-harbor provision. (Dkt. 189 at 20.) Defendants further maintain the purchase documentation for the shares had an affirmation of an accredited investor and each PPM includes a Regulation D certificate clearly stating the high risks involved in the investment. (Dkt. 189 at 21.)[4] Based on these affirmative representations, Defendants argue, it was reasonable for them to believe the investors were sophisticated. The SEC counters that the safe-harbor provision was not available to Defendants because AEHI's own records indicate that it offered and sold stock to unaccredited and unsophisticated investors. (Dkt. 167 at 12.)

"In *Ralston Purina*, the Supreme Court held: [T]he applicability of Section 4(2) should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for

---

[4] If the offerings are determined to not be integrated, the Defendants argue the separate offerings qualify for the Regulation D safe-harbor permitting sales to 35 non-accredited investors per offering. (Dkt. 189 at 20.) "Regulation D creates a safe harbor within this exemption by defining certain transactions as non-public offerings." *Platforms*, 617 F.3d at 1091 (citations omitted). "To qualify for Regulation D safe harbors, the issuer must comply with Rule 502(d) and 'exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act.'" *Id.* (citing 17 C.F.R. § 230.502(d)). While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. *Id.* Because the Regulation D safe-harbor does not apply to general solicitations, which these offerings were, the Court finds the accreditations relied upon by Defendants do not place the offerings within the registration exception. *See* 17 C.F.R. § 230.502(c).

themselves is a transaction 'not involving any public offering.'" *Murphy*, 626 F.2d at 644 (quoting *Ralston Purina*, 346 U.S. at 125). The Court finds that Defendants may have shown a question of fact exists on this question by pointing to the affirmations contained on the PPMs. As discussed below, however, because the Defendants have not shown that all of the offerees also had access to the type of information that registration would disclose and/or that a sufficient relationship existed such that the offer is not considered a general solicitation, the Defendants have failed to show that the offerings qualify for the registration exemption. *See e.g. SEC v. Kenton Capital, Ltd.*, 69 F.Supp.2d 1, 11 (D.D.C. 1998) ("Even if the Court were to find that Defendants had created an issue of material fact with respect to investor sophistication, 'sophistication is not a substitute for access to the information that registration would disclose.'") (quoting *Doran*, 545 F.2d at 902-03).

c. Size and Manner of the Offering(s)

As to the size and manner of the offering, "[i]f an offering is small and is made directly to the offerees rather than through the facilities of public distribution such as investment bankers or the securities exchanges, a court is more likely to find that it is private." *Murphy*, 626 F.2d at 646 (citations and quotations omitted). The purchase price on the offerings in this case appear to have been penny stocks but the size of the offerings were quite large, whether viewed individually or collectively. The SEC argues the offerings were in the manner of a general solicitation using general advertising over television, radio, and in person. (Dkt.

167 at 19.) In addition, the SEC contends that the Defendants hired helpers and promoters to solicit additional investors, held investment seminars, and paid commissions to promoters. Defendants have not disputed the volume of sales or dollars raised as asserted by the SEC. The Defendants do deny that the offerings were made through advertising, outside help, or investment bankers or securities exchange points. (Dkt. 189 at 22.) Defendants maintain they distinguished between individuals who were qualified investors and those who were not.

Having reviewed the record, this Court finds that Defendants have failed to point to evidence giving rise to a genuine issue of material fact showing the size and manner of the offerings were private. Although Defendants argue the offerings were not made through investment bankers or securities exchanges, they admit that they used helpers and promoters at least as to one offering but deny any other use of outside help. The Defendants do not, however, point to any evidence to rebut the contention that they encouraged others to forward the offerings on to other potential investors or that they paid commissions or finder's fees for doing so. Whether viewed collectively or individually, the evidence in the record indicates the offerings were large such that the size and manner supports a finding that the offers were public and the Defendants have not otherwise shown a genuine issue of material fact exists.

d. Relationship of the Offerees to the Issuer

The ultimate question in determining whether an offer of securities is a private offering exempt from registration under Section 4(2) of the Securities Act

is whether the offerees are able to fend for themselves or, conversely, whether they need the protections afforded by the registration requirement. In order to be exempt from the registration provisions under Section 4(2), a private offering must be one where investors do not need the protections of the Securities Act because they already have access to the kind of information that would be contained in the registration statement – investor sophistication alone is insufficient. *See Parvin v. Davis Oil Co.*, 524 F.2d 112, 118 (9th Cir. 1975) "A court may only conclude that the investors do not need the protection of the Act if all the offerees have relationships with the issuer affording them access to or disclosure of the sort of information about the issuer that registration reveals." *Murphy*, 626 F.2d at 647 (citations omitted). The nature, extent, and timing of the information available to an offeree is the "touchstone of the inquiry into the private offering exemption." *Doran*, 545 F. 2d at 900 (citation omitted). To qualify for the Section 4(2) exemption, the issuer must make available to the offerees "the same kind of information that the Act would make available in the form of a registration statement." *Ralston Purina*, 346 U. S. at 126-126. Although the issuer need not provide information on all 32 categories of Schedule A, 15 U. S. C. § 77aa, the offeree must have available "the sort of information about the issuer that registration reveals." *Murphy*, 626 F. 2d at 647. The information required to be disclosed under the Securities Act is "quite extensive" so as to satisfy the Act's purpose of providing potential investors with detailed knowledge of the company and its affairs so that they can make an informed investment decision. *Id.* Where

potential investors receive or have access to the kind of information about the company they would be entitled to under the Act, such a circumstance would weigh in favor of finding the offering is a private one.

In this case, the SEC maintains the Defendants had no preexisting relationship with many of its offerees because it engaged in general solicitation fo the public and used promoters to solicit persons unknown to them. (Dkt. 167 at 19.) Essentially the SEC contends the Defendants did not limit the offerings in any way such that it knew or had any relationship with the offerees. Additionally, the SEC argues the offerees did not have access to the requisite information found in a registration statement that would provide the kind of information sufficient for the offeree to make an informed investment decision; particularly in light of the fact that the information that did exist was false, misleading, and inaccurate. (Dkt. 167 at 19-20.) The SEC points out that there is no evidence the solicited investors had a relationship with the companies or its members such that they did not need the protections afforded by the Securities Act. The SEC has come forward with evidence that the requisite relationship did not exist making it necessary for Defendants to, in defending against summary judgment, show a genuine issue of material fact exists that the offerees had available the necessary information. Defendants have failed to do so here.

The Court finds the offerees were the kind of people for whom the federal securities laws were designed to protect. The Defendants have not rebutted the evidence provided by the SEC that the prospective investors had no relationship or

otherwise had access to the necessary information about the company to make an informed investment decision. The SEC has pointed out that Defendants knew little to nothing about the offerees and, at best, relied upon affirmations. (Dkt. 200 at 10.) As noted above, the Defendants have not pointed to any evidence that their offerings were limited in any way such that even the Defendants themselves know who all the securities offerings were made to.

Defendants argue the offerees had access to information about the company that was equivalent to what would be found in a registration statement and that would be materially relevant to their investment decision through the PPMs, the company website, and other publicly available information. (Dkt. 189 at 23.) Defendants point to Exhibits 1-4 attached to the Declaration of Robert Tashjian which contain this Court's Order to Show Cause, AEHI's 2010 and 2011 annual reports, and AEHI's quarterly report for the period ending June 30, 2012. (Dkt. 218.) The Court disagrees. The materials identified by the Defendants do not supply the kinds of information required by a registration statement. General company information contained in an annual report is not the same kind of information found in a registration statement.

