UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21301-DPG

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.
_____/

DEFENDANT ARIEL QUIROS'S REPLY IN SUPPORT OF SECOND MOTION FOR AN ORDER PERMITTING PAYMENT OF ATTORNEYS' FEES AND COSTS

I. Introduction

On May 27, 2016, this Court granted Defendant Ariel Quiros's first motion for attorneys' fees (DE 109). After considering Mr. Quiros's motion, which sought fees beyond the instant SEC action, the Court unequivocally ordered that Mr. Quiros could sell or mortgage his Setai Condominium and use the proceeds to "pay Quiros's reasonable attorney's fees in amounts approved by the Court." (DE 148, pg. 4.) The Court placed no other limit on these fees. Now the Setai Condominium has been mortgaged, and the Court need simply specify the amount to be paid.

Nonetheless, through their Oppositions to Mr. Quiros's Second Motion for Attorneys' Fees, the SEC and Receiver attempt to re-litigate and re-write the Court's decision. They ignore that the Court issued its order after extensive oral argument and briefing and a full presentation of the facts. They also ignore that the Court already rejected a prior attempt by the SEC to re-write the May 27 order. (*See* DE 157, 159.) At some point, if only for the purpose of preserving resources, the re-litigation of issues the Court already has decided must stop.

Additionally, the Oppositions to Mr. Quiros's fee application reflect an unseemly attempt to separate Mr. Quiros from his counsel. If Mr. Quiros cannot pay for the defense of the numerous cases against him – including the lawsuit filed by the Receiver – he will suffer costly default judgments. The litigation against Mr. Quiros threatens his entire livelihood, and it would be manifestly unjust to prevent him from mounting vigorous defenses. The government should not be allowed to use its superior resources to force Mr. Quiros into submission.

Finally, Mr. Quiros's attorneys' fees are reasonable given the massive amount of work needed to defend him against a case the SEC had been building for over three years and numerous related actions, including one brought by the State of Vermont. Tellingly, the SEC and the Receiver do not question the tasks performed by Mr. Quiros's attorneys, but rather fixate

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on MSK's rates, which are in line with those charged by other national firms for similar work, and are not dissimilar to the rates charged by firms in Florida – including the Receiver's own law firm.

Mr. Quiros thus seeks an order awarding his attorneys' fees incurred through June 30, 2016. The Court has granted, in part, Mr. Quiros's first Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 109); all that remains is for the Court to specify the amount to be paid. Mr. Quiros likewise asks the Court to grant the instant Second Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 192).

II. The SEC and the Receiver are Improperly Trying to Re-Litigate the Court's Order Unfreezing Assets.

The SEC admits that "[t]he Court has identified the Setai Fifth Avenue Condominium … as the asset that will be used to pay reasonable attorney fees." (DE 199, SEC Opp., pg. 2.) This should end the inquiry as to whether the Setai Condominium may be used to pay attorneys' fees.

The Court's ruling, however, has not deterred the SEC from trying yet again. In issuing its May 27 order, the Court weighed the facts, considered evidence presented by both the SEC and Mr. Quiros, and reached the conclusion that "[a]t this time, ***many of the facts are in dispute***, including whether the Phase IV investor funds can be traced to the Setai Condominium and the amount of potential disgorgement should the SEC prevail." (DE 148, pg. 3; emphasis added.) Thus, in now claiming that "the Setai Fifth Avenue Condominium was purchased using investor funds" (SEC Opp., pg. 2), the SEC is dredging up old arguments that were already before the Court when it issued its May 27 order. The Court considered the evidence presented by the SEC, as well as that presented by Mr. Quiros demonstrating that the Setai Condominium was ***not*** purchased with investor funds.[1] The Court then issued an order. The SEC's attempt for a second

[1] The SEC asserts that Exhibit 133 shows that the Setai Condominium was purchased with Phase IV investor funds. However, the SEC's own witnesses admitted that Phase IV – Jay Peak Golf & Mountain Suites – is complete and in

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time to re-write the May 27 order – the Court summarily rejected the SEC's first effort (*see* DE 157, 159) – should not be countenanced.

