

**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 Defendants¹

**RECEIVER'S MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN
RECEIVER AND ARIEL QUIROS; (II) ENTRY OF A BAR ORDER; AND (III)**

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

**APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF SETTLEMENT
AND BAR ORDER; AND INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg, the court appointed receiver (the “Receiver”) in the above-captioned civil enforcement action (the “SEC Action”), through undersigned counsel, hereby files this *Motion for (I) Approval of Settlement between Receiver and Ariel Quiros; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order and Incorporated Memorandum of Law* (the “Motion”). In support of this Motion, the Receiver states as follows:

PRELIMINARY STATEMENT²

On or about November 17, 2017, counsel for the SEC and Ariel Quiros (“Mr. Quiros”) entered into a settlement agreement (the “SEC-Quiros Settlement”) pursuant to which Quiros agreed to disgorge substantial assets to the SEC (the “Disgorged Assets”) in satisfaction of an agreed judgment of \$83,859,964. This Court approved the SEC-Quiros Settlement on February 6, 2018 [ECF No. 449] and entered Final Judgment against Mr. Quiros on that same date [ECF No. 450]³.

Pursuant to the SEC-Quiros Settlement, the SEC agreed to transfer the Disgorged Assets set forth herein⁴ as **Exhibit “1”** to the Receiver to be used for the benefit of investors in the Jay Peak EB-5 projects. Pursuant to the SEC’s direction, Mr. Quiros has already transferred the Disgorged Assets to the Receiver. Under the settlement reached between the Receiver and Mr. Quiros, Mr. Quiros will waive any interest in the Jay Peak Resort and Burke Mountain Hotel and their related assets (as more fully set forth in the settlement agreement) which will pave the way

² Defined terms shall have the meaning set forth in the Settlement Agreement.

³ The terms of the settlement are laid out in the SEC’s Motion for Court to Establish Fair Fund [ECF No. 447].

⁴ The Disgorged Assets are referenced in the Settlement Agreement as Exhibit “A”. However, a copy of the proposed order approving the Settlement Agreement is also referenced as Exhibit “A” and is attached to the Settlement Agreement as Exhibit “A”. To avoid any confusion, a list of the Disgorged Assets is attached hereto as Exhibit “1”.

for the Receiver to sell the Jay Peak Resort and the Burke Mountain Hotel for the benefit of the investors. Eliminating any interest of Mr. Quiros in the Receivership Entities and their property is an important step that will enable the Receiver to sell the property and distribute the proceeds thereof to the investors in accordance with future orders of the Court. In consideration of this, the Receiver has agreed (i) to waive all claims against Mr. Quiros, compromise all claims relating to a separate lawsuit brought by the Receiver against Mr. Quiros, and dismiss that action with prejudice; and (ii) use his best efforts to obtain entry of a bar order enjoining all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action. A true and correct copy of the Settlement Agreement is attached as **Exhibit “2”** to this Motion. By way of this Motion, the Receiver requests that the Court approve the settlement by means of a two-step process.

First, the Receiver requests that the Court enter an order substantially in the form and substance as **Exhibit “C”** to the Settlement Agreement (the “Preliminary Approval Order”). The Preliminary Approval Order preliminarily approves the Settlement Agreement and establishes procedures, including providing notice to parties possibly affected by the settlement, along with an opportunity to object and participate in the final approval hearing. The Receiver believes that the Procedures Order can be entered without a hearing on the basis of the supporting law and facts set forth in this Motion.

Second, the Receiver requests that, after the requirements of the Preliminary Approval Order are met, including a final approval hearing, the Court enter an order substantially in the form and substance as **Exhibit “A”** to the Settlement Agreement (the “Settlement Order”), including a bar order (the “Bar Order Provision”) as set forth in the Settlement Order.

BACKGROUND

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida against the Receivership Defendants,⁵ the Relief Defendants,⁶ William Stenger, and Mr. Quiros (together “the Defendants”), alleging the Defendants violated federal securities laws by making false or materially misleading representations to investors under the federally created EB-5 visa program.

2. On April 13, 2016, upon the SEC’s Motion for Appointment of Receiver [ECF No. 7], this Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the “Receivership Order”).

3. The Receivership Order gives the Receiver the authority to take possession of and administer all property and assets of every kind of the Receivership Entities, wherever they are located, belonging to or in the possession of the Receivership Entities, to administer such assets as is required in order to comply with the directions contained in the Receivership Order, and to hold all other assets pending further order of the Court. Receivership Order ¶ 1. Moreover, the Receiver may make or authorize such payments and disbursements from the funds and assets taken into control that the Receiver deems reasonable and necessary in the discharge of his duties. *Id.* ¶ 8.

⁵ The “Receivership Defendants” are 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., and AnC Bio Vermont GP Services, LLC.

⁶ The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC Bio VT, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants, along with their subsidiaries and affiliates, shall collectively be referred to as the “Receivership Entities.”

The Temporary Restraining Order and Asset Freeze

4. On the same day the Receiver was appointed, this Court entered an Order on the SEC's Emergency Motion and Memorandum of Law for Temporary Restraining Order (the "TRO") [ECF No. 4, granted at ECF No. 11].

5. The TRO is consistent with the powers granted to the Receiver to control assets of the Defendants that can be traced to investors' funds. Specifically, the TRO restrained all Defendants, including Mr. Quiros, from any use or withdrawal of any kind of the assets or property that would go on to be administered by the Receiver in the discharge of his duties. [ECF No. 11]

¶ III. A. The TRO also required each financial institution identified by the SEC to freeze each account identified by the SEC that was associated with the Defendants such that no Defendant could dissipate the contents of the account on his, her or its own. *Id.* ¶ III. B.

6. On August 23, 2017, based on Mr. Quiros' agreement with the SEC and consent, the Court entered a Judgment of Permanent Injunction and Other Relief Against Defendant Ariel Quiros [ECF No. 398], which in pertinent part, maintained the asset freeze set forth in the TRO (as modified by the Court's April 25, 2016 and May 27, 2016 Orders [ECF Nos. 82 and 148]) and the Preliminary Injunction [ECF No. 238]. Pursuant to the Judgment of Permanent Injunction, the Court retained jurisdiction to determine the amount of disgorgement, prejudgment interest and civil penalty to be assessed against Mr. Quiros.

7. On February 2, 2018, based on the agreement and consent of Mr. Quiros, the SEC filed an Unopposed Motion for Entry of Final Judgments against Defendants Ariel Quiros and William Stenger and for Court to Establish Fair Fund [ECF No. 447].

8. As demonstrated above, the Permanent Injunction and the Final Judgment, including the agreement to disgorge significant assets, were entered based on Mr. Quiros' consent

and agreement after good faith negotiations with the SEC. Likewise, the Settlement Agreement at issue in the instant Motion is the result of Mr. Quiros' cooperation and good faith negotiations with the Receiver.

SETTLEMENT TERMS AND CONDITIONS

9. The Settlement Agreement arises out of the SEC-Quiros Settlement and would not have occurred but for that settlement and the concomitant transfer of the Disgorged Assets to the Receiver. Subsequent to the SEC-Quiros Settlement, the Receiver and Mr. Quiros, through counsel, have been negotiating for months in good faith and at arm's length. These negotiations have included multiple lengthy in-person meetings and telephone conferences.

10. Throughout this investigation, the Receiver and Mr. Quiros were represented by experienced and diligent counsel vigorously pressing their respective clients' positions, underscoring the risk of litigation in terms of time, expense, and uncertainty of outcome.

11. On or about May 20, 2016, the Receiver commenced a lawsuit in the District Court against Mr. Quiros, Case No.: 1:16-CV-21831-JAL (the "Receiver's Action"), seeking damages against Mr. Quiros for claims arising out of his pre-receivership dealings with the Receivership Entities. Mr. Quiros disputes the factual and legal bases of such claims and has indicated his intention to defend any such claims vigorously.

12. The Receiver and Mr. Quiros reached a settlement and compromise of their disputes as memorialized in the Settlement Agreement to avoid further expense, delay, and the risk and uncertainty of litigation, without admission of any liability or concession to the Receiver's potential claims and Mr. Quiros' potential defenses. The principal terms of the Settlement

Agreement are summarized below.⁷

13. In consideration of the releases being given by the Receiver to Mr. Quiros, the dismissal of the Receiver's Action, with prejudice, and the Receiver's covenant to use his best efforts to obtain the entry of the Bar Order Provision (as set forth below), upon the Effective Date of the settlement, Mr. Quiros agrees as follows:

(a) Waiver of Any Interest in the Receivership Entities; Resort Properties; and Disgorged Assets. Mr. Quiros, on behalf of himself and on behalf of anyone that claims through him, shall waive any and all rights, title, claim, or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities, including but not limited to all property used by the Receivership Entities in the operation of the Jay Peak Resort and the Burke Mountain Hotel and their related assets. This waiver is intended to be the broadest possible waiver resulting in Quiros having no remaining right, title, claim, or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel.

(b) No Entitlement to Share in Proceeds. Mr. Quiros shall waive any right or entitlement to share in any sales proceeds of the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel.

⁷ This description of the Settlement Agreement is only a summary. The Settlement Agreement memorializes all of the terms and conditions of the parties' agreement and parties in interest are encouraged to read it in full and consult with a lawyer, if necessary.

(c) Waiver of Standing. Mr. Quiros shall no longer have any standing to appear or be heard in the SEC Action with respect to matters concerning the Receiver's administration of the receivership estate or the Receivership Entities and with respect to matters concerning the operation of the Jay Peak Resort, the Burke Mountain Hotel, or their related assets specifically including the sale thereof.

(d) Bar Order. The Receiver will use his best efforts to obtain the entry of the Bar Order enjoining all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action.

