

**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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**FINAL ORDER (I) APPROVING SETTLEMENT BETWEEN RECEIVER, CASON
PLAINTIFFS, EDWARD J. CARROLL, ESQ. (AND HIS LAW FIRMS), AND MARK H.
SCRIBNER, ESQ. (AND HIS LAW FIRM); AND (II) BARRING, RESTRAINING, AND
ENJOINING CLAIMS AGAINST EDWARD J. CARROLL, ESQ.
(AND HIS LAW FIRMS) AND MARK H. SCRIBNER, ESQ. (AND HIS LAW FIRM)**

THIS MATTER came before the Court on the Motion for (i) Approval of Settlement between Receiver, Cason Plaintiffs, Edward J. Carroll, Esq. (and His Law Firms), and Mark H. Scribner, Esq. (and His Law Firm); (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [ECF No. 620] (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 this Court’s Order (I) preliminarily approving settlement between Receiver, Cason Plaintiffs, Edward J. Carroll, Esq. (and His Law Firms), and Mark H. Scribner, Esq. (and His Law Firm); (II) approving form and content of notice, and manner and method of service and publication; (III) setting deadline to object to approval of settlement and entry of bar order; and (IV) scheduling a hearing [ECF No. 631, as modified by 633] (the “**Preliminary Approval Order**”), the Court held a hearing on April 6, 2021, to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests final approval of a proposed settlement between: a group of investors that filed the amended complaint in the litigation in the United States District Court for the District of Vermont captioned *Cason, et al. v. Edward Carroll, Esq. and Mark Scribner, Esq.*, Case No. 2:18-cv-40 (the “**Cason Action**”), Sandra Cason as Executrix of the Estate of Armando Cason, Sandra Chau, Robert Connors, Fernando De Salvidea, Carlos Duarte, John Duthoit, Charmaine Enslin, Natalie Faldo, William Handley, Clarissa Hobden, Daniel Khabbazi, Roman Klaban, Roland Lanctot, David Malcher, Angela Mann, Christopher Mercer, Lakshman Paidi, Eshaghi Parviz, Chandrasekhar Pemmasani, Gareth Perry, Peter Poulsen, Maurice Price, Jorge Salas, Antony Sutton, and Caroline Waters (collectively, the “**Cason**

Plaintiffs”); the Receiver; Edward J. Carroll, Esq. (“**Carroll**”), and his law firms, Carroll & Scribner, P.C. (“**C&S**”), Carroll & Associates, P.C. (“**C&A**”); and Mark H. Scribner, Esq., (“**Scribner**”) and his law firm, Primmer Piper Eggleston & Cramer, P.C. (“**PPEC**” and, together with Carroll, C&S, C&A, and Scribner, the “**Attorneys**”). The settlement is memorialized in the settlement agreement attached to the Motion as Exhibit 1 (the “**Settlement Agreement**”). As used in this Order, the “**Settling Parties**” means the Attorneys, the Receiver, and the Cason Plaintiffs. Defined 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 requests entry of a bar order (the “**Bar Order**”) permanently barring, restraining and enjoining any person or entity from pursuing claims against any of the Attorney Released Parties (as defined below) relating to the events and occurrences underlying the claims in the SEC Action or any of the other EB-5 Actions,¹ relating to any of the Receivership Entities, or which arise directly or indirectly in any manner whatsoever from the Attorneys’ activities, omissions, services or counsel in connection with the Receivership Entities, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (the “**Attorney Activities**”) by any person or entity (other than federal or state governmental bodies or agencies), including but not limited to claims by on behalf of any Investor (as defined below), by the Receiver, by the Receivership Entities (including their past and present general partners, owners, shareholders, officers, and directors), or by any current or former clients of the Attorneys.