Nor is there any basis for the SEC to re-litigate the legal underpinning of the Court's May 27 order. Because the Court has already unfrozen the Setai Condominium (DE 148), and indeed it has already been mortgaged and over $1 million has been transferred to the Receiver (Receiver Opp., DE 200, pg. 2), the SEC's argument that Mr. Quiros must establish that unfreezing this asset is in the best interest of the investors is beside the point and moot.[2] (*Compare* SEC Opp., pg. 2.) In any event: (a) the SEC's claim against Mr. Quiros only totals roughly $55 million (*see* Exhibit 133, DE 144-35, alleging $55,510,871 in excess fees); (b) such claim is far overstated, as it fails to account for, *inter alia*, (i) the 11th Circuit's recent ruling rendering a substantial percentage of its damages claim time-barred (*SEC v. Graham*, 2016 U.S. App. LEXIS 9650 (11th Cir. May 26, 2016)), and (ii) the millions of dollars of expenditures that have already been proven legitimate (*see, e.g.,* Proposed Findings of Fact and Conclusions of Law, DE 153, pg. 15, ¶ 34); and (c) Mr. Quiros's assets ***more than triple*** the amount of the SEC's claim (*see* DE 39, pg. 13), and include Jay Peak Inc., for which a buyer has offered, in writing, to pay ***$93 million*** (*i.e.*, $38 million more than the SEC's overstated claim).[3] (*See* Exhibit 1.) Accordingly, there are more than enough assets available to satisfy any judgment against Mr. Quiros, and thus there is no logical reason why he should not be able to access his own assets to defend himself.

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operation. Thus, investors in Phase IV received what they bargained for. Neither does Exhibit 133 purport to show that any funds from later phases were used for Phase IV. So, the SEC's assertion is belied by its own evidence. Mr. Quiros incorporates by reference pg. 3, ¶ 6 and pgs. 8-9, ¶ 20 of his Proposed Findings of Fact and Conclusions of Law. (DE 153.)

[2] Tellingly, the authorities cited by the SEC (Opp., pgs. 2-4) and Receiver (Opp., pg. 5) focus on the circumstances under which a court may unfreeze assets. Since the Court has already made the decision to unfreeze the asset in question, Mr. Quiros does not address these cases in detail.

[3] For reasons that are unclear, the Receiver has not disclosed to this Court the offer to purchase Jay Peak Inc. for $93 million. To say the least, the offer seriously undercuts the Receiver's argument that "the receivership estate is in a precarious financial position." (Receiver Opp., pg. 4.)

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In addition to attempting to re-litigate whether the Setai Condominium should be unfrozen, the SEC and Receiver also improperly try to argue the merits of the case against Mr. Quiros. In its May 27 order, the Court explained:

> The Court balances the ability to provide restitution to the victims with the defendants' ability to defend themselves prior to a finding of liability. *See F.T.C. v. 4 Star Resolution, LLC*, No. 15-CR-1125, 2015 WL 4276273 at *1 (W.D.N.Y. July 14, 2015) ("[I]t cannot be ignored that 'this suit was brought to establish [D]efendants' wrongdoing; ***the [C]ourt cannot assume the wrongdoing before judgment in order to remove the [D]efendants' ability to defend themselves.***'") (*quoting Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 553, 565 (5th Cir. 1987)).

(DE 148, pg. 3; emphasis added.) Yet the SEC and Receiver do just that: they ask the Court to assume Mr. Quiros's guilt in order to deprive him of counsel. The SEC argues that "Quiros does not have the right to use contested assets to pay for counsel of his choice" and compares him to a "bank robber" using "loot" to wage his defense. (SEC Opp., pg. 4.) The Receiver claims that "the assets being used to fund the payment of legal fees are directly traceable to stolen investor funds" (Receiver Opp., pg. 6), even though the Court has held that the facts are in dispute.

