

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;)
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.)

**DEFENDANT ARIEL QUIROS'S OPPOSITION TO STATE OF VERMONT'S
MOTION FOR AN ORDER FREEZING DEFENDANT QUIROS'S ASSETS**

Defendant Ariel Quiros ("Mr. Quiros"), by and through counsel, submits that the Court should deny the State of Vermont's (the "State") Motion for an Order Freezing Mr. Quiros's

Assets (the “Motion”) because the State has failed to demonstrate any legitimate basis for its requests.

PRELIMINARY STATEMENT

Mr. Quiros has already consented to disgorge to the United States Securities and Exchange Commission (“SEC”) \$81,344,166, plus interest, “representing profits gained as a result of the conduct alleged in the [SEC’s] Amended Complaint...”¹ That sum exceeds the amounts of profits the SEC alleges that Mr. Quiros illegally derived from violations of securities laws in connection with the Jay Peak and related EB-5 projects (here, referred to as the “Jay Peak Projects”).² In other words, Mr. Quiros has already agreed to disgorge to the SEC more than his alleged ill-gotten gains from the Jay Peak Projects. All of the assets disgorged by Mr. Quiros to the SEC will be distributed by the federal Receiver, Michael Goldberg, for the sole benefit of investors and creditors of the Jay Peak Projects.

The State refused to participate in the global resolution.³ Instead, it now improperly seeks prejudgment attachment by asking this Court to freeze *all* of Mr. Quiros’s remaining assets, whether domestic or international and regardless of whether they were purchased before or after he was involved with the Jay Peak Projects, purportedly to “maintain the status quo and preserve assets for disgorgement.” *See* State’s Motion at 17. The State’s Motion seeks relief

¹ A copy of the Final Judgment entered in *SEC v. Ariel Quiros, et al.* (Case No. 16-CV-21301-Gayles (S.D. Fla.)) (the “SEC Action”) is attached hereto as Exhibit A.

² The SEC Action is pending in the United States District Court for the Southern District of Florida. A copy of the SEC’s Amended Complaint, filed May 17, 2016, is attached hereto as Exhibit B. The Amended Complaint identifies in detail all of the Jay Peak Projects at issue in this case. The projects are also identified in the State’s Amended Complaint in this action, which is modeled after the SEC’s Complaint.

³ To the extent the State contends it is entitled to some portion of the disgorgement, the State should file a claim in the Receivership Estate.

that is not available under any interpretation of applicable law. Mr. Quiros has already consented to disgorge an amount greater than what he is alleged to have improperly derived from the Jay Peak Projects, and the law prohibits disgorgement beyond the amount of a defendant's ill-gotten gains. Because disgorgement is no longer available as a remedy in the State's action, there is no legal or factual basis for an asset freeze.⁴

Rather than address the analysis governing determination of whether an asset freeze is warranted, the State spends the near entirety of its Motion explaining its theories of why the Court should find that Mr. Quiros allegedly committed securities fraud in connection with the Jay Peak Projects. While their lengthy explanations may feed their goal of painting him as the "bad guy," they serve no purpose in demonstrating that an asset freeze is warranted in this case—the purported purpose of the Motion. Indeed, the State's Motion appears to be a thinly veiled attempt to deflect attention away from the State's own misconduct, which is already the target of investors' complaints and has led to the federal government's shutdown of the Vermont Regional Center.⁵

The State's tactics should be rejected and their Motion should be denied.

⁴ Ironically, the State relies entirely on evidence and exhibits developed and presented in the SEC Action in support of its Motion in this case. Thus, the only evidence that has been developed and presented to date regarding profits allegedly derived by Mr. Quiros from the Jay Peak projects was developed and presented by the SEC in the SEC Action. Far from supporting the State's Motion, that evidence dictates that the Motion must be denied.

⁵ In a putative class action complaint, investors in the Jay Peak Projects have sued the State and asserted 16 counts, including fraud, breach of fiduciary duty, misrepresentations, and violations of the Vermont Securities Act and consumer protection laws based on the State's complete lack of oversight and failure to comply with its duties and obligations in connection with the Vermont Regional Center and the EB-5 Program. See *Sutton v. Vermont Regional Center, et al*, Docket No. 100-5-17 Lecv (the "*Sutton* Complaint"). The case is pending in Vermont Superior Court, Lamoille Unit. A copy of the *Sutton* Complaint is attached hereto as Exhibit C.

