

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

16-21301

FILED by _____ D.C.

APR 12 2016

STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

CV- Gayle

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.

MAGISTRATE JUDGE
TURNOEE

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. This is an emergency action the Commission is bringing to stop an ongoing,

massive eight-year fraudulent scheme in which the Miami owner and the chief executive of a Vermont ski resort have systematically looted more than \$50 million of the more than \$350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program.

2. The fraudulent scheme spans seven limited partnership securities offerings all connected to Jay Peak, Inc., a Vermont ski resort that is wholly owned by Miami-based Q Resorts, Inc., which in turn is owned by Miami businessman Ariel Quiros. Quiros and William Stenger, the president and CEO of Jay Peak, are primarily responsible for the fraudulent scheme.

3. Among other things, Quiros, Stenger, and the companies they run that have overseen the development and construction of the Jay Peak resort have misused more than \$200 million – more than half of all money raised from investors. Quiros orchestrated and Stenger facilitated an intricate web of transfers between the various Defendants and Relief Defendants to disguise the fact that the majority of the seven projects were either over budget or experiencing shortfalls. These shortfalls were due in large part to Quiros pilfering tens of millions of dollars of investor money for his own use.

4. Since 2008, Quiros has misappropriated more than \$50 million in investor money to, among other things: (1) finance his purchase of the Jay Peak resort; (2) back a personal line of credit to pay his income taxes; (3) purchase a luxury condominium; (4) pay taxes of a company he owns; and (5) buy an unrelated resort. He improperly used additional investor funds to pay down and pay off margin loans (including paying nearly \$2.5 million in margin interest) he set up in the name of the Defendant companies at a brokerage firm.

5. The EB-5 investment program gives foreign investors the chance to earn permanent residence in the United States through investing in U.S. projects that create a certain

number of jobs. Quiros, Stenger, and the other Defendants made numerous misrepresentations and material omissions to these foreign investors. Among them were telling investors the Defendants would only use investor money to finance the specific project to which each investor contributed. The Defendants further assured investors that Stenger, the *de facto* general partner for the first six projects, had control of investor funds. In reality, Stenger extremely recklessly ceded control of investor funds to Quiros. He did almost nothing to manage investor money, even when confronted with red flags of Quiros' misuse.

6. The first six projects for which the Defendants raised money were all part of a ski resort and accompanying facilities located near Jay, Vermont. The most recent project, for which the Defendants continue to raise money from unwitting investors, purports to be for a nearby \$110 million biomedical research center that the Defendants have operated as nearly a complete fraud. The offering documents the Defendants are providing to investors in that project are rife with material misstatements and omissions. These include bogus claims that the Defendants are in the process of obtaining Food and Drug Administration approval for the research center's products. In reality, the Defendants have not undertaken the necessary steps to begin the lengthy and cumbersome process of getting FDA approval. Further exacerbating their misstatements, the Defendants have baselessly projected hundreds of millions of dollars in revenue from the research center – projections based on FDA approval they have done virtually nothing to obtain.

7. As a result, although the Defendants have raised almost three-quarters of the money for the research facility, they have done almost no work on it other than site preparation and ground-breaking, and are years behind their original construction and revenue schedule. Quiros has secretly used most of the money raised for the research facility's construction to pay

off and pay down a margin loan and to misappropriate approximately \$30 million for his own use.

8. As a consequence of the Defendants' systematic misuse of investor funds from the various Jay Peak projects, there is little money left in any of the research facility's accounts to pay for its construction. Similarly the sixth project, part of the ski resort, is nowhere near completion and out of money. Investors in those projects, who contributed \$500,000 each, are in grave danger of losing their investments and having their immigration petitions denied.

9. The Defendants apparently are hoping to fund remaining construction of the sixth and seventh projects through ongoing efforts to raise money from new investors – both in the biomedical research facility and in additional EB-5 projects Quiros is attempting to start. To stop the Defendants' illegal course of conduct and prevent further fraud on investors, the Commission is bringing this action and seeking emergency relief, among other remedies.

10. Through their conduct, the Defendants have each violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"). In addition, Quiros violated Section 20(a) of the Exchange Act and he and Q Resorts aided and abetted violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act. The Commission is seeking several forms of relief, including simultaneous emergency relief of temporary restraining orders, asset freezes, appointment of a Receiver, and sworn accountings. The Commission also seeks preliminary and permanent injunctions and civil money penalties against all the Defendants, and disgorgement of ill-gotten gains against the Defendants and Relief Defendants.

