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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17849

In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, AND DAVID W. WELLS,

Respondents.

DIVISION OF ENFORCEMENT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250

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Pursuant to Rule 250(a) of the Rules of Practice of the Securities and Exchange Commission ("the SEC" or "Commission"), the Division of Enforcement ("the Division") respectfully submits this Reply Memorandum of Law in Support of its Motion for an Order imposing Monetary Sanctions against Peraza Capital & Investment LLC. ("Peraza Capital").

OVERVIEW

The law has changed since the Division filed its original motion papers. In *Kokesh v. SEC,* 198 L. Ed. 2d 86 (2017), the Supreme Court held that the five-year statute of limitations in 28 U.S.C. § 2462 applies to disgorgement claims made by the SEC. In the Division's original papers, we sought disgorgement of unjust enrichment received as early as 2010. That total amount must now be adjusted downward to include only unjust enrichment received within the five-year period as set forth in *Kokesh.*

Respondent Peraza Capital interprets *Kokesh* well beyond its holding to argue that it entirely eliminates disgorgement in this case. (See Respondent's Memorandum in Opposition to the Division's Motion for Summary Disposition ("Opp. Memo"), at 6-9.) Under Respondent's interpretation of Section 2462, the SEC's disgorgement claims "first accrued" when the defendant started violating the securities laws, and because those violations began outside of the five-year period, the Commission is barred from seeking disgorgement for any unjust enrichment from subsequent violations. In Respondent's world, a perpetrator of a decade-long fraud could simply keep every dollar he stole from victims during the course of that fraud because the fraud began outside the limitations period. This is not the law.

Respondent's argument is fatally flawed: Respondent did not commit only one violation. Rather, a violation occurred *each time* Angel Oak Capital Partners "effect[ed] any transactions in, or [] induce[d] or attempt[ed] to induce the purchase or sale of, any security" while unregistered in violation of Section 15(a). Respondent caused (and received a commission for) each of Angel Oak's illegal transactions and is liable to disgorge those gains derived from repeated violations. Because Respondent indisputably engaged in some of those violations within the limitations period, the disgorgement claims for those violations are not barred, irrespective of whether other violations were outside the period.

As the Respondent notes, the Supreme Court held in *Gabelli* that the discovery rule did not apply to SEC civil money penalty claims under 28 U.S.C. § 2462. Thus, the SEC has to bring its penalty claims within five years of the claim accruing. If the Respondent were correct, then the fact that any violation occurred outside the limitations period would prevent the SEC from pursuing penalty claims for violations inside the limitations period. But since *Gabelli*, courts have rejected penalty claims from outside the limitations period, while allowing penalty claims based on violations within the limitations period. None of those cases, including *Kokesh* itself, has adopted the Respondent's argument that if you lose one penalty claim due to the statute of limitations, you must lose them all. There is no justification for treating disgorgement claims any differently.

Respondent makes two other non-*Kokesh* arguments in his papers. First, Respondent attempts to argue with the findings in the Order Instituting Proceedings ("OIP"). This is improper under the terms of the Offer that Peraza Capital made to settle this matter. *See* Reply Declaration of John D. Worland, Jr. dated July 12, 2017, ("Worland Reply Decl.") Exhibit A ("Peraza Offer"). Among other matters, Peraza Capital now seeks to dispute several clear-cut findings in the OIP that are no longer subject to dispute. First, Peraza Capital describes this proceeding for money sanctions as arising from the Division's "*claim*" that Peraza Capital caused Angel Oak to operate an unregistered broker-dealer (Opp. Memo at 1). But this is not a "claim" anymore; it is a finding of fact and conclusion of law. As the OIP states: "the findings made in this Order shall be accepted and deemed true by the hearing officer." (OIP, Part IV) Second, Peraza Capital disputes whether the trading that took place in Angel Oak's offices was, in fact, illegal, because not everything about the trading was independently wrong (Opp. Memo, at 15-16). But whether a trade is legal or not for purposes of finding a violation does not require all participants in the trade to act illegally. A trade can be illegal, for example, even if all participants satisfy all applicable legal requirements in executing the trade, if the trade was induced at the outset by non-public material information. Third, Peraza Capital now disputes whether the revenue that it received from the Atlanta trades arose because Peraza Capital had "caused" the illegal operation of the Angel Oak office (Opp. Mem, at 14-16). But this is simply another attempt to re-argue the findings in the OIP. The OIP found that Peraza Capital caused the illegal activities in Atlanta. The only trades that the Division uses to assess disgorgement are trades that were undertaken through the unregistered, and therefore illegal, broker-dealer in Atlanta, by traders that Peraza Capital had registered and was supposed to be keeping compliant with the applicable laws and regulations.