RELEVANT BACKGROUND AND FACTS

1. The SEC Action and Disgorgement Analysis.

The SEC filed its action against Mr. Quiros and the Jay Peak related entities on April 12, 2016, alleging violations of federal securities laws. Shortly thereafter, the State of Vermont followed suit and filed the complaint in the instant case against the same defendants alleging violations of State securities and consumer protection laws. The allegations in the State's Amended Complaint are nearly identical to the SEC's allegations. The State does not allege any other conduct that may have resulted in ill-gotten gains beyond those alleged in the SEC Action.

The SEC secured an asset freeze and preliminary injunction at the outset of its case. On April 25, 2016, the Federal District Court in Miami held an evidentiary hearing at which the parties offered voluminous evidence and exhibits regarding the propriety of injunctive relief and the asset freeze. Importantly, during that hearing, in support of their request to maintain an asset freeze, the SEC offered testimony and exhibits regarding disgorgement. In support of its disgorgement estimates, the SEC presented evidence and exhibits regarding amounts allegedly taken by Mr. Quiros in excess of the fees and payments properly allowed in connection with the Jay Peak Projects. As demonstrated in the SEC's primary exhibit concerning disgorgement, attached as Exhibit D, the SEC argued that Mr. Quiros took approximately \$55,510,871 in excess of the amounts allowed pursuant to the various offering documents in connection with the Jay Peak Projects. Mr. Quiros disputed this and entered substantial evidence demonstrating that amount was exceedingly high. Nevertheless, the \$55,510,871 represents the SEC's high estimate of alleged ill-gotten gains without reduction based on the evidence presented by Mr. Quiros.⁶

⁶ In addition to the \$55,510,871 in profits allegedly taken by Mr. Quiros over what he was authorized to take pursuant to the offering documents, the SEC also offered testimony in support of an additional theory that Mr. Quiros should be required to disgorge an additional

The District Court made no finding regarding the SEC's disgorgement estimates, and, as indicated herein, Mr. Quiros challenged those amounts throughout the litigation in the SEC action. Here, the State has not presented any evidence that the SEC's disgorgement analysis and estimates were incorrect and instead relies on the SEC's evidence and exhibits.

2. *Mr. Quiros's Cooperation and Negotiations with the SEC.*

Mr. Quiros has spent the last year working cooperatively with the SEC and the Receiver to resolve the claims against him and to facilitate the transfer of assets to the Receiver for the benefit of creditors and investors of the Jay Peak projects. In that vein, before a determination on the merits of the claims against him, Mr. Quiros disclosed all assets in his possession and in the possession of individuals and entities related to or affiliated with him. Then, Mr. Quiros consented to the turn-over of numerous assets to the Receiver's control on a rolling basis. On August 21, 2017, Mr. Quiros consented to the entry of a permanent injunction in the SEC Action, leaving only the issue of the amount of disgorgement and damages for determination by the Court.

Mr. Quiros and the SEC engaged in lengthy and substantive negotiations regarding the proper measure of disgorgement and damages, with each party presenting substantial evidence and analyses of the issues.

3. *The Receiver's Settlement with Raymond James.*

Meanwhile, while negotiations between Mr. Quiros and the SEC were ongoing, on May 15, 2017, the Receiver announced that he had reached a settlement with Raymond James. The

\$24,000,000 that he, as the resort owner, was required to contribute to the Jay Peak EB-5 projects but allegedly failed to contribute. *See* excerpt of testimony of Michael Piecak, attached hereto as Exhibit E. This theory was never fully litigated, and Mr. Quiros disputed this additional theory in support of disgorgement. Nevertheless, even with this unchallenged additional theory, the highest amount of potential disgorgement for which the SEC presented evidence was approximately \$79,500,000.

federal court approved the Raymond James Settlement in the SEC Action on June 30, 2017. A copy of the Raymond James Settlement is attached hereto as Exhibit F. Pursuant to the Raymond James Settlement, Raymond James agreed to pay \$150 million dollars, which provided the Receiver with sufficient funds to pay all past-due contractors, all past-due vendors and trade creditors (which were comprised of local businesses in Vermont, non-profits, and municipalities), and all investors who are unable to receive their green cards.⁷

The State also settled its claims against Raymond James in June 2016. Pursuant to the State's settlement with Raymond James, Raymond James paid \$6,000,000, of which \$4,550,000 went to the Receivership Estate and \$1,450,000 went to the Vermont Department of Financial Regulation. A copy of the State's settlement with Raymond James is attached hereto as Exhibit H.