II. DEFENDANTS AND RELIEF DEFENDANTS

A. Defendants

11. **Jay Peak** is a Vermont corporation with its principal place of business in Jay, Vermont. Jay Peak operates the Jay Peak Resort in Jay, Vermont, which encompasses the first six projects for which the Defendants raised money. Jay Peak, in conjunction with others, has served as the manager or developer of the projects.

12. **Q Resorts** is a Delaware corporation with its offices in Miami, Florida. Q Resorts is the 100 percent owner of Jay Peak, and Quiros is the sole owner, officer and director of Q Resorts. Q Resorts acquired Jay Peak from a Canadian firm in 2008, and Quiros has since overseen the various Jay Peak projects through Q Resorts.

13. **Quiros**, 58, resides in Key Biscayne, Florida. In addition to being the sole owner, officer and director of Q Resorts, he is chairman of Jay Peak. Through those two companies, Quiros controlled each of the Defendant general and limited partnerships. He is a principal of the general partner of the Jay Peak Biomedical limited partnership offering, which is the seventh and most recent project offering. Between February and April 2011, Quiros served on the board of directors of Bioheart, Inc., a publicly-traded company.

14. **Stenger**, 66, resides in Newport, Vermont. Stenger is the Director, President, and CEO of Jay Peak. He is the president and director of the general partner of the first Jay Peak project offering, and is the sole officer or director of the general partner of the second through sixth offerings. All six offerings were set up as limited partnerships. Stenger is, along with Quiros, a principal in the Jay Peak Biomedical general partner.

15. **Jay Peak Hotel Suites L.P.** ("Suites Phase I") is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between December 2006 and May 2008, Suites Phase I raised \$17.5 million from 35 investors through an EB-5 offering of limited partnership interests to build a hotel. The hotel is completed and operating.

16. **Jay Peak Hotel Suites Phase II L.P.** (“Hotel Phase II”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between March 2008 and January 2011, Hotel Phase II raised \$75 million from 150 investors through an EB-5 offering of limited partnership interests to build a hotel, an indoor water park, an ice rink, and a golf club house. Construction on all is complete and they are operating.

17. **Jay Peak Management, Inc.** is a Vermont corporation which is the general partner of Suites Phase I and Hotel Phase II. It is also a wholly-owned subsidiary of Jay Peak. Stenger is the company’s president.

18. **Jay Peak Penthouse Suites L.P.** (“Penthouse Phase III”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between July 2010 and October 2012, Penthouse Phase III raised \$32.5 million from 65 investors through an EB-5 offering of limited partnership interests to build a 55-unit “penthouse suites” hotel and an activities center, including a bar and restaurant. Construction is complete and the facilities are operating.

19. **Jay Peak GP Services, Inc.** is a Vermont corporation and the general partner of Penthouse Phase III. Stenger, listed as the director, is its only principal.

20. **Jay Peak Golf and Mountain Suites L.P.** (“Golf and Mountain Phase IV”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between December 2010 and November 2011, Golf and Mountain Phase IV raised \$45 million from 90 investors through an EB-5 offering of limited partnership interests to build “golf cottage” duplexes, a wedding chapel, and other facilities. Construction is complete, and the facilities are operating.

21. **Jay Peak GP Services Golf, Inc.** is a Vermont corporation and the general partner of Golf and Mountain Phase IV. Stenger, listed as the director, is its only principal.

22. **Jay Peak Lodge and Townhouses L.P.** (“Lodge and Townhouses Phase V”) is a Vermont limited partnership with its principal place of business in Jay Vermont. Between May 2011 and November 2012, Lodge and Townhouses Phase V raised \$45 million from 90 investors through an EB-5 offering of limited partnership interests to build 30 vacation rental townhouses, 90 vacation rental cottages, a café, and a parking garage. Construction is complete and the facilities are operating.

23. **Jay Peak GP Services Lodge, Inc.** is a Vermont corporation and the general partner of Lodge and Townhouses Phase V. Stenger, listed as the director, is its only principal.

