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,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

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MOTION FOR (I) APPROVAL OF SETTLEMENT BETWEEN RECEIVER, ARIEL QUIROS, WILLIAM STENGER, AND IRONSHORE INDEMNITY, INC.; (II) ENTRY OF A BAR ORDER; AND (III) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF SETTLEMENT AND BAR ORDER; INCORPORATED MEMORANDUM OF LAW

Michael I. Goldberg, as the court-appointed receiver (the "Receiver") for 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., and Q Burke Mountain Resort, LLC (collectively, the "Receivership Entities"), in the above-captioned civil enforcement action (the "SEC Action"), files this *Motion for (I) Approval of Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc.; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; Incorporated Memorandum of Law* (the "Motion"). In support of this Motion, the Receiver respectfully states:

I.
Introduction

In exchange for a settlement payment in the amount of $1,900,000 from Ironshore Indemnity, Inc. ("Ironshore"), the Receiver, on behalf of the Receivership Entities, and Defendants Ariel Quiros ("Quiros") and William Stenger ("Stenger") have agreed (i) to settle and compromise all claims for coverage under the Ironshore insurance policies ("Policies") and all claims related to Ironshore's payment of funds to any person or entity arising out of or related to the claims made against any Insured (as defined in the Policies) in the SEC Action or in any other action, and (ii) to obtain entry of a bar order enjoining any person from bringing any claims which directly or indirectly arise from or relate to the Policies or to any other contract or agreement with Ironshore

purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, all as more fully set forth in the Settlement Agreement and Release, dated December 27, 2018 (the "Settlement Agreement"), a true and correct copy of which is attached as Exhibit "1" to this Motion. The Receiver requests that the Court approve the settlement and bar order by means of a two-step process.

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

Second, the Receiver requests that, after the requirements of the Preliminary Approval Order are met, the Court enter orders in substantially the same form and substance as attached as Exhibits B (the "Final Approval Order") and C (the "Bar Order") to the Settlement Agreement.[1]

II.
Background

A. Commencement of the SEC Action and Appointment of the Receiver

The Complaint in the SEC Action alleged, *inter alia*, that Quiros and Stenger controlled and used various Receivership Entities in violation of federal securities laws. Through the SEC Action, the SEC sought various forms of relief, including appointment of the Receiver.

[1] As is set forth in the Settlement Agreement, $500,000 of the settlement payment is conditioned on the Court's entry of the Bar Order and the exhaustion of all appeals to the Bar Order.

This Court appointed the Receiver to exercise dominion and control over and act as sole legal representative for and on behalf of the Receivership Entities in the SEC Action. Specifically, the Receiver derives his authority over the Receivership Entities from the Court's April 13, 2016 Order Granting Motion for Appointment for Appointment of Receiver [ECF No. 13] (the "Receivership Order"), entered at the request of the Securities and Exchange Commission (the "SEC"). [ECF No. 7]. The Receiver is empowered to take immediate possession and administer "all property, assets and estates of every kind" of the Receivership Entities, in accordance with the terms of the Receivership Order or subject to Order of the Court, and to compromise or settle legal actions in which any of the Receivership Entities or the Receiver is a party. *See* Receivership Order ¶¶ 1 & 6. The Receivership Order enjoins all persons with notice of the Order from "in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings . . . which affect the property of the" Receivership Entities. *Id.* ¶ 15.

B. The Coverage Action

From 2011 through 2016, Ironshore issued a series of directors, officers, and private company liability policies which each insured Q Resorts, Inc., Quiros, and Stenger under a combined $10 million policy limit. On April 15, 2016, after the commencement of the SEC Action and the appointment of the Receiver, Quiros and Stenger requested coverage for the SEC Action from Ironshore. Thereafter, the Receiver requested coverage on behalf of the Receivership Entities, as additional insureds under the Policies. Ironshore denied coverage, claiming that the SEC Action related back to the SEC's prior investigation, and that the investigation was a covered "claim" under the Policies that should have been reported.

On December 6, 2016, without notice to the SEC or the Receiver, Quiros filed an action against Ironshore for coverage under the Policies, *Quiros v. Ironshore*, No. 1:16-cv-25073-MGC (Cooke, J.) (the "Coverage Action"). Quiros sued Ironshore for breach of contract and declaratory

relief, arguing that he was entitled to advancement of defense costs. On January 13, 2017, Ironshore and Quiros entered into an Interim Funding Agreement, by which Ironshore agreed to advance defense costs only while the Coverage Action was pending, with full reservation of Ironshore's rights and with Quiros's obligation to repay Ironshore if, *inter alia*, Quiros lost the Coverage Action. *See* Declaration of Joseph Galardi [ECF No. 406-1]. Quiros entered into the Interim Funding Agreement without notice to the SEC or the Receiver.

On about March 29, 2017, Quiros terminated his counsel, Leon Cosgrove, and agreed with Ironshore to the cancellation and termination of the IFA. Leon Cosgrove filed a notice of charging lien in the Coverage Action (the "Charging Lien"). Several months later, on October 5, 2017, Leon Cosgrove and Quiros's other former attorneys, Mitchell Silberberg & Knupp LLP, filed a breach of contract action against Ironshore in New York state court (the "IFA Action"). In the IFA Action, Quiros's former attorneys contend that Ironshore breached the Interim Funding Agreement by not paying their legal fees.

C. Receiver's Contentions and the Parties' Settlement

The Receiver was granted leave to intervene in the Coverage Action on July 21, 2017. After intervening, the Receiver asserted claims against Ironshore for defense and liability coverage for those "claims" alleged against Q Resorts Inc. pursuant to the Policies. Ironshore disputed the factual and legal bases of the claims of both Quiros and the Receiver. The parties thereafter engaged in extensive discovery and summary judgment briefing, and were scheduled for an October 17, 2018 oral summary judgment argument and for Judge Cooke's two-week trial period beginning October 29, 2018.

To avoid the expense, delay, and uncertainty of litigation, the parties began settlement discussions in July 2017, and attended multiple mediations. The Receiver, Quiros, Stenger, and Ironshore eventually settled and compromised their disputes as memorialized in the Settlement

Agreement, without admission of any liability or concession to Quiros and the Receiver's claims and Ironshore's defenses. The Settlement Agreement was fully and finally executed by all parties on December 27, 2018.

D. Settlement Terms and Conditions

The principal terms of the Settlement Agreement are as follows:[2]

(i) The Receiver obtains entry of the Preliminary Approval Order.

(ii) The Receiver obtains entry of the Final Approval Order.

(iii) The Receiver obtains entry of the Bar Order.

(iv) Ironshore pays the Receiver $1,900,000 (the "Settlement Payment") in four tranches: *first*, $500,000, payable 30 days following entry of the Final Approval Order; *second*, $500,000, payable 60 days following entry of the Final Approval Order; *third*, $400,000, payable 120 days following entry of the Final Approval Order; and *fourth*, $500,000 which shall be paid once the Bar Order (*supra* at (iii)) is final and not subject to appeal.

(v) $300,000 of the Settlement Payment will be held in escrow (the "Charging Lien Escrow Amount") as security for possible payment of the Charging Lien, the validity and amount of which are disputed.

(vi) The Receiver, Quiros, Stenger, and Ironshore agree to mutual releases as and to the extent set forth in section 8 of the Settlement Agreement.

As stated above, it is a condition precedent to Ironshore's obligation to pay the fourth and final tranche of the Settlement Payment (*i.e.*, $500,000) that the Bar Order is entered by the Court and becomes final and non-appealable.

In connection with the Settlement Agreement and as consideration received by Quiros and Stenger for the settlement of their rights and claims under the Policies and against Ironshore, the Receiver, Quiros, and Stenger executed a distribution agreement (the "Distribution Agreement") to allocate the funds received from Ironshore pursuant to the Settlement Agreement. A copy of

[2] This description of the Settlement Agreement is only a summary; the Settlement Agreement memorializes all of the terms and conditions of the parties' agreement.

the Distribution Agreement is attached as Exhibit "2" to this Motion and is expressly contingent on the Court's approval of the Settlement Agreement. Of the $1,900,000 payable by Ironshore pursuant to the Settlement Agreement, the Receiver is anticipated to receive $837,500, Quiros is anticipated to receive $837,500, and Stenger is anticipated to receive $225,000. These amounts may change in the event any of the proceeds must be used to resolve potential challenges to entry of the Bar Order.