Peraza Capital's other argument disputes whether the Division has deducted all appropriate costs from the trading profits it seeks to recover in disgorgement. As to this point, Peraza Capital is just wrong. The record shows that the revenue that the SEC identifies as disgorgement is net of direct trading costs, and that Peraza Capital never paid any of the overhead for the illegal trading. In fact, Angel Oak was providing the overhead for the Atlanta office, and those expenses were being paid out of the pockets of the registered representatives doing the trading. While the Respondent appears to argue that there are other unexplained expenses for which "offset" is appropriate, Respondent does not identify them. The Division's measure of disgorgement is thus a "reasonable approximation" of the correct amount (indeed it is in essence the exact amount), and Respondent has offered nothing to support any claim to the contrary.

I. ADJUSTING THE MEASURE OF DISGORGEMENT FOR *KOKESH*.

In its original papers, the Division derived its disgorgement measure from a spreadsheet prepared, authenticated, and explained by the CFO of Peraza Capital. (See Declaration of John D. Worland, Jr., May 26, 2017, ("Worland Decl.") at ¶ 4, Exhibit 2.) That spreadsheet covered the period from 2010 through 2014. Peraza Capital executed a tolling agreement on June 28, 2016, and subsequently extended it on October 24, 2016. (Copies of the two agreements are attached as Exhibit B to the Worland Reply Decl.). The OIP was timely filed before the tolling agreements expired on February 28, 2017. Thus, the Commission is entitled under *Kokesh* to disgorgement going back to June 29, 2011, five years prior to the date of the original tolling agreement. To insure that all of its disgorgement claims are within the five-year period, the Division will seek only the amounts identified by Peraza Capital for the years 2012 through 2014.

The Peraza Capital spreadsheet contains separate numbers for each of the years from 2010 through 2014. (*See* Exhibit 2 to the original Worland Decl.) The Division's original disgorgement calculation was $1,521,705.87, for all five years. The amount Respondent gained in 2010 and 2011 must now be deducted from that disgorgement amount to satisfy *Kokesh*. The adjusted number is $1,180,487.98.

The Division's original measure of prejudgment interest must also be adjusted. The OIP requires that prejudgment interest for the total amount of disgorgement be calculated from October 1, 2014. (*See* Exhibit 1 to the original Worland Decl. at Section IV.) The new prejudgment interest calculation is Exhibit C to the Worland Reply Decl. The adjusted total for prejudgment interest is now $125,807.20. The total for disgorgement and prejudgment interest is $1,306,295.18.

II. RESPONDENT'S THEORY OF ACCRUAL IS WRONG.

In Respondent's world, the failure to pursue a claim within five years of the first violation would bar the Commission from pursuing later claims based on any subsequent violations involving the same sort of conduct—even if those claims were timely filed. That cannot be—and is not—the law. Respondent is mistaken for three reasons, depending on one's view of the violations. First, under the plain language of Section 15, each violation first accrued when Angel Oak effected a securities transaction while unregistered, leading to multiple claims with different time bars. Second, to the extent that Respondent's liability is viewed as a single violation, disgorgement is appropriate because affirmative unlawful conduct continued over time, and Section 2462 does not begin to run until the violation is completed. Finally, even if the conduct here is viewed as a single event that began before the statute of limitations had run, any claim for disgorgement could not accrue until respondent received unjust enrichment within the limitations period, so claims arising from proceeds received within that period are timely. The Division's revised disgorgement and prejudgment interest figures properly account for the remedy owed, no matter which theory is used.