The statements contained in the PPMs and/or AEHI's annual report do not satisfy the requirement that offerees have the necessary information available to them that they would find in a registration statement. *See Lasker v. New York State Electric & Gas Corp.*, N. 94-CV-3781 (ARR), 1995 WL 867881, at *6 (E.D.N.Y. Aug. 22, 1995) (discussing statements in an annual report in the context of a §

12(2) claim). An annual report "is a document that is not required to contain the information in the registration statement. While some of the information required in an annual report is also required in a registration statement..., an annual report is subject to different requirements and may include less information than the registration." *Id.* (citing 17 C.F.R. § 240.14a–3; cf. Sec.Act Release No. 6223 (Sept. 2, 1980)).

While an annual report offers investors an insight into the company's activities for a given year it is different from an registration statement. The contents of a registration statement are regulated to include a comprehensive financial profile of the company based on regulated criteria. The registration statement demands detailed disclosures about the company's business and financial condition, operating results, management compensation, and other matters. As such, the Court concludes the information available to the potential investors in this case was insufficient to provide them with the kind of information they would have under the Securities Act.

e. Conclusion

Because the SEC met its burden to show the existence of the prima facie case for its claim of a violation of Section 5 of the Securities Act, the burden here is upon the Defendants to shown that genuine issues of material fact exist as to whether the securities offered fall within the Section 4(2) exemption. The Court finds Defendants have not met their burden here. Having considered the record *de novo*, on this question, this Court concludes that Defendants have failed to point to

evidence showing a genuine issue of material fact exists that the offerings in this case were public and, therefore, not exempt from the registration requirements of the Securities Act. Accordingly, the Court will grant the Motion for Summary Judgment as to the Sixth Claim of the Complaint.

B. Order Freezing Assets

The Report also contained an Order by Magistrate Judge Bush which granted in part and denied in part the SEC's Motion for Order to Show Cause and Order Freezing. (Dkt. 241 and 242 at 18.) Thereafter the SEC filed a renewed Motion to Freeze, and related materials, to which responsive briefing was filed. (Dkt. 258-263.) Magistrate Judge Bush issued an Order denying the renewed Motion to Freeze. (Dkt. 264.) The SEC has filed a Motion and Objections to both of the Magistrate Judge's Orders asking this Court to set aside the same and issue an order freezing assets. (Dkt. 243, 265.) The Court finds as follows.

Federal Rule of Civil Procedure 72(a) provides that a party may object to an order issued by a magistrate judge on a nondispositive matter and the district judge may "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). If a ruling on a motion is not determinative of "a party's claim or defense," it is not dispositive and, therefore, is not subject to *de novo* review as are proposed findings and recommendations for dispositive motions under Title 28 U.S.C. § 636(b)(1)(B).

Generally, in reviewing the Magistrate Judge's Order this Court will not consider materials not presented to the Magistrate Judge for his consideration. *See*

e.g. Estate of Gonzales ex rel. Gonzales v. Hickman, No. ED CV 05-660 MMM, 2007 WL 3231956, at *3 (C.D. Cal. April 18, 2007). The Court may, in its discretion, receive and "consider evidence presented for the first time on a party's objection to a magistrate judge's recommendation." *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000) (discussing the Circuit split on whether a district court must or may consider new evidence when reviewing de novo a magistrate judge's findings and recommendation, and concluding that a district "has discretion, but is not required" to consider new evidence); 28 U.S.C. § 636(b)(1). "[I]n making a decision on whether to consider newly offered evidence, the district court must actually exercise its discretion, rather than summarily accepting or denying the motion." *Id.* at 622.

"Under Rule 72(a), a finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Schiro v. Clark*, No. 3:10-cv-00203-RCJ-VPC, 2013 WL 4714403, at *1 (D. Nev. Aug. 30, 2013) (citations and marks omitted). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Id.* "This standard of review reflects the broad discretion accorded to magistrate judges on pretrial matters." *Gessele v. Jack in the Box Inc.*, No. 3:10-CV-00960-BR, 2013 WL 4542033, at *4 (D.Or. Aug. 27, 2013) (citing *Osband v. Woodford*, 290 F.3d 1036, 1041 (9th Cir. 2002)).

The assets sought to be frozen in this case are funds totaling approximately $2 million deposited by AEHI into an escrow account controlled by Black & LoBello, LLC. The funds were deposited pursuant to a Financial Service Agreement entered into between AEHI and Hamilton Guaranty Capital, LLC ("Hamilton"). There is now a dispute between AEHI and Hamilton over which party is entitled to receive the funds. Both parties sent demands for payment to Black & LoBello who then filed a Complaint for Interpleader against AEHI and Hamilton in Nevada state court. That court has entered an order requiring that 1) the funds be blocked and inaccessible to either party without a further order of the court and 2) the parties resolve the dispute by way of mandatory binding arbitration under the terms of the Financial Services Agreement.

The SEC requests an order from this Court freezing the $2 million held by Black & LoBello arguing the transfer of those funds to the escrow account was done in contravention of this Court's February 14, 2011 Order and is a part of a scam. (Dkt. 219, 243.) The SEC argues the Magistrate Judge erroneously concluded that it lacked authority to freeze the assets. The SEC also points to recent events which, it argues, further necessitate freezing the assets including that AEHI concealed the transfer by failing to disclose it in its accountings, new additional information that the promises by Hamilton to AEHI were a fraud, verification that Hamilton has not made a deposit as it had promised/represented, and AEHI has admitted in the Nevada state court action that the Hamilton transaction was a scam. (Dkt. 248 at 19-20.) Defendants argued to the Magistrate

Judge that they had not violated the Court's Order because the transfer of funds was not an expenditure required to be disclosed and, regardless, the transfer was eventually disclosed. Further, Defendants argued that the freeze is unnecessary in light of the existing order from the Nevada state court and that the SEC has not shown the freeze is warranted here as the additional freeze would effectively shut down the company. (Dkt. 228-30, 239, 260-62.)

1. Equitable Authority of the Court

In both of his Orders on the Motions to Freeze, the Magistrate Judge questioned his inherent jurisdiction to grant the relief the SEC seeks given the matter is the subject of an interpleader action in another court. (Dkt. 241 and 242 at 19) (Dkt. 264 at 4.) The SEC maintains that this Court has the inherent equitable authority to freeze accounts and assets if it shows 1) a likelihood of success on the merits of its claim and 2) a likelihood of dissipation of the claimed assets or other inability to recover monetary damages if relief is not granted. (Dkt. 243 at 22.) Here, the SEC seeks an order that would require Black & LoBello to maintain the funds in their current location pending the outcome of this litigation in order to preserve the status quo. The SEC contends such an order would complement the Nevada state court order which, the SEC argues, is not adequate to secure the funds until resolution of this case. The Magistrate Judge remained unconvinced by the SEC's second Motion to Freeze as to his underlying jurisdiction to issue the requested relief even in light of then recent events. (Dkt. 264 at 4.) The SEC

maintains this ruling is contrary to law and asks this Court to set aside the Magistrate Judge's ruling. (Dkt. 265.) The Court finds as follows.

In its initial briefing on the Motion to Show Cause and Freeze, the SEC argued the Defendants had violated this Court's February 14, 2011 Order requiring an accounting of the transferred funds and violated the Exchange Act, (Dkt. 220.) The SEC asserted that the Court has the inherent equitable authority to freeze accounts and assets in order to ensure that assets which are the subject of the enforcement action are not dissipated or secreted pending final judgment and to ensure that victims are compensated. (Dkt. 220 at 17) (Dkt. 243 at 22.) This Court agrees.

District courts have broad equitable power to order appropriate relief in civil contempt proceedings. *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949)). In *Hickey*, the Ninth Circuit stated: "We conclude that the district court's broad equitable powers, drawn from a tradition of allowing courts to reach third parties in order to effect orders in securities fraud enforcement actions, authorized the asset freeze." 322 F.3d at 1131. "[F]ederal courts have inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws." *Id.* (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). The Ninth Circuit recognized that district courts may shape equitable remedies to the necessities of particular cases and may restrain a nonparty in doing so. *Id.* Such relief, however, is to be exercised "only where necessary." *Id.*

(freezing the assets of a nonparty was appropriate where the nonparty is dominated and controlled by a defendant against whom relief has been obtained through a securities enforcement action).