SETTLEMENT APPROVAL PROCEDURES

14. To afford parties affected by the Settlement Agreement and the Bar Order Provision notice and an opportunity to object and participate in a hearing, the Receiver proposes the following procedures for notice, objections, and a hearing (the "Settlement Approval Procedures"):

(a) Notice. The Receiver will prepare a notice substantially in form and content as **Exhibit "D"** to the Settlement Agreement (the "Notice"), which will contain a description of the Settlement Agreement and the Bar Order Provision and afford affected parties the opportunity to obtain complete copies of all the settlement related papers; the notice will be distributed in accordance with the items below.

(b) Service. The Receiver will serve the Notice no later than five (5) days after entry of the Preliminary Approval Order via email (or if no electronic mailing address is available, then by first class U.S. mail, postage prepaid) to

(i) all counsel who have appeared of record in the SEC Action;

(ii) all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action; and

(iii) all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein.

(c) Publication. The Receiver will publish the Notice no later than ten (10) days after entry of the Preliminary Approval Order

(i) twice a week for a period of not less than two (2) weeks in the Vermont Digger; and

(ii) on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com), on which there is a “drop down” feature that permits viewers to convert website text to seven languages.

(d) Copies upon Request. The Receiver will provide promptly copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email to Kimberly Abbate at kimberly.abbate@akerman.com, or via telephone by calling Ms. Abbate at 954-759-8929.

(e) Evidence of Compliance. No later than 5 days before the Final Approval Hearing (defined below), the Receiver will file with the Court in the SEC Action written evidence of compliance with items (i) through (iv) above either in the form of an affidavit or declaration.

(f) Hearing. The Receiver requests that the Court schedule a hearing (the “Final Approval Hearing”) to consider final approval of the Settlement Agreement and the Bar Order Provision on a date that is at least 30 calendar days after the entry of the Preliminary Approval Order.

(g) Objection Deadline and Objections.

(i) The Receiver requests that the Court require any person who objects to the Settlement Agreement or the Bar Order Provision to file an objection with the Court no later than 21 calendar days after entry of the Preliminary Approval Order (the “Objection Deadline”).

(ii) The Receiver requests that the Court require all such objections to

(A) be in writing;

(B) be signed by the person filing the objection, or his or her attorney;

(C) state, in detail, the factual and legal grounds for the objection;

(D) attach any document the Court should review in considering the objection and ruling on the Motion;

(E) require the person filing the objection to make a request to appear at the Final Approval Hearing if the person intends to appear; and

(F) be served by email or regular mail on the Receiver and Quiros' counsel.

(iii) The Receiver requests that no person be permitted to argue at the Final Approval Hearing unless such person has complied with the requirements of these procedures.

(iv) The Receiver also requests that any party to the Settlement Agreement be authorized to file a response to the objection before the Final Settlement Hearing.

RELIEF REQUESTED

15. The Receiver respectfully requests (i) entry of the Preliminary Approval Order upon the filing of this Motion, and (ii) entry of the Settlement Order, including the Bar Order Provision, after expiration of the Objection Deadline if no objections are timely filed, or after the Final Approval Hearing, if objections are timely filed.

BASIS FOR REQUESTED RELIEF

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied).

A district court also has the power to enter an order permanently enjoining third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with any of the facts giving rise to the receivership- often referred to as a “bar order.” *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in SEC receivership). Bar orders are appropriate “to assist the parties in reaching a settlement.” *Matter of Munford, Inc.*, 97 F.

3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case). As set forth above, in furtherance of reaching a settlement with Mr. Quiros, the Receiver agreed to use his best efforts to obtain the entry of a bar order. Accordingly, the Receiver moves for the entry of a bar order preventing all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action and submits that the bar order is warranted and appropriate under the circumstances presented.

The Receiver notes, as indicated below, that he has conferred with the SEC, and the SEC has no objection to the relief requested in this Motion, including the request for entry of a Bar Order.

The powers of the Court also include the fixing of procedures for the grant of such relief, as long as due process is afforded to affected persons. *See Elliott*, 953 F.2d at 1566.

A. The Settlement Agreement is fair, adequate, and reasonable.

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *Sterling*, 158 F.2d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986 (11th Cir. 1984)).

Upon due consideration of these governing factors, the Settlement Agreement should be approved. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated all potential claims of the Receivership Entities against Mr. Quiros; the defenses to be asserted to those claims in the event of litigation; the delay and expense

of litigating such claims; the uncertainty of outcome in any such litigation; and the possibility of appeal by Mr. Quiros of any adverse outcome. The Receiver entered into the Settlement Agreement after extensive, arm's length negotiations conducted between the parties and their experienced counsel in good faith. It was, of course, not the product of collusion.

Indeed, it bears mention that the process of negotiating the terms of the proposed settlement occurred over a period of many months, during the course of which Mr. Quiros and his counsel were cooperative with the Receiver's efforts on behalf of the Receivership Entities. The proposed settlement marks the culmination of those efforts and is reflected in the Settlement Agreement and this Motion.

The Settlement Agreement provides for Mr. Quiros' waiver of any and all rights, title, claim, or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used, or possessed by the Receivership Entities, including but not limited to all property used by the Receivership Entities in the operation of the Jay Peak Resort and the Burke Mountain Hotel and their related assets. This will pave the way for the Receiver to sell the Jay Peak Resort and the Burke Mountain Hotel and their related assets and distribute the proceeds thereof to the investors and creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and not the product of collusion.

B. The Bar Order Provision is appropriate relief.

District courts have the power to enter bar orders in equity receiverships where necessary or appropriate as ancillary relief in the context of the underlying action. *Kaleta*, 530 Fed. Appx. at 362. As the Fifth Circuit has explained, a district court has "inherent equitable authority to issue a

variety of ancillary relief measures in actions brought by the SEC to enforce the federal securities laws[.]” *Id.* (internal quotations omitted). *See also* All-Writs Act, 28 U.S.C. 1651; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 338 (2d Cir. 1985). Such ancillary relief includes injunctions against non-parties as part of settlements in the receivership. *Kaleta*, 530 Fed. Appx. at 362.

This power to enter bar orders is consistent with the Eleventh Circuit’s recognition of the district court’s “broad powers and wide discretion to determine relief in an equity receivership [that] derives from the inherent powers of an equity court [to] fashion relief[.]” *See Elliott*, 953 F.2d at 1566. Moreover, the Eleventh Circuit has *expressly* held that district courts have the power to enter bar orders. *Seaside Engineering & Surveying*, 780 F. 3d at 1081 (affirming entry of a bar order through a chapter 11 plan where “fair and equitable”); *Munford*, 97 F. 3d at 455 (affirming entry of a bar order over objection of non-settling defendants); *In re U.S. Oil and Gas Lit.*, 967 F. 2d 489 (11th Cir. 1992) (affirming entry of a bar order over objection of non-settling co-defendants).⁸

Citing the Eleventh Circuit’s precedents in *Munford* and *U.S. Oil and Gas Litigation*, in the *Mutual Benefits* case, the court concluded that bar orders are “within this Court’s jurisdiction and equitable authority to enter and enforce”. *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8. Accordingly, courts in this District have regularly entered bar orders in SEC receiverships and in bankruptcy cases. *Latin American Services Co., Ltd.*, No. 99-2360, slip op. [ECF No. 353] at 4 (entering a bar order against all investors over investor objection); *In re*

⁸ The Eleventh Circuit’s approval of bar orders in bankruptcy cases is particularly persuasive here in that the Eleventh Circuit has also recognized the parallels between bankruptcy proceedings and equity receiverships. *See Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554, 557 (11th Cir 2013) (“Given that a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors, we will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context.”).

Rothstein Rosenfeldt Adler, PA, 2010 WL 3743885, at *7 (Bankr. S.D. Fla. Sept. 22, 2010) (entering bar order that was “fair and equitable”). Indeed, this Court has expressly recognized this authority and the benefits of bar orders when it approved entry of a Bar Order in this case in connection with the Raymond James Settlement. *See* [ECF No. 353].

For the reasons set forth herein, the Receiver respectfully submits that the Bar Order is appropriate and warranted under the circumstances presented.

C. The Settlement Approval Procedures comply with due process, in that they afford persons affected by the Settlement Agreement and Bar Order notice and an opportunity to be heard in a manner that is good and sufficient under the circumstances.

“Due process requires notice and an opportunity to be heard.” *Elliot*, 953 F.2d at 1566. The procedures required to satisfy due process vary “according to the nature of the right and to the type of proceedings.” *Id.* “[A] hearing is not required if there is no factual dispute.” *Elliot*, 953 F.2d at 1566. Ultimately, due process requires procedures that are “fair.” *Id.* The Settlement Approval Procedures meet these requirements.

The form and content of the Notice provide a reasonable opportunity to evaluate and object to the Motion, the Settlement Agreement and the Bar Order Provision. The Notice contains a description of the settlement, including the Bar Order Provision, the parties to the Settlement Agreement, and the material terms thereof. The Notice provides a reasonable description and warning that the rights of the person receiving or reviewing it may be affected by the Settlement Agreement and Bar Order Provision, and of such person’s right to object and the manner in which to make such an objection.

The manner and method of service and publication set forth in the Settlement Approval Procedures is reasonably calculated under the circumstances to disseminate the Notice to all affected parties. The Notice will be served on counsel of record in the SEC Action and on counsel

for investors appearing of record in *any* legal proceeding or arbitration relating to investors. The Notice will be served on all investors identified in the investor lists maintained by the Receivership Entities. The Notice will also be served on all non-investor creditors identified after a reasonable search. Therefore, all investors and creditors of which the Receiver has actual knowledge will receive actual service of the Notice.

In addition, the Notice will be published in the *Vermont Digger*, which has run many stories on Quiros and the Jay Peak projects and is believed to be followed by many stakeholders in the Receivership Entities. The Notice will also be published on the Receiver's website, which has been online since the Receiver's appointment and is available in seven languages. Such publication is reasonably calculated to apprise persons not receiving actual service of the Notice that their rights may be affected and of their opportunity to object.

Accordingly, the Settlement Approval Procedures furnish all parties in interest a full and fair opportunity to evaluate the Motion, the Settlement Agreement and the Bar Order Provision, and to object thereto.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court grant the Motion, and enter the Preliminary Approval Order and the Settlement Order, in the manner set forth above.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission whom takes no position on this Motion or the relief requested.