It is well established that "when a defendant commits successive violations, the statute of limitations runs separately from each violation." *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1969 (2014). This principle is so well-embedded in the law of private damage claims that it has its own name—the "separate accrual" doctrine. The Supreme Court recently explained the concept in the context of copyright law:

> Each time an infringing work is reproduced or distributed, the infringer commits a new wrong. Each wrong gives rise to a discrete "claim" that "accrue[s]" at the time the wrong occurs. In short, each infringing act starts a new limitations period. *See Stone v. Williams,* 970 F.2d 1043, 1049 (C.A.2 1992) ("Each act of infringement is a distinct harm giving rise to an independent claim for relief.").

Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962, 1969, 188 L. Ed. 2d 979 (2014). As discussed, the same principle applies here because violations occurred each time that securities transactions were "effected" while Angel Oak was unregistered. *See* Section 15(a).

Likewise, in the RICO context, the Second Circuit held that a separate RICO claim accrues each time a plaintiff "suffer[s] injury as a result of [a RICO] violation." *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1102 (2d Cir. 1988). Other courts of appeal have applied the doctrine in other areas, such as labor law claims. *See e.g. Figueroa v. District of Columbia Metropolitan Police Dept.*, 633 F.3d 1129, 1131 (D.C. Cir. 2011) (J. Garland) ("Because a new cause of action accrues each time MPD issues a deficient paycheck, claims based on paychecks falling within the limitations period are timely."); *Knight v. Columbus, Ga.*, 19 F.3d 579, 582 (11th Cir. 1994) ("this case involves a series of repeated violations of an identical nature. Because each violation gives rise to a new cause of action, each failure to pay overtime begins a new statute of limitations period as to that particular event.").

Although the SEC claims for disgorgement or penalties are not private damage claims, the governing accrual concept is the same. The error in Respondent's argument is well illustrated by penalty cases that have come down since *Gabelli*. The cases show that courts routinely allow penalty claims based on violations that are within the limitations period, while disallowing them for claims that accrued outside the limitations period. For example, in *SEC v. Radius Capital Corp.*, 2015 WL 1781567, *9 (M.D. Fla. April 20, 2015), the Commission alleged a long-running fraud involving the sale of mortgage-backed securities. After a jury found liability, the court held that the SEC could only recover penalties for fraudulent sales that occurred within five years of the filing of the complaint, while excluding penalties based on sales from before that period. 2015 WL 1781567, *9. *See also SEC v. GTF Enterprises, Inc.*, 2015 WL 728159, *4 (S.D.N.Y. February 19, 2015) (following default judgments, the court entered penalties in a Ponzi scheme case based only on the portion of the scheme that occurred within five years of the filing of the action, even though the scheme had started earlier); *SEC v. Syndicated Food Service Inter., Inc.*, 2014 WL 2884578, *19 (E.D.N.Y. February 14, 2014) (in a pump and dump case, defendants consented to a liability judgment, but contested monetary relief; the court calculated the maximum possible penalty by excluding violations outside of the limitations period).

While these cases precede *Kokesh* and addressed penalties, not disgorgement, there is no reason to believe that the reasoning would be different here. That is, claims for both penalties and disgorgement can be divided into accrual periods both inside and outside the five-year limitations period of 28 U.S.C. § 2462. The Division has applied this concept to its new measure of disgorgement.

Even were Respondent's conduct viewed as a single violation, however, the disgorgement claim is not barred. The Division's disgorgement claim is not akin to the claim at issue in *Sierra Club v. Oklahoma Gas & Elec. Co.*, 816 F.3d 666 (10th Cir, 2016), cited by Respondent, where the violation was "the act of constructing" a facility, and thus complete when construction commences without a permit in hand. In that situation, the violation "first accrues," and the limitations period begins to run, when the violation first commences, irrespective whether the state of violation continues for a period of time thereafter. But Respondent's liability here derives not from a "single, ongoing act" but from engaging in or facilitating brokerage activity and transactions over years—that is, "affirmative conduct within the limitations period and 'not merely the abatable but unabated inertial consequences of some pre-limitations action.'" *Sierra Club*, 816 F.3d at 671-72 (*quoting Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 517 F.2d 117, 128 (5th Cir.1975)). *See also Birkelbach v. SEC*, 751 F.3d 472, 479 n. 7 (7th Cir.2014) ("One violation continues when "the conduct as a whole can be considered as a single course of conduct.")