Here, there is no evidence that the Defendants are dominated or controlled by Hamilton or Black & LoBello as was found in *Hickey*. There is, however, evidence that AEHI has transferred funds, which are the subject of this enforcement action, possibly fraudulently or in contravention of this Court's February 14, 2011 Order. Because the funds are the subject of this securities enforcement action, the Court agrees with the SEC that it does have the authority to fashion an appropriate equitable remedy, as necessary, to ensure the enforcement of federal securities laws and this Court's orders.

2. Equitable Relief

In addition to the arguments made to the Magistrate Judge noted above, the SEC has alleged new facts further support the issuance of an order freezing the assets. The new facts involve more recent events that the SEC argues confirms that the financing transaction and Nevada state court litigation among AEHI, Hamilton, and Black & LoBello are a scam. (Dkt. 243 at 19)[5] In particular, information going to show Hamilton's promise to supply an offshore account valued at $200 million was not fulfilled based on information from banking regulators in New Zealand

[5] The SEC has maintained its request for an order freezing the funds in its responsive briefing to AEHI's Motion to Approve Settlement. (Dkt. 274.) This Court has reviewed the materials supplied by the parties to date on that Motion. Because the arguments raised in the newly filed materials are essentially the same as those raised in their briefing on the Motions that are the subject of this Order, the Court has considered the same to the extent they are relevant to the ruling in this Order. The Motion to Approve Settlement, however, remains pending before Magistrate Judge Bush.

where the offshore financial institution, General Equity Building Society, is headquartered. (Dkt. 245.) Additionally, the SEC notes that AEHI has now admitted in the Nevada state court case that it believes the transaction was a scam in relation to AEHI's filing requesting a more cost-effective arbitration forum. At risk, SEC asserts, is the loss of the $2 million AEHI put into the escrow and which is all that remains of the funds raised by way of the securities offerings at issue in this case.

The Court has reviewed the new materials and finds it appropriate to exercise its discretion and consider the same in ruling on the question of freezing assets. *Howell*, 231 F.3d at 621. These materials are relevant to this Court's determination on the question of whether to order that the funds be frozen. Further, the new materials were not obtained by the SEC until after the hearing before Magistrate Judge Bush was held and/or obtained by the SEC only shortly before the Report was issued. (Dkt. 245 at ¶ 5.) Some of these materials did not exist at the time of the hearing. (Dkt. 245, Exs. 3, 4.) The Court has also considered the materials submitted by the parties that were before the Magistrate Judge. (Dkt. 218-30, 232, 234, 239, 258-263.)

Having reviewed the record in this case, the Court finds that the Motion to Freeze is well taken. The funds appear to be the subject of the dispute between the parties in this case. It also appears AEHI may have transferred the funds in

violation of this Court's Order.[6] Furthermore, the new materials provided by the SEC regarding the transfer of funds appears to place those funds in jeopardy of being available for recovery in this action.[7] In order to ensure those funds are not further transferred and possibly lost entirely in the event recovery is found to be appropriate in this securities enforcement action, the Court finds it necessary to order that the funds remain in their current account unless otherwise ordered by this Court. The Nevada state court's order does not adequately protect the funds for this purpose.

Without such relief the Court finds it highly likely that the funds may be lost and, thus, become unavailable if relief is awarded to the SEC in this case. Further, the Court find the SEC has shown a likelihood of success on the merits of the claim as well as a likelihood that the claimed assets will be dissipated or that relief may otherwise be unavailable without this equitable relief. *See e.g., Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009) ("A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted."); *SEC v. Cavanagh*, 155 F.3d 129, 132 (2nd Cir. 1998) (An asset freeze requires a lesser showing than a preliminary injunction in that the SEC must establish only that it is likely to

---

[6] In so stating, the Court does not reach a finding that the Defendants are in violation of the Court's prior Order. Instead, this Court rules that the SEC has made a proper showing that an asset freeze is necessary in this case.

[7] AEHI has acknowledged that, in the Nevada state court action, Hamilton has engaged in a "strategy to avoid having its fraudulent scheme come to light." (Dkt. 270 at 6.)

succeed on the merits. The SEC need not show risk of irreparable injury.) Accordingly, the Court will grant the SEC's Motions to Freeze and order that the $2 million held in escrow by Black & LoBello remain in that same account unless and until otherwise ordered by this Court.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Report and Recommendation entered on March 13, 2013 (Dkt. 242) is **ADOPTED IN PART AND REJECTED IN PART** as stated herein and the Court HEREBY ORDERS as follows:

1) Plaintiff's Motion for Partial Summary Judgment (Dkt. 166) is **GRANTED**. Plaintiffs are granted summary judgment as to the First, Second, and Sixth causes of action.

2) Plaintiff's Motions for Order Freezing (Dkt. 219, 258) and Motion and Objection RE: Order Freezing (Dkt. 265) are **GRANTED**. The funds currently held in escrow by Black & LoBello are HEREBY ORDERED to **REMAIN** in that escrow account pending further order from this Court.

DATED: May 13, 2014

Honorable Edward J. Lodge
U. S. District Judge

MARC J. FAGEL (Admitted to Cal. bar)
MICHAEL S. DICKE (Admitted to Cal. bar)
TRACY L. DAVIS (Admitted to Cal. bar)
davistl@sec.gov
SUSAN L. LAMARCA (Admitted to Cal. bar)
lamarcas@sec.gov
DAVID A. BERMAN (Admitted to N.Y. bar)
bermand@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, 26th Floor
San Francisco, California 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ALTERNATE ENERGY HOLDINGS, INC., DONALD L. GILLISPIE, and JENNIFER RANSOM, Defendants, and BOSCO FINANCIAL, LLC, and ENERGY EXECUTIVE CONSULTING, LLC, Relief Defendants.	Case No. 1:10-cv-621-EJL-REB **AMENDED COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY OF THE ACTION

1. This matter involves a scheme to manipulate the market for Alternate Energy Holdings Inc.'s ("AEHI") stock and defraud individuals who purchased the company's stock. AEHI is a development stage company that purportedly plans to develop a nuclear reactor in Payette County, Idaho. AEHI and Gillispie have raised millions of dollars from individual investors in Idaho, elsewhere in the U.S., and Asia in illegal unregistered transactions, and by making misleading statements about the viability of AEHI, which has no realistic possibility of building a multi-billion dollar nuclear reactor. AEHI has never had any revenue or product. Beginning in 2006, Defendants engaged in a scheme to pump up the price and volume of AEHI's stock to artificially high levels through false press releases and promoters, and subsequently dump the stock through secret sales made by other entities and individuals connected to AEHI. The scheme was carried out by Defendant Donald L. Gillispie, founder and CEO of AEHI, and Defendant Jennifer Ransom, Senior Vice-President of Administration and Secretary of AEHI.

2. Gillispie's scheme had two components: promoters and press releases. Starting when AEHI went public in September 2006, Gillispie engaged promoters to persuade individual investors to buy restricted stock. Additionally, Gillispie encouraged promoters to enter sale orders at the end of certain trading days in order to increase AEHI stock's price and volume to artificially high levels. Gillispie also caused AEHI to issue a series of press releases that touted AEHI stock. Gillispie knew that some of the press releases were false and misleading. For example, AEHI press releases falsely stated that no officer had sold stock. In reality, AEHI Senior Vice-President of Administration Jennifer Ransom had sold at least one million shares. She hid her stock sales from AEHI investors and the public, failing to file forms notifying the Commission of her sales. In addition, Gillispie himself directed sales of more than one million shares of AEHI stock through nominees, thereby hiding from the public his conduct. Proceeds of those sales went to Gillispie, who spent the money on lavish personal expenses such as his Maserati sports car.

