

**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 ARIEL QUIROS' NOTICE OF FILING
DECLARATION OF QUIROS AND EXHIBITS IN SUPPORT OF REQUEST TO
MODIFY TEMPORARY RESTRAINING ORDER**

I. Introduction

For eight years, Ariel Quiros lied to hundreds of investors in the Jay Peak EB-5 offering projects. His deceit enabled him to raise more than \$350 million from unsuspecting investors and improperly place more than \$50 million into his own pocket. Now, the immigration status and investments of hundreds of investors are at risk, there are severe shortages in the last two projects, and Quiros has nowhere close to the amount of frozen assets needed to repay his equitable liabilities. Nonetheless, Quiros wants to victimize investors again by stripping out millions of dollars from the Court's asset freeze, so he can spend the funds before the Commission can use them to help compensate defrauded investors for the staggering losses created by Quiros and the other defendants.

After first requesting more than \$300,000 a month for professional expenses, now Quiros wants the outrageous sum of nearly \$100,000 a month in so-called reasonable living expenses. Quiros has not met his burden of proof to show he is entitled to use frozen investor funds to pay his living expenses. Furthermore, the amount requested by Quiros for living expenses is not reasonable and many of the expenses are not documented. In fact, approximately \$90,000 of the monthly expenses are for luxury items, non-necessities, or for undocumented expenses. Accordingly, the Court should deny his request.

II. Procedural Background on Quiros Requests for Living Expenses

In his Emergency Motion to Lift or Modify the Asset Freeze, Quiros did not provide a sworn statement accompanied by detailed and complete documentation of his reasonable living expenses. At the April 25, 2016, Asset Freeze Hearing, Quiros' counsel requested approximately \$90,000 a month in purported reasonable living expenses and provided an unsworn request that did not contain any back-up documentation. Apparently realizing the deficit nature of Quiros' unsworn request, Quiros' counsel requested additional time to submit a

revised request for reasonable living expenses. The Court granted Quiros' request and gave him until April 28, 2016, to submit a revised request for living expenses. On April 28th, Quiros submitted his revised request and *increased the amount he was seeking in so-called reasonable living expenses of nearly \$100,000 a month.*¹

A. Luxury Expenses

Quiros request includes more than \$73,000 a month for numerous lavish and unnecessary expenses, such as:

- His Adult Daughter's Living Expenses of \$6,310 a month
- His Granddaughter's Trips to Florida of \$590 a month
- His Adult Daughter's Cable/Internet Service of \$267 a month
- His Adult Daughter's Maintenance Charges of \$1,737 a month
- His Adult Son's Living Expenses of \$5,000 a month
- A Lease for one of his Several Luxury Automobiles of \$3,295 a month
- A Lease for his Wife's Luxury Car of \$1,761 a month
- A Yacht Club Fee of \$147 a month
- Military Jeep Collection Storage and Upkeep of approximately \$3,000 a month
- Maintenance and Property Taxes on his Luxury New York Condominium of approximately \$5,800 a month
- Parking and Cable/Internet/Phone relating to his Luxury New York Condominium

¹ In no way did Quiros address the 800 pound gorilla in the room – how he can afford nearly *\$100,000 a month* for so called “reasonable” living expenses and more than *\$300,000 a month* for attorney and accountant fees, *when he does not have enough liquid frozen assets to cover one month* of his proposed “reasonable” living expenses and professional fees? Simply put, Quiros does not have enough frozen liquid assets to pay for the amount he has requested for lavish, outrageously high living expenses and professional fees.

of approximately \$865 a month

- Expenses relating to his Bahamas Condominium of \$239 a month
- Property Taxes on his Vermont Properties of \$15,583 a month
- Property Insurance for his Vermont, New York and Florida Properties of \$1,477 a month
- Expenses For a Money Losing Restaurant of \$15,000 a month
- Office Expenses for Unspecified Businesses of approximately \$6,000 a month
- For Personal Assistants he wants \$6,650 a month²

Additionally, Quiros is requesting that the Court release \$21,775 before June 1st so he can make a semi-annual payment for his 8 year old granddaughter's private elementary school tuition, which costs approximately \$45,000 a year!

B. Unsupported Expenses

In addition, Quiros has more than \$17,000 on monthly unsupported expenses, such as:

- Medical Insurance of \$5,414 a month
- Homeowners Association Fee of \$379 a month
- AT&T of \$184 a month
- Cell Phone Bill of \$732 a month
- Homeowners Insurance of \$3,447 a month
- Lexington Insurance umbrella policy of \$2,052 a month
- Goods, gas, household items, and medications of \$5,000 a month

² In addition, more than \$52,000 of the above expenses relating to his adult children, his granddaughter's trips to Florida, Vermont property taxes, property insurance on his Vermont, New York and Florida properties, his restaurant business, and personal assistants are not documented.