Respectfully submitted,

By: /s/ Michael I. Goldberg
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Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this October 19, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

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Suite 1100

Miami, FL 33131-4327

Telephone: (305) 373-1000

Attorneys for Raymond James & Associates

Inc.

EXHIBIT 1

DISGORGED ASSETS

Real Property

<u>Real Property</u>	<u>Address/Description</u>
Quiros entire interest in Jay Peak Resort	830 Jay Peak Road, Jay, Vermont
Burke Mountain Resort	Q-Burke Mountain, Burke, Vermont
Quiros Land 199 Acres	Cross Rd. Revoir Flats Rd., Jay, Vermont
Cross Road 4 Acres	Cross Rd. Revoir Flats Rd., Jay, Vermont
River Bank 15	Acres Revoir Flats Rd. Rte. 105, Jay, Vermont
Jay Ranches	261 Revoir Flats Rd. TH4, Jay, Vermont
Bogner Property	172 Bogner Drive, Newport, Vermont
White House	986 Lake Road, Newport, Vermont
Setai Condominium	400 5th Avenue, New York, New York
Jay Peak Resort Unit V417 A/B	Jay Peak Resort VC 417, Bldg. 11, Jay, Vt.
Bella Vista	Cross Road TH 1, Troy, Vermont
Cross Road J	Cross Road J, Jay, Vermont
Trump Place Condominium	220 Riverside Drive, New York, New York
Renaissance Property	Downtown Newport, Vermont
Heavens Bench	2266 Darling Hill Road, Burke, Vermont
Q Aviation Airplane	Hanger 2628 Airport Road, Coventry, Vermont

Bank Accounts (The amount listed below in each account)

Citibank Account ending in 2336	\$ 286
Citibank Account ending in 3359	\$ 41,958
Citibank Account ending in 3362	\$ 60,125
Citibank Account ending in 3375	\$ 5,373
Citibank Account ending in 7382	\$ 9,000
Citibank Account ending in 6412	\$ 1,807
Citibank Account ending in 5662	\$ 14,224
Citibank Account ending in 7081	\$ 5,000

Funds Held in Trust by the Receiver

Tax Refund Check held by Receiver	\$168,801
Funds From Davivienda Int'l	\$110,000

EXHIBIT 2

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between Michael I. Goldberg, in his capacity as receiver (the "Receiver") of entities set forth in Schedule A to this Agreement (collectively, the "Receivership Entities") and Ariel Quiros ("Mr. Quiros"). (The Receiver and Mr. Quiros shall each be referred to in this Agreement as a "Party" and collectively be referred to in this Agreement as the "Parties").

RECITALS

A. The Receiver has been appointed as receiver over the Receivership Entities in a civil enforcement action commenced by the Securities and Exchange Commission (the "SEC") captioned *SEC v. Quiros et al.*, Case No. 16-21301-CV-DPG (the "SEC Action"), pending in the United States District Court for the Southern District of Florida (the "District Court"). Specifically, the Receiver derives his authority over the Receivership Entities from the District Court's *Order Granting Motion for Appointment of Receiver* [DE #13] (the "Receivership Order") entered at the request of the SEC [DE #7], and the Parties rely upon that Order in entering into this Agreement.

B. On or about May 20, 2016, the Receiver commenced a lawsuit in the District Court against Mr. Quiros, Case No.: 1:16-CV-21831-JAL (the "Receiver's Action"), seeking damages against Mr. Quiros for claims arising out of his pre-receivership dealings with the Receivership Entities.

C. On or about November 17, 2017, the staff of the SEC and Mr. Quiros entered into a proposed settlement agreement (the "SEC-Quiros Settlement") pursuant to which Mr. Quiros agreed to disgorge to the SEC the assets set forth on the attached Exhibit "A" (the "Disgorged Assets").

D. On or about February 6, 2018, the Court in the SEC Action entered a Final Judgment approving the SEC-Quiros Settlement and Directing Mr. Quiros to transfer the Disgorged Assets to the SEC (the "Final Judgment").

E. Pursuant to the SEC-Quiros Settlement and the Final Judgment, the SEC has transferred the Disgorged Assets to the Receiver to be used for the benefit of investors in the Jay Peak EB-5 projects in accordance with future orders of the District Court. Most of the Disgorged Assets have already been transferred by Mr. Quiros to the Receiver and the parties are in the process of finalizing the transfer of the remaining Disgorged Assets from Mr. Quiros to the Receiver.

F. The Parties have been negotiating for months in good faith and at arm's length. These negotiations have included the exchange of documents, multiple lengthy in-person meetings, and many telephone conferences. At each step, the Parties have been represented by experienced and diligent counsel vigorously pressing their respective client's position.

G. The Parties recognize and understand that any settlement of their respective rights, claims, and defenses is contingent upon the District Court approving this Agreement ("Court Approval").

H. As a result of these negotiations, the Parties have agreed to a full and final settlement of their rights, claims, and defenses as provided herein.

I. **NOW THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is **HEREBY AGREED** between the Parties as follows:

1. **RECITALS.** The Parties represent, warrant, and affirm that the above recitals are true and correct. The recitals set forth above are an integral part of this Agreement and are incorporated herein by reference.

2. **EFFECTIVENESS.** On the date of execution by the last Party to sign this Agreement (the "Execution Date"), this Agreement shall take effect between the Parties, subject to approval by the District Court as provided herein. This Agreement shall be effective for all purposes the later of the date the Court enters a final order approving the Agreement (the "Effective Date") or the date in which Mr. Quiros transfers all of the Disgorged Assets to the Receiver as required under the SEC-Quiros Settlement. As used in this paragraph, "final order" means an order unmodified after the conclusion of, or expiration of, any right of any person to seek any appeal, rehearing or reconsideration of the order.

3. **SETTLEMENT.**

In consideration of the releases being given by the Receiver to Mr. Quiros under this Agreement and the Receiver's covenant to use his best efforts to obtain the entry of the Bar Order (as set forth below), upon the Effective Date of this Agreement, Mr. Quiros agrees as follows:

a. **Waiver of Any Interest in Receivership Entities; Resort Properties; and Disgorged Assets.** Mr. Quiros, on behalf of himself and on behalf of anyone that claims through him, and subject to the exception set forth below in this subsection and in the following subsection b, shall waive any and all rights, title, claim or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities, including but not limited to all property used by the Receivership Entities in the operation of the Jay Peak Resort and the Burke Mountain Hotel and their related assets. Subject to the below exceptions, this waiver is intended to be the broadest possible waiver resulting in Mr. Quiros having no remaining right, title, claim or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel. This waiver is not intended to and does not interfere with Mr. Quiros's rights and interest in Jay Peak Townhouse Unit V132.

b. **No Entitlement to Share in Proceeds.** Mr. Quiros shall waive any right or entitlement to share in any sales proceeds of the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel. This waiver is not intended to and does not interfere with Mr. Quiros's rights and interest in Jay Peak Townhouse Unit V132. Moreover, this waiver is not intended to relinquish any of

Mr. Quiros' interest in business conducted through GSI of Dade County, Inc. which is unrelated to the Receivership Entities.

c. **Waiver of Standing.** Mr. Quiros shall no longer have any standing to appear or be heard in the SEC Action with respect to matters concerning the Receiver's administration of the Receivership Estate or the Receivership Entities unless any such matters directly implicate Mr. Quiros's personal or property rights or interests. Mr. Quiros shall no longer have any standing to appear and be heard with respect to matters concerning the operation of the Jay Peak Resort, the Burke Mountain Hotel or their related assets specifically including the sale thereof.

d. **Assignment of Flight Design Note to Mr. Quiros.** GSI currently holds a promissory note payable from Flight Design to GSI in the amount of \$325,000 (the "Flight Design Note"). Mr. Quiros has represented to the Receiver and the SEC that the proceeds of the loan made to Flight Design were from Mr. Quiros' personal funds and he has provided backup documentation supporting this assertion. Accordingly, Mr. Quiros asserts that the Flight Design Note was unintentionally made payable to GSI. Upon the Effective Date, the Receiver shall assign the Flight Design Note to Mr. Quiros. Prior to the Effective Date, Mr. Quiros may commence a lawsuit on the Flight Design Note in GSI's name and he shall substitute in as the plaintiff in place of GSI after the Effective Date.

e. **Other Matters Involving GSI.** In addition to the Flight Design Note, Mr. Quiros believes that he may have other personal business dealings he conducted through GSI. Pursuant to the Receivership Order, the Receiver is vested with complete control over GSI and Mr. Quiros is prevented from exercising any rights over GSI's property, and further, lacks any standing whatsoever to pursue claims held by GSI. In the event Mr. Quiros informs the Receiver of other rights he believes are wrongfully in GSI's name, the Receiver agrees to consider and investigate such information, and if the Receiver determines that such property rights are owned by Mr. Quiros, the Receiver shall file a motion with the Court seeking authorization to assign any such rights to Mr. Quiros. Notwithstanding the foregoing, the Receiver shall be entitled to use his sole discretion in connection with any such decision and Mr. Quiros agrees to abide by any such decision.

4. **APPROVAL OF THE SETTLEMENT BY THE COURT.**

a. **Request for Approval.** No later than five business days after the Execution Date, the Receiver shall file with the District Court a motion substantially in the form and substance attached hereto as Exhibit "A" (the "Settlement Motion") requesting approval of this Agreement and entry of the Settlement Order.

b. **Contents of Settlement Motion.** The Receiver shall request in the Settlement Motion entry of a procedures order substantially in the form and substance as the form of order

attached hereto as Exhibit "B" and approval of the form and content and of the manner and method of service and publication of the notice attached hereto as Exhibit "C".

c. **Contents of Settlement Order.** The Receiver shall request entry of the Settlement Order substantially in the form and substance as set forth in Exhibit "D" to this Agreement.

d. **Service and Publication of Notice.** The Receiver shall use best efforts to provide good and sufficient notice of this Agreement, the Settlement Motion, the deadline to object to approval of the Agreement and entry of the Bar Order, and the form of the Settlement Order.

