

**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.,
Q RESORTS, 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 HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,**

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 RESPONSE TO DEFENDANT QUIROS' VERIFIED MOTION
TO CONTINUE SHOW CAUSE HEARING**

Plaintiff Securities and Exchange Commission opposes Defendant Ariel Quiros' Verified Motion to Continue Show Cause Hearing (DE 47) for two reasons. First, as set forth in the Declaration of Michael I. Goldberg, Esq. (attached as Exhibit A), any postponement of the

hearing on whether to enter a preliminary injunction against Quiros will have a dramatic and potentially ruinous effect on the ability of the Court-appointed Receiver to keep the Jay Peak and Q Burke Resorts open. Second, Quiros has already raised the very issues the Court will have to hear and address at the preliminary injunction hearing in his Emergency Motion to Lift or Modify Asset Freeze Order (DE 39). The documents, witnesses, and legal issues identified in that motion are identical to the documents, witnesses and legal issues the Commission will present in support of its request for a preliminary injunction. It will be an inefficient use of the parties' and the Court's resources to hear the same issues twice, and we therefore request that the Court simultaneously hear Quiros' motion to modify the freeze and the Commission's motion for a preliminary injunction at the scheduled April 25 show cause hearing.

The Receiver's Declaration

The attached declaration of the Receiver sets forth a bleak picture of the Receivership Entities' finances. As Mr. Goldberg explains, he only has about \$4.7 million in cash¹ immediately available to finance the operations of the Jay Peak Resort, and needs between \$7 million and \$11.5 million in upcoming operating expenses. Ex. A at ¶¶4-7. As the Receiver's declaration sets forth, the Receiver is facing that significant operating deficit, and a \$4.15 million repair of the gondola system, which is virtually mandatory to keep the Jay Peak resort operating in the long run. *Id.* at ¶7. Furthermore, the Receiver is facing numerous demands for payment from vendors that threaten the long-term health of the resort. *Id.* at ¶8.

In addition, the Q Burke Resort has almost no cash to operate. *Id.* at ¶10. That has already forced the Receiver to file an emergency motion seeking to borrow money from Jay Peak's scarce resources to keep that resort from further deteriorating. *Id.* Those numbers do not

¹ There is an additional \$1.3 million in a Canadian bank that the Receiver cannot access in the short run. The Receiver is in the process of hiring Canadian counsel to assist him with recovering that money.

account for unanticipated expenses, and as the Receiver states, even the slightest delay in resolving the asset freeze and preliminary injunction issues will likely have a significant impact on his ability to obtain interim financing to keep both resorts open and operating. *Id.* at ¶11. If the resorts have to close for any length of time, their value will likely diminish greatly. *Id.*

As outlined in the Commission's Emergency Motion for Temporary Restraining Order, Asset Freeze, and Other Relief (DE 4), keeping the Jay Peak and Q Burke resorts operating is of utmost importance to protect investors as the resorts are the only source of income for investors in the first five Jay Peak projects, the partially-completed Stateside Phase VI, and the Q Burke EB-5 offering investors. The Jay Peak resort operations may also impact the Stateside Phase VI investors' ability to achieve returns and possibly even get permanent green cards. Therefore, it is of no small import for the Receiver to keep both resorts open and operating. The facts outlined in his declaration provide a significant reason for the Court not to postpone the April 25 show cause hearing.

The Issues Are Ripe For Determination

In addition to the Resorts' financial condition, the fact that Quiros' motion to modify the asset freeze and the Commission's request for a preliminary injunction involve the same legal and factual issues provides good cause not to postpone the hearing.

As a threshold matter, while it is true that Charles Lichtman, Quiros' local counsel, has only recently appeared in the case, another of Quiros' attorneys, David Gordon, has represented him from the outset of the Commission's investigation. Mr. Gordon also represented William Stenger and every one of the corporate Defendants in this case. He oversaw the Defendants' production of documents to the Commission, and appeared at several testimonies, where his clients were asked questions about documents and issues that form the basis of the Commission's

cause of action. Mr. Gordon, who is petitioning the Court to appear *pro hac vice*, is intimately familiar with the facts and legal issues in this case, as evidenced by the detailed factual and legal issues raised in Quiros' motion to modify the asset freeze.

Quiros represents in his motion to continue the show cause hearing that the Temporary Restraining Order the Court entered on April 13, 2016 will remain in effect if the Court continues the show cause hearing. However, that is not true. A major portion of the TRO is the asset freeze order the Court entered against Quiros. Quiros now seeks to modify that portion of the TRO to allow him unfettered access to the scarce liquid resources available to satisfy a potential disgorgement order against him. In making this request, he has raised questions about the sufficiency of the Commission's factual evidence in support of the TRO, as well as attempted to present additional evidence of his own.