Finally, to the extent that any of the disgorgement claims attach to violations outside of the limitations period, a disgorgement claim does not accrue until unjust enrichment is received. For a claim for relief under the securities laws to accrue, it must not just have a beginning; it must be complete for pleading purposes. "Thus the 'standard rule' is that a claim accrues 'when the plaintiff has a complete and present cause of action.'" *Gabelli v. S.E.C.*, 568 U.S. 442, 454 (2013) (*quoting Wallace v. Kato,* 549 U.S. 384, 388 (2007). (Cited in Opp. Memo at 7.) A disgorgement claim, therefore, cannot accrue until the unjust enrichment is actually received. The fact that, as here, a long series of illegal transactions began at one date does not mean that the SEC could sue to recover unjust enrichment for those transactions *before the unjust enrichment has actually occurred.*[1]

While in the Opposition Brief, Respondent refers to when the Commission's "*claim* **first accrued**." (Opp. Memo at 9, bold emphasis in original, italics emphasis added), in the next sentence, the Respondent asserts that "Angel Oak's *violation* **first accrued** in March 2010." (Id. bold emphasis in original, italic emphasis added.) But *violations* do not accrue under Section 2462. Unfortunately, they just seem to happen. *Gabelli* endorses the "standard rule" that to

[1] While it is true that *Gabelli* held that a civil money penalty claim accrues upon the violation, that makes sense if the claim is complete (for purposes of filing an action) upon the violation. But where a disgorgement claim has an additional requisite element beyond the violation – receipt of an unjust benefit – general principles of accrual require all elements to be in place before the five-year limitations period starts to run. In citing to general accrual principles, nothing in *Gabelli* can be read to dictate that a disgorgement claim begins to run before any benefit is received.

accrue under the terms of the statute a claim must provide the plaintiff "a complete and present cause of action." *Gabelli* at 454. The other Supreme Court case cited by Respondent says the same thing:

> Statutes of limitations establish the period of time within which a claimant must bring an action. As a general matter, a statute of limitations begins to run when the cause of action "accrues"—that is, when "the plaintiff can file suit and obtain relief."

Heimeshoff v. Hartford Life & Acc. Ins. Co., 134 S. Ct. 604, 610, 187 L. Ed. 2d 529 (2013) (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997). *See also Green v. Brennan*, 136 S. Ct. 1769, 1777 (2016) (constructive discharge claim cannot accrue until after a plaintiff resigns, and the limitations period begins to run only "[a]t that point—and not before . . . [he has] a 'complete and present' cause of action.")

In other words, the running of a statute of limitations can extinguish a claim, but only for a period in which the claim could have been brought. In the case of disgorgement, the Commission obviously cannot bring a claim to recover unjust enrichment until the unjust enrichment has actually been received. And there is nothing in the text of Section 2462 that specifies to the contrary. *Green*, 136 S. Ct. at 1776 ("Although the standard rule can be displaced such that the limitations period begins to run before a plaintiff can file a suit, we 'will not infer such an odd result in the absence of any such indication' in the text of the limitations period.") (*citing Reiter v. Cooper*, 507 U.S. 258, 267 (1993)).

III. THE COMMISSION'S MEASURE OF DISGORGMENT, AS ADJUSTED, MEETS ITS BURDEN AND RESPONDENT'S UNIDENTIFIED "OFFSETS" DO NOT MERIT CONSIDERATION.

The Respondent argues that the Division's disgorgement figure, as originally drawn from Peraza Capital's own calculation, is erroneous because it failed to deduct "***all marginal costs incurred in producing the revenues that are subject to disgorgement.***" (Opp. Memo at 16-17, bold and italics emphasis added by Respondent, quoting *Kokesh* 198 L.Ed. 2d at 95 (which quotes Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment h, at 216).) There are two problems with Respondent's claim. First, using direct expenses associated with the trades as the measure of marginal costs, the Division has already taken into account and deducted all such costs that it can identify. Second, the Respondent has not identified, let alone met its burden to prove, that there are any additional marginal costs that the Division has not deducted. In other words, under the law, the Division has met its burden to provide a reasonable approximation of the disgorgement amount, and Respondent has not even tried to meet its burden of refuting the Division's estimate. (*See* Division's original Memorandum of Law, at 7, for the appropriate law on the SEC's burden, and the switch in burden to the Respondent to show that the SEC's approximation is unreasonable.)

