

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)
THOMAS J. DONOVAN, JR.,)
)
Plaintiffs,)

v.)
)
ARIEL QUIROS; WILLIAM STENGER;)
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.)

MOTION TO RULE DOCUMENTS
DISCOVERABLE AND FOR
DECLARATORY RELIEF

Office of the
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109 State Street
Montpelier, VT
05609

Plaintiff, the State of Vermont, hereby moves (1) pursuant to 1 V.S.A. § 317(c)(14) for an Order ruling that certain documents produced to Defendants, which have had all personally identifiable information (PII) redacted, are discoverable; (2) pursuant to 12 V.S.A. § 4711 for a ruling that certain non-PII contained in the Documents may be disclosed to the public; and (3) approving the process outlined below for consideration of future batches of documents under Section 317 (c)(14). In support of this Motion, the State states as follows:

1. The State has alleged that Defendants committed securities and consumer protection fraud in connection with multiple EB-5 projects in the Northeast Kingdom of Vermont. A similar civil securities fraud case initiated by the Securities and Exchange Commission (SEC) is pending in the U.S. District Court for the Southern District of Florida. The Defendants' EB-5 projects and the EB-5 litigation have sparked significant public interest.

2. Pursuant to this Court's Discovery Orders dated April 6, 2017 and December 7, 2017, the State has been producing documents on a rolling basis and will continue to do so through November 15, 2018. The State has produced the documents pursuant to a Protective Order entered by this Court on August 7, 2017. That Protective Order expressly states that nothing in it prevents the type of disclosure sought here and expressly contemplates that all PII, as defined in 9 V.S.A. §2430(5)(A), be redacted prior to public disclosure.

3. Along with many aspects of the EB-5 program, the documents that have been and will be produced by the State in discovery have been the subject of numerous

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public records requests directed to multiple state agencies, both before and during the litigation, and more such requests are likely.

4. Pursuant to 1 V.S.A. § 317(c)(14), “records which are relevant to litigation to which the public agency is a party of record” are exempt from public inspection. However, such documents may “be available to the public after ruled discoverable by the court before which the litigation is pending.”

5. Governor Scott directed the Department of Financial Regulation (DFR) to develop a plan to accelerate the release of documents related to the pending EB-5 litigation.

6. In response to the Governor’s directive, DFR consulted with the Attorney General’s Office to develop a plan to release documents from the State’s files produced in discovery during the litigation (the “Document Disclosure Plan”). The Document Disclosure Plan is designed to balance the public interest in disclosure of records under the Public Records Act, 1 V.S.A. § 315 *et seq.*, and the public’s interest in the effective enforcement of the securities and consumer protection laws. A copy of the Document Disclosure Plan is attached to this motion as Exhibit A.

7. In general terms, the Document Disclosure Plan calls for the following: a) the State will file a motion with this Court asking that the non-privileged documents from the State’s files produced to Defendants be ruled discoverable under 1 V.S.A. § 317(c)(14), to the extent the documents are not subject to other public record exemptions; b) DFR will post the motion on its website; c) the State will not object to media requests to intervene in the case for the limited purpose of being heard on whether the motion should be granted; and d) if the Court grants the State’s motion, the State will make public all documents ruled discoverable, on a rolling basis, to the extent not subject to other public record exemptions.

8. Pursuant to the Document Disclosure Plan, the State has entered into a contract with an outside vendor to review and redact the PII in the documents it has already produced and will in the future produce to the Defendants. To date, the vendor has de-identified the PII in 5,000 pages of the State's production,¹ and the State has served those Documents on Defendants' counsel with this motion. Contemporaneous with this motion, the State is filing a separate motion to allow the State to submit the Documents under seal (the Motion to Seal). If the Court grants the Motion to Seal, the Court will be able to view the Documents, if necessary to decide this Motion.

9. The 5,000 pages contain certain categories of data which, while outside the definition of PII, potentially implicate the privacy interests of third-parties who are not named defendants (Third-Party Information). Third-Party Information within the 5,000 pages includes: a) the name and address of the spouse of Defendant Ariel Quiros and information regarding their joint finances; b) names and addresses of investors in Defendant limited partnerships, the amounts of their financial contributions, and correspondence or other transactions related to these investors; and c) the names and addresses of individuals who were vendors for or customers of Jay Peak, Inc. or one of its affiliates, including their transactions with one or more of those entities.

10. Pursuant to 1 V.S.A. § 315(a), it is the purpose of the Public Records Act to provide free and open examination of records. Section 315(a) states, "[o]fficers of government are trustees and servants of the people, and it is in the public interest to enable any person to criticize their decisions even though such examination may cause inconvenience or embarrassment." Section 315(a) further states, "all people have a right to

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¹ The documents are identified as bates number ranges: VT-DFR 57114-57146, VT-DFR 57551-57578, VT-DFR 254317-259227, VT-DRF 441145-441154, and VT-DFR 655647-655666 (the "Documents").

privacy in their personal and economic pursuits which ought to be protected unless specific information is needed to review the action of a governmental officer.”

11. Courts have consistently held that the Public Records Act is to be construed liberally and that policy considerations favor the right of access to public records. *Finberg v. Murnane*, 159 VT 431, 434 (1992).

12. When construing provisions of the Freedom of Information Act, courts have held that a privacy interest must be substantial to be cognizable, and even then, the court must balance that privacy interest against the public’s interest in disclosure. *See Citizens for Responsibility & Ethics in Washington v. Dept. of Justice*, 840 F. Supp.2d 226, 231 (D.D.C. 2012).

13. Here, the redaction of the Third-Party Information from the Documents will in most cases remove information that will hinder the public review of the Documents.

14. The State believes the public interest in reviewing complete documents outweighs the potential harm to the affected third parties, all of whom voluntarily associated themselves with one or more of the Defendants. This is particularly true as the privacy interests of the parties affected by the disclosure of the Third-Party Information do not appear to be substantial.

15. Therefore, given the high profile of the Jay Peak matter generally, of this litigation specifically, and in light of the Governor’s directive, the State believes it is in the public interest to make the Documents in a complete and unredacted form, with only PII removed, available to the public, including the portions of the Documents which contain Third-Party Information.

16. Accordingly, Plaintiff requests an Order ruling that the Documents with PII redacted are discoverable within the meaning of 1 V.S.A. § 317(c)(14), and may be made available to the public, to the extent not subject to other public record exemptions. Plaintiff further requests a ruling that the Third-Party Information in the Documents may be made public. Upon entry of such an Order, Plaintiff anticipates making the Documents public by posting them on DFR's website.

17. For each subsequent batch of documents that are de-identified, the State proposes to give notice of the documents it would like to release to Defendants' counsel to determine if they object to a designation that these documents are discoverable. If there is no objection within ten (10) days, the State would file a Certificate of No Objection with the Court for each successive batch, identifying the bates range of the documents and certifying that the Defendants do not object to ruling them discoverable and making them public. If there is an objection, the State would file a motion, attaching the documents under seal. Accordingly, the State also requests that the Court enter an Order approving this procedure for the Court to determine whether subsequent batches of documents are discoverable under the Public Records Act, particularly the filing of documents under seal.

DATED at Montpelier, Vermont this 23rd day of February 2018.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February 2018, I served Plaintiff's *Motion to Rule Documents Discoverable* by sending same via first class mail, postage prepaid, to the following:

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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.

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DATED at Montpelier, Vermont this 23rd day of February, 2018

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