3. Defendants AEHI, Gillispie and Ransom have violated, and continue to violate, the antifraud provisions of the federal securities laws in connection with the purchase or sale of securities. In addition to the emergency relief requested by the Commission in its *Ex Parte* Application for a Temporary Restraining Order filed concurrently with the complaint, the Commission seeks an order preliminarily and permanently enjoining them from further conduct that violates the securities laws and requiring them to disgorge their ill-gotten gains, with prejudgment interest. The Commission also seeks an order requiring Defendants to pay civil money penalties. The Commission further seeks an order prohibiting Gillispie from serving as an officer or director of any public company in addition to an order prohibiting Gillispie and Ransom from participating in any offering of penny stock.

4. In addition to the emergency relief requested by the Commission in its *Ex Parte* Application for a Temporary Restraining Order, the Commission further seeks disgorgement of all ill gotten gains disbursed to Relief Defendants Bosco Financial, LLC and Energy Executive Consulting, LLC.

JURISDICTION

5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Defendants, directly or indirectly, made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, transactions, practices, and courses of business alleged in this complaint.

7. Venue is proper in the District of Idaho pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. During the period described in this complaint, AEHI had its principal place of business in this district and

Defendants Gillispie and Ransom resided in this district. In addition, acts, practices, and courses of business that form the basis for the violations alleged in this complaint occurred in this district.

INTRADISTRICT ASSIGNMENT

8. Assignment to the Southern Division is appropriate pursuant to Local Civil Rule 3.1 because a substantial part of the events and omissions giving rise to the Commission's claims occurred, among other places, in Ada County.

DEFENDANTS

9. **Alternate Energy Holdings, Inc.** was founded by Donald L. Gillispie and incorporated in Nevada in 2001, with its principal place of business in Eagle, Idaho. The company went public in September 2006 as a result of a reverse merger, and registered its securities under Section 12(g) of the Exchange Act on October 8, 2008. AEHI's stock is quoted on the OTC Bulletin Board and on the Pink Sheets operated by Pink OTC Markets Inc. It is a development stage company that is purportedly planning to build a nuclear power plant in Payette County, Idaho. The Commission has suspended trading in the stock of AEHI pursuant to Section 12(k) of the Exchange Act.

10. **Donald L. Gillispie,** age 67, has been President, CEO, and Chairman of AEHI at least since the company went public in 2006. During the relevant period, Gillispie resided in Thaxton, Virgina, and Eagle, Idaho.

11. **Jennifer Ransom,** age 36, has been Senior Vice-President of Administration and Secretary for AEHI since at least 2008. She also has a personal relationship with Donald Gillispie and is the beneficiary of his IRA account. During the relevant period, Ransom resided in Star, Idaho.

RELIEF DEFENDANTS

12. **Bosco Financial, LLC ("Bosco")** is an Idaho limited liability company based in Boise, Idaho, of which 99.99% is owned by Jennifer Ransom and .01% is owned by Ransom's

attorney, Brian L. Webb. Bosco received financial distributions to which it was not entitled. Bosco is named as a Relief Defendant in this action for the purpose of assuring complete relief.

13. **Energy Executive Consulting, LLC ("Energy Executive")** is an Idaho limited liability company based in Eagle, Idaho, and owned by Donald L. Gillispie. Energy Executive received financial distributions to which it was not entitled. Energy Executive is named as a Relief Defendant in this action for the purpose of assuring complete relief.

FACTUAL ALLEGATIONS

A. Gillispie Forms AEHI and Takes It Public

14. AEHI's predecessor was incorporated in 2001 in the state of Nevada. In 2006, Gillispie renamed the company "AEHI" and took it public through a reverse merger. Although Gillispie initially ran the company out of his home in Thaxton, Virginia, in approximately 2007, he moved the company's headquarters to Eagle, Idaho.

B. Gillispie and AEHI Raise Millions of Dollars From Investors Through Public Solicitations

15. From at least October 2006, AEHI and Gillispie engaged in a continuous plan to raise money by offering and selling AEHI stock directly to the public. This offering was not registered with the Commission.

16. The principal method by which AEHI and Gillispie conducted their offering was through mass e-mail distributions of offering documents called Private Placement Memoranda ("PPMs"). Typically, Gillispie would email the PPMs to a list of supporters, paid promoters and finders and invite them, in turn, to forward the solicitation to potential investors. Gillispie included cover notes touting the offering as the "last chance" and the "lowest it will be" and repeatedly (over four years) warned that investors should rush to buy stock from the company before the company's "public offering" or "IPO." These statements were false. AEHI never engaged in a "public offering" (aside from the unregistered offerings made pursuant to PPMs), and could not have conducted an "IPO" or initial public offering because it was already a

publicly-traded company. These false statements were made to induce unsophisticated investors into purchasing the company's stock.

17. Some of the AEHI's promoters and finders were paid regular consulting fees for disseminating the PPMs. Others were offered commissions for producing investors. From at least November 2006 to September 2010, Gillispie also personally solicited investors through mass e-mail distributions, mailings to existing shareholders, fax blasts, and in-person investor presentations.

18. In addition to Gillispie's false and misleading statements made in his cover emails, the PPMs also contained false and misleading statements, which are described in detail below.

19. AEHI's PPMs also did not include important financial information about the company. Specifically, the PPMs did not include audited financial statements or other information that would, among other things, inform investors as to the risk of the investment.

20. The PPMs included an investor questionnaire that asked the prospective investor to "agree[] he is in accredited investor..." The PPMs further stated that "[t]he purpose of this Questionnaire is to assure the Company that it may rely on certain exemptions from the registration requirements of the Securities Act..." An individual investor may be "accredited" under the federal securities laws if, at the time of the investment, his net worth exceeds $1,000,000 or he regularly earns at least $200,000 annually.

21. Despite sending the questionnaires, AEHI and Gillispie did not actually determine whether individuals were accredited or sophisticated when engaging in public solicitations, and instead offered and sold securities to unaccredited and/or unsophisticated investors. The AEHI investor questionnaire did not seek key information about individual investors' salary or assets. In some cases, unaccredited and/or unsophisticated investors were invited to fill out the questionnaire and simultaneously return it to AEHI with cash. In other cases, AEHI and Gillispie ignored the requirement that the investor questionnaire be completed and returned at all. In one example, after being solicited by an AEHI promoter, an individual with minimal assets

and no investing experience walked into AEHI's offices and purchased $4,400 worth of AEHI stock. This individual was not required to fill out a questionnaire.

22. From October 2006 to October 2010, AEHI raised at least $14 million by selling securities to more than 850 investors in unregistered transactions. Purchasers in these transactions resided in at least 30 different states and at least three countries.

23. AEHI has also issued more than 120 million shares of common stock to compensate employees, consultants, stock promoters and finders. The company has valued these shares at at more than $12 million. These transactions were also not registered with the Commission.

C. Despite AEHI's Weak Financial Condition, Defendants Promote AEHI

24. Despite pitching many business ventures that the company planned to pursue over the past four years (including harvesting lightning; developing fuel additives to reduce natural gas production costs by 40 percent; and using nuclear-powered desalination reactors to provide the third world with clean water), AEHI has no meaningful revenue and describes itself as a development stage company. AEHI's promotional material claims that AEHI plans to pay the $10 billion cost of building the nuclear reactor "[w]ith capital raised from stock and direct investments." According to AEHI's Form 10-K for the fiscal year ended December 31, 2010, AEHI has "minimum liquid assets" and "and will be reliant upon stock and/or debt offerings to fund any kind of nuclear operations." The company took in more than $14 million through private placement offerings, yet according to its most recent Form 10-K filed with the Commission on April 6, 2011, AEHI had no revenue from inception to December 31, 2010 and had spent substantially all the cash it had raised from investors. The revenue that AEHI has recognized consists entirely of proceeds of the sales of two homes that it built under its "Energy Neutral" brand. AEHI stated in its 2010 10-K that the homes were sold for $447,000, but that one home was sold at an undisclosed loss and one was sold at a profit of approximately $7,500. Despite AEHI's weak financial condition, Gillispie stated in a November 12, 2010 interview that, in the long term, AEHI "could rival Exxon Mobil in profitability."