E. Facts Supporting Approval of the Settlement Agreement and Bar Order

The Receiver has diligently investigated all claims he believes he could have brought against Ironshore. Among other things, the Receiver has obtained thousands of pages of documents relating to the Policies, deposed several witnesses during the Coverage Action, and engaged in multiple mediations and conferences with Ironshore. This investigation revealed that the Receiver's claims against Ironshore involve disputed facts and legal issues, including issues concerning the actions and inactions of Quiros's former counsel, that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. Throughout this litigation, the Receiver and Ironshore were represented by experienced and diligent counsel vigorously pressing their respective client's position, underscoring the risk of litigation in terms of time, expense and uncertainty of outcome.

If approved, the Settlement Agreement will result in a substantial recovery under the Policies. The anticipated benefit would provide the Receivership Estate necessary liquidity and funds to continue and optimize operation of the Jay Peak resort, during a time when the Receiver readies receivership assets for liquidation and distribution to claimants. Because the insureds under the Policies are limited to the Receivership Entities and the former officers and directors of Q Resorts, Inc. (such as Quiros and Stenger), the terms of the Settlement Agreement are fair, reasonable, and beneficial to the Receivership Estate.

The Bar Order has been a key settlement term with Ironshore since the commencement of the parties' discussions. In colloquial terms, the total amount that Ironshore is willing to settle for is contingent upon "global peace" with respect to all claims that could be asserted against Ironshore relating in any way whatsoever to the Policies or to Ironshore's obligation to pay any Insured or any of the Insureds' current or former attorneys, including in the IFA Action. The Bar Order is thus a condition precedent to payment of the fourth tranche of the Settlement Amount (*i.e.*, $500,000). Parties affected by the Bar Order, will receive notice in the manner set forth below and provided in the Preliminary Approval Order (as may be supplemented by the Court).

E. Settlement Approval Procedures

To afford parties affected by the Settlement Agreement and the Bar Order 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"):

(i) 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 and afford affected parties the opportunity to obtain complete copies of all the settlement-related papers; the notice will be distributed in accordance with items (ii), (iii) and (iv) below.

(ii) Service. The Receiver will serve the Notice no later than five (5) business 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

a. all counsel who have appeared of record in the SEC Action;

b. 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;

c. 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

d. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.

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

a. twice a week for a period of not less than three (3) weeks in each of the Burlington Free Press and Vermont Digger; and

b. 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.

(iv) 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.

(v) Evidence of Compliance. No later than 5 calendar 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.

(vi) Hearing. The Receiver requests that the Court schedule a hearing (the "Final Approval Hearing") to consider final approval of the Settlement Agreement and entry of the Bar Order on a date that is at least 75 calendar days after the entry of the Preliminary Approval Order.

(vii) Objection Deadline and Objections.

a. The Receiver requests that the Court require any person who objects to the Settlement Agreement or the Bar Order to file an objection with the Court no later than 30 calendar days after entry of the Preliminary Approval Order (the "Objection Deadline").

b. The Receiver requests that the Court require all such objections to

i. be in writing;

ii. be signed by the person filing the objection, or his or her attorney;

iii. state, in detail, the factual and legal grounds for the objection;

iv. attach any document the Court should review in considering the objection and ruling on the Motion;

v. require the person filing the objection to make a request to appear at the Final Approval Hearing, if that person intends to appear at the Final Approval Hearing; and

vi. be served by email or regular mail on Jeffrey C. Schneider (jcs@lklsg.com), Levine Kellogg Lehman Schneider + Grossman, LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131; Melissa Damian Visconti (mvisconti@dvllp.com), Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, FL 33131; and Joseph G. Galardi (galardi@beasleylaw.net), Beasley & Galardi, P.A., 505 S. Flagler Dr. Suite 1500, West Palm Beach, FL 34401.

c. 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.

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

III.
Relief Requested

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

IV.
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 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). Such bar orders have been approved by the Eleventh Circuit and in cases in this District. *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (approving a bar order in a chapter 11 bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving bar order in a class action); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (Moreno, J.) (approving bar order in SEC receivership); *SEC v. Latin American Services Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002) (Ungaro-Benages, J.) (approving bar order in SEC receivership). Entry of a bar order is reviewed for an abuse of discretion. *Seaside Engineering & Surveying*, 780 F.3d at 1081 (affirming entry of a bar order where "the bankruptcy court did not abuse its discretion").

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.3d 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 Ironshore; 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 Ironshore 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 several months, and only after extensive discovery and summary judgment briefing in the Coverage Action. The proposed settlement is the product of well-informed parties, and is reflected in the Settlement Agreement and this Motion. The Settlement Agreement thus provides for a total anticipated payment of $837,500 to the Receiver. Such a recovery is well within the range of reasonableness and will provide the Receiver liquidity needed to maximize the value of the assets owned by the Receivership Entities for the benefit of investors and other creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and their investors and other creditors.

The Settlement Agreement also provides security for the putative Charging Lien filed by Leon Cosgrove, because $300,000 of the Settlement Payment will be held in escrow pending

judicial determination of the validity and amount of the Charging Lien, both of which are disputed by the Parties to the Settlement Agreement. This escrowed amount is more than sufficient given the information Leon Cosgrove has provided to date, and in any event, the Charging Lien is subject to the pre-existing equitable rights of the Receivership Entities. *See Christopher N. Link, P.A. v. Rut*, 165 So. 3d 768, 771 (Fla. 4th DCA 2015) (even duly noticed charging lien was inferior to claim that was "superior in time and first in right"). Accordingly, the Settlement Agreement is fair, adequate and reasonable, and not the product of collusion.

B. The Bar Order is necessary and appropriate ancillary relief to the SEC Action.

i. The Court has the authority to approve the Bar Order.

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 where "integral to settlement in an

adversary proceeding"); *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).[3]

Citing the Eleventh Circuit's precedents in *Munford* and *U.S. Oil and Gas Litigation*, Judge Moreno 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. *See, e.g.*, *id.* (entering a bar order where it was "necessary" to administration of the receivership); *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 Rothstein Rosenfeldt Adler, PA*, 2010 WL 3743885, at *7 (Bankr. S.D. Fla. Sept. 22, 2010) (entering bar order that was "necessary to achieve the complete resolution" of the parties' disputes and was "fair and equitable"). Indeed, this Court has entered Bar Orders in the instant action nearly identical in form to the Proposed Bar Order now requested.

ii. The Court should approve the Bar Order.

Whether a bar order should be approved turns on the specific facts and circumstance of each individual case. *See Kaleta*, 530 Fed. Appx. at 362 ("receivership cases are highly fact-specific"). In this case, there are ample facts establishing that the Bar Order is necessary and appropriate ancillary relief to the SEC Action:

- The Bar Order is necessary to secure substantial additional consideration – specifically, the fourth and final $500,000 settlement payment. *See Seaside Engineering & Surveying*, 780 F.2d at 1080 (approving bar order where settling party made a substantial contribution); *U.S. Oil and Gas Lit.*, 967 F.2d at 494 (bar order appropriate to secure $8.5 million in exchange for global peace for setting

[3] 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.").

party); *Kaleta*, 530 Fed. Appx. at 362 (additional consideration in the form of guarantee of payment to the receivership).

- The anticipated benefit to the Receivership Estate would provide necessary liquidity and funds to continue and optimize operation of the Jay Peak resort and maximize its value as a going concern. *See Seaside Engineering & Surveying*, 780 F.2d at 1080 (approving bar order that was essential to maintaining operations of reorganized debtor and would provide "life blood"); *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8 (bar order necessary to the administration and disposition of receivership property).

- The Bar Order is integral to the settlement and is a condition precedent to Ironshore's payment of the additional $500,000. *See U.S. Oil and Gas Lit.*, 967 F.2d at 494-95 (approving bar order that was "integral" to approved settlement).