5. **RELEASES AND BAR ORDER.**

a. **Release of Mr. Quiros:** Upon the occurrence of the Effective Date and the Court Approvals, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court in the SEC Action, except as expressly provided in this Agreement, the Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge Mr. Quiros, and his undersigned counsel, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Receiver and/or the Receivership Entities, may have or claim to have, now or in the future, against Mr. Quiros that arise out of, in connection with or pertain to directly or indirectly, the SEC Action, including the Parties, allegations, and issues in the SEC Action, the Receiver's Action, the Receivership Entities, the Relief Entities, or the Disgorged Assets. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Mr. Quiros from the performance of his obligations in accordance with this Agreement. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, any other party or financial institution in any manner whatsoever, and, for the avoidance of doubt and not by way of limitation, the Receiver expressly reserves all claims and causes of action he may have against any other party or financial institution. Moreover, notwithstanding anything else contained in this Agreement, nothing herein shall constitute a release or waiver of the Receiver's right to receive from the SEC or any other person assets obtained from Mr. Quiros or his family members.

b. **Limited Release by Receiver of Okcha, Nicole, and Ary Quiros and Release by Okcha, Nicole, and Ary Quiros:** Upon the occurrence of the Effective Date and the Court Approvals, and without the need for the execution and delivery of additional documentation, the Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge Okcha Quiros, Ary Quiros and Nicole Quiros from any claims to recover transfers of funds made by the Receivership Entities to them. Upon the occurrence of the Effective Date and the Court

Approvals, and without the need for the execution and delivery of additional documentation, Okcha Quiros, Ary Quiros, and Nicole Quiros shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Receiver and the Receivership Entities from any and all claims.

c. **Release of Receiver:** Upon the occurrence of the Effective Date and the Court Approvals, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the court in the SEC Action, except as expressly provided in this Agreement, Mr. Quiros, on behalf of himself and anyone claiming through him shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Receiver and his agents and counsel, and the Receivership Entities, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which Mr. Quiros, or anyone claiming through him, on their behalf or for their benefit may have or claim to have, now or in the future, against the Receiver and his agents and counsel and the Receivership Entities that are based upon, relate to, or arise out of, in connection with or pertain to the SEC Action, including the parties, allegations, and issues in the SEC Action. Notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Receiver from the performance of his obligations in accordance with this Agreement.

d. **Bar Order.** The Receiver covenants that he shall use his best efforts to seek the entry of a Bar Order by the District Court enjoining the claims of all investors and creditors of the Receivership Entities from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action. In the event the District Court enters a Bar Order, any such Bar Order shall expressly not bar the claims of any state or federal governmental agency or entity and shall only apply to the civil claims of the Receivership Entities' investors and creditors to the extent such claims arise out of Mr. Quiros's affiliation with the Receivership Entities.

e. **Dismissal of the Receiver's Action.** Within five (5) business days of the Effective Date and the Court Approvals, the Receiver shall dismiss the Receiver's Action against Mr. Quiros, with prejudice.

6. **REPRESENTATIONS AND WARRANTIES**

a. **Representation and Warranties of Mr. Quiros.** Mr. Quiros hereby represents and warrants that as of the Effective Date: (a) he has full requisite power and authority to execute and deliver and to perform his obligations under this Agreement, and the execution, delivery and performance hereof.

b. **Representation and Warranties of the Receiver.** The Receiver hereby represents and warrants that as of the Effective Date: (a) subject to the entry of the Settlement Order, he has the power and authority to bind the applicable Receivership Entities to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on their behalf.

7. **COVENANTS**

a. **Covenants of Mr. Quiros.** Mr. Quiros hereby covenants and agrees that he shall take all actions reasonably necessary to obtain and shall take no action to impede or preclude the entry of the Order Approving Settlement, the administration of the SEC Action or actions brought by the Receiver on behalf of the Receivership Entities, or the implementation of this Agreement. Mr. Quiros further covenants that he will execute, or cause to be executed, any and all documents reasonably requested by the Receiver or the SEC to effectuate the transfer of the Disgorged Assets to the Receiver.

b. **Covenants of the Receiver.** The Receiver, for himself and, as applicable, on behalf of the Receivership Entities, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities and their subsidiaries and affiliates to take, all actions reasonably necessary to obtain, and shall take no action to impede or preclude, the entry of the Bar Order and the Order Approving Settlement.

c. **Good Faith Negotiations.** The Parties further recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly, at arm's length, and in good faith; this Agreement is made and executed by and of each Party's own free will; that each Party knows all of the relevant facts and his or its rights in connection therewith; and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any party to this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties that are settled by the execution of this Agreement.

d. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns. For the avoidance of doubt, only the signatories hereto may seek to enforce this Agreement.

e. **Governing Law; Retention of Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the federal law, and, to the extent not applicable, with the internal laws of the State of Florida, without giving effect to any principles of conflicts of law. By its execution and delivery of this Agreement, each of the Parties

hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding between the Parties with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the District Court for the Southern District of Florida, Miami Division, before the District Court Judge presiding over the SEC Action, and by execution and delivery of this Agreement, each Party hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 6(h) hereof.

f. **Entire Agreement.** This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Agreement.

g. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

h. **Notices.** Any notice required or permitted to be provided under this Agreement shall be in writing and served by electronic mail and either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

If to the Receiver, to:

Michael I. Goldberg, Esq.
Akerman LLP
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, FL 33301
Tel: (954) 468-2444
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

If to Mr. Quiros, to:

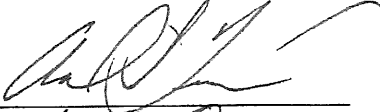
Ariel Quiros
c/o Melissa Visconti, Esq. or
Melanie Damian, Esq.
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
305-371-3960 (office)
305-371-3965 (fax)
Email: mvisconti@dvlp.com
mdamian@dvlp.com

i. **Further Assurances.** Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

**Michael I. Goldberg, not individually,
but solely in his capacity as Receiver, for
each of the Receivership Entities**

Ariel Quiros


Signature: 


Print Name: ARIEL QUIROS

Dated: June _____, 2018.

Dated: June 13th, 2018.

AGREED TO AN ACCEPTED SOLELY AS TO THE RELEASE PROVISION AFFECTING
THE UNDERSIGNED


Okcha Quiros


Nicole Quiros

Ary Quiros



If to Mr. Quiros, to:

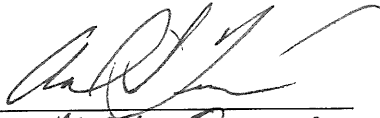
Ariel Quiros
c/o Melissa Visconti, Esq. or
Melanie Damian, Esq.
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
305-371-3960 (office)
305-371-3965 (fax)
Email: mvisconti@dvlp.com
mdamian@dvlp.com

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**Michael I. Goldberg, not individually,
but solely in his capacity as Receiver, for
each of the Receivership Entities**

Ariel Quiros

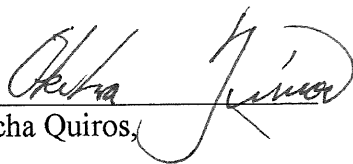
Signature: 

Print Name: ARIEL QUIROS

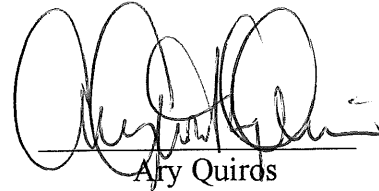
Dated: June 20, 2018.

Dated: June 13th, 2018.

AGREED TO AN ACCEPTED SOLELY AS TO THE RELEASE PROVISION AFFECTING
THE UNDERSIGNED


Okcha Quiros,

Nicole Quiros


Ary Quiros



Schedule A

(List of Receivership Entities)

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
Q Burke Mountain Resort, Hotel and Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
Jay Construction Management, Inc.
GSI of Dade County, Inc.
North East Contract Services, Inc.
Q Burke Mountain Resort, LLC

Exhibit A
(Form of Settlement Order)



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 Defendants¹

**FINAL ORDER (I) APPROVING SETTLEMENT BETWEEN RECEIVER,
AND ARIEL QUIROS; AND (II) BARRING, RESTRAINING, AND ENJOINING
CLAIMS AGAINST ARIEL QUIROS**

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

THIS MATTER came before the Court on the Motion for Approval of Settlement between the Receiver and Ariel Quiros [ECF No. ___] (the “Motion”) filed by Michael I. Goldberg, as the Court-appointed receiver (the “Receiver”) of the entities set forth on Exhibit A to this Order (the “Receivership Entities”) in the above-captioned civil enforcement action (the “SEC Action”) seeking authorization to settle the claims the Receiver brought against Ariel Quiros in a separate action filed by the Receiver against Ariel Quiros in the United States District Court for the Southern District of Florida, Case No.: 1:16-CV-21831-JAL (the “Receiver’s Action”). Pursuant to the Order (I) Preliminarily Approving the Settlement between Receiver and Ariel Quiros; (II) Approving Form and Content of Notice, and Manner and Method of Service and Publication; (III) Setting Deadline to Object to Approval of Settlement and Entry of Bar Order; and (IV) Scheduling a Hearing [ECF No. ___] (the “Preliminary Approval Order”), the Court held a hearing on _____ to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests final approval of the proposed settlement with Ariel Quiros set forth in the Settlement Agreement dated August __, 2018 (the “Settlement Agreement”) attached as Exhibit A to the Motion, executed by the Receiver on behalf of each of the Receivership Entities and by Ariel Quiros (and by Okcha Quiros, Nicole Quiros and Ary Quiros as to section 5(b) of the Settlement Agreement) (collectively, the “Settling Parties”); and for entry of a bar order (the “Bar Order”) enjoining any and all persons (excluding any federal or state governmental bodies or agencies) from commencing or continuing litigation or other pursuit of any and all claims against Ariel Quiros that relate in any manner to those events, transactions and circumstances alleged in the SEC Action.