D. Gillispie Uses Promoters to Manipulate AEHI Trading Volume and Stock Price

25. Soon after AEHI became a public company in 2006, Gillispie engaged the services of stock promoters to find prospective investors for AEHI and to manipulate AEHI's stock price. Gillispie offered promoters AEHI stock in exchange for their efforts. Gillispie coached promoters on how to manipulate AEHI's stock price, instructing them to buy at the end of certain trading days to increase artificially the stock's price and trading volume.

26. In 2009, Gillispie became frustrated with some promoters he retained because they were not buying enough AEHI stock to manipulate sufficiently AHEI's stock price. Gillispie accused them of lying about whether they had bought AEHI stock at high prices as he instructed. Gillispie also instructed them to buy larger increments of stock in order to affect the price. He tried to incentivize the promoters to manipulate the stock more aggressively by offering them additional AEHI stock if they could get the stock price up to specific targets and keep the price there for a specified period of time.

27. Gillispie encouraged further price manipulation in advance of meetings with wealthy potential investors in order to make the investment appear more attractive. Gillispie's manipulation of AEHI's stock price also helped him raise money from the public pursuant to PPMs, because the artificially-inflated market price was higher than the direct offering price. This artificial discount was a key component of Gillispie's pitch. Gillispie's manipulation of AEHI's stock price allowed him to rake in more investor funds and, thus, to further perpetuate his scheme.

28. Coupled with his use of false and misleading press releases, Gillispie's stock price manipulation also allowed him and Ransom to sell their AEHI shares at artificially inflated prices, further enriching themselves at the expense of investors.

E. Defendants Make Misrepresentations and Omissions, and Fail to File SEC Filings Disclosing Material Events

29. Defendants' offering fraud and stock price manipulation scheme were part of a larger effort by Defendants to mislead the public about AEHI's business. While AEHI spent

investor money on undisclosed executive salaries and payments to stock promoters, it raked in investor funds and made misleading statements in a barrage of press releases claiming that it was a growing, multi-national business whose financial success was just around the corner. This was false.

i. *AEHI and Gillispie Misrepresent That No Officer Has Sold AEHI Stock*

30. Gillispie used press releases as a key part of his scheme to manipulate AEHI's stock price and volume. AEHI has issued 166 press releases since it went public in September 2006, 87 of them since January 2010, despite the fact that the company has no revenue or meaningful operations. Several press releases contain false and misleading statements.

31. On September 7, 2010, AEHI issued a press release claiming that "Based on confidence in AEHI's accomplishments and long term potential, company directors and line officers have maintained their stock ownership, in which **no shares have been sold since company inception.**" (emphasis added). On September 30, 2010, an AEHI press release quoted Donald Gillispie as stating: "Recent insider purchases and the fact that **neither I**, our CFO, board members, **nor any officers** who have day-to-day line responsibilities for running the company **have sold a single share since the Company's inception** speak to our strong confidence in the outlook for the business." (emphasis added).

32. Both statements are false. AEHI's Senior Vice-President of Administration and Secretary Jennifer Ransom sold one million AEHI shares netting proceeds of $675,326.14 between June and September 2010. As described below, Gillispie directed her sales.

33. Gillispie's tactics worked. AEHI's average daily closing price for the month in April 2010 was $0.18 and average daily volume for the month was 262,905. AEHI issued 11 press releases in May and during this time the daily average closing price for the month rose to $0.43 and monthly average volume rose to 894,950. Ransom secretly sold her stock from June to September – with her last two September 2010 sales at $0.72 and $0.74 per share.

34. Ransom was both an officer of AEHI and a senior member of the company's management. AEHI repeatedly referred to Ransom in its SEC filings as an "executive officer" of

AEHI, and identified her in other public statements as a "key member[] of the management team." Ransom was the second-highest paid executive of AEHI, earning almost twice as much as the company's CFO in 2008 and almost three times as much as the CFO in 2009. By the time that Gillispie said that no "officers who have day-to-day line responsibilities for running the company have sold a single share since the Company's inception," Ransom had been promoted to **President** of one of AEHI's subsidiaries, Energy Neutral.

35. As an AEHI officer, Ransom was required to report her purchases and sales of AEHI stock made either directly or indirectly on her behalf, to the Commission, pursuant to Rule 16a-3 of the Exchange Act. But Ransom failed to file any SEC Forms 3, 4, or 5 disclosing these sales, effectively keeping her sales secret from investors and the public.

36. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their claims to investors and the public that no AEHI officers had sold stock were false and misleading. Defendants' misrepresentations were material because, among other things, investors were misled into believing that AEHI's officers believed so strongly in the company's future that they had never sold AEHI stock. Defendant Ransom knew or was reckless in not knowing that she substantially assisted AEHI's and Gillispie's misconduct by hiding her stock sales from the public and AEHI investors.

ii. ***AEHI and Gillispie Misrepresent That Gillispie Has Not Sold AEHI Stock***

37. The September 7 and September 30, 2010, press releases falsely stated that CEO Gillispie had not sold shares. Although Gillispie has not sold shares held in his name, he sold stock through nominees Jennifer Ransom and AEHI attorney Brian Webb. In 2010, Ransom sold at least one million AEHI shares, as set forth in paragraph 32 above. Additionally, Gillispie sold shares through AEHI attorney Brian Webb. In 2010, Webb sold at least 137,000 shares of AEHI stock. Gillispie, Ransom, and Webb all had brokerage accounts located at the same firm and used the same broker. Gillispie instructed the broker to sell stock for Ransom and Webb, including how and when to execute the trades.

38. Gillispie enriched himself using the proceeds of these nominee sales. Ransom transferred at least $200,000 of the $675,326.14 in proceeds from her sales of AEHI stock to Gillispie. Ransom wrote a check to Bosco (her limited liability company) for the majority of the $200,000, but the check was deposited in Gillispie's Energy Executive bank account, which Gillispie uses for personal expenses, such as jewelry, cruises, and his Maserati sports car. In addition, Gillispie, who had a personal relationship with Ransom and made her the beneficiary of his IRA account, had determined to pay down Ransom's debt. Accordingly, when Gillispie directed sales of Ransom's AEHI stock holdings, he was benefiting himself. Thus, Gillispie's statement that he never sold AEHI shares was false in light of his use of Ransom and Webb as his nominees for stock sales.

39. As an AEHI officer, Gillispie was required to report his purchases and sales of AEHI stock made either directly or indirectly on his behalf, to the Commission, pursuant to Rule 16a-3 of the Exchange Act. But Gillispie failed to file any Forms 3, 4, or 5 disclosing these sales, effectively keeping his sales secret from investors and the public.

40. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their claims to investors and the public that Gillispie had not sold stock were false and misleading. Defendants' misrepresentations were material because, among other things, investors were misled into believing that Gillispie believed so strongly in the AEHI's future that he never sold AEHI stock. Defendant Ransom knew or was reckless in not knowing that she substantially assisted AEHI's and Gillispie's misconduct by transferring proceeds from her stock sales to Gillispie.

iii. ***AEHI and Gillispie Falsely State in Private Placement Memoranda and Elsewhere That They Have Funding***

41. AEHI and Gillispie have repeatedly misled investors about the status of AEHI's funding. Funding is a critical factor for investors because AEHI has claimed that it plans to pay the $10 billion cost of building a nuclear reactor "[w]ith capital raised from stock and direct investments."

42. Since January 2009, AEHI has issued at least 25 PPMs. PPMs are documents used by companies to solicit investors to purchase issuers' securities. Several of these PPMs contained false statements about the status of AEHI's funding.