4. *Mr. Quiros's Settlement with the SEC and His Disgorgement of All Alleged Ill-Gotten Gains.*

Subsequent to the Raymond James Settlement, Mr. Quiros and the SEC continued their negotiations and ultimately reached a settlement agreement. Mr. Quiros agreed, without admitting or denying the allegations against him, to consent to the entry of a final judgment against him for \$83,859,964, which includes a disgorgement amount of \$81,344,166, more than the full amount of disgorgement presented by the SEC, with the understanding that all assets disgorged would go directly to the benefit of investors and creditors and would be distributed by the Receiver. *See* Exhibit A.

⁷ As further explained in the Receiver's Fourth Interim Status Report, filed in the SEC Action on January 10, 2018, after the Raymond James Settlement, all Phase I investors have been fully paid and all Phase VII investors have been offered full refunds of their payment or the option of having their investments redeployed to another EB-5 investment. All other investors have received or are in the process of receiving their green cards and continue to own an equity interest in the Jay Peak project in which they originally invested. A copy of the Receiver's Fourth Interim Status Report is attached hereto as Exhibit G.

As part of the consideration for the significant disgorgement by Mr. Quiros to the Receiver for the investors and creditors, the SEC also agreed that the Receiver would dismiss his claims against Mr. Quiros. In addition, the SEC agreed to continue efforts to include the State in the settlement negotiations and to include the State in the final settlement. Although the SEC, the Receiver, and Mr. Quiros attempted to bring the State to the table to participate in a global settlement by explaining the benefits to creditors and investors, the State refused. Instead, the State threatened Mr. Quiros that if he did not accede to their own demands, they would seek to freeze his assets—despite the lack of any legal basis for doing so, as explained below.

ARGUMENT

The Vermont Uniform Securities Act (“VUSA”) provides that a court may order an asset freeze “upon a proper showing.” 9 V.S.A. §5603(b)(2)(A). The State wholly fails to carry its burden of making such a showing here. The only available basis for an asset freeze would have been to preserve assets for disgorgement—but Mr. Quiros has already disgorged all alleged ill-gotten gains, and the State has failed to show any basis for additional disgorgement by Mr. Quiros.

Moreover, as the party seeking the freeze, the State must provide a reasonable approximation of the funds subject to disgorgement before the Court may order an asset freeze. *See SEC v. Lauer*, 478 F. App’x 550, 554 (11th Cir. 2012); *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734-36 (11th Cir. 2005).⁸ The State also bears the burden of presenting evidence to demonstrate a credible threat that the defendant will dissipate any assets subject to disgorgement. *See, e.g., SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990); *Westfield Ins.*

⁸ As the State acknowledges in its Motion, the Comments to the VUSA make clear that Vermont courts should look to federal securities law to determine whether a “proper showing” has been made to justify a freeze. *See* 9 V.S.A. §5603(b)(2)(A), Comment 3 (“The term ‘upon a proper showing’ has a settled meaning in the federal securities laws.”).

Co. v. Pavex Corp., No. 17-14042, 2017 WL 6407459 at *2 (E.D. Mich. Dec. 15, 2017). The State has failed to satisfy either of these requirements.

A. Only Amounts Subject to Disgorgement May Be Frozen.

Under federal securities law, a freeze order properly attaches only to funds or property that are the subject of equitable claims (*e.g.*, disgorgement and restitution). A prejudgment asset freeze may not restrain funds to ensure future satisfaction of a potential award of money damages. *See Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999); *Rosen v. Cascade Int'l. Inc.*, 21 F.3d 1520, 1530 (11th Cir. 1994) (“[P]reliminary injunctive relief freezing a defendant’s assets in order to establish a fund with which to satisfy a potential judgment for money damages is simply not an appropriate exercise of a federal district court’s authority.”). Even where a plaintiff asserts both equitable and at law remedies, the freeze attaches only to funds that are the subject of the equitable claims. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005); *United States ex rel. Rahman v. Oncology Assoc.*, 198 F.3d 489 (4th Cir. 1999).

