

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

CASE NO. 16-21301-CIV-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al*,

Defendant.

SECOND AGREED MOTION TO MODIFY ASSET FREEZE ORDER

Defendant, Ariel Quiros, files this Second Agreed Motion to Modify the Asset Freeze Order, [ECF #11], and states:

On March 31, 2017, upon the agreement of Defendant Quiros, Plaintiff, the Securities and Exchange Commission (the “SEC”), and the Court-appointed Receiver (the “Receiver”), this Court entered an Endorsed Order Granting an Agreed Order to Modify the Court’s Asset Freeze Order. (ECF # 302). In that Order, this Court authorized Ironshore Indemnity to pay \$100,000 to undersigned counsel for Defendant Ariel Quiros to pay defense costs.

However, immediately following the Court’s entry of the above-referenced Endorsed Order, prior counsel for Defendant Quiros took immediate action to interfere with the payment of the agreed and authorized amount to undersigned counsel, including threatening Ironshore Indemnity and undersigned counsel with legal action if Ironshore Indemnity paid undersigned counsel pursuant to this Court’s Order. Therefore, Ironshore Indemnity has not paid undersigned counsel the \$100,000 toward defense costs, despite this Court’s Order authorizing it to do so, without assurances that it will be free from further interference or legal action from prior counsel.

Recently, Defendant Quiros received a refund check from the Internal Revenue Service (the "IRS"). The refund check is directed to Defendant Quiros and his wife, jointly. The Receiver and the SEC assert that the refund check is subject, in its entirety, to the Court's Asset Freeze Order. Defendant Quiros asserts that only half of the refund check is subject to the asset freeze. In the interest of avoiding costly litigation over the issue, Defendant Quiros, the SEC, and the Receiver have agreed that Defendant Quiros will endorse the entire check to the Receiver to be held in the Receiver's law firm trust account pending a final determination regarding disposition of the refund check. The parties have further agreed that, subject to this Court's approval, the Receiver will release \$100,000 of the total amount of the refund check to undersigned counsel for Defendant Quiros to be used toward defense costs in light of Ironshore not paying the previously agreed-to \$100,000. The parties have further agreed that when and if Ironshore releases any amounts up to the previously agreed-to \$100,000, such amounts will be paid to the Receiver, although Defendant Quiros reserves the right to seek further defense costs and to seek the payment of any amounts paid by Ironshore Indemnity on behalf of Defendant Quiros. The Receiver and the SEC reserve the right to contest any such efforts.

All parties agree that the instant Agreed Motion is not intended to prejudice Defendant Quiros' right to seek payment of additional defense costs under the Ironshore Indemnity Policy or to seek payment of any portion of the IRS refund check, nor the Plaintiff's or the Receiver's rights to agree to or oppose payment of such additional defense costs or of the remaining amounts of the IRS refund check, and no party otherwise waives any rights as they relate to the Policy or the refund check. The parties agree that the relief requested herein will avoid wasting counsel's and the Court's resources.

CASE NO. 16-21301-CIV-GAYLES

Pursuant to Southern District of Florida Local Rule 7.3, and as set forth above, undersigned counsel has conferred with counsel for the Plaintiff, the SEC, and counsel for the Receiver, and is authorized to represent that they agree to the relief requested herein.

WHEREFORE, Defendant, Ariel Quiros, respectfully requests that this Court GRANT the instant Second Agreed Motion to Modify Asset Freeze Order, authorize the Receiver to deposit the IRS refund check into his trust account, then authorize the Receiver to release \$100,000 of that amount to Damian & Valori LLP, without prejudice to undersigned counsel's ability to request the payment of additional defense costs at a later date.

Respectfully submitted,

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/s/ Melissa D. Visconti
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail via CM/ECF, on this 25th day of April, 2017, to all counsel of record.

/s/ Melissa D. Visconti
Melissa Damian Visconti