Thus, despite that the Court has already heard and weighed testimony on the Setai Condominium and the claims against Mr. Quiros, and issued its May 27 order in light of the facts and legal argument before it, the SEC and the Receiver persist in arguing that Mr. Quiros is not entitled to money to pay his attorneys because he allegedly engaged in wrongdoing. In addition to being an improper, inefficient attempt to re-litigate issues already decided by the Court, this reflects the SEC's efforts, as explained further below, to bring the vast resources of the government to bear against Mr. Quiros and deprive him of the opportunity to fairly defend himself.[4]

[4]As the Setai Condominium is not even part of the receivership estate, it is unclear how the Receiver even has standing to challenge Mr. Quiros's fee application.

III. The Court's Order Permitted Payment of Fees for All Cases Going Forward.

The Court's May 27 order granting Mr. Quiros's first fees motion did not limit the cases or time period for which "Quiros's reasonable attorney's fees" could be paid. (DE 148, pg. 4.) Nonetheless, both the SEC and the Receiver attempt to strip Mr. Quiros of his ability to pay defense counsel for cases beyond the instant SEC action, and the Receiver tries to drastically limit the time period for recovery of fees. The SEC and Receiver ignore both the plain language of the May 27 order, which contained no such limitations, and the fact that the Court issued it in response to a motion seeking fees beyond this action. Mr. Quiros's team of lawyers at MSK and his local counsel rightly relied on the unlimited scope of the Court's order; if fees are limited to the instant case, local counsel will recover very little, if anything. The Oppositions reflect a transparent attempt to separate Mr. Quiros from his counsel and thereby weaken him.

The Receiver argues that Mr. Quiros's attorneys' fees should be limited to the SEC action, confined to defending against the motion for a preliminary injunction, and cut off as of the May 27 order. (Receiver Opp., pg. 6.) The Receiver appears to be arguing that Mr. Quiros is entitled to fees for the preliminary injunction hearing because that supposedly was an attempt to prove his innocence, after which he should be presumed guilty. (*Id.*) However, the Court plainly held that it will not presume Mr. Quiros's wrongdoing in order to deprive him of counsel. (*See* DE 148, pg. 3, discussed *supra*.) Whatever the Court decides with respect to the preliminary injunction application, Mr. Quiros plainly has a very significant financial interest in defending against the claims for damages brought against him.

Furthermore, the Court already granted Mr. Quiros's request for fees beyond the instant action, and thus the SEC and the Receiver's attempt to limit fees to this case must fail. (Receiver Opp., pg. 6; SEC Opp. pg. 8.) By its May 27 order, the Court granted Mr. Quiros's first motion for attorneys' fees, which sought, "an order permitting him to pay his fees incurred in connection

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with this action and in the action *State of Vermont v. Quiros*, Docket no. 217-4-16Wncv (Superior Court, April 14, 2016)" and explicitly sought "reasonable amounts sufficient to retain counsel in the Vermont Action." (DE 109, pg. 2.) The Court's discussion in the May 27 order expressly recognized that Mr. Quiros was seeking "a sum sufficient to retain Vermont counsel." (DE 148, pg. 2.)

Indeed, as early as the April 25, 2016 hearing on the asset freeze, counsel for Mr. Quiros apprised the Court of the Vermont litigation, the possibility of additional lawsuits, and the need for Mr. Quiros to pay his attorneys' fees to defend himself:

> We are also faced with actions in Vermont that have been filed. Those have to be paid. There is also a threat that I have read about. Nothing has yet been filed but I understand it's coming, and knowing the plaintiff's bar, it wouldn't surprise me of other lawsuits against Mr. Quiros resulting from the contentions that the SEC has made that have been well publicized in papers all around the country.

