

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
DOCKET NO. 217-4-16 Wncv

STATE OF VERMONT,)
)
THROUGH MICHAEL S. PIECIAK,)
IN HIS OFFICIAL CAPACITY)
AS COMMISSIONER OF THE)
VERMONT DEPARTMENT OF)
FINANCIAL REGULATION,)
)
and)
)
ATTORNEY GENERAL)
WILLIAM H. SORRELL,)
)
Plaintiffs,)

v.)

ARIEL QUIROS; WILLIAM STENGER;)
Q RESORTS, INC.; JAY PEAK, INC.;)
JAY PEAK HOTEL SUITES L.P.; JAY)
PEAK HOTEL SUITES PHASE II L.P.;)
JAY PEAK MANAGEMENT, INC.;)
JAY PEAK PENTHOUSE SUITES L.P.;)
JAY PEAK GP SERVICES, INC.;)
JAY PEAK GOLF AND MOUNTAIN)
SUITES L.P.; JAY PEAK GP SERVICES)
GOLF, INC.; JAY PEAK LODGE AND)
TOWNHOUSES L.P.; JAY PEAK GP)
SERVICES LODGE, INC.; JAY PEAK)
SUITES STATESIDE L.P.; JAY PEAK)
GP SERVICES STATESIDE, INC.;)
JAY PEAK BIOMEDICAL RESEARCH)
PARK, L.P.; and ANC BIO VERMONT)
GP SERVICES, LLC)

Defendants.)

**STATE OF VERMONT'S
EMERGENT MOTION FOR A
TEMPORARY ASSET FREEZE
OR IN THE ALTERNATIVE
FOR EXPEDITED BRIEFING**

Plaintiff, the State of Vermont (the “State”), by and through its undersigned counsel, hereby moves for an order temporarily freezing the assets of Defendant Ariel Quiros. The assets that the State seeks to freeze will soon be unfrozen as part of the settlement of claims asserted against him by the Securities and Exchange Commission (“SEC”). The State seeks a temporary order, pending full briefing on the State’s motion for a permanent order freezing the assets. In the alternative, the State requests an expedited briefing schedule to permit the State’s motion to be heard prior to the lifting of the Federal District Court’s current freeze on Quiros’s assets. In support of its motion, the State states as follows:

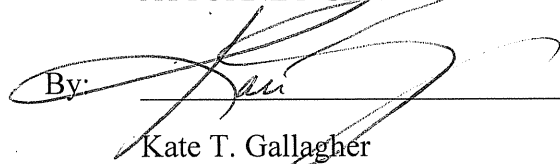
1. The SEC filed a civil enforcement action in the United States District Court for the Southern District of Florida, under seal, against Quiros and Stenger alleging violations of federal securities laws. The SEC also sought an *ex parte* Order seeking, among other relief, a freeze on Defendant Quiros’s assets, which the District Court granted.
2. On the day the seal was lifted, the State, through the Commissioner of the Department of Financial Regulation and the Vermont Attorney General, filed this lawsuit against Quiros, Stenger, and the Limited Partnership Defendants alleging violations the Vermont Uniform Securities Act (the “VUSA”) and the Vermont Consumer Protection Act (the “VCPA”). Because the federal Freeze Order ensured that the ill-gotten gains from Quiros’s fraud would not be dissipated, transferred, or concealed, and these funds would be available for disgorgement, the State did not seek entry of an order from this Court to freeze Quiros’s assets when it filed the Complaint in this case.