- AEHI's June 4, 2007 PPM stated that "The project has obtained $3.5 billion in funding."
- AEHI's November 30, 2007 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's December 1, 2008 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's January 13, 2009 PPM stated that "The project has funding arrangements and is seeking process approvals."
- Another version of AEHI's January 13, 2009 PPM, which Gillispie personally distributed on July 6, 2009, stated that "The project has funding commitments and is seeking process approvals."
- AEHI's February 13, 2009 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's March 31, 2009 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."

43. These statements in the PPMs were false. The "project" was the purported development of a nuclear reactor in Idaho. The company's Form-10K for fiscal year ended December 31, 2008 -- filed with the Commission on March 31, 2009 -- indicated that the company had no such funding: "The Company may need to obtain loans to fund any amounts not funded by private placement subscriptions." The Form 10-K described the company's financial condition as very weak and explained that AEHI "has minimum liquid assets" and "will be reliant upon stock offerings to fund any kind of nuclear operations." The 10-K further stated that "The monies raised by any private offering may not be sufficient for the continued proposed operations of AEHI." AEHI and Gillispie made material misrepresentations to potential investors when they wrote in PPMs, including those identified above, that they had funding.

44. When faced with the false and misleading PPM dated March 31, 2009, Gillispie said in a sworn affidavit that the statement about funding was "nonsensical" and that the "document was altered without AEHI's knowledge or permission and was never disseminated by AEHI." But Gillispie's sworn statement is also false, as Gillispie personally distributed the false and misleading PPM to potential investors on multiple occasions. For example, in pitching AEHI's February 13, 2009 PPM, Gillispie wrote a cover email to potential investors stating that "we believe our nuclear rezone and funding will occur with [sic] the next 30 days or so lifting the stock even higher..." Gillispie's email was inconsistent with the attached PPM, which stated that the project "is funded." In any case, both statements were false, as the project was not funded and Gillispie had no reason to believe that AEHI would obtain funding within the next 30 days.

45. AEHI and Gillispie knew or were reckless in not knowing that the statements in the PPMs concerning funding were false and misleading.

46. AEHI and Gillispie made other false and misleading statements about the status of AEHI's funding. As described above, Gillispie repeatedly urged potential investors to buy stock in private transactions because AEHI was about to do a "public offering." Gillispie also told investors in a September 9, 2009 letter that "we are starting the process for our first public stock offering (IPO) for later this year." These statements were false. First, the company never did an "IPO" or any similar transaction. Second, AEHI could not have done an "IPO" because it was already a publicly-traded company.

47. AEHI and Gillispie also misled investors when they failed to disclose that the nuclear power plant could not be funded absent certain events which were distant and highly speculative. Gillispie stated in a September 9, 2009 letter to investors that "we have a large energy trust that is willing to loan us up to $5 billion for the plant construction phase." This statement omitted key facts and was misleading. Gillispie himself later acknowledged that at the time he considered the interest rate on the proposed loan to be unacceptable, and that the

financing deal would not be available until AEHI had spent several years and hundreds of millions of dollars (which it did not have) on various approvals.

48. In his many statements in PPMs and elsewhere about AEHI's funding status, Gillispie failed to disclose that he, himself, believed that funding would be contingent on at least two future and uncertain events: AEHI's being approved for listing on a national stock exchange, and the successful execution of a new public offering. Gillispie wrote in a May 26, 2010 email exchange that he knew that "[t]he Idaho project is contingent upon the offering we mentioned which will occur after we move to a higher exchange." In the same exchange he wrote that "[t]he funds for the Idaho reactor project is [sic] coming from a separate offering in the future and until we raise those funds the project would not be launched."

49. Gillispie himself was ultimately responsible for the misleading claims in the PPMs, and he adopted them in statements he made in distributing them.

50. AEHI and Gillispie knew or were reckless in not knowing that their statements and omissions about the status of AEHI's funding were false and misleading.

iv. ***AEHI and Gillispie Falsely State Gillispie's 2009 Compensation***

51. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that Gillispie's cash compensation for 2009 was $133,000 that "consisted of expense allotment for travel, auto, Idaho living expenses, entertainment." AEHI reported no other cash compensation to Gillispie for 2009.

52. In reality, Gillispie pocketed these purported expense allotments while AEHI separately paid his bills. For example, Gillispie, a Virginia resident until 2009, set up automatic debits from AEHI starting in 2008 so that the company would pay rent on a $3,000-per-month house that he leased in Idaho. Gillispie also submitted at least $143,456.15 in credit card bills directly to AEHI for payment, and kept his expense allotment for those same expenses. The bills included charges for travel, food, and season tickets to football games. Gillispie received at least $55,000 of additional undisclosed cash from AEHI in 2009.

53. In 2009, AEHI paid Gillispie and Energy Executive (Gillispie's LLC) at least $367,456.15 in cash and paid expenses – approximately $230,000 more than AEHI disclosed to the public. Thus, AEHI and Gillispie understated Gillispie's compensation by approximately 64%.

54. AEHI and Gillispie knew or were reckless in not knowing that their statements about Gillispie's compensation were false.

v. ***AEHI Fails To Disclose A Material Change in, And Then Falsely States, Gillispie's 2010 Compensation***

55. AEHI did not provide any updated information to investors about Gillispie's compensation in 2010. Gillispie's salary increased to at least $306,500 during 2010, because AEHI's board increased Gillispie's salary to $40,000 per month effective July 1, 2010. In addition to his salary, AEHI paid Gillispie at least $102,950.98 for his rent and credit card bills. Plus, Gillispie received at least $200,000 from Ransom after he directed her secret stock sales described above in paragraphs 37-38. Gillispie's 2010 compensation from AEHI totaled at least $658,950.98 – a more than $525,000 increase over the 2009 figure released to shareholders. Yet, AEHI failed to file a Form 8-K with the Commission or otherwise inform the public.

56. In its Form 10-K for the fiscal year ended December 31, 2010, signed and certified by Gillispie, AEHI and Gillispie stated that Gillispie received cash compensation for 2010 was $393,000. In a footnote to its Summary Executive Compensation Table, AEHI stated that Gillispie's cash compensation for 2010 was $344,000. Each of these statements is false. As described above, AEHI paid Gillispie more than $650,000 in 2010.

57. AEHI and Gillispie knew or were reckless in not knowing that their statements about Gillispie's compensation were false.

vi. ***AEHI and Gillispie Falsely State Ransom's 2009 Compensation***

58. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that Ransom's cash compensation for 2009 was $130,000 for

"expense allotment, travel, auto and entertainment." AEHI reported no other cash compensation to Ransom for 2009.

59. In reality, like Gillispie, Ransom kept the cash that was given to her as "expense allotment" while AEHI paid $62,502 to her credit cards for those same expenses.

60. In 2009, AEHI paid Ransom at least $191,028 in cash and paid expenses.

61. AEHI and Gillispie knew or were reckless in not knowing that their statements about Ransom's compensation were false. Ransom knew or was reckless in not knowing that that she substantially assisted AEHI's and Gillispie's misconduct by submitting expenses for reimbursement that were already covered by her purported "expense allotment."

vii. ***AEHI and Gillispie Fail to Disclose Ransom's 2010 Compensation***

62. During 2010, Ransom's compensation increased to at least $323,747, which was substantially beyond the $130,000 that had previously been disclosed to investors. Her compensation consisted of $136,000 in cash paid to Bosco, her consulting company, plus $187,747 in payments by AEHI to Ransom's credit cards for the same expenses that were covered by her "expense allotment." As such, Ransom's 2010 compensation was more than *double* what had previously been disclosed to investors.

63. However, in its Form 10-K for the fiscal year ended December 31, 2010, signed and certified by Gillispie, AEHI made no disclosure whatsoever about Ransom's 2010 compensation.