(DE 93, pg. 31:2-9; *see generally* pgs. 30-32.) In the May 9 and 10 preliminary injunction hearing, the Receiver testified that he was "familiar with two class action lawsuits that have recently been filed plus the State of Vermont's lawsuit." (DE 125, May 10, Vol. 2, pg. 176:17-18; *see also* 178:22 – 179:19.) Counsel for Mr. Quiros expressly requested attorneys' fees for the other lawsuits against Mr. Quiros:

> All I wish to note is that you heard Mr. Goldberg talk about the other lawsuits. I need – my client needs to be able to pay lawyers to deal with them. There has been a report of the U.S. Attorney in Vermont apparently doing some investigation, so we want to be able to pay someone with appropriate qualifications to advise on that. So there are, unfortunately, quite a lot of mouths to feed here, and my client is unable to bring him on to what is, much to his dismay, of a pretty significant team.

(*Id.*, pg. 191:2-10; *see also* pg. 193:7-19.) Counsel for Mr. Quiros suggested that he be allowed to use proceeds from the Setai Condominium for this purpose. (*Id.*, pg. 191:24 – 192:20.) At the end of the May 10 preliminary injunction hearing, Judge Gayles concluded by stating that he

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would "absorb all of the information I have received over the past couple of days and last week and I will make a decision." (*Id.*, pg. 194:17-22.) Less than three weeks later, the Court issued its May 27 order granting Mr. Quiros's first fees motion.

Furthermore, although both the SEC and the Receiver oppose providing Mr. Quiros fees for the other cases, and the SEC argues that doing so "will quickly dissipate investors' funds" (SEC Opp., pg. 8), the SEC and Receiver fail to consider what will happen if Mr. Quiros cannot pay defense counsel. If Mr. Quiros is not entitled to use his own unfrozen assets to pay attorneys, he will have difficulty obtaining any counsel – let alone the skilled counsel needed – to defend himself. He will invariably end up defaulting in the other litigation, allowing the plaintiffs to obtain multi-million dollar judgments, which would be very damaging. Moreover, it is particularly dubious that the Receiver seeks to prevent Mr. Quiros from defending against the Receiver's own case against him, for which the Receiver and his counsel will be compensated out of the receivership estate. Again, this is an example of the SEC and Receiver attempting to use their superior resources to leave Mr. Quiros defenseless.

IV. MSK's Fees are Reasonable.

Finally, the SEC and Receiver both wrongly claim that the fees incurred by MSK are unreasonable. However, the fees for April, May, and June are the result of the massive amount of work that Mr. Quiros's attorneys needed to do to defend him. Mr. Quiros's defense has been front-loaded to counter the SEC's investigation, which was built over three years (as well as the state of Vermont's, which spanned a year).[5] Moreover, the large number of hours Mr. Quiros's attorneys worked – in May and June, MSK attorneys billed over 900 hours – and the resulting fees, were the direct byproduct of responding to the aggressive litigation tactics pursued by the SEC and the Receiver. The SEC has applied significant resources to this case: *e.g.*, during the

[5] Thus, the SEC's extrapolation of the rates charged for May and June 2016 to claim that Mr. Quiros's attorneys' annual rate will be more than $3.8 million (SEC Opp., pg. 3) is a strawman.

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preliminary injunction hearing, at least eight people working on the SEC's case filed through the courtroom; Mr. Quiros had a team of three. Notably, neither the SEC nor the Receiver questions the necessity of the work performed by MSK or its local counsel; they only challenge the dollar amounts.

Additionally, the SEC and Receiver fixate on the fact that one MSK partner billed at $805 an hour (*see* SEC Opp., pg. 3; Receiver Opp., pg. 3), but they ignore that the lead MSK partner on the case, David B. Gordon, bills at the rate of $695 an hour, which is ***identical*** to the rate charged by Charles Lichtman of Berger Singerman. (*Compare* DE 118, pg. 4.)