III. Legal Memorandum

In order to have funds released Quiros must show that unfreezing assets is in the best interests of investors. Several courts have held that before they will remove assets from a freeze, the defendant must “establish that [the] modification is in the best interest of the defrauded investors.” *SEC v. Grossman*, 887 F.Supp. 649, 661 (S.D.N.Y. 1995) (denying release of funds to pay attorneys’ fees and funeral and burial expenses), *aff’d*, 173 F.3d 846 (2d Cir. 1999); *see also SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972). Here Quiros has not shown how it is in the best interests of defrauded investors for him to maintain his exorbitant lifestyle. This is especially true here, since to fund this lavish lifestyle, Quiros will squander the assets investors need to help them recoup the losses they have suffered from Quiros’ massive fraud.

Furthermore, the Court should only release to Quiros necessary and reasonable living expenses and it should not release to Quiros any funds for luxuries. Numerous courts have denied living expenses, when as Quiros has done here, the defendant has requested living expenses for luxuries and not limited the request to necessary and reasonable living expenses. *SEC v. Forte*, 598 F. Supp. 2d 689, 694 (E.D.Penn. 2009) (court entirely denied release of funds and was “astonish[ed] and disturb[ed] that the Defendant” had included non-necessary living expenses totaling approximately \$6,000); *SEC v. Dobbins*, 2004 WL 95771 * 3 (N.D.Tex. April 14, 2004) (refusing to unfreeze funds to pay approximately \$11,000 a month in living expenses, where the items included cable television and automobile financing); *SEC v. Private Equity Group, Inc.*, 2009 WL 2058247 (C.D.CA. July 9, 2009) (court denied request for \$27,000 of living expenses because, among other reasons, the request was “facially unreasonable” as the defendant was asking the court “to release funds that he can use to fund a lavish lifestyle that

includes owning multiple homes and cars” and “by no stretch of the imagination can [\$27,0000 a month] be considered reasonable.”)

As demonstrated in above Section II.A., more than \$73,000 a month of Quiros’ living expenses are for luxury items and such expenses are neither reasonable nor necessary. Hence, the Court should deny Quiros’ outrageous request for living expenses to support his lavish lifestyle of, among other things, multiple homes, properties, and luxury cars, paying substantial sums to able bodied adult children that he is not legally bound to pay, paying personal assistants, funding a money losing restaurant, and paying approximately \$45,000 a year for private elementary school.

Moreover, to justify the release of funds to pay reasonable living expenses, Quiros is required to produce evidence of those expenses in the form of a sworn statement accompanied by detailed and complete documentation. *See SEC v. Spear & Jackson, et al.*, Case No. 04-80354-CIV, Slip Op. at 3 (S.D. Fla. Aug. 19, 2004), attached as Ex. D to DE 64, at 5-6 (denying defendant’s motion to release frozen funds for living expenses because she had produced neither a sworn statement nor detailed documentation of expenses); *SEC v. A.B. Financing and Investment, Inc.*, Case No. 02-23487-CIV, Slip. Op. at 2 (S.D. Fla. Feb. 10, 2003), attached as Ex. E to DE 64, at 4 (denying defendant's motion to modify asset freeze because he failed to document his reasonable living expenses); *SEC v. Starcash, Inc.*, Case No. 02-80456-CIV, Slip Op. at 2 (S.D. Fla June 18, 2002) (denying defendants’ motion to modify asset freeze because they had not submitted sworn statements showing their expenses or documentary evidence of them) (attached as Ex. F to DE 64); *CFTC v. Prism Fin. Corp.*, 1996 WL 523349 at *4 (D. Col. April 5, 1996) (defendant wishing to modify asset freeze ordered to so under oath and with all proposed expenses “*fully substantiated by all relevant financial documentation*”) (emphasis

added).

For many monthly expenses, Quiros has not provided documentation. As described above in Section II.B., Quiros has more than \$17,000 of monthly unsupported expenses. In addition, as described above in footnote 2, from the category of more than \$73,000 of lavish and unnecessary expenses, more than \$52,000 of these expenses are unsupported. Hence, in total Quiros has more than \$69,000 of monthly expenses (\$17,000 + \$52,000) that the Court should reject, since he has not provided the required documentation.

In sum, in the face of the case law, in order to protect defrauded investors, and the limited frozen funds available for release to pay any living expenses, the Court should deny Quiros' request to release frozen funds to pay living expenses.

IV. Conclusion

In conclusion, the Court should entirely deny Quiros attempt to modify the asset freeze to pay for his lavish and outrageous expenses.³

May 5, 2016

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³ Even if the Court wants to provide living expenses to Quiros, the Court should deny his request until he provides a sworn accounting of properly documented reasonable and necessary living expenses.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on May 5, 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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SEC v. Ariel Quiros, et al.
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