A. The Division's Disgorgement Measurement Includes Only Ill-Gotten Gains.

There have been two depositions in this case taken that relate specifically to the cost questions raised by the Respondent. The first, of Xiomara Perez, the CFO of Peraza Capital, addressed the amount of revenue that Peraza Capital received directly from the illegal trades conducted by registered representatives operating out of the Angel Oak Atlanta office. In the Division's original papers, the transcript for that deposition was not yet available. It is now available, and there can be no doubt how Ms. Perez described the revenue that the Division attributes to Peraza Capital's ill-gotten gains. (The relevant pages from the Perez transcript are attached to the Worland Reply Decl. as Exhibit D.)

> Q. Back on. Ms. Perez, I've marked as Exhibit 1 **[Exhibit 2 to the original Worland Decl.]** a series of papers that relate to Peraza Capital & Investment, LLC. The top page relates to the Atlanta OSJ Branch Support Allocation. Do you recognize this document?
>
> A. Yes.

Q. Can you tell me what it is?

A. It's a document that I prepared to submit with our waiver application request.

(p. 40, line 23 – p. 41, line 8).

*   *   *

Q. Okay. Let's flip back to the first page. If we look at Gross Annual Revenues across the top, that line --

A. Yes.

Q. -- it begins with -- there's a number in 2010, and it goes through 2014?

A. Yes.

Q. Can you tell me what that is?

A. So those would have been revenues associated with the Atlanta OSJ for those periods.

(p. 45, line 11–25).

*   *   *

Q. Okay. And then we have an item defined as Commissions to the Atlanta branch?

A. Correct.

Q. What is that?

A. So those would have been the net -- the commission dollars paid to the -- to the branch.

Q. And this would have been calculated, as we described before, gross revenues --

A. Yes.

Q. -- minus Peraza's share, minus clearing fees, minus any other expenses?

A. Right.

Q. Okay. And what is the number Revenues less Commissions Paid?

A. So that would be gross annual revenues less commissions to Atlanta branch, and that's a total there.

Q. Is that Peraza's share of the commissions?

A. Yes. The gross share, yeah.

Q. So if I -- and the number on the far right-hand that says totals, 1,521,705.87, that is the total revenues that Peraza got over 2010, '11, '12, '13, and '14 from the trading done by the Atlanta branch?

A. Correct.

(p. 46, line 10 – p. 47, line 9).

So the calculation is clear. There is a gross revenue number, from which Peraza Capital takes its percentage share. Peraza Capital then deducts all the clearing fees and other direct trading expenses. The remainder is transferred to the Atlanta office.

The deposition of David Wells, former Peraza Capital supervisor for the Atlanta office confirmed what Ms. Perez said about the direct trading expenses, and also established that the Atlanta traders were covering all overhead expenses from the share of the revenue paid to the Atlanta OSJ ***after*** Peraza Capital had taken out its share. (The relevant pages from the Wells transcript are attached to the Worland Reply Decl. as Exhibit E.)

Q You had mentioned the economic sort of cash flow relationship between Peraza and the OSJ. Do you recall that?

A Yes.

Q Was that governed by a contract?

A Yes.

(Whereupon a document was identified as Exhibit 4.)**[Exhibit 4 to the Wells Deposition is attached as Exhibit F of the Worland Reply Decl.]**

Q I'd like to have marked as Wells Exhibit 4 a copy of a Peraza Capital Independent Contractor Agreement that's dated October 6th, 2009. Mr. Wells, is this a copy of the agreement that you just referenced?

A Correct.

Q Could you flip to the last page? It says Exhibit A.

(Witness complies with request of counsel.)

Q It says commission and fee structure. Do you see that?

A I do.

Q The first sentence reads, Contractor shall be entitled to 85 percent of all commissions or other compensation received by the company from securities transactions of the Locations, less commissions refunded to customers, and all expenses directly incurred by the Company and related to such trades. Do you see that?

A I do.

Q Is that an accurate understanding of the relationship?

A That is.

Q So if there was an expense, like a clearing fee that was directly related to a trade, that would come out?

A Correct.

Q What are some of the expenses directly related to the trades?

A Trade ticket, cost of entering trade tickets. There's a fee that the clearinghouse charges per trade. So the more trades you do in a month, they get more -- the clearing firm gets more money. So those were taken out of the commission on top of the 15 percent.