- The Bar Order is tailored to the facts underlying the Coverage Action, and the barred claims are interrelated to claims that could be brought by or through the Receivership Entities or the other known insureds under the Policies. *See U.S. Oil and Gas Lit.*, 967 F.2d at 496 (barring interrelated claims); *Kaleta*, 530 Fed. Appx. at 362 (bar order appropriately tailored to claims that arise from the underlying fraud).

- Because each policy directly provided insurance to Q Resorts, Inc., the Policies are property of the Receivership Estate and their proceeds belong, at least in part, to the Receiver. *See In re CyberMedica, Inc.*, 208 B.R. 12, 17 (Bankr. D. Mass. 2002) ("[W]here a liability insurance policy provides broad coverage directly to a debtor for liability arising from the acts or omissions of the debtor's directors and officers proceeds of such policies are property of the bankruptcy estate.").

- The Bar Order's preclusion of the IFA Action is appropriate and equitable under the circumstances. Quiros, who was represented by Leon Cosgrove at the time, filed the Coverage Action and entered into the Interim Funding Agreement without any notice to the SEC or the Receiver, and Quiros subsequently agreed with Ironshore, the only other party to the IFA, to cancel and terminate the IFA. The Coverage Action, the Interim Funding Agreement, and the IFA Action are "related to" the Receivership, because they impact estate assets. *See Munford*, 97 F.3d at 453.

- Additionally, the fees sought in the Coverage Action and the Interim Funding Agreement are "on account" of Quiros's and Stenger's underlying liability to the SEC, the Receiver, and Jay Peak's investors. *See In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 864 (11th Cir. 2009). The claims being barred "arise out of the same common nucleus of operative facts and circumstances," namely, the suits against Quiros and Stenger and the Insureds' demand for insurance coverage from the Policies. *Brophy v. Salkin*, 550 B.R. 595, 600 (S.D. Fla. 2015). Finally, the parties are providing $300,000 in security for Leon Cosgrove's disputed Charging Lien, which will not be affected by the Bar Order.

- Investors and other creditors will be able to benefit from the Settlement Payment by filing a claim against the Receivership after a claims process is established and by having a more valuable asset – namely, a resort that can be sold as an operating resort and a going concern. *See Kaleta*, 530 Fed. Appx. at 362 (investors may "pursue their claims by participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate") (alteration in original; internal quotations omitted).

- The interests of persons affected by the Bar Order have been represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and upon the advice and guidance of his experienced counsel.

A similar bar order was approved by the court in *SEC v. Kaleta*, CIV.A. H-09-3674, 2013 WL 2408017, at *1 (S.D. Tex. May 31, 2013). In *Kaleta*, the principals of an entity in receivership demanded coverage under the entity's errors and omissions policy for lawsuits that had been filed against them. *See id.* at *3. The SEC receiver then made a demand that the insurance company tender the policy proceeds to the estate, for distribution to investors. *Id.* The receiver settled with the insurance company and moved for a bar order enjoining all persons "from in any manner taking any adverse action against the Insurance Company and/or the Policy," effectively wiping out the principals' claim for coverage. *Id.* The principals objected to the bar order, but the court overruled their objection. The court found that entry of the bar order was within the court's "broad equitable authority" to stay litigation "in circumstances affecting assets of a receivership estate." *Id.* at *6.

In light of the circumstances of this case, and the authorities entering similar bar orders in comparable circumstances, entry of the Bar Order is necessary and appropriate ancillary relief to the SEC Action.

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. The Notice contains a description of the settlement, including the Bar Order, 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, 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, including Quiros's former attorneys, 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 *Burlington Free Press*, which is the regional paper of widest circulation in Vermont, and 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, and to object thereto.

V.
Conclusion

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

Local Rule 7.1 Certification of Counsel

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for all parties to this action. Undersigned counsel hereby certifies that defendants Ariel Quiros and William Stenger agree to the relief sought herein. Undersigned counsel certifies that the SEC does not object to the settlement, but takes no position for or against the proposed bar order.

Dated: January 8, 2019

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
Co-counsel for the Receiver
201 South Biscayne Boulevard
Miami Center, 22nd Floor
Miami, FL 33131
Telephone: (305) 403-8788
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By: */s/ Jeffrey C. Schneider*
JEFFREY C. SCHNEIDER, P.A.
Florida Bar No. 933244
Primary: jcs@lklsg.com
Secondary: lv@lklsg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this January 8, 2019 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/ Jeffrey C. Schneider_*
JEFFREY C. SCHNEIDER, P.A.

SERVICE LIST

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

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Attorneys for Raymond James & Associates Inc.

Case No. 16-cv-21301-GAYLES

Exhibit 1

(Settlement Agreement between Receiver, Ariel Quiros, William Stenger and Ironshore Indemnity, Inc.)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Agreement**") is entered into by and among Ariel Quiros ("**Quiros**"), William Stenger ("**Stenger**"), Michael I. Goldberg, in his capacity as receiver (the "**Receiver**") for the entities identified on Schedule A to this Agreement (collectively, the "**Receivership Entities**"), and Ironshore Indemnity, Inc. ("**Ironshore**") (Quiros, Stenger, the Receiver, and Ironshore shall each be referred to as a "**Party**" and shall collectively be referred to as the "**Parties**").

RECITALS

A. Quiros, Stenger, QResorts, Inc. ("**QResorts**"), and QResorts' **Subsidiaries** are **Insureds** under Directors, Officers and Private Company Liability Insurance Policy No. 001100502 and No. 001100504 issued by Ironshore (collectively the "**Policies**"). (Capitalized and bolded terms, unless defined herein, are as defined in the Policies.)

B. On April 12, 2016, the Securities and Exchange Commission (the "**SEC**") filed a civil enforcement action against Quiros, Stenger, and others in the U.S. District Court for the Southern District of Florida (the "**District Court**") styled *SEC v. Quiros et al.*, Case No. 16-21301-CV-DPG (the "**SEC Action**").

C. The Receiver has been appointed as receiver over the Receivership Entities in the SEC Action pending in the District Court before the Honorable Darrin P. Gayles. The Receiver derives his authority over the Receivership Entities from the District Court's Order Granting Motion for Appointment of Receiver [DE #13] entered at the request of the SEC [DE #7], and as expanded on April 22, 2016, to include other entities [DE #60]. The District Court subsequently entered a Preliminary Injunction, thereby continuing the Receiver's appointment over the Receivership Entities [DE #238]. (The Receivership Entities and all property subject to the Receiver's authority are collectively referred to as the "**Receivership Estate.**")

D. Quiros, the Receiver, and Ironshore are currently involved in litigation in the District Court styled *Ariel Quiros and Michael I. Goldberg, as court-appointed Receiver for QResorts, Inc. v. Ironshore Indemnity, Inc.*, Case No. 16-cv-25073-MGC (S.D. Fla.) (the "**Coverage Action**") pending before the Honorable Marcia G. Cooke, in which Quiros and the Receiver claim entitlement to coverage under the Policies and in which Ironshore claims there is no coverage.

E. In the Coverage Action, the Receiver and Quiros seek insurance coverage for "Claims" made against them, including, for example, the SEC Action, claims made against the Receivership Entities, and other related litigation. In addition, the Receiver contends that the Policies and proceeds therefrom are, at least in part, property of the Receivership Estate.

F. The Receiver has incurred approximately $450,000 in attorneys' fees in connection with the prosecution of the Coverage Action.

G. On March 29, 2017, Quiros's former attorneys, Leon Cosgrove, LLC (the "**Leon Cosgrove Firm**"), filed a Notice of Filing Charging Lien in the Coverage Action [DE #23] (the "**Charging Lien**"), pursuant to which the Leon Cosgrove Firm claims an entitlement to settlement proceeds payable to Quiros. Quiros and Ironshore do not agree to the validity or the amount of the claimed Charging Lien.

H. The Parties have engaged in meaningful discovery via the Coverage Action, including the exchange and review of large quantities of documents and depositions of key individuals, and the parties filed numerous motions, including case dispositive motions for summary judgment which remain pending.

I. Since July 2017, the Parties have been engaged in good faith, arm's-length settlement negotiations. These negotiations have included multiple in-person meetings and phone conferences, and two mediation sessions with two different mediators. At each step, the Parties have been represented by experienced and diligent counsel vigorously pressing their respective client's positions.