A prejudgment asset freeze must, therefore, bear a sufficient nexus to both the merits of the action and the particular property sought to be restrained. *See Newby v. Enron Corp.*, 188 F. Supp. 2d 684, 697 (S.D. Tex. 2002) (“If plaintiffs are seeking cognizable relief in equity, they must show a sufficient nexus between the assets sought to be frozen and the equitable relief plaintiffs request.”); *Rahman*, 198 F.3d at 496 (pre-judgment asset freeze available only upon assertion of “a cognizable claim to specific assets of the defendant or [of] a remedy involving those assets”); *In re Quest Comm. Int'l Inc. Sec. Litig.*, 243 F. Supp. 2d 1179, 1184 (D. Colo. 2003) (“[A] plaintiff seeking an asset freeze injunction must assert an equitable claim, and that claim must have a clear and close nexus to the assets sought be enjoined.”).

In *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 214 (2002), the Supreme Court clarified the difference between equitable claims, which may be subject to disgorgement, and legal claims, which are not. Considering the traditional equitable remedy of restitution, the Court stated, “for restitution to lie in equity, the action generally must seek not to impose personal liability upon the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.” *Id.* at 214. If the action seeks to impose personal liability upon the defendant for some benefit that the defendant allegedly received at the expense of the plaintiff, such “restitution” is considered legal, not equitable. *Id.* at 214.

Thus, the Court cannot order an asset freeze for the preservation of assets to satisfy any potential future monetary judgment. The only available basis for an asset freeze in this case would be to preserve assets for disgorgement.⁹ And to the extent the State seeks to freeze any assets for purposes of disgorgement, the State bears the burden of proving a nexus between the assets and the remedy of disgorgement. It has not and cannot do so here.

The State has failed to demonstrate that any amounts beyond what Mr. Quiros has already agreed to disgorge in the SEC Action are subject to disgorgement—and, thus, subject to an asset freeze. Even if the State were able to demonstrate that further disgorgement from Mr. Quiros were warranted, the State would be required to make some showing that its request to freeze all of Mr. Quiros’s assets (which include predominantly assets purchased well before Mr. Quiros had any involvement with the Jay Peak Projects) has a nexus to the merits of its disgorgement request. But the State does not seek to restore specifically earmarked funds or

⁹ Although the State indicates that it seeks an asset freeze to preserve the status quo, the State asserts no independent need to maintain the status quo other than in connection with the need to preserve assets for disgorgement. In this case, there is no need to maintain the status quo in order to provide time to determine what assets Mr. Quiros possesses, because the availability of Mr. Quiros’s assets has already been disclosed and developed in both this case and the SEC Action.

property in Mr. Quiros's possession to the State or to creditors or investors. Rather, what the State seeks is to impose personal liability upon Mr. Quiros in the form of a money judgment and to establish a reserve in the event that it ultimately obtains such a judgment. There is no question that such relief is legal, not equitable, in nature, *id.* at 213-214, and cannot support an asset freeze.

Accordingly, the State has failed to justify the issuance of an order that would interfere with Mr. Quiros's use of his assets prior to a final judgment of liability.

B. The State Has Not Shown a Reasonable Approximation of Funds Subject to Disgorgement.

Where, as here, the State purports to seek a freeze of assets to preserve them for disgorgement, the State bears the burden of showing a reasonable approximation of the amount of funds subject to disgorgement. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005) (government has burden to proffer "reasonable approximation" of assets subject to equitable remedies in support of asset freeze); *see also SEC v. Schooler*, 902 F. Supp. 2d 1341, 1360 (S.D. Cal. 2012). The State has not made any showing in its Motion of a reasonable approximation of the amount of assets held by Mr. Quiros that are potentially subject to equitable remedies, such as an order of disgorgement, after the \$81,344,166 disgorgement to the SEC. In fact, the State has not even articulated a damages theory for disgorgement under the circumstances of this case.

The State's only mention of an amount subject to disgorgement in this case is in a footnote in which the State asserts that "Quiros is liable for the funds out of which he defrauded investors." Motion at 18 n.9. In support of this broad assertion, the State cites one unpublished case, *SEC v. Robinson*, No. 00 Civ.7452 RMB AJ, 2002 WL 1552049 (S.D.N.Y. July 16, 2002). Contrary to the State's misleading suggestion, the *Robinson* case does *not* state that a defendant

in a securities action is liable for the funds he defrauded from investors, and certainly not in the context of calculating disgorgement. In fact, it states the opposite.