64. AEHI and Gillispie knew or were reckless in not knowing that their statements about Ransom's compensation were false. Ransom knew or was reckless in not knowing that that she substantially assisted AEHI's and Gillispie's misconduct by submitting expenses for reimbursement that were already covered by her purported "expense allotment."

viii. ***AEHI Falsely States That A Promoter Was Not Paid for Touting AEHI Stock***

65. On October 14, 2010, AEHI issued a press release announcing that Pinnacle Digest "vetted" and "recommended" AEHI stock. Pinnacle holds itself out as an exclusive

online financial newsletter for investors. The release stated that "Pinnacle Digest was not paid or compensated by AEHI in any way for writing the article."

66. This statement was false. Pinnacle's website disclosed that it had been paid to display and disseminate AEHI news.

67. In fact, Pinnacle's President was a paid promoter for AEHI. In a May 27, 2010 email, Gillispie said about Pinnacle's President that "he does our stock promotion in Canada." In the months leading up to Pinnacle's October 14, 2010 article touting AEHI, AEHI sold Pinnacle's President 170,000 shares of its common stock at a quarter of the market price, or less. Pinnacle's President bought an additional 2,500 shares of AEHI common stock on October 14, 2010 – the very same day that he published his article touting AEHI stock – which he sold a week later.

68. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their claims to investors and the public about payment to promoters were false and misleading.

ix. ***AEHI and Gillispie Mislead Investors About AEHI's Employees***

69. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that "The Company and its subsidiaries have 15 full-time employees. In addition, nine officers and directors provide certain services dedicated to current corporate and business development activities." This statement was false and misleading in at least two respects.

70. First, during the period when this statement was made, according to Gillispie, AEHI did not have a single full-time employee. Instead, AEHI engaged the services of independent contractors who billed AEHI for their time with invoices on a month-by-month basis.

71. Further, even counting independent contractors, AEHI had less than half of the work force that it claimed. In fact, as of the date that AEHI filed its 2009 10-K, AEHI had at most *seven* individuals, and possibly fewer, who were working regular hours for the company as independent contractors.

72. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their claims to investors and the public about AEHI's "employees," were false and misleading.

x. *AEHI and Gillispie Mislead Investors About AEHI's Offices and Subsidiaries*

73. AEHI and Gillispie have stated to investors and the public that AEHI has offices in Beijing, China; Seoul, Korea; and Lagos, Nigeria. For example, in a June 18, 2009 press release AEHI stated that:

> AEHI will open an office in the Chaoyang District, central business district, of Beijing [China] in July to facilitate institutional investors for AEHI projects and joint ventures with Asian companies for nuclear plant components and other energy-related projects with US companies. Nancy Shi will be the President of AEHI China reporting to AEHI Chairman and CEO, Don Gillispie, in the US.

In a September 9, 2009 letter to investors, Gillispie wrote that "In July, we opened an office in Beijing, China..." In a May 2010 AEHI newsletter to investors, AEHI listed offices in Eagle, Idaho, Beijing, China and Seoul, South Korea. In that same newsletter, Gillispie began his "Notes from the CEO" by writing: "Greetings from our China office..." In AEHI's PPM the Company specifically listed "AEHI China, Ltd." and "AEHI Korea" along with its other subsidiaries under the heading "Business of the Company." These statements are false or misleading.

74. AEHI has disclaimed any control over AEHI China, Ltd. or its President, Nancy Shi. According to Gillispie, AEHI decided not to open its own independent China office because it was too costly. Instead, according to Gillispie, AEHI China, Ltd. was set up by Shi as a separate entity substantially all of which she owns along with other Chinese investors. According to Gillispie, AEHI asked these investors to create AEHI China, Ltd. in the hope that AEHI would one day receive a share of revenues from the business they operated; however, no such revenue has been generated. According to Gillispie, AEHI has a similar relationship, lacking control, with AEHI Korea.

75. AEHI and Gillispie also misled investors about the business of its subsidiary, Energy Neutral. In AEHI's May 2010 investor newsletter, Gillispie announced that "...a number of people even began ordering new Energy Neutral homes. We will begin to franchise Energy Neutral around the country this summer." This statement was false. No one had ever ordered an Energy Neutral home, and AEHI made no meaningful effort to franchise Energy Neutral.

76. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their claims to investors and the public about AEHI's purported international offices and subsidiaries were false and misleading.

xi. ***AEHI and Gillispie Mislead Investors and the Public with Press Releases***

77. AEHI and Gillispie routinely used press releases to mislead the market about AEHI's purported progress towards its goals.

78. In a January 4, 2010 press release, AEHI stated that "Don Gillispie, AEHI's CEO, left today for Seoul to finalize negotiations with Korean Electric Power Company, KEPCO, to import the South Korean's advanced reactor, APR 1400, for its Idaho and Colorado sites." AEHI had no agreement with KEPCO that it could "finalize," and had not obtained local or federal approvals for the construction of nuclear power plants in Idaho or Colorado.

79. In a March 24, 2010 press release, AEHI stated that "The Nuclear Regulatory Commission has officially recognized AEHI's proposal to build a nuclear power plant in Payette County, Idaho." AEHI had not obtained any approval from the Nuclear Regulatory Commission. Rather, the Nuclear Regulatory Commission had simply acknowledged that AEHI had applied for such approval.

80. In the summer of 2010, AEHI ramped up its promotional activity, flooding the market with press releases that were non-substantive, duplicative and, in some cases, misleading. A number of these press releases related to AEHI's new venture entitled "Green World Water." For example:

- In a May 18, 2010 press release, AEHI announced "the company's official partnership through AEHI China with China National Nuclear Corporation...to produce and market nuclear desalinization reactors at the international level. The product will be the largest, cleanest, most efficient, most cost-effective converter of salt water to drinking water on the market and will be available to order in the summer of 2010."

- In a June 29, 2010 press release, AEHI announced that Green World Water "has developed the world's first commercially available and competitively-priced nuclear desalination reactor that can produce clean water from the ocean and electricity simultaneously, including pumping the water hundreds of miles inland."

- In a July 22, 2010 press release, AEHI announced the launch of a website for Green World Water, which it said "will be used to promote and sell commercial Green World Water(TM) nuclear desalination systems, some of which are poised to sell before the end of the year."

- In an August 12, 2010 press release, AEHI announced that Green World Water had signed a "Negotiation Agreement" with Tubestar Oil.

Neither AEHI nor Green World Water had ever built or sold a desalination reactor and they had no contracts to do so. To the extent that Green World Water had entered any "agreements," they were non-binding or contingent on the occurrence of distant and speculative events.

81. Defendants AEHI and Gillispie knew, or were reckless in not knowing, that their press releases omitted key facts and were misleading.

F. AEHI Continues to Issue New Press Releases

82. On or around September 22, 2010, after raising the issue with Gillispie and company management, AEHI's securities lawyers and investor relations firm resigned over their concerns about the volume and nature of AEHI's press releases.

83. Following these resignations, AEHI continued to issue a new press release almost every business day, including on October 4, 11, 14, 15, 18, 19, 25, 27, 28; November 1, 2, 8, 9, 11, 15, 17, 22, 29; and December 1, 2, 3, 6, 10, and 13, 2010. On December 6, 2010, a promotional fax purporting to originate from AEHI provided contact information for those seeking to invest in AEHI, noting that investors had the option of purchasing the company's publicly traded stock or making multi-million-dollar direct investments in the company, and

quoting Gillispie extolling nuclear power as "a tremendous investment opportunity with excellent return potential." From November 30 to December 7, the daily trading volume of AEHI stock doubled, rising from 357,500 to 841,900 shares.