J. The Parties desire to settle all claims for coverage under the Policies and all claims related to Ironshore's payment of funds to any person or entity arising out of or related to the claims made against any Insured in the SEC Action and in any other action. Ironshore seeks assurance that, upon settlement of these claims, no civil actions can or will be prosecuted or commenced against Ironshore relating to any claims for coverage under the Policies or Ironshore's payment of funds to any person or entity arising out of or related to the claims made against any Insured in the SEC Action or in any other action.

K. The Parties understand and agree that their settlement is contingent on the District Court approving this Agreement and that the parties shall seek the issuance of a bar order in the SEC Action enjoining all persons, including any Insured under the Policies or any such Insureds' current or former attorneys, from commencing, continuing, or in the future filing, any claims whatsoever against Ironshore which directly or indirectly arise from or relate to the Policies, to any other contract or agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, any claim based on a purported or actual attorneys' charging lien, or to transactions and occurrences alleged in the SEC Action, without exception and including that certain action filed by Quiros's former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017, and the Leon Cosgrove Charging Lien (Coverage Action DE # 23).

L. As a result, the Parties have agreed to a full and final settlement of their rights, claims and defenses; **provided, however**, that a condition precedent to the full effectiveness of the settlement is the entry of (i) an Order by the District Court in the SEC Action in substantially the same form and substance as attached hereto as **Exhibit "A"** (the "**Preliminary Approval Order**"), which, *inter alia*, provides for preliminary approval of this Agreement and delineates the form, manner and substance of notices to be provided in advance of final approval of this Agreement; and (ii) an Order by the District Court in the SEC Action which, *inter alia*, provides for final approval of the settlement and this Agreement in substantially the same form and substance as attached hereto as **Exhibit "B"** (the "**Final Approval Order**"). In addition, a Final Payment (as defined below) will be made only if the District Court in the SEC Action enters an order in substantially the same form and substance as attached hereto as **Exhibit "C"** (the "**Bar Order**"), which, *inter alia*, bars commencement and continuation of any actions against Ironshore as provided below.

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 the approvals by the District Court as provided herein. On the date the Agreement is approved by the District Court by the entry of the Final Approval Order (the "**Effective Date**"), this Agreement shall be effective for all purposes.

3. Settlement Payment. Contingent upon the approval by the District Court and the entry of the Preliminary Approval Order and the Final Approval Order, and subject to the terms and conditions of this Agreement, in full and final settlement of the claims released in Section 8 of this Agreement, Ironshore shall pay the sum of One Million Nine Hundred Thousand Dollars ($1,900,000.00) (the "**Settlement Payment**") as follows:

a. A total of One Million Four Hundred Thousand Dollars ($1,400,000.00) payable in installments (the "**Installment Payments**") to the Receiver, who shall distribute the Installment Payments among Quiros, Stenger, and the Receiver pursuant to a separate distribution agreement among them to which Ironshore is not a party (the "**Distribution Agreement**"). The Installment Payments shall be made by Ironshore to the Receiver as follows:

i. Five Hundred Thousand Dollars ($500,000.00) payable to the Receiver 30 days following the entry of the Final Approval Order.

ii. Five Hundred Thousand Dollars ($500,000.00) payable to the Receiver 60 days following the entry of the Final Approval Order.

iii. Four Hundred Thousand Dollars ($400,000.00) payable to the Receiver 120 days following the entry of the Final Approval Order.

iv. For avoidance of doubt, the Installment Payments shall be due and owing regardless of whether the District Court in the SEC Action issues a Bar Order and regardless of whether a Bar Order, if one is issued, becomes final and non-appealable.

v. Notwithstanding any other provision in this Agreement, the Releases in paragraph 8 below shall become irrevocably effective upon payment of the Installment Payments.

b. A total of Five Hundred Thousand Dollars ($500,000.00) (the "**Final Payment**") payable to the Receiver if a Bar Order is issued and it becomes final

and non-appealable. The Final Payment shall also be distributed by the Receiver pursuant to the Distribution Agreement. For avoidance of doubt, the Final Payment shall not be paid to the Receiver unless and until the Bar Order becomes final and non-appealable, but the Parties shall continue to be bound by the releases set forth in Section 8 of this Agreement.

c. Ironshore shall have no responsibility with respect to the distribution or use of the Settlement Payment, Installment Payments, or Final Payment once made to the Receiver, and Ironshore shall have no further liability to any of the Parties based on the Receivers' distribution of the Settlement Payment, Installment Payments, or Final Payment.

d. The Parties hereby affirm that the provisions of this Agreement and the settlement, including the Settlement Payment and allocation thereof, are fair and reasonable.

e. Ironshore shall make the Settlement Payment to an escrow account maintained by the Receiver (the "**Receiver Escrow Account**") by wire transfer pursuant to the following wire instructions:

Receiving Bank: SunTrust Bank, 25 Park Place NE Atlanta, GA. 30303
Routing/ABA #: 061000104
Swift Code: SNTRUS3A
Credit to: Akerman LLP IOTA Trust Account
Beneficiary Account #: 1000050722866
Attention: Michael I. Goldberg; Matter No. 312632

4. Leon Cosgrove Charging Lien Escrow. Notwithstanding any other provision in this Agreement, Three Hundred Thousand dollars ($300,000.00) of the Installment Payments shall be held in the Receiver Escrow Account as security for payment of the Leon Cosgrove Charging Lien (the "**Charging Lien Escrow Amount**"). The Charging Lien Escrow Amount will be funded from the portion of the Installment Payment that would be payable to Quiros under the Distribution Agreement being executed simultaneously herewith.

a. The Charging Lien Escrow Amount shall be payable to the Leon Cosgrove Firm only: (i) if the District Court enters a final non-appealable order adjudicating the Charging Lien as valid and in an amount determined by the District Court; or (ii) upon agreement among the Leon Cosgrove Firm and the Parties to satisfy the Charging Lien claim. If any amount that may become payable under either subsection (i) or (ii) of this paragraph is less than the Charging Lien Escrow Amount, the balance may be distributed by the Receiver to Quiros.

b. The Parties have set aside the Charging Lien Escrow Amount to provide for the possible payment of the Leon Cosgrove Charging Lien in an amount that the Parties have in good faith determined to be in excess of an amount sufficient to pay the Lien based on the information provided by the Leon Cosgrove firm. The actual amount of the Lien is disputed and has yet to be determined or liquidated either by

agreement of the parties or adjudication by the Court. By agreeing to the provisions in this paragraph 4, the Parties do not agree that the Leon Cosgrove Charging Lien is valid or that the value of the Lien is equal to $300,000. On the contrary, the value of the Leon Cosgrove Charging Lien, to the extent it is valid, is worth far less than $300,000. Thus, the $300,000 amount is set aside to avoid additional unnecessary but threatened litigation by Leon Cosgrove against the Parties with respect to the Charging Lien.

5. Approval of the Settlement by the District Court. No later than ten (10) days after the occurrence of the Execution Date, the Receiver shall file a motion with the District Court (the "**Settlement Motion**") requesting approval of this Agreement and entry of the Preliminary Approval Order, the Final Approval Order, and the Bar Order.

a. The Receiver shall request in the Settlement Motion (i) entry of the Preliminary Approval Order substantially in form and substance as Exhibit A to this Agreement; (ii) entry of the Final Approval Order; and (iii) entry of the Bar Order substantially in form and substance as Exhibit C to this Agreement; and (iv) approval of the notice attached as **Exhibit "D,"** and of the form and content, and the manner and method of publication, of the notice. All costs of notice and distribution pursuant to this Agreement shall be borne by the Receivership Estate.

b. The Receiver shall use best efforts to provide good and sufficient notice of this Agreement, the Settlement Motion, and the deadline to object to approval of this Agreement and the Bar Order.

6. Cancellation of the Interim Funding Agreement. Quiros and Ironshore agree that the Interim Funding Agreement entered into between them in December 2016 has been and remains canceled and of no further effect.