¹ As used in this Order, the “**EB-5 Actions**” means: the SEC Action; the Cason Action; *Qureshi v. People’s United Bank*, Case No. 2:18-CV-00163-CR (D. Vt.); *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.); *Wang v. Shen*, Case No. 2:17-CV-00153 (D. Vt.); *Goldberg v. Kelly*, Case No. 0:17-CV-62157 (S.D. Fla.); *Goldberg v. Mitchell Silberberg & Knupp, LLP*, Case No. 1:19-CV-21862 (S.D. Fla.); *Goldberg v. McAleenan*, Case No. 1:19-CV-24753 (S.D. Fla.); *Goldberg v. McAleenan*, Case No. 1:19-CV-24746 (S.D. Fla.); *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CV-00061 (D. Vt.); *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CV-25073 (S.D. Fla.); and *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CV-21707 (S.D. Fla.).

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 all affected parties, including all foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa programs known as Suites Phase I, Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, Biomedical Phase VII, AnC Bio Phase VII, and/or Q Burke Phase VIII (collectively, "**Investors**"). The Preliminary Approval Order and related documents were served 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 the Bar Order. That deadline has passed, and an Objection was filed at ECF No. 645, but withdrawn at ECF No. 656.

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. 650] (the "**Declaration**").

This Court is fully advised of the issues in the various actions, as it has previously received evidence and heard argument concerning the events, circumstances, and transactions in the SEC Action, which resulted in the appointment of the Receiver and the issuance of the Preliminary Injunction [ECF No. 238], the Permanent Injunction [D.E. No. 260], and the Asset Freeze Order [ECF No. 11]. In addition, the Court has read and considered the Motion, the Settlement

Agreement, other relevant filings of record, and the arguments and evidence presented at the hearing; therefore, the Court **FINDS AND DETERMINES** as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion, the Settlement Agreement, and the Bar Order, and authority to grant the Motion, approve the Settlement Agreement, enter the Bar Order, and award attorneys' fees. *See* 28 U.S.C. § 1651; *SEC v. Kaleta*, 530 F. App'x 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action). *See also Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (approving settlement and bar order in a bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving settlement and bar order in a class action).

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

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

D. The Settling Parties negotiated over a period of several months; their negotiations included the exchange and review of documents, numerous depositions, and many telephone conferences; and a mediation by Zoom also occurred, at which counsel for several of the Settling Parties were present.

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

- i. The claims the Cason Plaintiffs brought against Carroll and Scribner 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 plaintiff, and any ensuing appeal. Such litigation is costly and burdensome, involves complex transactions, multiple witnesses in multiple fora, and substantial legal arguments.
- ii. The Receiver has diligently investigated all claims he believes he could have brought against the Attorneys, including potential claims arising from or related to legal services provided to the Receivership Entities by the Attorneys. The Receiver's investigation revealed that the Receiver's potential claims against the Attorneys involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. The Attorneys dispute the factual and legal bases of any such claims and have indicated their intention to defend any such claims vigorously.
- iii. The Attorneys provided legal services to certain of the Receivership Entities before the SEC Action was filed. Following his appointment, the Receiver engaged some of the Attorneys to provide additional legal services to certain of the Receivership Entities. Over \$50,000 billed to the Receivership Entities by the Attorneys – including amounts billed for services requested by the Receiver – remains unpaid. Additionally, certain of the Receivership Entities may have pre-receivership contractual obligations to indemnify the Attorneys for attorneys' fees and costs incurred in connection with Cason Action and other issues related to the Receivership Entities. To date, these attorneys' fees and costs exceed \$1,400,000. The Receiver disputes the factual and legal bases of any pre-receivership contractual indemnification obligations to the Attorneys.

F. The Settlement Agreement provides for the Attorneys to pay a total amount of Eight Million Dollars (\$8,000,000.00) (the "**Settlement Amount**")—a recovery for the Receivership

Entities of, in net and absolute terms, Five Million Two Hundred Thousand Dollars (\$5,200,000.00)—which permits the Receiver to protect and substantially increase the value of the assets of the Receivership Estate for the remaining Investors. The payment of attorneys’ fees to counsel for the Cason Plaintiffs relieves the Cason Plaintiffs from the obligation to pay attorneys’ fees and costs out of their own recoveries with respect to their claims against Carroll and Scribner.