While we will have a more detailed response to Quiros' purported factual evidence in our response to that motion, the point here is that Quiros has identified the exact factual issues that will be involved at the show cause hearing, whether it takes place on April 25 or any other date. The documents underlying both parties' factual claims will be the same, and the witnesses the Commission will present in support of its motion for a preliminary injunction and in opposition to Quiros' motion to modify the asset freeze will be the same. Quiros' motion to modify the asset freeze demonstrates he is prepared to address (and has addressed) those issues already.

Similarly, the legal issues Quiros raises regarding the sufficiency of the evidence and the standards for imposing an asset freeze are the legal issues the Court will also have to address in deciding the Commission's request for a preliminary injunction. As Quiros has already raised those issues, there is no reason the Court cannot hear arguments from both sides on those issues in connection with both motions on April 25.

Finally, holding the show cause hearing on April 25 will not impact any other party. The Commission has filed the Consents of all the corporate Defendants and Relief Defendants (who are under the control of the Receiver) and William Stenger to entry of preliminary injunctions against them. Those are the only other parties in the case. Therefore, the show cause hearing on April 25 will only involve Quiros' request for relief and the Commission's entitlement to relief against Quiros.

For all those reasons, the Commission asks the Court to deny Quiros' motion to continue the show cause hearing.

April 21, 2016

By: s/Robert K. Levenson
Robert K. Levenson, Esq.
Senior Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov

By: s/ Christopher E. Martin
Christopher E. Martin, Esq.
Senior Trial Counsel
SD Fla. Bar No. A5500747
Direct Dial: (305) 982-6386
Email: martinc@sec.gov

Attorneys for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 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/Robert K. Levenson
Robert K. Levenson, Esq.

SERVICE LIST

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

Jonathan S. Robbins, Esq.
AKERMAN LLP
Las Olas Centre II, Suite 1600
350 East Las Olas Blvd.
Fort Lauderdale, FL 33301-2229
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Email: jonathan.robbins@akerman.com
Counsel for Court-appointed Receiver

Naim S. Surgeon, Esq.
AKERNIAN LLP
Three Brickell City Centre
98 Southeast Seventh St., Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600
Facsimile: (305) 349-4654
Email: naim.surgeon@akerman.com
Counsel for Court-appointed Receiver

Charles Lichtman, Esq.
Pamela C. Marsh, Esq.
Nicole L. Levy, Esq.
BERGER SINGERMAN LLP
350 E Las Olas Blvd., Suite 1000
Fort Lauderdale, FL 33301-4215
Phone: 954-525-9900
Direct line (954) 712- 5138
Fax: 954-523-2872
Email: clichtman@bergersingerman.com
Email: pmarsh@bergersingerman.com
Email: nlevy@bergersingerman.com
Attorneys for Defendant Ariel Quiros

Roberto Martinez, Esq.
Colson Hicks Eidson
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
Telephone: (305) 476-7400
E-mail: bob@colson.com
Counsel for Defendant William Stenger
Service via U.S. Mail

DECLARATION OF MICHAEL I. GOLDBERG, ESQ.

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Michael I. Goldberg. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. On April 13, 2016, I was appointed as Receiver by the Hon. Darrin Gayles in the case of SEC v. Jay Peak, Inc., Case No. 16-CV-21301-GAYLES, in the Southern District of Florida. The receivership included the 15 corporate entities that are Defendants in this case, as well as the four Relief Defendants (collectively “the Receivership Entities”).

3. Since taking possession of the Receivership Entities and their bank and other financial accounts, I have learned that the Receivership Entities are in dire financial position and in danger of not having sufficient funds to continue operating beyond the very immediate future. In sum, the Receivership Entities have very little cash on hand, and numerous upcoming expenses that will quickly use up that cash. If I am not able to obtain additional sources of funding through a loan or line of credit, it is highly likely I will have to scale back or shut down operations at both the Jay Peak and Q Burke resorts.

4. Information provided by three financial institutions where the Receivership Entities have accounts – People’s United Bank, Merrill Lynch, and Citibank – show only about \$4.7 million in frozen funds immediately available to the Receivership Entities to finance operations. As discussed below, that is far short of the cash the Receivership Entities need to continue operations.

