

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

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC., et al.,**

Defendants, and

**JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,**

Relief Defendants.

**PLAINTIFF'S PARTIAL RESPONSE TO DEFENDANT ARIEL QUIROS' MOTION
FOR ORDER PERMITTING PAYMENT OF ATTORNEYS' FEES AND COSTS
AND ORAL REQUEST TO MODIFY ASSET FREEZE**

Plaintiff Securities and Exchange Commission files this brief response to address two issues: (1) Defendant Ariel Quiros' oral request at the close of the Preliminary Injunction hearing to modify the asset freeze to allow him to sell or borrow against the Setai Condominium in New York City that was purchased with investor funds to pay living expenses and attorneys' fees; and (2) Quiros' Motion for Order Permitting Payment of Attorney's Fees and Costs to allow him to use investor funds to, among other things, pay his attorneys at rates that exceed \$800 an hour (D.E. 109).

Both requests are outrageous and threaten to further deplete the scarce resources currently available for the benefit of investors. The Court should deny both motions. If the Court is

considering granting either motion, the Commission submits that the factual and legal issues in both motions are subsumed within the factual and legal issues already at issue in the Commission's request for a preliminary injunction and a continuation of the asset freeze against Quiros. Therefore the Commission requests that the Court allow the parties to fully brief both motions in the final preliminary injunction submissions due on May 27, 2016, and rule after that. If the Court is considering ruling on either request sooner, the Commission requests an opportunity to fully respond to both requests, either in a written response or at a hearing.

First, with regard to the Setai Condominium, Quiros' counsel incorrectly asserted to the Court at the conclusion of the hearing on Tuesday, May 10 that no investor funds had been "traced" to the condominium. In fact, just a few hours before counsel made this assertion, the Commission presented evidence through the testimony of accountant Mark Dee and the attached Exhibit 133 that Quiros used investor funds from Golf and Mountain Phase IV to buy the Setai Condominium. *See* attached Exhibit A, Exhibit 133. Counsel for Quiros not only saw this document, he questioned Dee extensively on it. Nonetheless, he brazenly claimed to the Court he was not aware of any investor funds "tainting" this condominium.

As discussed in earlier pleadings and again in Court Tuesday, the Commission is not required to trace tainted funds to particular assets in order for them to be subject to a freeze. The Court can freeze all of a Defendants' assets up to the total amount of potential disgorgement and prejudgment interest. The Commission's evidence submitted in support of both the TRO and preliminary injunction shows that the potential disgorgement against Quiros in this case exceeds the value of the frozen assets. On that basis alone it would be inequitable for the Court to allow Quiros to encumber an asset that could be used to satisfy a disgorgement judgment and eventually liquidated for the benefit of investors.

Moreover, making it even more inequitable for the Court to modify the freeze to release the Setai Condominium is that the Commission has presented un rebutted evidence that Quiros used investor funds to buy it. Hence, the Setai Condominium is “tainted” with investor funds, so there is absolutely no basis to release it from the asset freeze.

Quiros’ motion seeking funds to pay his attorneys’ fees is no more well taken. Having already stolen more than \$55 million of investor funds and misspent hundreds of millions more, Quiros now seeks to exacerbate the harm perpetrated on investors by attempting to drain assets potentially subject to a disgorgement judgment to pay excessive attorneys’ fees. For roughly two weeks’ work in one case, Quiros’ lawyers seek more than \$200,000 in fees – a rate of more than \$5 million a year.¹ That does not include the additional amounts they seek for accounting and other expert witnesses, and for lawyers to represent Quiros in other civil actions, a State of Vermont lawsuit, and potential criminal charges.

Quiros seeks fees for *nine* attorneys at rates that exceed \$800 an hour. DE 109-3 at 18 (showing attorney rates from \$340 to \$805 an hour). In particular, Quiros’ lawyers seek to bill investors – and any money Quiros receives from frozen assets for attorneys’ fees will come straight out of assets that could be used for the benefit of defrauded investors – for four partners’ work at rates of \$600, \$695, \$775, and \$805 an hour. *Id.* These rates exceed standard rates in this market. By way of contrast, Michael Goldberg, the Receiver in the case, testified at the hearing he is billing at the reduced rate of \$395 an hour in an effort to conserve scarce resources for investors. Attorneys working for him are billing at rates of \$260 an hour to \$395 an hour, again in an effort to take a little as possible from the Receivership estate and leaving more for investors. Quiros’ request for attorneys’ fees shows no such interest in investors’ well-being.

¹ The requested amounts do not include what Quiros’ other counsel, Berger Singerman, was charging during this same timeframe, which also likely be substantial.