7. Policy Rescission and Premium Return. The Parties agree that the Installment Payments comprise a return of the Policy premiums in the amount of $51,000.00and that upon payment of the foregoing amounts, the Policies shall be deemed rescinded.

8. Releases. The following releases shall become effective upon the entry of the Final Approval Order:

(a) General Release of Ironshore. Quiros, the Receiver and the Receivership Entities, and Stenger, and all of their affiliates, employees, attorneys, and agents shall release, waive, and forever discharge Ironshore and all of its current and former officers, directors, affiliates, employees, attorneys, agents, successors and assigns (collectively the "**Ironshore Released Parties**"), from any and all claims, demands, causes of action, suits, debts, liabilities, and damages (collectively, "claims"), known or unknown, asserted or unasserted, including but not limited to all claims relating to the Policies, claims made or that could have been made in the Coverage Action, or any claims relating to the distribution of the Settlement Payment amount among Quiros, Stenger, the Receiver, the Receivership estate, any Insured, and current or former attorney for any Insured, or any and every other person or entity whatsoever.

(b) General Release of Quiros. Ironshore shall release, waive, and forever discharge Quiros and all of his current and former affiliates, employees, attorneys, agents, successors and assigns (collectively the "**Quiros Released Parties**"), from any and all claims, demands, causes of action, suits, debts, liabilities, and damages (collectively, "claims"), known or unknown, asserted or unasserted, including but not limited to all claims relating to the Policies or claims made or that could have been made in the Coverage Action; provided however, that this release shall not apply to any of Quiros's former attorneys Quiros retained in connection with the SEC's investigation of QResorts or the Coverage Action, including but not limited to the law firms of Mitchell Silberberg & Knupp LLP, León Cosgrove LLP, or any of their current or former attorneys.

(c) General Release of the Receiver. Ironshore shall release, waive, and forever discharge the Receiver and the Receivership Entities and all of their current and former officers, directors, affiliates, employees, attorneys, agents, successors and assigns (collectively the "**Receiver Released Parties**"), from any and all claims, demands, causes of action, suits, debts, liabilities, and damages (collectively, "claims"), known or unknown, asserted or unasserted, including but not limited to all claims relating to the Policies or claims made or that could have been made in the Coverage Action.

(d) General Release of Stenger. Ironshore shall release, waive, and forever discharge Stenger and all of his current and former affiliates, employees, attorneys, agents, successors and assigns (collectively the "**Stenger Released Parties**"), from any and all claims, demands, causes of action, suits, debts, liabilities, and damages (collectively, "claims"), known or unknown, asserted or unasserted, including but not limited to all claims relating to the Policies or claims made or that could have been made in the Coverage Action; provided however, that this release shall not apply to any of Stenger's former attorneys Stenger retained in connection with the SEC's investigation of QResorts or the Coverage Action, including but not limited to the law firms of Mitchell Silberberg & Knupp LLP, León Cosgrove LLP, or any of their current or former attorneys.

9. Dismissal with Prejudice. Upon entry of the Final Approval Order and payment of the Installment Payments, Quiros, the Receiver, and Ironshore shall cause to be filed a joint dismissal of all of their claims in the Coverage Action with prejudice, with each to bear their own attorneys' fees and costs.

10. No Admission of Liability. This Agreement is a compromise of disputed claims and shall not be considered as an admission of liability or responsibility by any Party. The Parties acknowledge and agree that no Party has at any time admitted any liability to any other person for any claims released herein.

11. Receiver's Representations and Warranties. The Receiver represents and warrants that he has the power and authority to bind the Receivership Entities to the terms of this Agreement or otherwise has been duly authorized to execute and deliver the Agreement on their behalf; and that the Receiver and the Parties will pursue approval of the Agreement and entry of the Bar Order in the SEC Action.

12. Quiros's Representations and Warranties. Quiros represents and warrants that: (a)

he has the power and authority to execute and deliver this Agreement; (b) that Quiros will cooperate fully with the Parties' pursuit of the Bar Order; and (c) the Agreement shall bind Quiros without the need for approval of the District Court in the SEC Action or of any other court or the approval of the SEC or any other person, agency, or entity, unless and until the District Court in the SEC Action orders that the Agreement will not be approved such that no part of the Settlement Payment shall become payable

13. Stenger's Representations and Warranties. Stenger represents and warrants that: (a) he has the power and authority to execute and deliver this Agreement; (b) that Stenger will cooperate fully with the Parties' pursuit of the Bar Order; and (c) the Agreement shall bind Stenger without the need for approval of the District Court in the SEC Action or of any other court or the approval of the SEC or any other person, agency, or entity.

14. Third Parties; No Assignment. 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 the Released Parties (to the extent of the Bar Order, the releases, and dismissals) 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 and the expressly identified beneficiaries hereof may seek to enforce this Agreement. The Parties represent and warrant that they have not assigned or transferred or purported to assign or transfer to any entity or person any of the claims released hereunder.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, the Receivership Estate, and their respective heirs, executors, administrators, successors, and assigns, including without limitation upon any successor receiver in the SEC Action, or any trustee, custodian, or other estate representative appointed in a case under title 11 of the United States Code.

16. Modification and Non-Waiver. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement, and approved by the District Court in the SEC Action. A Party's failure to seek redress for a violation of this Agreement or any provision thereof shall not constitute a waiver.

17. Severability. The Parties agree that every provision of this Agreement is intended to be severable, except for the approval in the SEC Action and the Final Approval Order and Bar Order requirements set forth above. If approval in the SEC Action is denied or held to be prohibited, invalid, or unenforceable, then the Agreement as a whole shall be deemed invalid and unenforceable and shall not be binding on the Parties. For avoidance of doubt, if the Bar Order is entered but subsequently dissolved or reversed either by the District Court or on appeal, this Agreement shall continue to be enforceable.

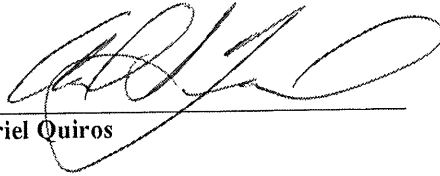
18. Construction. This Agreement is the result of bargaining and negotiation by Parties represented by independent counsel. No Party to this Agreement shall be considered the drafter for purposes of its construction or interpretation.

19. Governing Law and Jurisdiction. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida without giving effect to any conflict of law provisions. The Parties agree that any action, suit, or proceeding relating to or arising out of this Agreement or the terms of this Agreement shall be brought in the United States District Court for the Southern District of Florida, Miami Division, and each Party will irrevocably accept and consent to the jurisdiction of such Court.

20. Entire, Integrated Agreement. This Agreement sets forth and constitutes the final and entire understanding and agreement between the Parties with respect to the subject matter of this Agreement. There are no collateral understandings, agreements, or other representations, express or implied.

21. 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.

[Remainder of page intentionally left blank; signatures to follow on the next page.]



Ariel Quiros

12.21.2018
Date

William Stenger

Date

Michael I. Goldberg, in his capacity as court-appointed Receiver for QResorts, Inc. and the other Receivership Entities

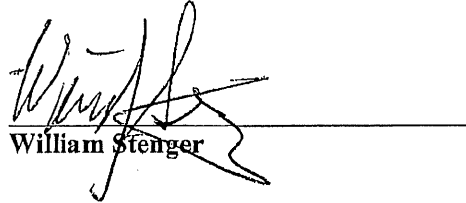
Date

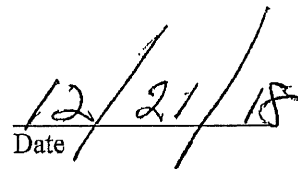
Ironshore Indemnity, Inc.

By: Christopher Smith
As its: ______________________

Date

Ariel Quiros — Date





William Stenger — Date

Michael I. Goldberg, in his capacity as court-appointed Receiver for QResorts, Inc. and the other Receivership Entities — Date

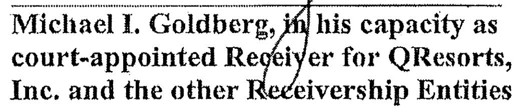
Ironshore Indemnity, Inc.