G. The Receiver will act as disbursing agent for the Settlement Amount. After the Cason Plaintiffs and their counsel receive their share of the recovery from the Settlement Amount, and subject to the escrow obligations provided in the Settlement Agreement, the Receiver will be permitted to distribute the balance 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. Without payment of these portions of the Settlement Amount, the assets of the Receivership Estate could be wasted and have diminished value.

H. The Attorneys have two policies of insurance that were or could be available to cover claims prosecuted or commenced against the Attorneys with respect to the events and occurrences: underlying the claims in the SEC Action and the other EB-5 Actions; relating in any way to any of the Receivership Entities; or which arise directly or indirectly from the Attorney Activities, including but not limited to claims by the Cason Plaintiffs or the Receiver. The policies are “wasting” policies in the amount of Ten Million Dollars (\$10,000,000.00) and Two Million Dollars (\$2,000,000.00),² a significant portion of which has been used in connection with the defense of the Cason Action, document requests by the Receiver and Investors, and settlement negotiations that led to the Settlement Agreement. Entry of the Bar Order is necessary to obtain the Settlement Amount, which will help to preserve assets of the Receivership Estate.

² “A ‘wasting’ insurance policy has coverage limits that are reduced as defense costs are incurred.” *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 901 n.66 (5th Cir. 2019).

I. The Court finds that the allocations and consideration for each phase of Investors among the Cason Plaintiffs and the Receivership Entities delineated in the Settlement Agreement are fair and reasonable, both individually and as a whole.

J. 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 Amount 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).

K. The Attorneys have expressly conditioned their willingness to enter into the Settlement Agreement, or make the Settlement Amount, 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 Attorney Released Parties (as defined below) that relate in any manner whatsoever to the events and occurrences underlying the claims in the EB-5 Actions, the Receivership Entities, or the Attorney Activities (the “Barred Claims,” as more fully defined below). A necessary condition to the Attorneys’ ultimate acceptance of the terms and conditions of the Settlement Agreement is the issuance of the Bar Order. Pursuant to the terms of the Settlement Agreement, entry of the Bar Order is a necessary condition precedent to the payment of the full Settlement Amount.

L. The Attorneys are only willing to pay the full Settlement Amount in exchange for finality as to the Barred Claims. The Court finds that the Settling Parties have agreed to the

settlement in good faith and that the Attorneys are paying a fair share of the potential damages for which it is alleged they could be liable, though the Attorneys deny any wrongdoing or liability.

M. The Investors made investments in eight limited partnerships created to meet the requirements of the EB-5 program, through which an investor who invested \$500,000 in a project that created ten or more jobs per investor would be eligible to apply for unconditional permanent residency in the United States on an expedited basis. The eight limited partnerships into which the investments were made were intended to create economic assets that would operate, generate income, and possibly be sold to return capital.

N. The Cason Plaintiffs invested in Suites Phase I, Hotel Phase II, and Penthouse Phase III. The Cason Action arises from C&S's representation of the Cason Plaintiffs' immigration petitions.

O. The Settlement Amount returns approximately one hundred percent (100%) of the attorneys' fees that certain Cason Plaintiffs paid to C&S, as more specifically delineated in the Settlement Agreement. The Settlement Amount returns approximately fifty percent (50%) of the attorneys' fees that the remaining Cason Plaintiffs paid to C&S, as more specifically delineated in the Settlement Agreement. The Settlement Amount also creates a fund for the Receiver to disburse to protect and substantially increase the value of the assets of the Receivership Estate for all of the remaining Investors, creditors, and stakeholders.

P. **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:

- i. all counsel who have appeared of record in the SEC Action;
- ii. all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of

- the Receivership Entities, or 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;
 - 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;
 - vi. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;
 - vii. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and
 - viii. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.