In our response to Quiros' Motion to Lift or Modify the Asset Freeze (DE 64), we cited extensive case law demonstrating Quiros is not entitled to receive attorneys' fees from the frozen assets. Making things even worse, as in his Motion to Lift or Modify the Asset Freeze (DE 39), Quiros again fails to identify a single source of funds to pay for the hundreds of thousands of dollars he seeks now, and the millions more he apparently intends to spend on attorneys' fees. As the testimony of Mr. Goldberg at the preliminary injunction hearing showed, there are no liquid assets in either the accounts of Mr. Quiros or the Receivership estate with which to pay these outrageous sums. And as set forth at the hearing and in DE 46, Quiros does not have sufficient assets to justify releasing any of them from the freeze in order to fund an army of lawyers.

For all those reasons, the Court should deny Quiros' requests for a modification of the asset freeze to pay his attorneys' fees and living expenses, whether using the Setai Condominium or any other frozen assets. But, as stated at the outset of this response, if the Court is considering granting either request, we ask the Court to allow further briefing on this issue in the final preliminary injunction hearing briefs due May 27. Finally, if the Court is going to rule sooner, the Commission seeks the opportunity to more fully respond to Quiros' requests, either at a hearing or in writing.

Respectfully submitted,

May 11, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2016, 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/Christopher E. Martin
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SERVICE LIST

SEC v. Ariel Quiros, et al.
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JAY PEAK EB-5 PROJECT FEES OVERVIEW								
Phase	Phase I (Hotel Suites)	Phase II (Hotel Suites II)	Phase III (Penthouse Suites)	Phase IV (Golf & Mountain)	Phase V (Lodge & Townhouse)	Phase VI (Stateside)	Phase VII (AnC Bio)	Total
FEES TAKEN								
Management Fees	\$ 1,550,000	\$ 9,405,000	\$ 2,796,075	\$ 4,550,000	\$ 4,883,700	\$ 5,805,033	\$ 7,818,036	\$ 36,807,844
Land Sale				\$ 4,500,000	\$ 3,760,000	\$ 2,460,000		\$ 10,720,000
Sub Total	\$ 1,550,000	\$ 9,405,000	\$ 2,796,075	\$ 9,050,000	\$ 8,643,700	\$ 8,265,033	\$ 7,818,036	\$ 47,527,844
J Peak Purchase	\$ 12,340,000	\$ 9,500,000						\$ 21,840,000
Setai Condo				\$ 3,816,000				\$ 3,816,000
JCM Taxes						\$ 1,974,000	\$ 4,200,000	\$ 6,174,000
Q Burke Mtn.							\$ 7,010,000	\$ 7,010,000
Trump Condo							\$ 2,200,000	\$ 2,200,000
Personal Taxes							\$ 6,000,000	\$ 6,000,000
Bogner Land							\$ 3,800,000	\$ 3,800,000
Sub Total	\$ 12,340,000	\$ 9,500,000	\$ -	\$ 3,816,000		\$ 1,974,000	\$ 23,210,000	\$ 50,840,000
Grand Total of Fees Taken	\$ 13,890,000	\$ 18,905,000	\$ 2,796,075	\$ 12,866,000	\$ 8,643,700	\$ 10,239,033	\$ 31,028,036	\$ 98,367,844
MAXIMUM FEES ALLOWED BASED ON WORK COMPLETED								
Project Management Fees								
10-15%	\$ (1,918,500)	\$ (5,557,815)	\$ (2,796,075)	\$ (3,412,500)	\$ (3,485,355)	\$ (3,718,500)	\$ (1,500,000)	\$ (22,388,745)
Contingencies								
5%	\$ (639,000)	\$ (3,000,443)	\$ -	\$ (1,137,500)	\$ (1,471,785)	\$ (1,039,500)	\$ (500,000)	\$ (7,788,228)
Land Proceeds	\$ (1,800,000)	\$ (4,200,000)	\$ -	\$ (1,800,000)	\$ (2,420,000)	\$ (2,460,000)	\$ -	\$ (12,680,000)
Grand Total of Fees Allowed	\$ (4,357,500)	\$ (12,758,258)	\$ (2,796,075)	\$ (6,350,000)	\$ (7,377,140)	\$ (7,218,000)	\$ (2,000,000)	\$ (42,856,973)
Fees Taken in Excess of Allowed	\$ 9,532,500	\$ 6,146,742	\$ -	\$ 6,516,000	\$ 1,266,560	\$ 3,021,033	\$ 29,028,036	\$ 55,510,871