By: Christopher Smith — Date

As its: ____________________

Ariel Quiros — Date

William Stenger — Date



12/27/18

Michael I. Goldberg, in his capacity as court-appointed Receiver for QResorts, Inc. and the other Receivership Entities — Date

Ironshore Indemnity, Inc.

12/20/18

By: Christopher Smith — Date

As its: V.P.

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 Preliminary Approval 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,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

____/

ORDER PRELIMINARILY APPROVING SETTLEMENT BETWEEN RECEIVER, ARIEL QUIROS, WILLIAM STENGER, AND IRONSHORE INDEMNITY, INC.

THIS MATTER came before the Court upon the *Motion for (I) Approval of Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc.; (II) Entry of a*

Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; 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, William Stenger, and Ironshore Indemnity, Inc. ("Ironshore") set forth in the Settlement Agreement dated December 27, 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, Ariel Quiros, William Stenger, and Ironshore. 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. D 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 Final Approval Order, 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 Unites States Constitution. Accordingly:

   a. The Receiver is directed, no later than 10 business 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 any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;

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; and

iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.

v. all parties to the SEC Action and the Coverage Action.

vi. all owners, officers, directors, and senior management employees of the Receivership Entities identified by the Receiver from discovery in the SEC Action.

b. The Receiver is directed, no later than 10 business 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 three consecutive weeks in each of The Burlington Free Press and 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 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. 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.** The Court will conduct a hearing 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 __________ ___, 2019 (the "Final Approval Hearing"). The purposes of the Final Approval Hearing will be to consider final approval of the Settlement Agreement and entry of a Final Approval Order and a Bar Order as provided in Exs. B and C 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 _________ ___, 2019. 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-

Jeffrey C. Schneider
(jcs@lklsg.com)
Levine Kellogg Lehman Schneider + Grossman LLP
201 S. Biscayne Blvd., 22nd Floor
Miami, FL 33131

-and-

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

-and-

Joseph G. Galardi
(galardi@beasleylaw.net)
Beasley & Galardi, P.A.
505 S. Flagler Dr. Suite 1500
West Palm Beach, FL 34401

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. **No Admission.** Nothing in this Order or the Settlement Agreement is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the settling parties with regard to the SEC Action, the Coverage Action, any proceeding therein, or any other case or proceeding.

8. **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 ______, 2019.

____
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit 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 B

Form of Final Approval 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,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants
____/

FINAL ORDER APPROVING SETTLEMENT BETWEEN RECEIVER, ARIEL QUIROS, WILLIAM STENGER, AND IRONSHORE INDEMNITY, INC.

THIS MATTER came before the Court on the Motion for Approval of Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [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**"). Pursuant to the Order Preliminarily Approving the Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [ECF No. ___] (the "**Preliminary Approval Order**"), the Court held a hearing on _____, 2019 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, William Stenger and Ironshore Indemnity, Inc. ("**Ironshore**") set forth in the Settlement Agreement dated December 27, 2018 (the "**Settlement Agreement**") attached as Ex. A to the Motion, executed by the Receiver on behalf of each of the Receivership Entities, by Ariel Quiros and William Stenger, and by Ironshore (collectively, the "**Settling Parties**"); and for entry of a bar order (the "**Bar Order**") enjoining, except as provided in the Settlement Agreement, any and all persons, including any Insured under the Policies or any such Insureds' current or former attorneys, from commencing, continuing, or in the future filing, any claims whatsoever against Ironshore which directly or indirectly arise from or relate to the Policies, to any other contract or agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, or to transactions and occurrences alleged in the SEC Action, without exception and including that certain action filed by Quiros's former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017. **This Order addresses the final approval of the Settlement Agreement.** The Court will address entry of the requested Bar Order by separate order.

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 # 238], the Permanent Injunction [ECF # 260], and the Asset Freeze Order [ECF # 11]. In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record in the Coverage Action, 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). In addition, the insurance policies and proceeds therefrom at issue in the Settlement Agreement are, at least in part, property of the receivership estate and subject to administration by this Court. *See SEC v. Narayan*, Case No. 3:16-cv-1417-M, 2017 WL 447205, at *4 (N.D. Tex. Feb. 2, 2017); *SEC v. Faulkner*, Case No. 3:16-CV-1735-D, 2017 WL 4238705, at *5 (N.D. Tex. Sept. 25, 2017); *In re CyberMedica, Inc.*, 208 B.R. 12, 17 (Bankr. D. Mass. 2002).

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, and the Settlement Agreement, 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, 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 and the Coverage 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 more than a year; their negotiations included the exchange and review of documents, multiple in-person meetings, numerous depositions, many telephone conferences, and two mediation sessions.

E. The Settlement Agreement was entered into in good faith, is the product of arm's-length negotiations, and is not collusive. The claims the Receiver brought against Ironshore involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation, the measurement of damages, the allocation of benefits to each relevant Receivership Entity, and any ensuing appeal.

F. The Receiver has a present and immediate need for the funds he is receiving pursuant to the settlement to preserve and maximize the value of the assets in the Receivership Entities for the benefit of the remaining investors and other creditors and stakeholders.

G. The Settlement Agreement provides for Ironshore to pay the Receiver, Quiros, and Stenger a total settlement amount of One Million Nine Hundred Thousand Dollars ($1,900,000.00) (the "Settlement Payment"), of which One Million Four Hundred Thousand Dollars ($1,400,000.00) is nonrefundable. The remainder of the Settlement Payment (Five Hundred Thousand Dollars) will be paid when the Bar Order becomes final and non-appealable.

H. The Settlement Agreement provides for a total anticipated payment of $837,500 to the Receiver. The Court finds this consideration fair and reasonable as to the Receiver.

I. 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 the Settlement Payment provides a recovery to the Receiver for the benefit of 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).

J. The Court also finds that the provisions of Section 3 of the Settlement Agreement fairly and equitably address the Receiver's need for immediate funds and fairly and equitably compensate Ironshore for the risks of making immediate payment of the Settlement Payment, without waiting for relevant appellate periods to expire or appellate proceedings to be concluded.

K. The Coverage Action against Ironshore arises from the Policies Ironshore issued to Receivership entity Q Resorts, Inc. ("**Q Resorts**"). The Policies insured both Q Resorts and its officers and directors, including Ariel Quiros and William Stenger.

L. **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 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;
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
4. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.
5. all parties to the SEC Action and the Coverage Action.
6. all owners, officers, directors, and senior management employees of the Receivership Entities identified by the Receiver from discovery in the SEC Action.

The Receiver has maintained a list of those given notice.

In addition, the Receiver has published the Notice approved by the Preliminary Approval Order in the Vermont Digger, and The Burlington (Vermont) Free Press, twice a week for three 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 would 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.

M. The releases and other provisions in the Settlement Agreement are tailored to matters relating to the Receivership Entities' and other insureds' rights under the Policies and are appropriate in light of the Policies' coverage to maximize the value of the Receivership Entities. 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 Ironshore relating to the Policies.

N. Approval of the Settlement Agreement 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 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**. 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.

3. The Receiver shall use and disburse the Settlement Payment in accordance with the terms and conditions of the Settlement Agreement (Ex. 1 to the Motion) and the Distribution Agreement (Ex. 2 to the Motion). Without limitation of the foregoing, upon the occurrence of the Effective Date, the releases set forth in Section 8 of the Settlement Agreement are **APPROVED**, and are final and binding on the Parties and their successors and assigns as provided in the Settlement Agreement.

4. Nothing in this Order or the Settlement Agreement, and no aspect of the Settling Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Settling Parties with regard to any case or proceeding.

5. 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 Ironshore, the Receiver, Ariel Quiros, or William Stenger against any party not released in the Settlement Agreement.

6. The Receiver is directed and authorized to dismiss his claims against Ironshore in the Coverage Action with prejudice in accordance with the terms of the Settlement Agreement.

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 releases in the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _________, 2019.

____
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit 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.

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Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

EXHIBIT C

Form of Bar 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,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

____/

FINAL ORDER BARRING, RESTRAINING, AND ENJOINING
CLAIMS AGAINST IRONSHORE INDEMNITY, INC.