Further, the SEC's challenge to the Valeo database statistics disingenuously ignores the nuances of those statistics and Douglas Gold's declaration. Critically, Mr. Gold explained that the database "gathers fees from publicly filed motions, thus ***the data available necessarily depends on what fees motions are actually filed***…." (DE 192-22, pg. 2.) Nonetheless, the SEC complains that the evidence presented by Mr. Gold is "substantially incomplete." (SEC Opp., pg. 5-6.) Likewise, the SEC feigns disbelief that the rate of a 1976 law graduate could be higher than that of a 1971 graduate (SEC Opp., pg. 6), again forgetting that the variance may be a function of what fees motions were filed and ignoring factors like older graduates transitioning to senior, of-counsel roles within a law firm. Even more absurd is the SEC's detailed analysis of the number of attorneys at the Florida law firms that Mr. Gold included in Exhibit 3 to his declaration. (SEC Opp. pgs. 6-7.) MSK never represented that these firms were the same size, rather that they "compete with MSK for legal services and candidates" and that they would be "equipped to handle major litigation such as this matter." (SEC Opp., pgs. 6-7; DE 192-22, pg. 4.) The SEC implicitly concedes that if MSK had more attorneys it could charge higher rates, which belies its purported concern for the investors.

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Equally misleading are claims by the SEC and the Receiver that the Receiver is providing services at a discounted rate of $395 an hour. (SEC Opp., pg. 3; Receiver Opp., pg. 3.) The Receiver (who has a legal degree) is not serving in the capacity of an attorney, and he notably omits the rates he charges for his own legal services. (*See* Receiver Opp., pg. 3, n.6.) Tellingly, in 2016, partners at the Miami-area offices of the Receiver's law firm, Akerman LLP, were awarded attorneys' fees at rates up to $642.88 an hour, and the Receiver himself was awarded fees at the rate of $638.25 an hour.[6] (*See* Exhibit 2: Supplemental Declaration of Douglas Gold, ¶ 3.)

Consequently, for the reasons set forth in the second fees motion and the Gold Declaration, the rates charged by MSK are reasonable.

V. Conclusion

Both the SEC and the Receiver purport to oppose Mr. Quiros's Second Motion for Attorneys' Fees in order to protect investors. Upon closer examination, however, the Oppositions are improper attempts to re-litigate the Court's order granting Mr. Quiros's first fees motion and authorizing him to use proceeds from his Setai Condominium to pay his attorneys' fees. Thus, in reality, the Oppositions are attempts to hold Mr. Quiros guilty until proven innocent – as expressly rejected by the Court – and to use the allegations against him as grounds to deprive him of the counsel of his choosing. Such arguments waste the Court's time and resources, as well as Mr. Quiros's.

Mr. Quiros therefore seeks an order awarding his attorneys' fees incurred through June 30, 2016, as set forth in his first Motion For An Order Permitting Payment Of Attorneys' Fees

[6] The Receiver's assertion that MSK did not provide notice to the applicable insurance carrier is misleading and without any foundation. (Receiver's Opp., pg. 2, n.2.) MSK was instructed by its clients not to address insurance issues, never was provided a copy of any insurance policy, and was advised that Jay Peak's in-house insurance expert would handle coverage issues, if any. In any event, notice indisputably given to the insurer at the time the SEC and various private litigants filed purported class and other actions was timely under the terms of the policy, regardless of whether notice was given earlier.

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And Costs (DE 109) and the instant Second Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 192). A Proposed Order (attached as Exhibit 3) specifying the fees sought by both the first and second motions is submitted concurrently herewith.

Dated: August 22, 2016

Respectfully submitted,

By: *s/ Scott B. Cosgrove*

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CERTIFICATE OF SERVICE

I hereby certify that on this on August 22, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in the manner stated in the service list attached.

s/ Scott B. Cosgrove
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EXHIBIT 1

BELLWETHER
ASSET MANAGEMENT

Letter of Intent to Purchase Shares and Associated Assets

This Letter of Intent to Purchase Shares and Associated Assets ("Letter of Intent") sets forth the agreement and understanding as to the terms of the sale between Q Resorts, Inc. (the "Seller"), whose principal place of business is located at 111 NE 1st St, Miami, FL 33132, and Bellwether Business Group, Inc. (the "Purchaser"), whose principal place of business is located at 7900 Glades Road, Suite 530, Boca Raton, FL 33434. The parties intend for this Letter of Intent to be binding, subject to the conditions and contingencies herein, and enforceable and that it shall be for the benefit of the respective parties as well as their successors and assigns.