24. **Jay Peak Hotel Suites Stateside L.P.** (“Stateside Phase VI”) is a Vermont limited partnership with its principal place of business in Jay, Vermont. Between October 2011 and December 2012, Stateside Phase VI raised \$67 million from 134 investors through an EB-5 offering of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. Although the Stateside Phase VI offering was fully subscribed, the Defendants have only built the hotel. A small amount of work has been done on building the cottages and work has not yet begun on the recreation and medical centers.

25. **Jay Peak GP Services Stateside, Inc.** is a Vermont corporation and the general partner of Stateside. Stenger, listed as the director, is its only principal.

26. **Jay Peak Biomedical Research Park L.P.** (“Biomedical Phase VII”) is a Vermont limited partnership with its principal place of business in Newport, Vermont. Since November 2012, Biomedical Phase VII has raised approximately \$83 million from 166 investors through an EB-5 offering of limited partnership interests to construct a biomedical research facility. Other than site preparation and groundbreaking, no work has been done on the facility. The Defendants seek to raise approximately another \$27 million from 54 investors, which,

because of the misuse and misappropriation of funds, will not be enough to finance construction of the research facility.

27. **AnC Bio Vermont GP Services, LLC** is a Vermont limited liability company and the general partner of Biomedical Phase VII. Its managing members are Quiros and Stenger.

B. Relief Defendants

28. **Jay Construction Management, Inc.** (“JCM”) is a Vermont corporation with its offices in Miami, Florida, at the same address as Q Resorts. Its status is listed as terminated as of March 16, 2016. Quiros is the sole officer and director of JCM. Quiros funneled more than \$160 million of investor funds from several projects through JCM and its bank accounts, and entered into contracts with outside vendors for construction of some of the Jay Peak projects. He also used misused tens of millions of dollars of the funds JCM received. Quiros controlled JCM’s bank accounts. Without any legitimate basis, JCM received investors’ proceeds emanating from the Defendants’ securities fraud.

29. **GSI of Dade County, Inc.** (“GSI”) is a Florida corporation with its offices in Miami at the same address as Q Resorts and JCM. Quiros is the owner and sole officer and director of GSI. GSI received more than \$13 million of investor money emanating from Biomedical Phase VII investor funds. Without any legitimate basis, GSI received investors’ proceeds emanating from the Defendants’ securities fraud.

30. **North East Contract Services, LLC** (“Northeast”) is a Florida limited liability company formed in February 2013 and headquartered in Weston, Florida. Northeast acts as project manager for Biomedical Phase VII. William Kelly, who is Jay Peak’s COO and a longtime business associate of Quiros, is the managing principal of Northeast. Northeast received at least \$7.9 million of Biomedical Phase VII investor funds (in turn, Northeast paid

approximately \$5.5 million of these funds to GSI) for purported supervision fees on approximately \$47 million of expenses that JCM purportedly was going to pay on behalf of Biomedical Phase VII. In reality, the Defendants paid less than \$10 million of Biomedical Phase VII expenses with the approximately \$47 million JCM received from Biomedical Phase VII. Quiros misused and misappropriated the vast majority of the remaining more than \$37 million of Biomedical Phase VII investor funds that JCM received. Hence, Northeast received construction supervision fees for work that was not performed. Without any legitimate basis, Northeast received investors' proceeds emanating from the Defendants' securities fraud.

31. **Q Burke Mountain Resort, LLC** ("Q Burke") is a Florida limited liability company formed in April 2012 and headquartered in Miami at the same address as Q Resorts. Quiros is the managing principal of Q Burke. Q Burke is also the owner of the Burke Mountain Resort located in East Burke, Vermont, which is the site of another EB-5 offering that Quiros is promoting called Q Burke Mountain Resort. As described below, Quiros improperly used approximately \$7 million from a margin loan backed by investor funds to purchase Q Burke. He subsequently used approximately \$18.2 million of Biomedical Phase VII investor funds as part of the \$19 million pay off of this margin loan. Without any legitimate basis, Q Burke received investors' proceeds emanating from the Defendants' securities fraud.

III. JURISDICTION AND VENUE

32. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a); and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

33. This Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida for several reasons. Q Resorts, which owns Jay Peak and as a

result oversees the Jay Peak projects, is located in Miami. Quiros, who orchestrated the fraudulent scheme and through Q Resorts controls the general partner and limited partnerships in all Jay Peak offerings, resides and works in the Miami area. Stenger and the other Jay Peak employees all take direction from Quiros. Several of the companies through which Quiros orchestrated the fraud and through which he funneled money, including JCM, GSI, Northeast, and Q Burke, are located in South Florida.