The Court’s Preliminary Approval Order preliminarily approved the Settlement Agreement, approved the form and content of the Notice, and set forth procedures for the manner

and method of service and publication of the Notice to affected parties. The Preliminary Approval Order and related documents were served by email on all identifiable interested parties and publicized in an effort to reach any unidentified persons.

The Preliminary Approval Order set a deadline for affected parties to object to the Settlement Agreement or the Bar Order, and scheduled the hearing for consideration of such objections, as well as the Settling Parties' argument and evidence in support of the Settlement Agreement and Bar Order. That deadline has passed, and Objections were filed at ECF No. _____.

The Receiver filed a Declaration with the Court in which he detailed his compliance with the notice and publication requirements contained in the Preliminary Approval Order [ECF No. ____].

This Court is fully advised of the issues in the various actions, as it has previously received evidence and heard argument concerning the events, circumstances, and transactions in the SEC Action, which resulted in the appointment of the Receiver and the issuance of the Preliminary Injunction [ECF No. 238], the Permanent Injunction [ECF No. 260], and the Asset Freeze Order [ECF No. 11]. In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record, and the arguments and evidence presented at the hearing; therefore, the Court **FINDS AND DETERMINES** as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion, the Settlement Agreement and the Bar Order, and authority to grant the Motion, approve the Settlement Agreement and enter the Bar Order. *See* 28 U.S.C. § 1651; *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action). *See also*

Matter of Munford, Inc., 97 F. 3d 449 (11th Cir. 1996) (approving settlement and bar order in a bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving settlement and bar order in a class action).

B. The service or publication of the Notice as described in the Receiver's Declaration is consistent with the Preliminary Approval Order, constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all affected persons of the Motion, the Settlement Agreement and the Proposed Bar Order, and of their opportunity to object thereto, of the deadline for objections, and of their opportunity to appear and be heard at the hearing concerning these matters. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, the Bar Order and all matters related thereto and to be heard at the hearing; therefore, the service and publication of the Notice complied with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the due process requirements of the United States Constitution.

C. The Court has allowed any investors, creditors, objectors, and parties to the SEC Action to be heard if they desired to participate. Each of these persons or entities has standing to be heard on these issues.

D. The Settling Parties negotiated over a period of several months; their negotiations included the exchange and review of documents, multiple in-person meetings, and many telephone conferences.

E. The Settlement Agreement was entered into in good faith, is at arm's length, and is not collusive.

F. The Settlement Agreement provides for Ariel Quiros, on behalf of himself and anyone that claims through him (including his wife and children) to fully and forever waive any rights, title, claims or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities in the operation of the Jay Peak Resort or the Burke Mountain Hotel and their related assets. The Settlement Agreement further provides that Ariel Quiros shall have no remaining right, title, claims or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and Burke Mountain Hotel. The Receiver has a present and immediate need to resolve Ariel Quiros' claims to any of the Receivership Entities, including their property or proceeds of their sale, so that he may undertake a sales process of the Jay Peak Resort and Burke Mountain Hotel and their related assets and distribute the proceeds of those sales, subject to Court approval, to the Investors who may be entitled to share in such distribution, as to be determined by the Court at a later time.

G. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that Ariel Quiros' (including his wife and children) waiver of any rights, claims, title and interest to the Receivership Entities or their property and proceeds provides a benefit to the Receivership Entities and the Investors that is well within the range of reasonableness. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a receivership may be

approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties).

H. **Notice to Affected Parties**

The Receiver has given the best practical notice of the proposed Settlement Agreement and Bar Order to all known interested persons:

1. all counsel who have appeared of record in the SEC Action;
2. all counsel for all of the Investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual Investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action; and
3. all known Investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein; and

The Receiver has maintained a list of those given notice. Access to that list will be permitted as necessary if a Barred Person as defined below denies receiving notice and asserts that this Order is therefore inapplicable to that Barred Person.

In addition, the Receiver has published the Notice approved by the Preliminary Approval Order in the Vermont Digger twice a week for two consecutive weeks. The Receiver has also maintained the Notice on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).

Through these notices and publications, anyone with an interest in the Receivership Entities should have become aware of the Settlement Agreement and Bar Order and have been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

I. **Benefits of the Settlement:**

The Settlement Agreement provides for Ariel Quiros, on behalf of himself and anyone that claims through him (including his wife and children), to fully and forever waive any rights, title, claims or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities in the operation of the Jay Peak Resort or the Burke Mountain Hotel and their related assets. The Settlement Agreement further provides that Ariel Quiros shall have no remaining right, title, claims or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property owned by, related to or utilized by the Jay Peak Resort and Burke Mountain Hotel. The Receiver has a present and immediate need to resolve Ariel Quiros' claims to any of the Receivership Entities, their property or proceeds of their sale so that he may undertake a sales process of the Jay Peak Resort and Burke Mountain Hotel and their related assets and distribute the proceeds of those sales, subject to Court approval, to the Investors who may be entitled to share in such distribution, as to be determined by the Court. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate to assist in maximizing the value of the Receivership Entities and insuring for a more prompt sale of the Receivership Entities' assets and distribution of their proceeds for the benefit of the investors. The interests of persons affected by the Bar Order and the releases in the Settlement Agreement were well represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and in consultation with the SEC. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and in the best interests of all creditors of, investors in, or other persons or entities claiming an interest in, having authority

over, or asserting claims against the Receivership Entities, and of all persons who could have claims against Ariel Quiros relating to the Barred Claims. The Bar Order is an appropriate order granting ancillary relief in the SEC Action.

Approval of the Settlement Agreement and the Bar Order and adjudication of the Motion are discrete from other matters in the SEC Action, and, as set forth above, the Settling Parties have shown good reason for the approval of the Settlement Agreement and Bar Order to proceed expeditiously. Therefore, there is no just reason for delay of the finality of this Order.

Based on the foregoing findings and conclusions, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED** in its entirety. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved.

2. The Settlement Agreement is **APPROVED**, and is final and binding upon the Settling Parties and their successors and assigns as provided in the Settlement Agreement. The Settling Parties are authorized to perform their obligations under the Settlement Agreement. The Receiver is authorized and directed to dismiss the Receiver's Action, with prejudice.

3. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED**. *See Kaleta*, 530 Fed. Appx. at 362 (entering bar order and injunction in an SEC receivership proceeding where necessary and appropriate as "ancillary relief" to that proceeding). *See also In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1010 (11th Cir. 2015) (approving bar orders in bankruptcy matters); *Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554 (11th Cir. 2013) (the Eleventh Circuit "will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context"); *Munford, Inc. v.*

Munford, Inc., 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litig.*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

4. **BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST ARIEL QUIROS WITH RESPECT TO THE BARRED CLAIMS**, as those terms are herein defined.

- a. **The “Barred Persons”**: Any non-governmental person or entity, including, without limitation, (i) owners, officer and directors, limited and general partners, investors, and creditors of the Receivership Entities; or (ii) any person or entity claiming by or through such persons or entities, and/or the Receivership Entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;
- b. **The “Barred Conduct”**: instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

c. **The “Barred Claims”**: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, whether arising under local, state, federal or foreign law; that in any way relate to, are based upon, arise from, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership Entities, the investments made in the eight limited partnerships which raised funds from investors, including but not limited to those events, transactions and circumstances alleged in the SEC Action;

5. The Bar Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government and its agencies or departments; or (ii) to the Settling Parties’ respective obligations under the Settlement Agreement.

6. Nothing in this Order or the Settlement Agreement, nor the performance of the Settling Parties’ obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Receiver or any Barred Persons against any party other than Ariel Quiros.

7. Pursuant to Fed. R. Civ. P. 54(b), and the Court’s authority in this equity receivership to issue ancillary relief, this Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration.

8. This Order shall be served by counsel for the Receiver via email, first class mail or international delivery service, on any person or entity afforded notice (other than publication notice) pursuant to the Preliminary Approval Order.

9. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the injunction, Bar Order and releases herein or in the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _____,
2018.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)²

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
Q Burke Mountain Resort, Hotel and Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
Jay Construction Management, Inc.
GSI of Dade County, Inc.
North East Contract Services, Inc.
Q Burke Mountain Resort, LLC
Q Burke Mountain Resort, Hotel and Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
AnC Bio VT, LLC

² The Receivership Entities includes all affiliates and subsidiaries of the Receivership Entities.

Exhibit B

(Form of Settlement Motion)

43797550;1
45357214;1



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 Defendants¹

RECEIVER'S MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN
RECEIVER AND ARIEL QUIROS; (II) ENTRY OF A BAR ORDER; AND (III)

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

**APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF SETTLEMENT
AND BAR ORDER; AND INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg, the court appointed receiver (the “Receiver”) in the above-captioned civil enforcement action (the “SEC Action”), through undersigned counsel, hereby files this *Motion for (I) Approval of Settlement between Receiver and Ariel Quiros; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order and Incorporated Memorandum of Law* (the “Motion”). In support of this Motion, the Receiver states as follows:

PRELIMINARY STATEMENT²

On or about November 17, 2017, counsel for the SEC and Ariel Quiros (“Mr. Quiros”) entered into a settlement agreement (the “SEC-Quiros Settlement”) pursuant to which Quiros agreed to disgorge substantial assets to the SEC (the “Disgorged Assets”) in satisfaction of an agreed judgment of \$83,859,964. This Court approved the SEC-Quiros Settlement on February 6, 2018 [ECF No. 449] and entered Final Judgment against Mr. Quiros on that same date [ECF No. 450]³.

Pursuant to the SEC-Quiros Settlement, the SEC agreed to transfer the Disgorged Assets set forth herein⁴ as **Exhibit “1”** to the Receiver to be used for the benefit of investors in the Jay Peak EB-5 projects. Pursuant to the SEC’s direction, Mr. Quiros has already transferred the Disgorged Assets to the Receiver. Under the settlement reached between the Receiver and Mr. Quiros, Mr. Quiros will waive any interest in the Jay Peak Resort and Burke Mountain Hotel and their related assets (as more fully set forth in the settlement agreement) which will pave the way

² Defined terms shall have the meaning set forth in the Settlement Agreement.