5. The majority of the revenue for the Jay Peak Resort is generated from October through April, when the mountain is open for skiing. From May through October, the off season, the Resort does not generate sufficient revenue to cover its expenses. Accordingly, the

Resort operator has to generate sufficient cash during the ski season to carry it through the off season, or borrow money during the off season to meet expenses. By way of example, during last year's off season the Jay Peak Resort had arranged a \$2 million line of credit with a bank to meet its operational needs.

6. Because of this year's extremely warm winter and lack of snow, the Jay Peak Resort did not generate as much cash as last year, and not nearly enough to meet its expenses for the upcoming off season. I believe that Mr. Quiros was aware of this – in fact he had been attempting to obtain a \$4 million line of credit when the SEC filed its case and I was appointed Receiver. The line of credit was not executed, and because of the present circumstances, is not available to me now.

7. Our initial evaluation shows we will need at least \$7 million and as much as \$11.5 million to keep the Jay Peak resort open and operating through the off season. Moreover, I have been informed that the gondola system, which is needed to transport skiers to the top of the Jay Peak mountain, requires major and immediate repairs to meet the State of Vermont's safety standards. The system is 52 years old. The gondola's manufacturer, which is the only company in the world capable of properly repairing the gondola, has quoted the Jay Peak Resort a \$4.15 million price to complete the repairs. This requires an immediate 30 percent down payment – approximately \$1.3 million – and an additional \$800,000 later in the summer, with the balance due early next year. If the gondola becomes non-operational, the Resort will not be able to transport skiers to the top of the mountain, and will not survive.

8. In addition, we are facing a daily barrage of demands for payment from numerous vendors. On April 20 alone, my management team had conversations with soft drink, internet service, gasoline and food services suppliers, all of whom in one fashion or another

threatened to cut off service or require cash payments. There are hundreds of vendors whom Jay Peak owes money, and if we do not come up with additional funds soon, the Resort will cease operating.

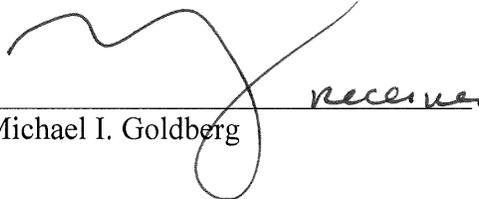
9. Because of the extensive publicity over the SEC's case and my appointment, we have been contacted by several groups and parties that had made reservations to hold events at the Resort, including a large meeting of a major car manufacturer scheduled for mid-June as well as several wedding parties. Jay Peak is required to complete \$34,000 in improvements to meet the car manufacturer's requirements. My staff has spent countless hours trying to assure these future guests that the Resort will be open for business and will be able to accommodate their needs. Any loss of any of this business will further plunge the Resort into financial chaos.

10. The Q Burke Resort is in equally poor financial condition, as detailed in my recent motion seeking Court approval to have Jay Peak loan the Q Burke Resort money. More specifically, the hotel there has been recently completed and is ready to open, but cannot obtain a certificate of occupancy because of a dispute with the general contractor. The contractor claims the Resort owes it more than \$3.9 million, and has apparently placed a lien on the hotel. The contractor is also holding the hotel's certificate of occupancy in escrow and refusing to deliver it until it receives payment. As detailed in my recent motion, the Q Burke Resort has almost no cash to fund operations or resolve this dispute.

11. Based on the foregoing, both Jay Peak and Q Burke resorts must immediately borrow millions of dollars to maintain their viability. If they "go dark," a great deal of their value will be lost. Accordingly, over the past week, I have engaged in preliminary discussions with several parties to attempt to arrange a loan. If the status of the receivership remains in limbo, and if there is even the slightest chance that Mr. Quiros will be put back in control, the

potential lenders I am speaking with will most likely refuse to lend any money to the Receivership Entities. Before the Court rules on the SEC's request for a preliminary injunction and to continue the asset freeze, I cannot give potential lenders any assurances that I will remain in control of the entities and be able to engage in a long-term plan to continue operations and improve the finances. Therefore, from the Receiver's perspective, it is imperative that the Court hold the preliminary injunction hearing and rule on the request for a preliminary injunction as soon as possible to enable me to arrange the necessary loans in time to keep both Resorts open and operating. I ask that the Court not postpone the Show Cause hearing on the SEC's request for a preliminary injunction now scheduled for 9:30 a.m. on April 25, 2016.

I declare under penalty of perjury that the foregoing is true, correct, and made in good faith.



Michael I. Goldberg

Executed on this 21st day of April, 2016.