In *Robinson*, the court explained that “the primary purpose of disgorgement [to the SEC] is not to compensate investors,” but rather to force “a defendant to give up the amount by which he was unjustly enriched.” *Id.* at *7 (citing *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 102 (2d Cir. 1978)). Thus, the *Robinson* court states that “the measure of disgorgement *need not be tied to the losses suffered by defrauded investors . . .*” *Id.* (emphasis added) (citing *SEC v. Fischbach Corp.*, 133 F.3d 170, 175-76 (2d Cir. 1997)).

Relying on its invalid theory of calculating disgorgement based on funds out of which investors were allegedly defrauded, the State asserts that “a reasonable approximation of the amount subject to disgorgement is at least \$156 million and as much as \$350 million.” Motion at 18 n.9. The State’s position is wrong as a matter of law, plain and simple. It is well established that disgorgement “is a method of forcing a defendant to give up the amount by which he was unjustly enriched.” *SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013), *as amended* (Nov. 26, 2013) (citing *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2d Cir. 1978)). Thus, in order to establish a proper disgorgement amount, “the party seeking disgorgement must distinguish between the legally and illegally derived profits,” *CFTC v. British Am. Commodity Options Corp.*, 788 F.2d 92, 93 (2d Cir.), *cert. denied*, 479 U.S. 853 (1986), so that disgorgement is ordered only with respect to those profits that were illegally derived by the defendant. *See also Kokesh v. SEC*, 137 S. Ct. 1635, 1643 (2017) (the primary purpose of disgorgement is to deprive violators of their ill-gotten gains).

There is absolutely no evidence that Mr. Quiros took \$156 million to \$350 million in illegal profits as the result of the Jay Peak Projects. To the contrary, the only evidence

supporting any theory of ill-gotten gains was presented by the SEC in the SEC Action, and, as stated above, the SEC's most ambitious theories of ill-gotten gains obtained by Mr. Quiros (which Mr. Quiros disputes) approximated \$55 million to \$79 million, amounts below what Mr. Quiros has already consented to disgorge in the SEC Action. The State has presented no evidence or law that Mr. Quiros can be required to disgorge any more than that which he is disgorging in the SEC Action.¹⁰

The State cannot carry its burden because it has failed to specify a credible theory for a disgorgement remedy—and has not provided an estimate of the amount of funds remaining in Mr. Quiros's possession after disgorgement to the SEC that must be frozen for any such proposed remedy. The Court should deny the proposed asset freeze on this basis alone. *See, e.g., Commodity Futures Trading Comm'n v. Commodity Inv. Group, Inc.*, No. 05 CIV 5741, 2006 WL 353466 at *3 (S.D.N.Y. Feb. 11, 2006) (denying personal asset freeze in part because “the CFTC has not provided any specific information regarding the amount of funds possessed . . . that may be subject to disgorgement”).

¹⁰ It is also well settled that a defendant in a securities action cannot be subject to double disgorgement based on the same ill-gotten gains, which would result in payment of amounts in excess of those ill-gotten gains. *See SEC v. Palmisano*, 135 F.3d 860, 863-64 (2d Cir. 1998) (court reduced a disgorgement order by any monies paid pursuant to a criminal restitution order to avoid possibility that amounts paid in restitution and disgorgement might exceed amount of ill-gotten gains); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996) (noting that the court may take into account a \$5 million settlement payment when determining disgorgement amount for alleged \$27 million profit from securities violations); *SEC v. Lawbaugh*, 359 F. Supp. 2d 418, 425 (D. Md. 2005) (ordering disgorgement in the amount equal to the defendants' misappropriation, but noting that the defendants are credited for restitution already made in a forced bankruptcy); *see also SEC v. Henke*, 275 F. Supp. 2d 1075, 1082 (N.D. Cal. 2003) (granting “SEC's request for disgorgement of the full value of losses avoided by [defendant's] insider trade . . . (to be fully offset by the amount in criminal restitution already paid)"); *SEC v. Pace*, 173 F. Supp. 2d 30, 34 (D.D.C. 2001) (refusing to order disgorgement because the “[d]isgorgement would be redundant with the restitution [that the defendant] will be required to pay as a consequence of his criminal conviction”).