34. In addition, the Raymond James & Associates, Inc. (“Raymond James”) account executive and brokerage office through which Quiros opened the Raymond James accounts used to perpetrate the fraud were located in Coral Gables, Florida. While investor money was first deposited in an escrow account for each project at a Vermont bank, it was soon after transferred to a corresponding Raymond James account through the brokerage office located in Coral Gables. Quiros and Stenger had numerous communications with the Raymond James broker located in Coral Gables, including emails, letters, wires, and telephone calls.

35. Furthermore, Kelly, Jay Peak’s COO, is located in South Florida. Other key Jay Peak employees spent significant time in South Florida during the time period alleged in this Complaint. A number of investors who received green cards also have settled in the Southern District, including at least 22 investors in Hotel Phase II, eight in Penthouse Phase III, 19 in Golf and Mountain Phase IV, 11 in Lodge and Townhouses Phase V, 17 in Stateside Phase VI, and seven in Biomedical Phase VII.

36. The Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

IV. THE EB-5 PROGRAM

37. Congress created the EB-5 Immigrant Investor Program in 1990 in an effort to boost the U.S. economy. The Program provides a prospective immigrant with the opportunity to become a permanent resident by investing in the U.S.

38. To qualify for an EB-5 visa, a foreign applicant must invest \$500,000 or \$1 million (depending on the type of investment) in a commercial enterprise approved by the U.S. Citizenship and Immigration Service ("Immigration Service"). Once he or she has invested, the foreign applicant may apply for a conditional green card, which is good for two years. If the investment creates or preserves at least ten jobs during those two years, the foreign applicant may apply to have the conditions removed from his or her green card. The applicant can then live and work in the U.S. permanently.

39. A certain number of EB-5 visas are set aside for prospective immigrants who invest through what is known as a Regional Center. An applicant only has to invest \$500,000 if he or she invests through a Regional Center.

40. The State of Vermont EB-5 Regional Center has been a federally-designated Regional Center since 1997. Prospective immigrants investing through the Vermont Regional Center only have to invest \$500,000. As the Regional Center, the state has approved all EB-5 projects within the state and has entered into a memorandum of understanding with the issuers of EB-5 projects, including Jay Peak. The Vermont Agency of Commerce and Community Development has, until recently, administered the state's EB-5 program. The Vermont Division of Financial Regulation now shares that responsibility with the Agency.

V. THE JAY PEAK EB-5 OFFERINGS

41. Jay Peak began offering and selling securities in the form of limited partnership interests in December 2006. Since that time it has raised more than \$350 million from more than

700 investors from at least 74 countries in seven separate offerings. The individual offerings are set forth in Paragraphs 15, 16, 18, 20, 22, 24, and 26 above. While Biomedical Phase VII involves construction of the biomedical research facility, the first six limited partnership offerings have centered around a ski resort and related facilities, such as hotels, lodges, condominiums, recreation and meeting facilities, and restaurants and cafes.

42. Jay Peak has marketed its EB-5 limited partnership interests and solicited investors in a variety of ways – through its website, intermediaries who have promoted the investments, immigration attorneys with interested clients, and overseas meetings and seminars with prospective investors.

43. For example, Jay Peak has routinely attended events overseas where company representatives, including Stenger, have spoken and met with prospective investors. In addition, Jay Peak has sponsored booths and spoken at immigration-related conferences and events, both in the U.S. and abroad. Stenger has met in person with about 95 percent of the investors in the Jay Peak projects, and Quiros in recent years also has attended Jay Peak meetings with investors and answered their questions.

44. While foreign residents are interested in investing to obtain their permanent green cards, they also are interested in achieving a return on their investment. Stenger has told investors he anticipated the individual projects would each make a two to six percent annual return once they were each complete and operating. In addition, the offering materials the Defendants provided to investors have touted their potential returns. For example, one Stateside investor received information from Jay Peak in the Stateside Phase VI offering materials stating that once the project is complete, investors will realize up to a six percent annual return. A Biomedical Phase VII investor received materials stating a five percent annual return is expected.

Other Biomedical Phase VII investors also received offering documents touting a four to six percent annual return once the project is built.