Q Did you also pay expenses from the OSJ to Angel Oak?

A Correct.

Q Do you recall what those were, just in characteristic, not amount?

A Office space, telephones, computers, software licensing, general expenses to cover office.

(Whereupon a document was identified as Exhibit 5.) **[Exhibit 5 to the Wells deposition is attached as Exhibit G to the Worland Reply Decl.]**

Q Let me mark, as well, Exhibit 5, an invoice to you from Angel Oak. Mr. Wells, without asking you if you remember the specifics of the numbers, can you identify the format here?

> A I can.
>
> (p. 52, line 14 – p. 54, line 20.)
>
> *   *   *
>
> Q But in general, these are the sorts of expenses that Peraza incurred and paid back to Angel Oak?
>
> A Correct.
>
> (p. 55, line 24 – p. 56, line 2.)

That is, Angel Oak provided the registered representatives located in Atlanta—the ones who generated the revenue from the illegal trading—all the support facilities necessary to conduct the trading. Angel Oak billed these overhead expenses to the registered representatives directly, and they paid these expenses out of **their** share of the revenue. There can simply be no denying that **the Division's number includes only the illegal profits received by Peraza Capital.**

B. Respondent Makes No Effort To Identify Any Legitimate "Offsets".

Respondent argues that it is entitled to unidentified "offsets" to the Division's disgorgement number. But, as shown above, all direct trading costs have been deducted from the Division's calculation, and the Division has shown that any "overhead" costs were not paid by Peraza Capital. Just asserting that some other thing might exist does not satisfy the Respondent's burden of proof on this issue.

IV. THERE ARE NO CAUSATION ISSUES.

> The SEC's burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze) is light: "a reasonable approximation of a defendant's ill-gotten gains [is required] ... Exactitude is not a requirement." *SEC v. Calvo,* 378 F.3d 1211, 1217 (11th Cir.2004).

S.E.C. v. ETS Payphones, Inc., 408 F.3d 727, 735 (11th Cir. 2005). Respondent nevertheless argues that its illegal acts did not cause the ill-gotten gains the Division seeks to recover. (Opp.

Memo, at 14-16.) But it seems clear from the face of the OIP and Peraza's Offer that Respondent has already admitted for purposes of this proceeding that it caused the violations that went into the operation of an unregistered, and therefore illegal, broker-dealer. Therefore, assuming the Respondent is not simply going back on its signed Offer, it must be arguing that the operation of the illegal broker-dealer did not cause the ill-gotten gains.

But this makes no sense. The OIP describes the conduct by Peraza Capital that allowed Angel Oak to engage in the unlawful activity. Peraza Capital provided access to its trading platform through which trades were executed, granted Angel Oak access to its clearing firm arrangement and trade support services, and interacted with the clearing firm on behalf of Angel Oak. Moreover, Peraza Capital was the first party to receive the ill-gotten gains, and controlled the distribution of the funds to the other participants. In short, the OIP makes clear that Angel Oak could not have engaged in any trading activity without assistance from Peraza Capital. And, without engaging in trading activity, Angel Oak could not have conducted a securities business at all. In this sense, Peraza Capital is responsible for causing **all** of the illegal revenue -- $11.5 million. (See Exhibit 2 to the Worland Decl., the top line on the right, and Perez testimony cited above.) Peraza Capital is not just the "but-for" cause of the entire arrangement, it is the proximate cause of each and every trade, and all of the money that everyone made from the arrangement. On these undisputed facts, there can be no doubt that Peraza Capital caused the illegal revenue to be created. There can be no causation issue on these facts.

CONCLUSION

For all of the above reasons, the Division requests that the Commission impose monetary sanctions of $1,180,487.98 in disgorgement, prejudgment interest of $125,807.20, and a penalty of $75,000, for a total of $1,381,295.18.

Dated: July 12, 2017

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief has fewer than 7,000 words in accordance with 17 C.F.R. 201.154.

John D. Worland, Jr.

John D. Worland, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I served true copies of the **DIVISION OF ENFORCEMENT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250 and the REPLY DECLARATION OF John D. Worland, Jr.** by e-mail on this 12th day of July, 2017, on the following:

The Honorable Jason S. Patil
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and filed the same with the Secretary's Office.

John D. Worland, Jr.

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