C. The State Fails to Present Credible Evidence of a Threat of Dissipation of Assets.

Even if it had established that there were some basis for disgorgement in this case and demonstrated an approximation of funds subject to disgorgement, the State's Motion still fails because the State has not shown, let alone submitted evidence to demonstrate, that Mr. Quiros is likely to dissipate, conceal, or transfer assets to evade any potential disgorgement judgment. The potential dissipation of assets is a consideration for the Court in determining whether an asset freeze is appropriate. *See Commodity Futures Trading Comm'n v. Sterling Trading*, 605 F. Supp. 2d 1245, 1304 (S.D. Fla. 2009) (denying asset freeze in part because CFTC did not make "showing of dissipation or hiding of assets"); *see also SEC v. ABS Manager, LLC*, No. 13cv319-GPC, 2013 WL 1164413 at *6 (S.D. Cal. Mar. 20, 2013) (denying asset freeze because, "[i]n support of its motion to freeze assets, the SEC . . . offered no evidence that [the] Defendant . . . will likely dissipate his own personal assets or the corporate assets."); *SEC v. Schooler*, 902 F. Supp. 2d 1341, 1360 (S.D. Cal. 2012) (modifying asset freeze in part because "SEC . . . offered no evidence that Defendants are sheltering or hiding money, or shuffling it around nefariously"); *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-cv-4719, 2009 WL 7844076 at *15 (C.D. Cal. Nov. 17, 2009) (denying asset freeze of defendants' personal assets where "there is no evidence that Defendants have ever previously attempted to intentionally dissipate, hide or otherwise shelter corporate or personal assets from an effort to collect a debt or judgment against Defendants").

The Motion presents no credible evidence or argument that Mr. Quiros will likely dissipate his assets during the pendency of this case—and, indeed, no such evidence exists. To the contrary, Mr. Quiros disclosed all assets to the SEC and then to the State of Vermont, including overseas assets which likely would not have been identified without Mr. Quiros's

assistance. Mr. Quiros then turned over assets and money to the Receiver by consent, prior to the entry of any findings or orders from the federal court. Indeed, all judgments against Mr. Quiros, including monetary and injunctive relief, have been the result of Mr. Quiros's consent and cooperation.

In light of Mr. Quiros's documented cooperation with the SEC, the State's self-serving argument that Mr. Quiros may dissipate assets fall far short of its burden of proving by credible evidence that there is a likelihood that Mr. Quiros will dissipate assets. For this reason alone, the State's motion must be denied.

HEARING

Mr. Quiros submits that the State's Motion should be denied as a matter of law, as the State has failed to come forward with sufficient evidence or information to carry its burden of making a proper showing that an asset freeze is warranted.

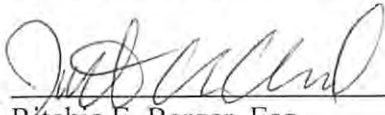
Pursuant to this Court's February 23, 2018 Order, the parties have conferred and agree that in the event a hearing is deemed necessary by this Court, one hour is sufficient for the hearing.

CONCLUSION

While the law provides for asset freezes upon a proper showing that a freeze is necessary to preserve assets for the equitable remedy of disgorgement, the State has failed to make—and, indeed, cannot make—such a showing in this case. Disgorgement is simply not available: Mr. Quiros has already disgorged all allegedly ill-gotten gains derived from the Jay Peak Projects. The State has provides no evidence of additional allegedly ill-gotten gains beyond the amounts already disgorged. There accordingly is no legal basis for an asset freeze, and the State's Motion must be denied.

DATED at Burlington, Vermont, this 2nd day of March, 2018.

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STATE OF VERMONT

SUPERIOR COURT
Washington Unit

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STATE OF VERMONT,)
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THROUGH SUSAN L. DONEGAN, IN HER)
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)
Defendants.)

CERTIFICATE OF SERVICE

I, Ritchie E. Berger, Esq., certify that I have today caused *Defendant Ariel Quiros's*
Opposition to State of Vermont's Motion for an Order Freezing Defendant Quiros's Assets to be
served on counsel by e-mail at:

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DATED at Burlington, Vermont, this 2nd day of March 2018.

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