THIS MATTER came before the Court on the Motion for Approval of Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [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**"). Pursuant to the Order Preliminarily Approving the Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [ECF No. ___] (the "**Preliminary Approval Order**"), the Court held a hearing on _____, 2019 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, William Stenger and Ironshore Indemnity, Inc. ("**Ironshore**") set forth in the Settlement Agreement dated December 27, 2018 (the "**Settlement Agreement**") attached as Ex. 1 to the Motion, executed by the Receiver on behalf of each of the Receivership Entities, by Ariel Quiros and William Stenger, and by Ironshore (collectively, the "**Settling Parties**"); and for entry of a bar order (the "**Bar Order**") enjoining any and all persons, including any Insured under the Policies or any such Insureds' current or former attorneys, from commencing, continuing, or in the future filing, any claims whatsoever against Ironshore which directly or indirectly arise from or relate to the Policies, to any other contract or agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, or to transactions and occurrences alleged in the SEC Action, without exception and including that certain action filed by Quiros's former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017. The Court has approved the Settlement Agreement [ECF No. ___] (the "Final Approval Order") and incorporates by reference herein its findings and conclusions. **This Order addresses the requested Bar Order.**

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 # 238], the Permanent Injunction [ECF # 260], and the Asset Freeze Order [ECF # 11]. In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record in the Coverage Action, 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). In addition, the insurance policies and proceeds therefrom at issue in the Settlement Agreement are property of the receivership estate and subject to administration by this Court. *See SEC v. Narayan*, Case No. 3:16-cv-1417-M, 2017 WL 447205, at *4 (N.D. Tex. Feb. 2, 2017); *SEC v. Faulkner*, Case No. 3:16-CV-1735-D, 2017 WL 4238705, at *5 (N.D. Tex. Sept. 25, 2017); *In re CyberMedica, Inc.*, 208 B.R. 12, 17 (Bankr. D. Mass. 2002).

B. Ironshore has conditioned its willingness to make the full Settlement Payment on a full and final resolution with respect to any and all claims instituted now or hereafter by any and all of the Barred Persons (as defined below) against any and all of the Ironshore Released Parties (as defined below) that relate in any manner whatsoever to the Policies, to any other contract or

agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, or to transactions and occurrences alleged in the SEC Action (the "Barred Claims," as more fully defined below). A necessary condition to Ironshore's ultimate agreement to the Settlement Agreement was the inclusion of the Bar Order. Pursuant to the terms of the Settlement Agreement, entry of the Bar Order is necessary for the Receiver to use and disburse the full Settlement Payment pursuant to the terms of the Settlement Agreement.

C. Ironshore is only willing to pay the full Settlement Payment in exchange for finality as to the Barred Claims. The Court finds that Ironshore, the Receiver, Ariel Quiros, and William Stenger have agreed to this Settlement in good faith and that Ironshore is paying a fair share of the potential damages for which it could be liable.

U. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate in light of the Policies' coverage to maximize the value of the Receivership Entities. 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 upon the advice and guidance of his experienced counsel. 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 Ironshore relating to the Barred Claims. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

V. 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**. Any objections to entry of the Bar Order are overruled to the extent not otherwise withdrawn or resolved.

2. The Bar Order as set forth in paragraph 3 of this Order is **APPROVED** as a necessary and appropriate component of the settlement. *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. 1955).

3. **BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE IRONSHORE RELEASED PARTIES 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, officers and directors, limited and general partners, investors, and creditors of the Receivership Entities; (ii) any Defendant in the SEC

Action, the Coverage Action, or in any action which may hereafter be brought in connection with the Barred Claims; or (iii) 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, reinstituting, 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, complaints, cross-claims, counterclaims, or third-party claims or proceedings 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, Canada or elsewhere, 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 Policies, with any other contract or

agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, or to transactions and occurrences alleged in the SEC Action, without exception and including that certain action filed by Ariel Quiros's former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017;

d. **The "Ironshore Released Parties"**: Ironshore, its parent, affiliate, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and each of its members, managers, principals, associates, representatives, distributors, attorneys, trustees, and general and limited partners and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest.

4. Paragraph 3 of this Order shall not apply to the Settling Parties' respective obligations under the Settlement Agreement.

5. Nothing in this Order or the Settlement Agreement, and no aspect of the Settling Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Settling Parties with regard to any case or proceeding.

6. Other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Federal Rules of Civil Procedure, no appeal, challenge, decision or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement Agreement, or to impair, modify or otherwise affect in any manner the Bar Order.

8. 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.

9. 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.

10. 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. This retention of jurisdiction is not a bar to any person, including the Settling Parties, from raising the injunction or Bar Order to obtain its benefits in establishing reductions to damage awards or seeking to dismiss a claim.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _________, 2019.

____
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit 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 D

Form of Notice

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,

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants
_______________________________________/

NOTICE OF PROCEEDINGS TO APPROVE SETTLEMENT WITH
IRONSHORE INDEMNITY, INC. AND BAR ORDER

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 Ironshore Indemnity, Inc. (the

"Ironshore Settlement Agreement") to settle all claims that were or could have been asserted against Ironshore Indemnity, Inc. ("Ironshore") by the Receiver, the Receivership Entities, or any person or entity claiming by or through such entities. Ariel Quiros and William Stenger are also parties to the Ironshore Settlement Agreement.

PLEASE TAKE FURTHER NOTICE that the Receiver has requested that the Court approve the Ironshore 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 any Ironshore Released Parties[1] 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 Policies, with any other contract or agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds' current or former attorneys, or to transactions and occurrences alleged in the SEC Action, including that certain action filed by Ariel Quiros's former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017 (the "Bar Order").

PLEASE TAKE FURTHER NOTICE that the material terms of the Ironshore Settlement Agreement are that Ironshore will pay to the Receiver One Million Nine Hundred Thousand Dollars ($1,900,000.00) in exchange for a broad release from the Receivership Entities and the Bar Order. Of the $1,900,000.00 payable by Ironshore pursuant to settlement with the Receiver, Quiros, and Stenger, the Receiver is anticipated to receive $837,500.00, Quiros is anticipated to receive $837,500.00, and Stenger is anticipated to receive $225,000.00. These amounts may change in the event some of the proceeds must be used to pay other claimants to obtain entry of the Bar Order.

PLEASE TAKE FURTHER NOTICE that copies of the Ironshore Settlement Agreement; the Motion for (i) Approval of Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc.; (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 supporting and 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 request to Kimberly Abbate at kimberly.abbate@akerman.com or by telephone by calling Ms. Abbate 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 Ironshore 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 ____________ _____, 2019 (the "Final Approval Hearing").

Any objection to the Ironshore 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

[1] The term "Ironshore Released Parties" is more fully defined in the Ironshore Settlement Agreement.

(michael.goldberg@akerman.com), Akerman LLP, 350 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, FL 33301; Jeffrey C. Schneider (jcs@lklsg.com), Levine Kellogg Lehman Schneider + Grossman LLP, 201 South Biscayne Blvd., 22nd Floor, Miami, FL 33131; Melissa Damian Visconti (mvisconti@dvllp.com), Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, FL 33131; and Joseph G. Galardi (galardi@beasleylaw.net), Beasley & Galardi, P.A., 505 S. Flagler Dr. Suite 1500, West Palm Beach, FL 34401, **no later than __________ ____, 2019 (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 shall not be heard by the Court. 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.

# # #

Exhibit 2

(Distribution Agreement between Receiver, Ariel Quiros, and William Stenger)

AGREEMENT RELATING TO DISTRIBUTION OF SETTLEMENT PROCEEDS FROM IRONSHORE INDEMNITY, INC.

This Agreement Relating to the Distribution of Settlement Proceeds from Ironshore Indemnity, Inc. (the "**Distribution Agreement**") is entered into by and among Ariel Quiros ("**Quiros**"), William Stenger ("**Stenger**"), and Michael I. Goldberg, in his capacity as receiver (the "**Receiver**") for the entities identified on Schedule A to this Agreement (collectively, the "**Receivership Entities**") (Quiros, Stenger, and the Receiver shall each be referred to as a "**Party**" and shall collectively be referred to as the "**Parties**").