1. Purchased Shares and Associated Assets.

At closing, for the consideration referenced herein, the Purchaser will purchase all of the outstanding shares of Jay Peak Incorporated, of which there are 9,232 (the "Shares"), which owns the real property known as the Jay Peak Ski Resort and located at 830 Jay Peak Road, Jay, VT 05859, and all the buildings, land, etc. therein (the "Property"). In addition to the Shares, the Purchaser will also purchase, for the consideration referenced herein, and for no additional consideration, the items listed in Exhibit A attached hereto (the "Associated Assets"), which are also owned by Jay Peak Incorporated.

2. Purchase Price.

The purchase price will be $93,000,000, payable with available funds in two installments. At the closing, sixty million ($60,000 000) payable in cash and the remaining thirty-three million ($33,000,000) once complete control of the Property is given to Purchaser. Note that the Seller may grant complete control at closing, in which case the Purchaser would pay the complete purchase of $93,000,000.

3. Pre-Closing Covenants.

Both parties will use their best efforts to obtain all necessary third party and government consents (which includes all certificates, permits and approvals required in connection with the Purchaser's operation of the Property and all material requested by Purchaser in the Due Diligence process). The Seller will continue to operate on the Property consistent with past practices while obtaining and distributing the proper documentation to Purchaser. The parties agree to prepare, negotiate and execute a proper purchase agreement that reflects the terms set forth in this Letter of Intent.

4. Due Diligence.

The Seller agrees to cooperate with the Purchaser's due diligence investigation of the Shares, Property, and the Associated Assets and to provide the Purchaser and its representatives with prompt and reasonable access to key employees and to books, records, contracts and other information pertaining to the operation of the Property. The obligations created by this Letter of Intent are only binding once the Purchaser is satisfied, at its sole discretion, and completes its due diligence, as referenced herein.

5. Confidentiality; Non-Competition.

The Purchaser will use the due diligence information it receives solely for the purpose of the Purchaser's due diligence and investigation of the Shares, Property, and the Associated Assets, and unless and until the Parties consummate the acquisition of the Shares, Property, and the Associated Assets, the Purchaser and its affiliates, directors, officers, employees, advisors, and agents (the "Purchaser's Representatives") will keep the due diligence information strictly confidential. The Purchaser will disclose the due diligence information only to those Representatives of the Purchaser who need to know such information for the purpose of consummating the acquisition of the Shares, Property, and the Associated Assets. The Purchaser agrees to be responsible for any breach of information by any of the Purchaser's Representatives and in the event the acquisition of the Shares, Property, and the Associated Assets is not consummated, the Purchaser shall immediately return any and all materials to Seller. Additionally, the Purchaser will not use any due diligence information to compete with Seller in the event the acquisition of the Shares, Property, and the Associated Assets is not consummated.

6. Exclusive Dealing.

Until Purchaser notifies Seller that it has completed its due diligence, the Seller will not enter into any agreement, discussion, negotiation, or provide information, solicit, encourage, entertain or consider any inquiries or proposals from, any other party, or other person with respect to the possible disposition of any portion of the Shares, Property, or the Associated Assets.

7. Expenses.

Each Party shall pay all of its own expenses, including legal fees, with the exception of consultation fees and closing costs, which shall be paid by the Seller in connection with the acquisition of the Shares, Property, and the Associated Assets.

a. A consulting fee of one and a half percent (1.5%) of the purchase price shall be paid to Midra Management & Consulting, which shall be due only upon closing.

b. A consulting fee of one point two percent (1.2%) of the purchase price shall be paid to Treasure Union Investment, Ltd., which shall be due only upon closing.