3. However, on February 2, 2018, the SEC filed an Unopposed Motion for Entry of Judgments Against Defendants Ariel Quiros and William Stenger and For Court to Establish a Fair Fund (the “Motion for Entry of Judgment”). The proposed Final Judgment Against Defendant Ariel Quiros (“Proposed Final Judgment”) submitted with the Motion for Entry of Judgment, provides that “upon receipt of confirmation from the Commission and the Receiver that Quiros has satisfied his obligations under Section I of this Final Judgment, the Asset Freeze [the Federal District] Court previously entered against Quiros (DE11, 238) shall be lifted and extinguished in its entirety.” See Exhibit A, at 9.
4. Simultaneously with this motion, the State has moved for an entry of an order permanently freezing assets currently subject to the Freeze Order that will be unfrozen upon consummation of the SEC’s settlement with Quiros.
5. Unfortunately, there is no clear date on which the Freeze Order will be lifted. The State is concerned, therefore, that the federal Freeze Order could be lifted prior to a ruling on the motion, allowing the assets to be dissipated, concealed, or encumbered. Accordingly, the State requests the entry of a temporary order freezing Quiros’s assets and preventing him from mortgaging, conveying, or otherwise encumbering or disposing of his assets.
6. In the alternative, pursuant to V.R.C.P. 78(a), the State requests that the Court enter an order requiring expedited briefing to allow for a decision on the motion to freeze assets prior to the lifting of the existing federal Freeze Order.

DATED at Montpelier, Vermont this 13th day of February 2018.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:  _____

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Attorney for Plaintiff State of Vermont

CERTIFICATE OF SERVICE

I certify that I have caused there to be delivered the State of Vermont's Emergent Motion for a Temporary Asset Freeze or in the Alternative for Expedited Briefing, email to Defendant Quiros's counsel and by first class mail by depositing it in the U.S. mail.

The names and address of the parties/lawyers to whom the mail was addressed was made are as follows:

Ritchie Berger, Esq.
Dinse, Knapp & McAndrew, P.C.
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209 Battery Street
Burlington, VT 05402

Attorney for Defendant Ariel Quiros.

David Cleary, Esq.
Cleary, Shahi & Aicher, P.C.
110 Merchants Row, Suite 3
P.O. Box 6740
Rutland, VT 05701

Attorney for Defendant William Stenger.

Michael Goldberg, Esq.
Akerman LLP
350 East Las Olas Boulevard
Suite 1600
Fort Lauderdale, FL 33301

Receiver for Defendants Q Resorts, Inc.; Jay Peak, Inc.; Jay Peak Hotel Suites L.P.; Jay Peak Hotel Suites Phase II L.P.; Jay Peak Management, Inc.; Jay Peak Penthouse Suites L.P.; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites L.P.; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses L.P.; Jay Peak GP Services Lodge, Inc.; Jay Peak Suites Stateside L.P.; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park, L.P.; and AnC Bio Vermont GP Services, LLC.

DATED at Montpelier, Vermont this 13th day of February 2018.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 

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EXHIBIT A

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

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., et al.,

Relief Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENTS
AGAINST DEFENDANTS ARIEL QUIROS AND WILLIAM STENGER
AND FOR COURT TO ESTABLISH FAIR FUND**

Plaintiff Securities and Exchange Commission moves for entry of Final Judgments against Defendants Ariel Quiros and William Stenger. Additionally, the Commission moves the Court to establish a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 to allow civil penalties paid by Quiros and Stenger to be added to a fund for the benefit of defrauded investors in this case.

By the signed, sworn Consents, attached as Exhibits A and B respectively, Quiros and Stenger have consented, without admitting or denying the allegations of the Amended Complaint except as noted within the Consents, to entry of the respective Final Judgments against them. The Final Judgments are attached as Exhibits C and D, respectively. As the Court is aware, both Quiros and Stenger previously consented to the non-monetary relief the Commission sought against them, including permanent injunctions, conduct-based injunctions against participation in future EB-5 offerings, and for Quiros, a bar from serving as an officer or director of a public

company. *See* DE 398 (Quiros) and 215 (Stenger).

