

**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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Case No. 16-cv-21301-GAYLES

**RECEIVER’S UNOPPOSED MOTION TO APPROVE FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE WITH RAYMOND JAMES & ASSOCIATES, INC.; 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, AnC Bio VT, 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 *Unopposed Motion to Approve First Amendment to Settlement Agreement and Release with Raymond James & Associates, Inc.; Incorporated Memorandum of Law* (the “Motion”).

**INTRODUCTION**

As stated on the record by the Receiver’s counsel at the April 6, 2021 final approval hearing on the Cason Plaintiffs’ settlement with Edward J. Carroll, Esq. (and his law firms) and Mark H. Scribner, Esq. (and his law firm), the Receiver and Class Counsel have entered into an agreement with Raymond James & Associates, Inc. (“Raymond James”) to amend the Settlement Agreement and Release between them that was approved by this Court on June 30, 2017 [DE 353]. The precise terms of the First Amendment to Settlement Agreement and Release (“Amendment”) are more fully set forth in the Amendment, a copy of which is attached as **Exhibit A**, but in broad terms, the Amendment amends Section 6 of the original Settlement Agreement and Release by

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increasing the percentage to which Raymond James is entitled for some recoveries in exchange for limiting the scope of Section 6 to only the four matters identified therein.

**MEMORANDUM OF LAW**

“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. *See 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)).

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. *See 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).

Upon due consideration of these governing factors, the Amendment should be approved. Before entering into the Amendment, and upon receiving Raymond James’s limited objection to another settlement that questioned the distribution provisions, the Receiver and his counsel engaged in extensive negotiations with Raymond James and its counsel to resolve not only the limited objection, but a broader agreement to amend the entire scope of the distributions to

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Raymond James. The Receiver, thus, believes that Amendment is in the best interest of the Receivership Estate. It will simplify the process of potential future settlements by the Receiver, investors, and/or the Class. It will eliminate the briefing associated with Raymond James's limited objection to the Cason Plaintiff's settlement, thereby streamlining future settlements and the approval process associated therewith.

The Amendment was executed 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. *See Hemphill v. San Diego Ass'n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“[T]he courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement[.]”). The proposed Amendment marks the culmination of extended negotiation efforts and is clearly not the product of collusion.

Such agreement is undoubtedly well within the range of reasonableness and provides clarity moving forward for the Receiver and Raymond James. The Amendment, therefore, provides a substantial benefit to the Receivership Entities and all of their investors and other creditors. Accordingly, the Amendment is fair, adequate and reasonable, not the product of collusion, and should be approved, and the proposed disbursement authorized.

**CONCLUSION**

**WHEREFORE**, the Receiver respectfully requests that the Court grant this Motion and enter the proposed Approval Order attached hereto as **Exhibit B**.

**Local Rule 7.1 Certification of Counsel**

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for the SEC and the SEC does not object to this Motion or the relief sought herein.

**Case No. 16-cv-21301-GAYLES**

Dated: April 21, 2021.

**LEVINE KELLOGG LEHMAN  
SCHNEIDER + GROSSMAN LLP**  
*Co-counsel for the Receiver*  
201 South Biscayne Boulevard  
Citigroup Center, 22nd Floor  
Miami, FL 33131  
Telephone: (305) 403-8788  
Facsimile: (305) 403-8789

By: /s/ Jeffrey C. Schneider  
JEFFREY C. SCHNEIDER, P.A.  
Florida Bar No. 933244  
Primary: jcs@lklsg.com  
Secondary: ams@lklsg.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on April 21, 2021 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case.

By: /s/ Jeffrey C. Schneider  
JEFFREY C. SCHNEIDER, P.A.

# **EXHIBIT A**

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE**

**THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE** (herein called this "Amendment") is made and entered into as of April 19, 2021 ("Amendment Effective Date"), by and among Michael I. Goldberg, in his capacity as receiver (the "Receiver") for the entities identified on Schedule A to the Settlement Agreement and Release (collectively, the "Receivership Entities"), Harley S. Tropin, and Kozyak Tropin & Throckmorton, LLP, as interim class counsel ("Class Counsel") on behalf of the plaintiffs in the Investor Class Action (as defined in the Agreement), and Raymond James & Associates, Inc. ("Raymond James"). The Receiver, Class Counsel, and Raymond James shall each be referred to as a "Party" and shall collectively be referred to as the "Parties." The Settlement Agreement and Release shall be referred to as the "Agreement."