8. Indemnification.

The Seller represents and warrants that the Purchaser will not incur any liability in connection with the consummation of the acquisition of the Shares, Property, and the Associated Assets to any third party with whom the Seller or its agents have had discussions regarding the disposition of the Shares, Property, and the Associated Assets, and the Seller agrees to indemnify, defend and hold harmless the Purchaser, its officers, directors, stockholders, lenders and affiliates from any claims by or liabilities to such third parties, including any legal or other expenses incurred in connection with the defense of such claims. The covenants contained in this paragraph will survive the termination of this Letter of Intent.

If you are in agreement with the terms of this letter of intent, please sign in the space provided below and return a signed copy to Bellwether Business Group, Inc. via electronic mail and mail an original copy shall be mailed to 7900 Glades Road Suite 530, Boca Raton, FL 33432 by the close of business on Friday, August the 5th, 2016. Upon receipt of a signed copy of this letter, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

Bellwether Business Group

By:_____ Date:_____
Jean Joseph
Director

Agreed:

Q Resorts, Inc.

By: _____ Date:_____
Ari Quiros
CEO and President

Exhibit A – the "Associated Assets"

All rights associated with the name "Jay Peak Ski Resort"

Leasing rights to the Newport Airport

Tramside snowmaking machines

Stateside snow guns

Snowmaking reservoir

Snow making pumps/compressor

Bombardier groomer and sky haus

Tramside sunkis covered moving carpet lift

Taxi quad lift at Stateside

Village double chair lift

Metro quad lift at Tramside

Jet triple lift at Stateside

Green mountain flyer quad base / detachable lift with RFID Lift gates

Bonaventure quad lift and stateside base

Vehicle maintenance garage at Stateside

Transide base area / tramdock / austria haus

Tram base area

Tram Haus Lodge

Alice's Table Restaurant

Sky Haus

Sky house deli

Foeger ballroom

Waterpark

Valhalla board room

Parking deck Outside Hotel Jay

International room

Golf course

Golf club house

Cross country facilities

Ice haus

The wedding barn

Provisions general store

Ski patrol facilities

Stateside cafeteria

Gear shop stateside base lodge

Howies restaurant stateside hotel

Stateside amphitheater

Bullwheel bar

Stateside day lodge

Kids adventure center Stateside

Burton riglet park

Childrens learn to ski and ride area

Disney pixar toy story

Equipment with Sunkid covered moving carpet

Indoor learn to ski ramp

Parking and signage

Operating equipment

Restaurant equipment

Ski/board/Nordic/ice rental equipment

Vehicles

Computer equipment

Computer software

Furniture, fixtures & equipment (including Water Park)

Government permits

Any documents, files, and records containing technical support and other information pertaining to the operation of the previous business

New south village townhomes

Chalet meadows

West Bowl Real Estate

West Bowl Hotel

Hole #13 real estate

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-cv-21301-DPG

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.
_____/

SUPPLEMENTAL DECLARATION OF DOUGLAS GOLD IN SUPPORT OF ARIEL QUIROS'S SECOND MOTION FOR ORDER PERMITTING PAYMENT OF ATTORNEY'S FEES AND COSTS

I, DOUGLAS GOLD, hereby declare as follows:

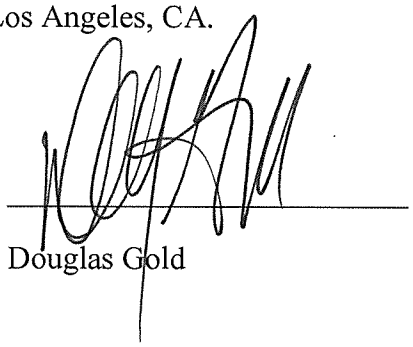
1. I am the Chief Marketing and Financial Officer of Mitchell Silberberg & Knupp, LLP ("MSK"), attorneys for Defendant Ariel Quiros. I make this Supplemental Declaration in support of Defendants Quiros's Second Motion For An Order Permitting Payment Of Attorney's Fees And Costs in this matter.

2. As discussed in greater detail in my original declaration in support of the second fees motion, as part of my job duties, I conduct comparative rate research using a database of attorney hourly rate and fee information from the company Valeo Partners (the "Valeo Database"). The Valeo Database was created by gathering attorney fee and rate information from public court filings.

