

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.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**RECEIVER'S AGREED MOTION TO BE AUTHORIZED SIGNATORY AND FOR  
ACCESS AND CONTROL OF RECEIVERSHIP ENTITY SUBSIDIARY ACCOUNTS**

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<sup>1</sup>See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].

Michael I. Goldberg, in his capacity as receiver (the “Receiver”) of 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 Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC (collectively, the “Defendants”) and Jay Construction Management, Inc., GSI of Date County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the “Relief Defendants”) and Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC (together, "Additional Receivership Defendants")(the Defendants, Relief Defendants, and Additional Receivership Defendants shall collectively be referred to as the “Receivership Entities”), by and through undersigned counsel, and pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointing Receiver, dated April 13, 2016 (the “Order”) [ECF No. 13], respectfully requests that the Court enter an order granting the Receiver signatory authority, access, and control over all accounts of subsidiaries, successors, and assigns of the Receivership Entities, including but not limited to the accounts of Burke 2000, LLC; Burke Mountain Operating Company ("BMOC"); Burke Mountain Water Company; and Mountain Road Management Company (collectively, the “Q Burke Entities”).

The Receiver's investigation has revealed that access to the accounts of the subsidiaries is critical for the Receiver to fulfill his obligations. For example, the Receiver recently learned that the Q Burke Entities' operations are necessary and critical to the operations of the Additional Receivership Defendants and signatory authority, access, and control over all accounts of the Q

Burke Entities is required to maintain and preserve operations at the Additional Receivership Defendants. Such authority, access, and control should be granted for all of the subsidiaries of the Receivership Entities. In support of this Motion, the Receiver states as follows:

## **BACKGROUND**

### **The Complaint and Appointment of Receiver**

1. On April 12, 2016, the Securities and Exchange Commission ("SEC") filed a complaint [ECF No. 1] ("Complaint") in the United States District Court for the Southern District of Florida (the "Court") against the Receivership Defendants, the Relief Defendants, William Stenger ("Stenger") and Ariel Quiros ("Quiros" and with the Receivership Defendants, Relief Defendants and Stenger, the "Defendants"), the principal of the Receivership Defendants, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. On April 12, 2016, the SEC filed an Emergency *Ex Parte Motion* for Temporary Restraining Order, Asset Freeze and Other Relief [ECF No. 4] (the "Asset Freeze Motion"). On April 13, 2016, the Court granted the Asset Freeze Motion [ECF No. 11].

3. On April 12, 2016, the SEC filed a Motion for Appointment of Receiver [ECF No. 7]. On April 13, 2016, the Court entered the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 13] (the "Receivership Order"). Among other things, the Receivership Order appointed Michael Goldberg as the Receiver and identified the Receiver's authority.

4. Pursuant to the Receivership Order, the Receiver is appointed as a receiver over the "Corporate Defendants and Relief Defendants" (as well as their subsidiaries, successors and assigns) and is authorized to take immediate possession of the property, assets and estates of

every kind that either belonged to or were in the possession of those entities. (Order ¶ 1).

Specifically, the Receivership Order provides in pertinent part:

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Michael Goldberg *is hereby appointed the Receiver over Corporate Defendants and Relief Defendants, their subsidiaries, successors and assigns*, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants, and whatsoever and wheresoever located belonging to or in the possession of the Corporate Defendants and Relief Defendants...

The Receivership Order, ¶ 1 (emphasis added). Accordingly, the Receiver is the receiver of not only the Receivership Entities, but their subsidiaries, successors, and assigns, as well.

5. The Receivership Order also provides the Receiver with control and signatory authority for all accounts of any kind for the Receivership Entities:

7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Corporate Defendants and Relief Defendants and, *upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary.*

*Id.* ¶ 7 (emphasis added).

6. As drafted, the Receivership Order appoints the Receiver as a receiver over not only the Receivership Entities, but their subsidiaries, successors, and assigns as well. The Receivership Order also gives the Receiver control over all property, assets, etc. of the Receivership Entities. The Receivership Order also provides the Receiver with signatory authority as well as control and access to all accounts for the Receivership Entities. *The Receivership Order, however, does not provide control and signatory authority over the accounts of subsidiaries or affiliates of Receivership Entities (even though he is already the*

*receiver for such subsidiaries) without further court order.* *Id.* ¶ 7. As explained below, such authority, control, and access is of great importance to operation of certain of the Receivership Entities.