45. Interested investors in each of the partnerships generally put down a \$10,000 deposit, which goes towards their \$500,000 investment. The investors then normally receive from Jay Peak, and often from Stenger, offering materials that consist of a private placement memorandum, a business plan, and a limited partnership agreement.

46. Among the documents included in each business plan is one showing the cost of each project and the use of investor funds. Given different titles, such as "Source and Use of Investor Funds" (Suites Phase I), "Projected Sources and Uses of Funds" (Biomedical Phase VII), or "Investor Funds Source and Application" (Penthouse Phase III), this use of proceeds document lists in great detail exactly how Jay Peak and/or the limited partnership intend to spend all investor funds raised, including on land acquisition, site preparation, and construction. The use of proceeds document also lists the management contribution in each offering, and how Jay Peak or the limited partnership will spend that money. The document also spells out exactly how much in construction, management, land, or other fees Jay Peak and the general partner are entitled to take from investor money in each offering.

47. So, for example, in Suites Phase I, the document entitled "Source and Use of Investor Funds" shows the project raising \$17.5 million from investors to pay for the project. The costs are then broken down as \$10.4 million for construction, \$1.6 million for operating systems and equipment, \$800,000 for utilities and common areas, \$1.8 million for purchase of the land, approximately \$600,000 for contingencies, and approximately \$400,000 for working capital. Upon completion of the project, Jay Peak is entitled to take \$1.9 million in developer fees, for a total of \$17.5 million.

48. An additional part of the offering materials is the limited partnership agreement in each project, which spells out the rights, obligations and responsibilities of the general partner for each project as well as the limited partners (investors). In each project through Stateside Phase VI, the general partner is an entity in which Stenger is the sole principal. In Biomedical Phase VII, Stenger and Quiros are both principals in the general partner.

49. Among other key provisions, each limited partnership agreement – which all investors either signed or adopted – contains several provisions regarding how Jay Peak and the general partner can use investor money. Generally, each limited partnership agreement prevents the general partner from, without consent of the limited partners: (1) borrowing from or commingling investor funds; (2) acquiring any property with investor funds that does not belong to the limited partnership; or (3) mortgaging, conveying or encumbering partnership property that was not real property.

50. As described in detail throughout the rest of this Complaint, the Defendants routinely violated these provisions when they misused, misappropriated, and commingled investor funds from the different projects. Instead of using investor funds as described in the use of proceeds documents, the Defendants frequently had investor funds flowing in a circular and roundabout manner among various accounts and entities, which allowed them to misuse and misappropriate investor funds.

51. Stenger reviewed, was responsible for, and had authority over, the contents of the offering documents in Phases I-VI, including the limited partnership agreements and the use of proceeds documents. Moreover, Quiros reviewed the contents of the Phase I-VI offering documents, was familiar with them, and understood he had to abide by them. He also approved the use of proceeds document in Phases III-VI.

52. Both Stenger and Quiros, as principals of the general partner for Biomedical Phase VII, reviewed and approved the contents of that project's offering documents, including the limited partnership agreement and the use of proceeds document.

53. Interested investors made a \$500,000 investment in a particular project, as well as paid an additional \$50,000 administrative fee that Jay Peak and the other Defendants used for expenses associated with the investment, including fees to intermediaries. Each project had an escrow account at People's United Bank in Vermont (formerly known as the Chittenden Trust Company). Stenger was a signatory on all of the People's Bank accounts and routinely authorized the transfer of funds into and out of those accounts.

54. The initial \$500,000 investment normally was deposited into the People's Bank account for the specific project in which the investor was participating. Once the Immigration Service approved the investor's initial, or provisional, green card, Stenger typically had the \$500,000 transferred to a Raymond James account that was set up in the name of the particular project through Raymond James' Coral Gables office.

55. Stenger had no signatory or other authority over the Raymond James accounts. Rather, Quiros opened all of the Raymond James accounts, and had sole authority over them. The Raymond James broker listed on the accounts was Quiros' former son-in-law. Once the Raymond James accounts received transfers from the People's Bank accounts, it was solely Quiros who directed use of the funds.

56. Quiros, Stenger, and other officers of Jay Peak and the Defendants oversaw and directed use of all investor funds and the development and construction of all projects. Investors played no role in the development, construction, or operation of the facilities.

**VI. THE DEFENDANTS FRAUDULENTLY USED INVESTOR FUNDS
TO FINANCE QUIROS' PURCHASE OF JAY PEAK**