3. On August 19, 2016, at the direction of counsel for Mr. Quiros, I researched the rates of the law firm Akerman LLP using the Valeo Database. Based on my research, in 2016, partners at Akerman LLP's offices in the Miami area have been awarded attorneys' fees at rates of up to $642.88 an hour, and Michael I. Goldberg, who I am informed is the Receiver in this litigation, was awarded fees at the rate of $638.25 an hour. Attached hereto as **Exhibit 1** and incorporated by reference herein is a chart summarizing my findings.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of August, 2016, at Los Angeles, CA.



Douglas Gold

Exhibit 1

Attorney	Position	Office	Grad Date	Bar Year	Actual Rate of Attorneys' Fees Awarded
Salomon, Peter E.	Partner	Miami	1989	1990	$642.88
Arnhols, William C.	Partner	Miami	1985	1985	$642.88
Roston, Carl D.	Partner	Miami	1988	1988	$642.88
Miller, Brian	Partner	Miami	1993	1993	$642.88
Goldberg, Michael I.	Partner	Fort Lauderdale	1990	1991	$638.25
Spratt, Jr., William J.	Partner	Miami	1986	1986	$527.25
Hartley, Andrea S.	Partner	Miami	1990	1990	$515.00
Marks, D. Brett	Partner	Fort Lauderdale	1996	1996	$510.00
Smith, Sarah	Partner	West Palm Beach			$462.50
Smith, Sarah Campbell	Partner	Miami	1999	1999	$462.50
Kline, Arlene K	Partner	West Palm Beach	1996	1997	$439.38
Berger, Eyal	Partner	Fort Lauderdale	2004	2004	$420.00

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-21301-DPG

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.
_____/

[PROPOSED] ORDER DIRECTING PAYMENT OF QUIROS'S ATTORNEYS' FEES AND COSTS RE FIRST AND SECOND MOTIONS FOR ATTORNEYS' FEES

On May 27, 2016, the Court granted, in part, Defendant Ariel Quiros's first Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 109). (*See* DE 148.) In the Court's May 27 order, it ruled that Mr. Quiros could sell or mortgage his Setai Condominium and use the proceeds to pay his attorneys' fees. (DE 148.) The Court further ordered that, upon receipt of the funds from the Setai Condominium, the Receiver shall pay Mr. Quiros's reasonable attorneys' fees in amounts approved by the Court. (*Id.*) The Receiver has now received proceeds from a mortgage of the Setai Condominium. (DE 200.)

Having previously granted Mr. Quiros's first Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 109), the Court now **GRANTS** Mr. Quiros's Second Motion For An Order Permitting Payment Of Attorneys' Fees And Costs (DE 192).

The Court finds that Mr. Quiros's attorneys billed their services at a reasonable hourly rate. The Court further holds that Mr. Quiros's attorneys expended a reasonable number of hours on his defense. Therefore, the Court awards Mr. Quiros the full attorneys' fees and costs sought by both the first and second fees motions.

IT IS HEREBY ORDERED that funds be released by the Receiver as follows to pay Mr. Quiros's attorneys' fees and costs:

1. $204,852 to pay Mitchell Silberberg & Knupp LLP's legal fees and costs through April 30, 2016.
2. $573,589.93 to pay Mitchell Silberberg & Knupp LLP's legal fees and costs for May 1, 2016 through June 30, 2016.
3. $20,000 to pay O'Connor & Kirby, PC's retainer.
4. $19,280.00 to pay Dinse, Knapp & McAndrew, P.C.'s legal fees and costs through June 30, 2016.

5. $19,952.99 to pay Gray Robinson's legal fees and costs through June 30, 2016.
6. $7,699.50 to pay León Cosgrove, LLC's legal fees and costs through June 30, 2016.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this _____ day of _____, 2016.

_____
Darrin P. Gayles
United States District Judge

cc: All Counsel of Record