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

In addition, the Receiver has published the Notice approved by the Preliminary Approval Order in the Vermont Digger and The Burlington (Vermont) Free Press twice a week for three (3) 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 been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

Q. **Benefits of the Settlement:**

1. The Settlement Amount allows the Receiver, as disbursing agent, to return approximately one hundred percent (100%) of the attorneys' fees that certain Cason Plaintiffs paid to C&S.
2. The Settlement Amount also allows the Receiver, as disbursing agent, to return approximately fifty percent (50%) of the attorneys' fees that the remaining Cason Plaintiffs paid to C&S.
3. The Settlement Amount allows the Receiver, as disbursing agent, to pay attorneys' fees and reimbursement of expenses to counsel for the Cason Plaintiffs so that the Cason Plaintiffs do not need to pay such amounts.
4. The balance of the Settlement Amount—Five Million Two Hundred Thousand Dollars (\$5,200,000.00)—allows the Receiver to protect and substantially increase the value of the assets of the Receivership Estate for all of the remaining Investors. Five Hundred Fifty Thousand Dollars (\$550,000.00) of this amount was allocated to settle the Receiver's potential claims against the Attorneys, factoring in the Attorneys' potential claims against the Receivership Estate.
5. The Receiver will maintain an escrow reserve of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) from the Settlement Amount, as further described in the Settlement Agreement, to hold the Attorney Released Parties harmless, and indemnify and defend the Attorney Released Parties at the expense of the Receivership Estate up to the amount held in escrow, from and against any and all judgments, claims, or liabilities arising from or related in any manner to any person or entity who brings or seeks to bring a claim

against any of the Attorney Released Parties that may be prohibited by, or in violation of, the Bar Order.

6. The Settlement Amount thus enhances the value of each Phase of the Receivership Estate and benefits all Investors, creditors, and stakeholders.

R. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate to maximize the value of the Receivership Entities for the benefit of the Investors and other stakeholders and creditors. The Bar Order also protects the assets of the Receivership Estate from being subjected to claims for indemnification by the Attorneys. The Bar Order will also protect the assets of the Receivership Estate by preventing the source of the Settlement Amount, the Attorneys' wasting insurance policies, from being further depleted in litigation. The Receiver will establish a distribution process through which Investors and other interested parties may seek disbursement of funds, including the Settlement Amount to the extent such amounts have not been used to administer the Receivership Estate or for the benefit of the Receivership Estate. 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 the Attorneys relating to the Barred Claims. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

S. Approval of the Settlement Agreement and the Bar Order and adjudication of the Motion are discrete from other matters in the SEC Action, and, as set forth above, the Settling

Parties have shown good reason for the approval of the Settlement Agreement and Bar Order to proceed expeditiously. Therefore, there is no just reason for delay of the finality of this Order.

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

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

2. The Settlement Agreement is **APPROVED** and are 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 disburse the Settlement Amount in accordance with the terms and conditions of the Settlement Agreement and a plan of distribution to be approved by this Court. Without limitation of the foregoing, upon payment of the full Settlement Amount, the releases set forth in Section 5 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. The Court further approves the use of Two Million Four Hundred and Fifty Thousand Dollars (\$2,450,000.00) to establish the Attorneys' Fund to be disbursed in accordance with the terms of the Settlement Agreement. The Court further approves the Receiver's use of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) to maintain an escrow reserve in connection with the indemnification obligations owed by the Receiver to the Attorneys.

4. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED** as a necessary and appropriate component of the settlement. *See Kaleta*, 530 F. App'x 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 F. App'x 554 (11th Cir. 2013) (the Eleventh Circuit “will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context”); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litig.*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

5. **BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE ATTORNEY 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, directors, limited and general partners, and Investors of the Receivership Entities; (ii) any Defendant in the SEC Action, or in any action now pending or which may hereafter be brought in connection with the Barred Claims; (iii) any party to the EB-5 Actions; (iv) current or former clients of the Attorneys; or (v) any person or entity claiming by or through such persons or entities, and/or the Receivership Entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;
- b. **The “Barred Conduct”**: instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or

litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

- c. **The “Barred Claims”**: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, 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 events and occurrences underlying the claims in the EB-5 Actions, with the Receivership Entities, with the investments made in the eight limited partnerships, including but not limited to those events, transactions and circumstances alleged in the SEC Action or relating in any way to the Attorney Activities;
- d. **The “Attorney Released Parties”**: The Attorneys, including without limitation Edward J. Carroll, Esq.; Mark H. Scribner, Esq.; Carroll & Scribner, P.C.; Carroll & Associates, P.C.; and Primmer Piper Eggleston & Cramer, P.C.; and each of their their parent, affiliate, and subsidiary companies, all current, former, and future employees, shareholders, of counsel, agents, attorneys, officers, directors,

members, managers, principals, associates, representatives, trustees, consultants, and general and limited partners; the Attorneys' insurer, ALPS Property & Casualty Insurance Company; and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest.

6. Any non-settling defendants in any action commenced by the Receiver or in any other actions by or on behalf of the Investors or any of them who would otherwise be entitled to contribution or indemnity from the Attorney Released Parties in connection with any claim asserted against them by the Receiver or the Investors shall be entitled to a dollar-for-dollar offset against any subsequent judgment entered against such party for: (1) with respect to the Receiver, the Settlement Amount, less the amounts paid to the Cason Plaintiffs for their share of the Settlement Amount and counsel for the Cason Plaintiffs; and (2) with respect to the Investors, any portion of the Settlement Amount received by each such Investor pursuant to the Settlement Agreement. This provision is without prejudice to whatever rights, if any exist, any non-settling defendant may have to setoff under applicable law in any action brought by or on behalf of the Receiver or the Receivership Entities or by any Investor now pending or which may be brought in the future.

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

8. 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, including the Cason Action.

9. No Attorney Released Party shall have any duty or liability with respect to the administration of, management of, or other performance by the Receiver of his duties relating to the Receivership Entities, including, without limitation, the process to be established for filing, adjudicating and paying claims against the Receivership Entities or the allocation, disbursement or other use of the Settlement Amount.

10. Neither the Settlement Agreement, nor this Order, shall be impaired, modified or otherwise affected in any manner 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.

11. Nothing in this Order or the Settlement Agreement, nor the performance of the Settling Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Attorneys, the Cason Plaintiffs, the Receiver, or the Investors against any party not released in the Settlement Agreement.

12. All Barred Claims against the Attorney Released Parties, including those in the Cason Action, are stayed until this Order is Final.³ To the extent reasonably necessary for the Receiver or the Investors to pursue claims against others, the Attorneys shall produce witnesses or documents within their custody or control but shall be reimbursed any reasonable expenses or costs incurred in doing so.

³ As used in this Order, in reference to any court order, being "**Final**" means a court order unmodified after the conclusion of, or expiration of, any right of any person to seek any appeal, rehearing, or reconsideration of the order.

13. The Cason Plaintiffs are directed and authorized to dismiss their claims against Carroll and Scribner with prejudice, when this Order is Final within the meaning of the Settlement Agreement, in accordance with the terms of the Settlement Agreement with no party admitting to wrongdoing or liability and all parties responsible for their attorneys' fees and costs.

14. 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.

15. 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.

16. 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, the 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 Tuesday, April 06, 2021.

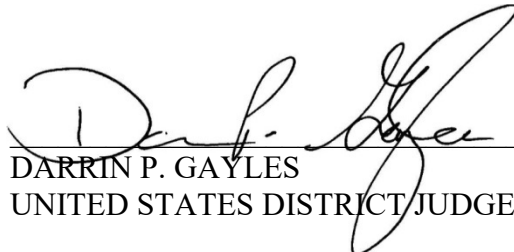

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

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
AnC Bio VT, LLC⁴
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

⁴ Also referred to as: AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont. See SEC Action, DE #492 and 493.