The proposed Final Judgments address the monetary relief the Commission seeks in this case. The proposed Final Judgment against Quiros holds him liable for \$81,344,166 of disgorgement, representing profits gained as a result of the conduct alleged in the Amended Complaint, prejudgment interest on disgorgement of \$2,515,798, and a civil penalty of \$1,000,000, for a total of \$83,859,964. The Final Judgment sets forth 17 pieces of real property, including the Jay Peak and Burke Mountain ski resorts and two New York City condominiums, and frozen cash amounts that Quiros is to turn over to the Court-appointed Receiver to satisfy his disgorgement, prejudgment interest, and civil penalty obligations. The proposed Final Judgment against Stenger orders him to pay a \$75,000 civil penalty (the Commission did not seek disgorgement from Stenger) in three installments over the next year.

In addition to entering the Final Judgments, the Commission asks the Court to enter the Order attached as Exhibit E establishing a Fair Fund for the benefit of defrauded investors. Section 308(a) of SOX, referred to as the “Fair Funds” provision, states that a Court shall, upon the Commission’s motion, include civil penalties in disgorgement distributions for the benefit of victims of securities law violations. Here, the Commission seeks the establishment of a Fair Fund to allow the distribution of the civil penalties paid by Quiros and Stenger, along with the disgorgement and prejudgment interest paid by Quiros, to defrauded Jay Peak investors.

Pursuant to Local Rule 7.1(a)(3), the Commission has conferred with counsel for Quiros, Stenger, and the Receiver. None oppose entry of the Final Judgments. In addition, the Commission has conferred with counsel for Citibank. Citibank represents that it does not object to entry of the Final Judgment, and specifically does not object to that portion of the proposed settlement that calls for disgorgement of the amounts indicated in the Citibank accounts listed on Page 2 of the Final

Judgment. However, by not objecting, Citibank indicated it is reserving and not waiving any legal, equitable, contractual or other rights against Quiros or anyone else pertaining to any transactions with Citibank or Citibank accounts. Nor is Citibank waiving any right to petition the Court for further relief, if necessary, or in respect of any further relief for which the SEC may petition the Court as provided in Section I of the Final Judgment.

Respectfully submitted,

February 2, 2018

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing

generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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

SERVICE LIST

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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., et al.,

Relief Defendants.

FINAL JUDGMENT AGAINST DEFENDANT ARIEL QUIROS

This cause comes before the Court upon the Motion by Plaintiff Securities and Exchange Commission for Entry of a Final Judgment against Defendant Ariel Quiros (“Final Judgment”). By the Consent attached hereto, and without admitting or denying the allegations of the Amended Complaint (except that Quiros admits the jurisdiction of this Court over him and over the subject matter of this action and as otherwise set forth in Section III), Quiros has entered a general appearance, agreed to entry of this Final Judgment, waived findings of fact and conclusions of law, and waived any right to appeal from this Final Judgment. The Court finds that good cause exists for entry of the Final Judgment. Accordingly, the Commission’s Motion is **GRANTED**. The Court further orders as follows:

I.

DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY

IT IS ORDERED AND ADJUDGED that Quiros is liable to the Commission for disgorgement of \$81,344,166, representing profits gained as a result of the conduct alleged in the

Amended Complaint, together with prejudgment interest on disgorgement in the amount of \$2,515,798, and a civil penalty in the amount of \$1,000,000, for a total of \$83,859,964.

IT IS FURTHER ORDERED AND ADJUDGED that Quiros shall satisfy the disgorgement, prejudgment interest, and civil penalty payments due to the Commission within 30 days of entry of this Final Judgment by disgorging the following assets to the Court-appointed

Receiver:

<u>Real Property</u>	<u>Address/Description</u>
Quiros entire interest in Jay Peak Resort	830 Jay Peak Road, Jay, Vermont
Burke Mountain Resort	Q-Burke Mountain, Burke, Vermont
Quiros Land 199 Acres	Cross Rd. Revoir Flats Rd., Jay, Vermont
Cross Road 4 Acres	Cross Rd. Revoir Flats Rd., Jay, Vermont
River Bank 15 Acres	Revoir Flats Rd. Rte. 105, Jay, Vermont
Jay Ranches	261 Revoir Flats Rd. TH4, Jay, Vermont
Bogner Property	172 Bogner Drive, Newport, Vermont
White House	986 Lake Road, Newport, Vermont
Setai Condominium	400 5 th Avenue, New York, New York
Jay Peak Resort Unit V417 A/B	Jay Peak Resort VC 417, Bldg. 11, Jay, Vt.
Bella Vista	Cross Road TH 1, Troy, Vermont
Cross Road J	Cross Road J, Jay, Vermont
Trump Place Condominium	220 Riverside Drive, New York, New York
Renaissance Property	Downtown Newport, Vermont
Heavens Bench	2266 Darling Hill Road, Burke, Vermont
Village Land	1645 Cross Road, Troy, Vermont

Bank Accounts (The amount listed below in each account)

Citibank Account ending in 2336	\$ 286
Citibank Account ending in 3359	\$ 41,958
Citibank Account ending in 3362	\$ 60,125
Citibank Account ending in 3375	\$ 5,373
Citibank Account ending in 7382	\$ 9,000
Citibank Account ending in 6412	\$ 1,807
Citibank Account ending in 5662	\$ 14,224
Citibank Account ending in 7081	\$ 5,000

Funds Held By The Receiver In Trust

Tax Refund Check held by Receiver	\$168,801
Funds From Davivienda Int'l	\$110,000

Quiros shall in good faith and expeditiously execute all documents and take any other

necessary steps to effectuate the turnover of the aforementioned real property and other assets. Quiros agrees that once he turns over the aforementioned property and assets he relinquishes all legal and equitable right, title and interest in the property and assets (“Funds”), and no part of the Funds shall be returned to him.

The Commission along with the Receiver may propose a plan to distribute the Funds subject to the Court’s approval. The Court shall retain jurisdiction over the administration of any distribution of the Funds.

The Commission may enforce the Court’s judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through any other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Quiros shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Commission and the Court have based their decision on what Funds Quiros is turning over in satisfaction of his disgorgement, prejudgment interest, and civil penalty liability to the Commission on Quiros’ sworn representations in his Responses to the Commission’s First Set of Interrogatories setting forth all of his assets. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Quiros’ representations to the Commission about his assets in the Responses to the Commission’s First Set of Interrogatories concerning his assets were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion, and without prior notice to Quiros, petition the Court for an order requiring Quiros to turn over any undisclosed assets to the Commission in further satisfaction of his disgorgement, prejudgment interest, or civil penalty liability. In connection with any such petition, the only issues shall be whether the financial information Quiros provided was

fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time Quiros made such representations. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Quiros to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Quiros may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Amended Complaint filed by the Commission; (3) contest the amount of disgorgement, pre-judgment interest, or civil penalty; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

II.

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, upon receipt of confirmation from the Commission and the Receiver that Quiros has satisfied his obligations under Section I of this Final Judgment, the Asset Freeze this Court previously entered against Quiros (DE 11, 238) shall be lifted and extinguished in its entirety.

III.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Amended Complaint are true and admitted by Quiros, and further, any debt for disgorgement, prejudgment interest, or civil penalty or other amounts due by Quiros under this Final Judgment or any other judgment, order, consent order, decree, or settlement agreement entered in connection with this proceeding, is a debt for the violation by Quiros of the federal

securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

IV.

INCORPORATION OF CONSENT

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

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter, the previous Judgment of Permanent Injunction and Other Relief entered against Quiros (DE 398), and Quiros in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

VI.

RULE 54(b) CERTIFICATION

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

DONE AND ORDERED this ____ day of _____ 2018, at Miami, Florida.

THE HON. DARRIN GAYLES
UNITED STATES DISTRICT JUDGE

Copies to: Counsel and Parties of Record