RECITALS

A. On April 12, 2016, the Securities and Exchange Commission (the "**SEC**") filed a civil enforcement action against Quiros, Stenger, and others in the U.S. District Court for the Southern District of Florida (the "**District Court**") styled *SEC v. Quiros et al.*, Case No. 16-21301-CV-DPG (the "**SEC Action**"). In the SEC Action, the Honorable Darrin P. Gayles appointed the Receiver as receiver over the Receivership Entities.

B. The Parties are insureds under Directors, Officers and Private Company Liability Insurance Policies No. 001100502 and No. 001100504 (collectively the "**Policies**") issued by Ironshore Indemnity, Inc. ("**Ironshore**"). Ironshore denied coverage under the Policies.

C. On December 6, 2016, Quiros filed a lawsuit against Ironshore seeking a declaratory judgment that Ironshore is obligated to pay covered claims for defense costs under the Policies (the "**Ironshore Action**"). The Receiver intervened in the Ironshore Action on July 21, 2017, and also sought a declaratory judgment for coverage under the Policies.

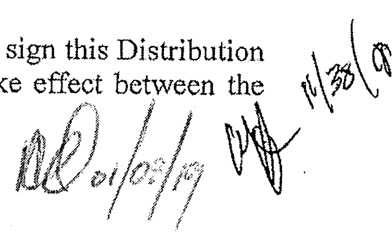
D. The Parties have settled all claims for insurance coverage under the Policies pursuant to a Settlement Agreement and Release (the "**Settlement Agreement**"), pursuant to which Ironshore shall pay to the Receiver One Million Nine Hundred Thousand Dollars ($1,900,000.00) (the "**Settlement Proceeds**") for distribution to the Parties (the "**Ironshore Settlement**"). The recitals of the Settlement Agreement are incorporated herein. The Ironshore Settlement and the Settlement Agreement are subject to the approval of the District Court in the SEC Action.

E. In connection with the Ironshore Settlement, the Parties have agreed to the terms of the distribution of the Settlement Proceeds as between the Parties, and, based on such agreed distribution terms, agree to the Settlement Agreement.

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 Distribution Agreement and are incorporated herein by reference.

2. Effectiveness. On the date of execution by the last Party to sign this Distribution Agreement (the "**Execution Date**"), this Distribution Agreement shall take effect between the



Parties. The Parties acknowledge, however, as stated above, that the Ironshore Settlement is subject to approval by the District Court in the SEC Action, and, absent approval and payment of the Settlement Proceeds, this Distribution Agreement will be ineffective.

3. Distribution of Settlement Proceeds. The Settlement Proceeds shall be distributed to the Parties as follows:

a. The aggregate of the Installment Payments, as defined in the Settlement Agreement, (*i.e.*, $1,400,000.00), shall be distributed as follow:

i. Two Hundred Thousand Dollars ($200,000.00) to Stenger;

ii. Six Hundred Thousand Dollars ($600,000.00) to Quiros; and

iii. Six Hundred Thousand Dollars ($600,000.00) to the Receiver.

b. Subject to Section 4 below, the Final Payment, as defined in the Settlement Agreement (*i.e.*, $500,000.00), shall be divided equally as follows: If, to obtain entry of the Bar Order, the Parties must agree to provide other claimants a portion of the Final Payment, the amount remaining for distribution from the Final Payment shall be divided equally between the Receiver and Quiros; however, if after payments to the other claimants, the Final Payment is $250,000.00 or more, then Stenger shall receive $25,000.00 and the remaining balance shall be divided equally between the Receiver and Quiros.

c. The Parties hereby affirm that the above distribution of the Settlement Proceeds is fair and reasonable.

4. Approval of the Ironshore Settlement and Entry of the Bar Order by the District Court. The Parties acknowledge that the Ironshore Settlement is contingent upon the District Court's entry of the Final Approval Order, as defined in the Settlement Agreement, and Ironshore's obligation to fund the Final Payment is contingent upon the District Court's entry of the Bar Order, as defined in the Settlement Agreement.

5. Charging Lien Filed Against Quiros. The Parties agree that the charging lien filed by Leon Cosgrove, LLC against any recovery or proceeds obtained by Quiros in the Coverage Action, as defined in the Settlement Agreement (the "**Charging Lien**"), shall not affect distributions made under this Distribution Agreement to the Receiver or Stenger. In other words, Quiros expressly agrees that, if an amount is required to be paid by Quiros to resolve or satisfy the Charging Lien, that amount shall not affect any other Party's distributions under this Distribution Agreement.

6. Mutual Cooperation Between the Parties. The Parties agree to pursue full approval of the Ironshore Settlement. The Parties shall cooperate in good faith to ensure entry of the Final Approval Order and the Bar Order and shall not act to impede the other Parties' distributions under this Distribution Agreement.

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7. Third Parties; No Assignment. Nothing in this Distribution Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the Parties hereto any right, remedy or claim under or by reason of this Distribution Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Distribution 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 and the beneficiaries hereof may seek to enforce this Distribution Agreement. The Parties represent and warrant that they have not assigned or transferred or purported to assign or transfer to any entity or person any of the claims released hereunder.

8. Successors and Assigns. This Distribution Agreement shall be binding upon and inure to the benefit of the Parties, the Receivership Estate, and their respective heirs, executors, administrators, successors, and assigns, including without limitation upon any successor receiver in the SEC Action, or any trustee, custodian, or other estate representative appointed in a case under title 11 of the United States Code.

9. Modification and Non-Waiver. This Distribution Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement, and approved by the District Court in the SEC Action. A Party's failure to seek redress for a violation of this Distribution Agreement or any provision thereof shall not constitute a waiver.

10. Construction. This Distribution Agreement is the result of bargaining and negotiation by Parties represented by independent counsel. No Party to this Distribution Agreement shall be considered the drafter for purposes of its construction or interpretation.

11. Governing Law and Jurisdiction. This Distribution Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida without giving effect to any conflict of law provisions. The Parties agree that any action, suit, or proceeding relating to or arising out of this Distribution Agreement or the terms of this Distribution Agreement shall be brought before the District Court in the SEC Action.

12. Entire, Integrated Agreement. This Distribution Agreement sets forth and constitutes the final and entire understanding and agreement between the Parties with respect to the subject matter of this Distribution Agreement. There are no collateral understandings, agreements, or other representations, express or implied.

13. Counterparts. This Distribution Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same Distribution 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.

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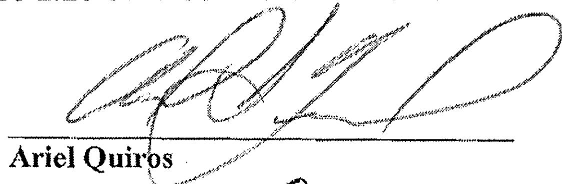
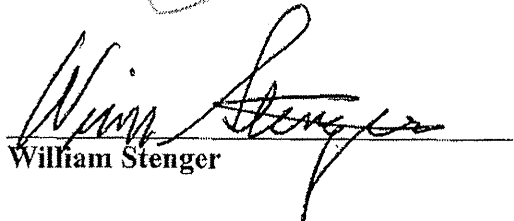


Ariel Quiros

01/08/19
Date



William Stenger

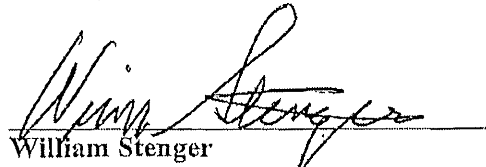
11/30/18
Date

Michael I. Goldberg, in his capacity as court-appointed Receiver for QResorts, Inc. and the other Receivership Entities

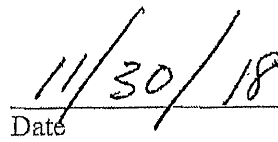
Date

Ariel Quiros

Date



William Stenger



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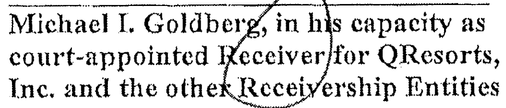
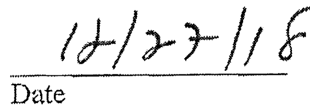


Michael I. Goldberg, in his capacity as court-appointed Receiver for QResorts, Inc. and the other Receivership Entities



Date

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

01/08/19 11/30/18