G. AEHI Has Raised Millions of Dollars from Investors While Issuing Press Releases and Touting Its Stock Through Promoters

84. As set forth in paragraph 30 above, AEHI issued 166 press releases between the time it went public in September 2006 and October 16, 2010, 87 of them since January 2010, despite the fact that the company has no meaningful revenue or operations. Several press releases contain false and misleading statements. AEHI has also aggressively used promoters to tout its stock, including on the internet. In an October 14, 2010 email, AEHI's public relations director circulated an article about AEHI from the website "steroidstocks.com" and said: "These are our web guys at work. They are now making about 15 posts per day per site and when we see days of increase they will also post articles about us on their websites and in investor newsletters." Gillispie's scheme to manipulate the market is working. In 2010, investors invested at least $5 million in AEHI.

H. The Commission Suspends Trading of AEHI Stock

85. On December 14, 2010, the Commission suspended the trading of AEHI stock pursuant to Section 12(k) of the Exchange Act which grants the Commission emergency authority to suspend the trading of any security where the Commission believes suspension is in the public interest and will protect investors.

FIRST CLAIM FOR RELIEF

(Violations of Section 17(a) of the Securities Act by Defendants AEHI and Gillispie)

86. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

87. Defendants AEHI and Gillispie have, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or of the mails: (a) with scienter, employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

88. By reason of the foregoing, Defendants AEHI and Gillispie have directly or indirectly violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and unless enjoined will continue to violate this provision.

SECOND CLAIM FOR RELIEF

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 By Defendants AEHI and Gillispie)

89. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

90. Defendants AEHI and Gillispie, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

91. By reason of the foregoing, Defendants AEHI and Gillispie have directly or indirectly violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17

C.F.R. §§ 240.10b-5] thereunder and unless restrained and enjoined will continue to violate these provisions.

THIRD CLAIM FOR RELIEF

(Violations of Section 13(a) of the Exchange Act and Rule 13a-11 By AEHI)

92. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

93. Defendant AEHI, by engaging in the conduct set forth above, violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-11 thereunder [17 C.F.R. § 240.13a-11], which obligate issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission accurate reports of significant events within four days of the event.

94. By reason of the foregoing, Defendants AEHI has directly or indirectly violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-11 thereunder [17 C.F.R. § 240.13a-11] thereunder and unless restrained and enjoined will continue to violate these provisions.

FOURTH CLAIM FOR RELIEF

(Aiding and Abetting Violations of 10(b) of the Exchange Act and Rule 10b-5 By Defendants Gillispie and Ransom)

95. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

96. Gillispie and Ransom knowingly provided substantial assistance to AEHI's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], and therefore are liable as aiders and abettors. Unless restrained and enjoined, they will continue to aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder.

FIFTH CLAIM FOR RELIEF

(Violations of Section 16(a) of the Exchange Act and Rule 16a-3 By Defendants Gillispie and Ransom)

97. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

98. Defendant Gillispie has been an officer of AEHI in his capacity as CEO, President, and Chairman of AEHI since at least 2006. Defendant Ransom has been an officer of AEHI in her capacity as Senior Vice-President of Administration and Secretary for AEHI since at least 2008.

99. By engaging in the conduct described above, Gillispie and Ransom failed to file statements accurately reflecting changes in their beneficial ownership of AEHI's common stock and annual statements accurately reflecting their beneficial ownership of AEHI's common stock. By reason of the foregoing, Gillispie and Ransom violated and, unless restrained and enjoined, will continue to violate, Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 thereunder [17 C.F.R. § 240.16a-3].

SIXTH CLAIM FOR RELIEF

(Violations of Sections 5(a) and 5(c) of the Securities Act By Defendants AEHI and Gillispie)

100. Paragraph numbers 1 through 85 are re-alleged and incorporated herein by reference.

101. During the relevant period, Defendants AEHI and Gillispie, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and to sell securities through the use or medium of a prospectus or otherwise when no valid registration statement had been filed or was in effect as to such offers and sales of such securities and no exemption from registration was available.

102. Defendants AEHI and Gillispie engaged in or participated in the unlawful distribution of AEHI securities as described above.

103. By reason of the foregoing, Defendants AEHI and Gillispie, directly or indirectly, violated, and unless enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and 77 e(c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin Defendants AEHI and Gillispie from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Enjoin Defendant AEHI from directly or indirectly violating Section Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-11 thereunder [17 C.F.R. § 240.13a-11].

III.

Enjoin Defendants Gillispie and Ransom from aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

IV.

Enjoin Defendants Gillispie and Ransom from directly or indirectly violating Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)].

V.

Enjoin Defendants AEHI and Gillispie from directly or indirectly violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and 77 e(c)].

VI.

Enter an order barring Gillispie from serving as an officer or director of any public company, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2).

VII.

Enter an order barring Gillispie and Ransom from participating in an offering of penny

stock, pursuant to Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6).

VIII.

Enter an order freezing the assets of Defendants AEHI, Gillispie, and Ransom, and Relief Defendants Energy Executive and Bosco.

IX.

Enter an order for Defendants and Relief Defendants to provide a verified accounting identifying (i) the location and disposition of all funds received from investors; (ii) the location and disposition of all accounts controlled by Defendants or held for their benefit; and (iii) the location and value of all investor assets, as well as personal or other assets currently held by Defendants, or under their control or over which they may exercise actual or apparent authority.

X.

Issue an order requiring Defendants and Relief Defendants to disgorge their ill-gotten gains according to proof, plus prejudgment interest thereon.

XI.

Issue an order requiring Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

XII.

Enter an order preventing Defendants and Relief from destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, books, records, computer programs, computer files, computer printouts, correspondence, including e-mail, whether stored electronically or in hard-copy, memoranda, brochures, or any other documents of any kind that pertain in any manner to the business of the Defendants and Relief Defendants.

XIII.

Enter an order permitting expedited discovery.

XIV.

Enter an order temporarily freezing the assets of Defendants AEHI, Gillispie and Ransom and Relief Defendants Bosco and Executive Energy Consulting.

XV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

XVI.

Grant such other and further relief as this Court may determine to be just, equitable, and necessary.

Dated: July 29, 2011

Respectfully submitted,

/s/ David Berman
David A. Berman
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

NRS 78.330 Directors: Election; terms; classification; voting power.

1. Unless elected pursuant to NRS 78.320, or unless the articles of incorporation or the bylaws require more than a plurality of the votes cast, directors of every corporation must be elected at the annual meeting of the stockholders by a plurality of the votes cast at the election. Unless otherwise provided in this chapter or in the bylaws, the board of directors has the authority to set the date, time and place for the annual meeting of the stockholders. If for any reason directors are not elected pursuant to NRS 78.320 or at the annual meeting of the stockholders, they may be elected at any special meeting of the stockholders which is called and held for that purpose. Unless otherwise provided in the articles of incorporation or bylaws, each director holds office after the expiration of his or her term until a successor is elected and qualified, or until the director resigns or is removed.

2. The articles of incorporation or the bylaws may provide for the classification of directors as to the duration of their respective terms of office or as to their election by one or more authorized classes or series of shares, but at least one-fourth in number of the directors of every corporation must be elected annually. If an amendment reclassifying the directors would otherwise increase the term of a director, unless the amendment is to the articles of incorporation and otherwise provides, the term of each incumbent director on the effective date of the amendment terminates on the date it would have terminated had there been no reclassification.

3. The articles of incorporation may provide that the voting power of individual directors or classes of directors may be greater than or less than that of any other individual directors or classes of directors, and the different voting powers may be stated in the articles of incorporation or may be dependent upon any fact or event that may be ascertained outside the articles of incorporation if the manner in which the fact or event may operate on those voting powers is stated in the articles of incorporation. If the articles of incorporation provide that any directors may have voting power greater than or less than other directors, every reference in this chapter to a majority or other proportion of directors shall be deemed to refer to a majority or other proportion of the voting power of all of the directors or classes of directors, as may be required by the articles of incorporation.

[Part 33:177:1925; A 1929, 413; NCL § 1632]—(NRS A 1967, 267; 1979, 215; 1987, 582; 1989, 875; 1993, 962; 1999, 1585; 2001, 1371, 3199; 2007, 2420)