**The Relationship Between  
Additional Receivership Defendants and Q Burke Entities**

7. Immediately after his appointment, the Receiver commenced investigating the Receivership Entities' affairs. Specifically, the Receiver learned in his initial investigations, among other things,

- The Q Burke Hotel is owned by Q Burke Mount Resort Hotel and Conference Center, L.P. ("Q Burke LP").
- The general partner of Q Burke LP is Q Burke Mountain Resort GP Services, LLC (the "Q Burke GP").
- The hotel was built on land purchased with funds that were diverted from the EB-5 offering associated with the Receivership Entities.
- According to paragraph 20 of Soneet R. Kapila's Affidavit,<sup>2</sup> BMOC (one of the Q Burke Entities) regularly received funds from the Relief Defendants to fund its operating shortfalls and pay expenses of the Q Burke Hotel on behalf of Q Burke LP. According to paragraph 20 of Mr. Kapila's Affidavit, as of March 2016, these transfers exceeded \$5 million.

8. Thereafter, the Receiver through his professionals moved for expansion of the receivership estate to include Q Burke LP and Q Burke GP, i.e., the Additional Receivership Defendants. Specifically, on April 19, 2016, the Receiver through his professionals filed the

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<sup>2</sup> Attached as an exhibit to Receiver's Emergency Motion to Expand Receivership [ECF No. 44].

Receiver's Emergency Motion to Expand [ECF No. 44] to include the Additional Receivership Defendants within the receivership estates.

9. On April 22, 2016, the Court entered the Order Granting Receivers Motion to Expand Receivership [ECF No. 60] wherein the Court, among other things, expanded the receivership estates to include the Additional Receivership Defendants, appointed the Receiver over the Additional Receivership Defendants, their subsidiaries, successors, and assigns, and authorized, empowered, and directed the Receiver to take all action set forth in or contemplated by the Receivership Order with respect to the Additional Receivership Defendants.

10. At the time, the Receiver and his professionals were not aware that the operations of the Q Burke Entities were critical and necessary to the operations of the area and hotel controlled by Additional Receivership Defendants. In fact, not only are the Q Burke Entities subsidiaries (and subsidiaries of subsidiaries) of Q Burke Mountain Resort, LLC (one of the original Relief Defendants), but the Q Burke Entities conduct many of the on-the-ground operations for the resort area controlled by the Additional Receivership Defendants.

11. The corporate relationship between these entities was diagrammed by Soneet R. Kapila, CPA, in his affidavit attached to Receiver's Emergency Motion to Expand [ECF No. 44]. Specifically, according to Mr. Kapila's affidavit, Q Burke Mountain Resort, LLC is the 100% parent of Burke 2000 LLC, which is the 100% parent of Burke Mountain Operating Company, which is the 100% parent of each of Burke Mountain Water Company and Mountain Road Management Company. As explained by the Receiver's professionals, the operating functions of the Q Burke Entities (which Receiver seeking to have added as Receivership Defendants in this Motion) is follows:

- Burke 2000, LLC – parent of the operating companies;

- Burke Mountain Operating Company – primary operating company for the Q Burke Resort area and controller of the primary banking accounts for such operations;
- Burke Mountain Water Company – utility company controlling water utilities for the Q Burke Resort area and surrounding communities;
- Mountain Road Management Company – management company controlling and having contractor relationships with surrounding communities and entities to keep roads operational and accessible (which is critical for a ski resort).

12. The issues raised in this Motion were brought to a head when the Receiver was blocked from having signatory authority and control over certain critical operating accounts. Even though the Receiver has been appointed by this Court as the receiver of the Receivership Entities, as well as their subsidiaries, the bank with the accounts for the Q Burke Entities has blocked the Receiver from having signatory authority over the Q Burke Entities' accounts (based on the specific language in paragraph 7 of the Receivership Order requiring a court order for authority over the accounts of subsidiaries of Receivership Entities). Absent signatory authority, access, and control over the accounts of the Q Burke Entities, it is not possible to maintain these critical operations that are necessary for maintenance and preservation of operations at the Additional Receivership Defendants.

13. This issue will undoubtedly arise with respect to other subsidiaries of the Receivership Entities. Accordingly, it is appropriate to expand the Receiver's signatory authority, control, and access to include all accounts of not only the Q Burke Entities, but all accounts of all corporate entities for which the Receiver has been appointed receiver (i.e., the Receivership Entities and their subsidiaries, successors and assigns).

## MEMORANDUM OF LAW

While the Receiver already has signatory authority, control, and access to all accounts for the Receivership Entities, the Receiver is requesting signatory authority, control, and access to all accounts for all other corporate entities for which he has been appointed receiver (i.e., the subsidiaries, successors and assigns of the Receivership Entities). Such authority, control, and access is being particularly requested for the Q Burke Entities' accounts so that the Receiver may take possession and control over the records and assets and maintain and preserve operation of the hotel and area controlled by the Additional Receivership Defendants. At the time that the Additional Receivership Defendants were added to the receivership estate, the Receiver, his professionals, and, of course, the Court were unaware that the Q Burke Entities were critical and necessary to operations of the Additional Receivership Defendants. Signatory authority, access, and control of the Receivership Entities' and their subsidiaries', successors', and assigns' accounts will allow the Receiver to maintain and operate those entities as well as preserve and improve the assets of the Additional Receivership Defendants for the benefit of the investors and creditors.