³ The terms of the settlement are laid out in the SEC’s Motion for Court to Establish Fair Fund [ECF No. 447].

⁴ The Disgorged Assets are referenced in the Settlement Agreement as Exhibit “A”. However, a copy of the proposed order approving the Settlement Agreement is also referenced as Exhibit “A” and is attached to the Settlement Agreement as Exhibit “A”. To avoid any confusion, a list of the Disgorged Assets is attached hereto as Exhibit “1”.

for the Receiver to sell the Jay Peak Resort and the Burke Mountain Hotel for the benefit of the investors. Eliminating any interest of Mr. Quiros in the Receivership Entities and their property is an important step that will enable the Receiver to sell the property and distribute the proceeds thereof to the investors in accordance with future orders of the Court. In consideration of this, the Receiver has agreed (i) to waive all claims against Mr. Quiros, compromise all claims relating to a separate lawsuit brought by the Receiver against Mr. Quiros, and dismiss that action with prejudice; and (ii) use his best efforts to obtain entry of a bar order enjoining all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action. A true and correct copy of the Settlement Agreement is attached as **Exhibit "2"** to this Motion. By way of this Motion, the Receiver requests that the Court approve the settlement by means of a two-step process.

First, the Receiver requests that the Court enter an order substantially in the form and substance as **Exhibit "C"** to the Settlement Agreement (the "Preliminary Approval Order"). The Preliminary Approval Order preliminarily approves the Settlement Agreement and establishes procedures, including providing notice to parties possibly affected by the settlement, along with an opportunity to object and participate in the final approval hearing. The Receiver believes that the Procedures Order can be entered without a hearing on the basis of the supporting law and facts set forth in this Motion.

Second, the Receiver requests that, after the requirements of the Preliminary Approval Order are met, including a final approval hearing, the Court enter an order substantially in the form and substance as **Exhibit "A"** to the Settlement Agreement (the "Settlement Order"), including a bar order (the "Bar Order Provision") as set forth in the Settlement Order.

BACKGROUND

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida against the Receivership Defendants,⁵ the Relief Defendants,⁶ William Stenger, and Mr. Quiros (together “the Defendants”), alleging the Defendants violated federal securities laws by making false or materially misleading representations to investors under the federally created EB-5 visa program.

2. On April 13, 2016, upon the SEC’s Motion for Appointment of Receiver [ECF No. 7], this Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the “Receivership Order”).

3. The Receivership Order gives the Receiver the authority to take possession of and administer all property and assets of every kind of the Receivership Entities, wherever they are located, belonging to or in the possession of the Receivership Entities, to administer such assets as is required in order to comply with the directions contained in the Receivership Order, and to hold all other assets pending further order of the Court. Receivership Order ¶ 1. Moreover, the Receiver may make or authorize such payments and disbursements from the funds and assets taken into control that the Receiver deems reasonable and necessary in the discharge of his duties. *Id.* ¶ 8.

⁵ The “Receivership Defendants” are 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., and AnC Bio Vermont GP Services, LLC.

⁶ The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC and AnC Bio VT, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants, along with their subsidiaries and affiliates, shall collectively be referred to as the “Receivership Entities.”

The Temporary Restraining Order and Asset Freeze

4. On the same day the Receiver was appointed, this Court entered an Order on the SEC's Emergency Motion and Memorandum of Law for Temporary Restraining Order (the "TRO") [ECF No. 4, granted at ECF No. 11].

5. The TRO is consistent with the powers granted to the Receiver to control assets of the Defendants that can be traced to investors' funds. Specifically, the TRO restrained all Defendants, including Mr. Quiros, from any use or withdrawal of any kind of the assets or property that would go on to be administered by the Receiver in the discharge of his duties. [ECF No. 11] ¶ III. A. The TRO also required each financial institution identified by the SEC to freeze each account identified by the SEC that was associated with the Defendants such that no Defendant could dissipate the contents of the account on his, her or its own. *Id.* ¶ III. B.

6. On August 23, 2017, based on Mr. Quiros' agreement with the SEC and consent, the Court entered a Judgment of Permanent Injunction and Other Relief Against Defendant Ariel Quiros [ECF No. 398], which in pertinent part, maintained the asset freeze set forth in the TRO (as modified by the Court's April 25, 2016 and May 27, 2016 Orders [ECF Nos. 82 and 148]) and the Preliminary Injunction [ECF No. 238]. Pursuant to the Judgment of Permanent Injunction, the Court retained jurisdiction to determine the amount of disgorgement, prejudgment interest and civil penalty to be assessed against Mr. Quiros.

7. On February 2, 2018, based on the agreement and consent of Mr. Quiros, the SEC filed an Unopposed Motion for Entry of Final Judgments against Defendants Ariel Quiros and William Stenger and for Court to Establish Fair Fund [ECF No. 447].

8. As demonstrated above, the Permanent Injunction and the Final Judgment, including the agreement to disgorge significant assets, were entered based on Mr. Quiros' consent

and agreement after good faith negotiations with the SEC. Likewise, the Settlement Agreement at issue in the instant Motion is the result of Mr. Quiros' cooperation and good faith negotiations with the Receiver.

SETTLEMENT TERMS AND CONDITIONS

9. The Settlement Agreement arises out of the SEC-Quiros Settlement and would not have occurred but for that settlement and the concomitant transfer of the Disgorged Assets to the Receiver. Subsequent to the SEC-Quiros Settlement, the Receiver and Mr. Quiros, through counsel, have been negotiating for months in good faith and at arm's length. These negotiations have included multiple lengthy in-person meetings and telephone conferences.

10. Throughout this investigation, the Receiver and Mr. Quiros were represented by experienced and diligent counsel vigorously pressing their respective clients' positions, underscoring the risk of litigation in terms of time, expense, and uncertainty of outcome.

11. On or about May 20, 2016, the Receiver commenced a lawsuit in the District Court against Mr. Quiros, Case No.: 1:16-CV-21831-JAL (the "Receiver's Action"), seeking damages against Mr. Quiros for claims arising out of his pre-receivership dealings with the Receivership Entities. Mr. Quiros disputes the factual and legal bases of such claims and has indicated his intention to defend any such claims vigorously.

12. The Receiver and Mr. Quiros reached a settlement and compromise of their disputes as memorialized in the Settlement Agreement to avoid further expense, delay, and the risk and uncertainty of litigation, without admission of any liability or concession to the Receiver's potential claims and Mr. Quiros' potential defenses. The principal terms of the Settlement

Agreement are summarized below.⁷

13. In consideration of the releases being given by the Receiver to Mr. Quiros, the dismissal of the Receiver's Action, with prejudice, and the Receiver's covenant to use his best efforts to obtain the entry of the Bar Order Provision (as set forth below), upon the Effective Date of the settlement, Mr. Quiros agrees as follows:

(a) Waiver of Any Interest in the Receivership Entities; Resort Properties; and Disgorged Assets. Mr. Quiros, on behalf of himself and on behalf of anyone that claims through him, shall waive any and all rights, title, claim, or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities, including but not limited to all property used by the Receivership Entities in the operation of the Jay Peak Resort and the Burke Mountain Hotel and their related assets. This waiver is intended to be the broadest possible waiver resulting in Quiros having no remaining right, title, claim, or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel.

(b) No Entitlement to Share in Proceeds. Mr. Quiros shall waive any right or entitlement to share in any sales proceeds of the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and the Burke Mountain Hotel.

⁷ This description of the Settlement Agreement is only a summary. The Settlement Agreement memorializes all of the terms and conditions of the parties' agreement and parties in interest are encouraged to read it in full and consult with a lawyer, if necessary.

(c) Waiver of Standing. Mr. Quiros shall no longer have any standing to appear or be heard in the SEC Action with respect to matters concerning the Receiver's administration of the receivership estate or the Receivership Entities and with respect to matters concerning the operation of the Jay Peak Resort, the Burke Mountain Hotel, or their related assets specifically including the sale thereof.

(d) Bar Order. The Receiver will use his best efforts to obtain the entry of the Bar Order enjoining all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action.

SETTLEMENT APPROVAL PROCEDURES

14. To afford parties affected by the Settlement Agreement and the Bar Order Provision notice and an opportunity to object and participate in a hearing, the Receiver proposes the following procedures for notice, objections, and a hearing (the "Settlement Approval Procedures"):

(a) Notice. The Receiver will prepare a notice substantially in form and content as **Exhibit "D"** to the Settlement Agreement (the "Notice"), which will contain a description of the Settlement Agreement and the Bar Order Provision and afford affected parties the opportunity to obtain complete copies of all the settlement related papers; the notice will be distributed in accordance with the items below.

(b) Service. The Receiver will serve the Notice no later than five (5) days after entry of the Preliminary Approval Order via email (or if no electronic mailing address is available, then by first class U.S. mail, postage prepaid) to

(i) all counsel who have appeared of record in the SEC Action;

(ii) all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action; and

(iii) all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein.

(c) Publication. The Receiver will publish the Notice no later than ten (10) days after entry of the Preliminary Approval Order

(i) twice a week for a period of not less than two (2) weeks in the Vermont Digger; and

(ii) on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com), on which there is a “drop down” feature that permits viewers to convert website text to seven languages.

(d) Copies upon Request. The Receiver will provide promptly copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email to Kimberly Abbate at kimberly.abbate@akerman.com, or via telephone by calling Ms. Abbate at 954-759-8929.

(e) Evidence of Compliance. No later than 5 days before the Final Approval Hearing (defined below), the Receiver will file with the Court in the SEC Action written evidence of compliance with items (i) through (iv) above either in the form of an affidavit or declaration.

(f) Hearing. The Receiver requests that the Court schedule a hearing (the “Final Approval Hearing”) to consider final approval of the Settlement Agreement and the Bar Order Provision on a date that is at least 30 calendar days after the entry of the Preliminary Approval Order.

(g) Objection Deadline and Objections.

(i) The Receiver requests that the Court require any person who objects to the Settlement Agreement or the Bar Order Provision to file an objection with the Court no later than 21 calendar days after entry of the Preliminary Approval Order (the “Objection Deadline”).

(ii) The Receiver requests that the Court require all such objections to

(A) be in writing;

(B) be signed by the person filing the objection, or his or her attorney;

(C) state, in detail, the factual and legal grounds for the objection;

(D) attach any document the Court should review in considering the objection and ruling on the Motion;

(E) require the person filing the objection to make a request to appear at the Final Approval Hearing if the person intends to appear; and

(F) be served by email or regular mail on the Receiver and Quiros' counsel.

(iii) The Receiver requests that no person be permitted to argue at the Final Approval Hearing unless such person has complied with the requirements of these procedures.

(iv) The Receiver also requests that any party to the Settlement Agreement be authorized to file a response to the objection before the Final Settlement Hearing.

RELIEF REQUESTED

15. The Receiver respectfully requests (i) entry of the Preliminary Approval Order upon the filing of this Motion, and (ii) entry of the Settlement Order, including the Bar Order Provision, after expiration of the Objection Deadline if no objections are timely filed, or after the Final Approval Hearing, if objections are timely filed.

BASIS FOR REQUESTED RELIEF

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied).

A district court also has the power to enter an order permanently enjoining third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with any of the facts giving rise to the receivership- often referred to as a “bar order.” *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in SEC receivership). Bar orders are appropriate “to assist the parties in reaching a settlement.” *Matter of Munford, Inc.*, 97 F.

3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case). As set forth above, in furtherance of reaching a settlement with Mr. Quiros, the Receiver agreed to use his best efforts to obtain the entry of a bar order. Accordingly, the Receiver moves for the entry of a bar order preventing all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action and submits that the bar order is warranted and appropriate under the circumstances presented.

The Receiver notes, as indicated below, that he has conferred with the SEC, and the SEC has no objection to the relief requested in this Motion, including the request for entry of a Bar Order.

The powers of the Court also include the fixing of procedures for the grant of such relief, as long as due process is afforded to affected persons. *See Elliott*, 953 F.2d at 1566.

A. The Settlement Agreement is fair, adequate, and reasonable.

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *Sterling*, 158 F.2d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986 (11th Cir. 1984)).

Upon due consideration of these governing factors, the Settlement Agreement should be approved. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated all potential claims of the Receivership Entities against Mr. Quiros; the defenses to be asserted to those claims in the event of litigation; the delay and expense

of litigating such claims; the uncertainty of outcome in any such litigation; and the possibility of appeal by Mr. Quiros of any adverse outcome. The Receiver entered into the Settlement Agreement after extensive, arm's length negotiations conducted between the parties and their experienced counsel in good faith. It was, of course, not the product of collusion.

Indeed, it bears mention that the process of negotiating the terms of the proposed settlement occurred over a period of many months, during the course of which Mr. Quiros and his counsel were cooperative with the Receiver's efforts on behalf of the Receivership Entities. The proposed settlement marks the culmination of those efforts and is reflected in the Settlement Agreement and this Motion.

The Settlement Agreement provides for Mr. Quiros' waiver of any and all rights, title, claim, or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used, or possessed by the Receivership Entities, including but not limited to all property used by the Receivership Entities in the operation of the Jay Peak Resort and the Burke Mountain Hotel and their related assets. This will pave the way for the Receiver to sell the Jay Peak Resort and the Burke Mountain Hotel and their related assets and distribute the proceeds thereof to the investors and creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and not the product of collusion.

B. The Bar Order Provision is appropriate relief.

District courts have the power to enter bar orders in equity receiverships where necessary or appropriate as ancillary relief in the context of the underlying action. *Kaletka*, 530 Fed. Appx. at 362. As the Fifth Circuit has explained, a district court has "inherent equitable authority to issue a

variety of ancillary relief measures in actions brought by the SEC to enforce the federal securities laws[.]” *Id.* (internal quotations omitted). *See also* All-Writs Act, 28 U.S.C. 1651; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 338 (2d Cir. 1985). Such ancillary relief includes injunctions against non-parties as part of settlements in the receivership. *Kaleta*, 530 Fed. Appx. at 362.

This power to enter bar orders is consistent with the Eleventh Circuit’s recognition of the district court’s “broad powers and wide discretion to determine relief in an equity receivership [that] derives from the inherent powers of an equity court [to] fashion relief[.]” *See Elliott*, 953 F.2d at 1566. Moreover, the Eleventh Circuit has *expressly* held that district courts have the power to enter bar orders. *Seaside Engineering & Surveying*, 780 F. 3d at 1081 (affirming entry of a bar order through a chapter 11 plan where “fair and equitable”); *Munford*, 97 F. 3d at 455 (affirming entry of a bar order over objection of non-settling defendants); *In re U.S. Oil and Gas Lit.*, 967 F. 2d 489 (11th Cir. 1992) (affirming entry of a bar order over objection of non-settling co-defendants).⁸

Citing the Eleventh Circuit’s precedents in *Munford* and *U.S. Oil and Gas Litigation*, in the *Mutual Benefits* case, the court concluded that bar orders are “within this Court’s jurisdiction and equitable authority to enter and enforce”. *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8. Accordingly, courts in this District have regularly entered bar orders in SEC receiverships and in bankruptcy cases. *Latin American Services Co., Ltd.*, No. 99-2360, slip op. [ECF No. 353] at 4 (entering a bar order against all investors over investor objection); *In re*

⁸ The Eleventh Circuit’s approval of bar orders in bankruptcy cases is particularly persuasive here in that the Eleventh Circuit has also recognized the parallels between bankruptcy proceedings and equity receiverships. *See Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554, 557 (11th Cir 2013) (“Given that a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors, we will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context.”).

Rothstein Rosenfeldt Adler, PA, 2010 WL 3743885, at *7 (Bankr. S.D. Fla. Sept. 22, 2010) (entering bar order that was “fair and equitable”). Indeed, this Court has expressly recognized this authority and the benefits of bar orders when it approved entry of a Bar Order in this case in connection with the Raymond James Settlement. *See* [ECF No. 353].

For the reasons set forth herein, the Receiver respectfully submits that the Bar Order is appropriate and warranted under the circumstances presented.

C. The Settlement Approval Procedures comply with due process, in that they afford persons affected by the Settlement Agreement and Bar Order notice and an opportunity to be heard in a manner that is good and sufficient under the circumstances.

“Due process requires notice and an opportunity to be heard.” *Elliot*, 953 F.2d at 1566. The procedures required to satisfy due process vary “according to the nature of the right and to the type of proceedings.” *Id.* “[A] hearing is not required if there is no factual dispute.” *Elliot*, 953 F.2d at 1566. Ultimately, due process requires procedures that are “fair.” *Id.* The Settlement Approval Procedures meet these requirements.

The form and content of the Notice provide a reasonable opportunity to evaluate and object to the Motion, the Settlement Agreement and the Bar Order Provision. The Notice contains a description of the settlement, including the Bar Order Provision, the parties to the Settlement Agreement, and the material terms thereof. The Notice provides a reasonable description and warning that the rights of the person receiving or reviewing it may be affected by the Settlement Agreement and Bar Order Provision, and of such person’s right to object and the manner in which to make such an objection.

The manner and method of service and publication set forth in the Settlement Approval Procedures is reasonably calculated under the circumstances to disseminate the Notice to all affected parties. The Notice will be served on counsel of record in the SEC Action and on counsel

for investors appearing of record in *any* legal proceeding or arbitration relating to investors. The Notice will be served on all investors identified in the investor lists maintained by the Receivership Entities. The Notice will also be served on all non-investor creditors identified after a reasonable search. Therefore, all investors and creditors of which the Receiver has actual knowledge will receive actual service of the Notice.

In addition, the Notice will be published in the *Vermont Digger*, which has run many stories on Quiros and the Jay Peak projects and is believed to be followed by many stakeholders in the Receivership Entities. The Notice will also be published on the Receiver's website, which has been online since the Receiver's appointment and is available in seven languages. Such publication is reasonably calculated to apprise persons not receiving actual service of the Notice that their rights may be affected and of their opportunity to object.

Accordingly, the Settlement Approval Procedures furnish all parties in interest a full and fair opportunity to evaluate the Motion, the Settlement Agreement and the Bar Order Provision, and to object thereto.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court grant the Motion, and enter the Preliminary Approval Order and the Settlement Order, in the manner set forth above.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission whom takes no position on this Motion or the relief requested.

Exhibit C
(Form of Procedures Order)

43797550;1
45357214;1



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 Defendants¹

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

**ORDER (I) PRELIMINARILY APPROVING SETTLEMENT
BETWEEN RECEIVER AND ARIEL QUIROS (II) APPROVING FORM AND
CONTENT OF NOTICE, AND MANNER AND METHOD OF SERVICE
AND PUBLICATION; (III) SETTING DEADLINE TO OBJECT TO APPROVAL OF
SETTLEMENT AND ENTRY OF BAR ORDER; AND (V) SCHEDULING A HEARING**

THIS MATTER came before the Court upon the Motion for (i) Approval of Settlement between the Receiver and Ariel Quiros; (ii) Entry Of Bar Order; (iii) Approval of Form, Content and Manner of Notice of Settlement and Bar Order and Incorporated Memorandum of Law [ECF No. ___] (the “Motion”) filed by Michael I. Goldberg, as the Court-appointed receiver (the “Receiver”) of the entities set forth on Exhibit A to this Order (the “Receivership Entities”) in the above-captioned civil enforcement action (the “SEC Action”). The Motion concerns the Receiver’s request for approval of the proposed settlement with Ariel Quiros set forth in the Settlement Agreement dated August ___, 2018 (the “Settlement Agreement”) attached as Ex. A to the Motion. Terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement.