## ARGUMENT

This Court's equitable powers are broad and, as a result, the Court has "wide discretion to determine relief in an equity receivership." *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5<sup>th</sup> Cir. 1982)). A court-appointed receiver is a well-established equitable remedy available in SEC enforcement proceedings for injunctive relief. *See e.g., SEC v First Financial Group of Texas*, 654 F.2d 429, 438 (5th Cir. 1981). Although this Court has already appointed the Receiver as a receiver over the Receivership Entities, including the Additional Receivership Defendants, that appointment did not include signatory authority, control, and access to the accounts of the subsidiaries or affiliates



of the specifically named Receivership Entities. The explicit language in paragraph 7 of the Receivership Order suggests that a court order is necessary for such authority, access, and control. The expansion of the Receiver's signatory authority, control, and access over the accounts for which the Receiver has been appointed a receiver, particularly the accounts of the Q Burke Entities, is well within this Court's inherent powers and necessary for the Receiver to satisfy his obligations under the Receivership Order.

The Receiver's signatory authority, control and access to the accounts of the subsidiaries of the Receivership Entities, particularly the accounts of the Q Burke Entities, is critical and necessary to maintenance and preservation of operations that the Additional Receivership Defendants as well as the other Receivership Entities. As shown above, this issue came to a head because the Q Burke Entities provide the primary operational support, including utilities, hotel/resort operations, computer and software, road access and snow removal, etc. for the Additional Receivership Defendants. Absent signatory authority, access, and control of the accounts of the subsidiaries of the Receivership Entities, particularly the accounts of the Q Burke Entities, the Receiver cannot satisfy his obligations to maintain and preserve the receivership estate.

**WHEREFORE**, the Receiver respectfully requests that this Court enter an order granting the Motion and granting the Receiver signatory authority, access, and control over all accounts of subsidiaries, successors, and assigns of the Receivership Entities including but not limited to the accounts of Burke 2000, LLC; Burke Mountain Operating Company; Burke Mountain Water Company; and Mountain Road Management Company along with such other relief as this Court deems appropriate.

**CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Local Rule 7.1(a)(3), the Receiver has conferred with counsel for the SEC and counsel for Defendants Quiros and Stenger. Counsel for the SEC has stated that his client does not oppose the Motion or the relief sought herein. Counsel for Defendant Stenger has stated that his client does not oppose the Motion or the relief sought herein. Counsel for Defendant Quiros has stated that his client does not oppose the Motion or the relief sought herein, while reserving Defendant Quiros' right to challenge the establishment of the Receivership.

Dated: May 2, 2016.

Respectfully submitted,

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**SERVICE LIST**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

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ARIEL QUIROS,  
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Relief Defendants.

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AND CONFERENCE CENTER, L.P.  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants<sup>1</sup>

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**ORDER GRANTING  
RECEIVER'S MOTION TO BE AUTHORIZED SIGNATORY AND FOR  
ACCESS AND CONTROL OF RECEIVERSHIP ENTITY SUBSIDIARY ACCOUNTS**

<sup>1</sup> See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].  
{38184183;1}

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**THIS MATTER** comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to the Authorized Signatory and for Access and Control of Receivership Entity Subsidiary Accounts [D.E. \_\_\_\_] (the "Motion");

**WHEREAS**, the Receiver believes it is necessary for the court to specifically provide signatory authority, access, and control over all accounts of subsidiaries, successors, and assigns of the Receivership Entities (as that term is defined in the Motion), including but not limited to the accounts of Burke 2000, LLC; Burke Mountain Operating Company ("BMOC"); Burke Mountain Water Company; and Mountain Road Management Company (collectively, the "Q Burke Entities");

**WHEREAS**, the Court has been advised that all parties consent to the Motion and the relief requested therein (with Defendant Quiros reserving specific arguments not directly related to the Motion); and

**WHEREAS**, the Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested;

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, as follows:

1. The Motion is **GRANTED**.
2. Michael Goldberg is hereby granted signatory authority, access, and control over all accounts had any bank, brokerage firm, or financial institution that has possession, custody, or control of any assets or funds, wherever situated, of subsidiaries, successors, and assigns of the Receivership Entities including but not limited to the accounts of Burke 2000, LLC; Burke Mountain Operating Company; Burke Mountain Water Company; and Mountain Road Management Company;
3. Other than as set forth herein, the Receivership Order shall remain in full force and effect; and

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4. This Court shall retain jurisdiction of this matter for all purposes.

**DONE AND ORDERED** in Chambers at Miami, Florida this \_\_\_\_ day of May, 2016.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record