By way of the Motion, the Receiver seeks an Order preliminarily approving the Settlement Agreement and establishing procedures to provide notice of the settlement and an opportunity to object, setting a deadline to object, and scheduling a hearing. After reviewing the terms of the Settlement Agreement, reviewing the Motion and its exhibits, and considering the arguments and proffers set forth in the Motion, the Court preliminarily approves the Settlement Agreement and hereby establishes procedures for final approval of the Settlement Agreement and entry of the Bar Order as follows:

1. **Preliminary Approval.** Based upon the Court’s review of the Settlement Agreement, the Motion and its attachments, and upon the arguments and proffers set forth in the

Motion, the Court preliminarily finds that the settlement is fair, adequate and reasonable, is a prudent exercise of the business judgment by the Receiver, and is the product of good faith, arm's length and non-collusive negotiations between the Receiver and Ariel Quiros. The Court, however, reserves a final ruling with respect to the terms of the Settlement Agreement, including the Bar Order, until after the Final Approval Hearing (defined below).

2. **Notice.** The Court approves the form and content of the notice attached as Ex. C to the Settlement Agreement (the "Notice"). Service or publication of the Notice in accordance with the manner and method set forth in this paragraph constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all interested parties of the Motion, the Settlement Agreement and the Bar Order, and of their opportunity to object thereto and attend the Final Approval Hearing (defined below) concerning these matters; furnishes all parties in interest a full and fair opportunity to evaluate the settlement and object to the Motion, the Settlement Agreement, the Bar Order, and all matters related thereto; and complies with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the United States Constitution. Accordingly:

- a. The Receiver is directed, no later than 10 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement, to be served via email (or if no electronic mailing address is available, then by first class U.S. mail, postage prepaid) to:
 - i. all counsel who have appeared of record in the SEC Action;
 - ii. all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by

or on behalf of any individual investor or putative class of investors seeking relief against Ariel Quiros in any manner related to the Receivership Entities or the subject matter of the SEC Action; and

- iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein.
- b. The Receiver is directed, no later than 10 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement to be published
 - i. twice a week for two consecutive weeks in the Vermont Digger; and
 - ii. on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).
 - c. The Receiver is directed to promptly provide copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email or other written notice to Kimberly Abbate at kimberly.abbate@akerman.com, or via telephone by calling Ms. Abbate at 954-759-8929. The Receiver may provide such materials in the form and manner that the Receiver deems most appropriate under the circumstances of the request.
 - d. The Receiver is directed, no later than 5 days before the Final Approval Hearing (defined below), to file with the Court in the SEC Action written evidence of compliance with the subparts of this paragraph, which may be in the form of an affidavit or declaration.
3. **Final Hearing.** A hearing will take place before the Honorable Darrin P. Gayles in the United States District Court for the Southern District of Florida, Wilkie D. Ferguson United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at __:__ .m. on _____, 2018 (the “Final Approval

Hearing”). The purposes of the Final Approval Hearing will be to consider final approval of the Settlement Agreement and the entry of a Bar Order as provided in Ex. B to the Settlement Agreement.

4. Objection Deadline; Objections and Appearances at the Final Approval Hearing.

Any person who objects to the terms of the Settlement Agreement, the Bar Order provision, the Motion, or any of the relief related to any of the foregoing, must file an objection, in writing, with the Court pursuant to the Court’s Local Rules, no later than _____, 2018. All objections filed with the Court must:

- a. Contain the name, address, telephone number of the person filing the objection or his or her attorney;
- b. Be signed by the person filing the objection, or his or her attorney;
- c. State, in detail, the factual and legal grounds for the objection;
- d. Attach any document the Court should review in considering the objection and ruling on the Motion; and
- e. If the person filing the objection intends to appear at the Final Approval Hearing, make a request to do so.

Subject to the discretion of this Court, no person will be permitted to appear at the Final Approval Hearing without first filing a written objection and requesting to appear at the hearing in accordance with the provisions of this paragraph. Copies of any objections filed must be served by email or regular mail on:

Michael I. Goldberg
(michael.goldberg@akerman.com)
Akerman LLP
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, FL 33301

-and-

Melissa Visconti, Esq.
(mvisconti@dvllp.com)
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
Miami, FL. 33131

Any person failing to file an objection by the time and in the manner set forth in this paragraph shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and such person shall be forever barred from raising such objection in this action or any other action or proceeding, subject to the discretion of this Court.

5. **Responses to Objections.** Any party to the Settlement Agreement may respond to an objection filed pursuant to this Order by filing a response in the SEC Action. To the extent any person filing an objection cannot be served by the Court's CM/ECF system, a response must be served to the email address provided by that objector, or, if no email address is provided, to the mailing address provided.
6. **Adjustments Concerning Hearing and Deadlines.** The date, time and place for the Final Approval Hearing, and the deadlines and other requirements in this Order, shall be subject to adjournment, modification or cancellation by the Court without further notice other than that which may be posted by means of the Court's CM/ECF system in the SEC Action. **If no objections are timely filed or if the objections are resolved before the hearing, the Court may cancel the Final Approval Hearing.**
7. **Jurisdiction.** The Court retains jurisdiction to consider all further matters relating to the

Motion or the Settlement Agreement, including, without limitation, entry of an Order finally approving the Settlement Agreement and the Bar Order provision.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _____, 2018.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)²

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
Q Burke Mountain Resort, Hotel and Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
Jay Construction Management, Inc.
GSI of Dade County, Inc.
North East Contract Services, Inc.
Q Burke Mountain Resort, LLC
Q Burke Mountain Resort, Hotel and Conference Center, L.P.
Q Burke Mountain Resort GP Services, LLC
AnC Bio VT, LLC

² Receivership Entities shall include any affiliates and subsidiaries of the Receivership Entities.

Exhibit D
(Form of Notice)

43797550;1
45357214;1



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 Defendants¹

NOTICE OF PROCEEDINGS TO APPROVE SETTLEMENT WITH
ARIEL QUIROS AND BAR ORDER

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

PLEASE TAKE NOTICE that Michael I. Goldberg, as the Court-appointed receiver (the "Receiver") of the entities (the "Receivership Entities") in the above-captioned civil enforcement action (the "SEC Action"), has entered into an agreement with Ariel Quiros (the "Ariel Quiros Settlement Agreement") to settle all claims that were and could have been asserted against Ariel Quiros by the Receiver, the Receivership Entities, or any person or entity claiming by or through such entities or relating in any way to the claims asserted in the SEC Action.

PLEASE TAKE FURTHER NOTICE that the Receiver has requested that the Court approve the Ariel Quiros Settlement Agreement and include in the order approving such Agreement a provision permanently barring, restraining and enjoining any person or entity from pursuing claims, **including claims you may possess**, against Ariel Quiros relating to the SEC Action (the "Bar Order").

PLEASE TAKE FURTHER NOTICE that the material terms of the Ariel Quiros Settlement Agreement is that Ariel Quiros, on behalf of himself and anyone that claims through him (including his wife and children), shall fully and forever waive any rights, title, claims or interest in or against any and all Receivership Entities and any and all real or personal property or other rights owned, used or possessed by the Receivership Entities in the operation of the Jay Peak Resort or the Burke Mountain Hotel and their related assets. The Settlement Agreement further provides that Ariel Quiros shall have no remaining right, title, claims or interest whatsoever in the Receivership Entities, the Jay Peak Resort, the Burke Mountain Hotel, Jay Peak Mountain, Burke Mountain, including but not limited to, any real or personal property related to or utilized by the Jay Peak Resort and Burke Mountain Hotel. The Receiver has a present and immediate need to resolve Ariel Quiros' claims to any of the Receivership Entities, including their property or proceeds of their sale, so that he may undertake a sales process of the Jay Peak Resort and Burke Mountain Hotel and their related assets and distribute the proceeds of those sales, subject to Court approval, to the Investors who may be entitled to share in such distribution, as to be determined by the Court at a later time Ariel Quiros is waiving such rights in exchange for a broad release from the Receivership Entities and the Receiver's promise to seek the entry of a Bar Order.

PLEASE TAKE FURTHER NOTICE that copies of the Ariel Quiros Settlement Agreement; the Motion for (i) Approval of Settlement between Receiver and Ariel Quiros; (ii) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; and (iii) Entry of a Bar Order [ECF No. ____] (the "Motion"); together with the proposed Bar Order; and other related papers, may be obtained from the Court's docket in the SEC Action or from the website created by the Receiver (www.JayPeakReceivership.com). Copies of the Motion may also be obtained by email or other written communication to Kimberly Matregrano at kimberly.matregrano@akerman.com or by telephone by calling Ms. Matregrano at 954-759-8929.

PLEASE TAKE FURTHER NOTICE that the final hearing on the Motion, at which time the Court will consider approval of the Ariel Quiros Settlement Agreement including grant of the releases and issuance of the Bar Order, is set before the Honorable Darrin P. Gayles, the United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at ____:____.m. on _____, 2018 (the "Final Approval Hearing").

Any objection to the Ariel Quiros Settlement Agreement, the Motion or any related matter, including, without limitation, entry of the Bar Order, must be filed, in writing, with the Court in the SEC Action, and served by email or regular mail, on Michael I. Goldberg (michael.goldberg@akerman.com), Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, FL 33301 and Melissa Visconti, (mvisconti@dvllp.com) Damian & Valori, LLP 1000 Brickell Avenue, Ste. 1020 Miami, Florida 33131 **no later than** _____, **2018 (the "Objection Deadline")**, and such objection must be made in accordance with the Court's Settlement Order [ECF No. ____].

PLEASE TAKE FURTHER NOTICE that any person or entity failing to file an objection on or before the Objection Deadline and in the manner required by the Settlement Order may not be heard by the Court, subject to the Court's discretion. Those wishing to appear and present objections at the Final Approval Hearing must include a request to appear in their written objection. **If no objections are timely filed, the Court may cancel the Final Approval Hearing without further notice.**

This matter may affect your rights. You may wish to consult an attorney.

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