**WHEREAS**, the Parties executed and entered into that certain Agreement dated as of April 13, 2017, which was approved on June 30, 2017 by United States District Judge Darrin Gayles in Case No. 16-cv-21301-Gayles pending in the United States District Court for the Southern District of Florida, styled *Securities and Exchange Commission v. Ariel Quiros, et al* (the "Litigation"); and

**WHEREAS**, the Parties desire to amend the Agreement as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. Defined and capitalized terms in the Amendment will have the same meaning as defined and capitalized in the Agreement, unless otherwise indicated in this Amendment.
2. Recitals. The recitals set forth above are true and correct and hereby incorporated in their entirety by reference.
3. Continuing Effect. Other than as specifically amended below, all other terms in the Agreement remain in effect and unchanged.
4. Modification and Substitution. All modifications and/or substitutions to the Agreement shall be set forth below in **bold**. Where substitutions are indicated, the original language of the Agreement is deleted and replaced in its entirety by the substitute language set forth below.

The Parties hereby substitute the following language for Section 6 of the Agreement as follows:

**ASSIGNMENT OF PROCEEDS**

a. **Litigation and Other Recoveries.** In accordance with the consideration received under this Agreement, Raymond James is entitled to receive the following percentages of the net proceeds (as defined in Section 6(b) below) recovered by the Receiver from the following matters brought by or on behalf of the Receiver or the Receivership Entities:

i. 75% of the Receiver's net proceeds from the settlement of the matter captioned *Goldberg v. Saint Sauveur Valley Resorts, Inc.*, Case No. 2:17-cv-00061-cr in the United States District Court of Vermont;

ii. 75% of the Receiver's net proceeds from the settlement of the matter captioned *Quiros v. Ironshore Indemnity, Inc.*, Case No. 16-25073-Civ-Cooke in the United States District Court for the Southern District of Florida;

iii. 87.5% of the Receiver's net proceeds from the \$550,000.00 settlement of the Receiver's potential claims against Edward J. Carroll, Esq. and Marc H. Scribner, Esq. and their law firms, as approved by Judge Gayles in his April 6, 2021 order in the SEC Litigation [DE 657];

iv. 87.5% of the Receiver's net proceeds from any recovery, through litigation or otherwise, from Merrill Lynch, Pierce, Fenner & Smith Incorporated or any of its subsidiaries or affiliates.

Any amounts due to Raymond James pursuant to this Section shall become payable to Raymond James within ninety (90) days after the Receiver has received the recovery. Nothing in this Section 6(a) shall impact the Receiver's independence or ability to exercise his business judgment in deciding whether or not to pursue and/or settle any claims or recoveries. The Receiver hereby represents and warrants that he has not assigned any claims belonging to the Receivership Estate or any of the Receivership Entities, or proceeds of such claims, nor has he entered into any sharing agreements regarding such claims. Notwithstanding anything in this Agreement or under applicable legal doctrine, Raymond James shall not have any standing or other right to appear and be heard in connection with the administration of the Receivership Estate or the Receiver's pursuit of the foregoing claims or recoveries, except to the extent necessary to protect Raymond James' rights under this Agreement. For purposes of clarity, Raymond James' sole right under Section 6(a) is the right to receive a percentage of the net proceeds of the foregoing four (4) matters, pursuant to the provisions set forth herein. Raymond James is not entitled to any other proceeds of any other recovery made by or on behalf of the Receiver or the Receivership Entities.

b. As used in this Agreement, the term "net proceeds" means the amounts remaining from the recoveries of the Receiver, whether by litigation or otherwise, after



payment of all legitimate business expenses, including but not limited to, all liens, encumbrances and other valid interests, attorneys' fees, Receiver's fees, and other costs and expenses incurred in connection with obtaining such proceeds.

c. The Receiver shall not pledge or mortgage any of the proceeds of the recoveries to which Raymond James is entitled.

5. Multiple Counterparts. This Amendment may be executed in a number of identical counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment.

6. Facsimile or PDF Signatures. For purposes of this Amendment, signatures delivered by facsimile or as a PDF attached to an e-mail shall be as binding as originals upon the parties so signing.

7. Headings. The use of headings, captions and numbers of the contents of particular sections are inserted only for the convenience of identifying and indexing various provisions in the Amendment and shall not be construed as a part of this Amendment or as a limitation on the scope of any of the terms or provisions of this Amendment.


8. Parties. This Amendment shall be binding upon the parties hereto and their respective successors and permitted assigns.

9. This Agreement shall not be valid and shall be of no force and effect until the Court approves this modification and such order of approval is final.

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

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

**Raymond James & Associates, Inc., a  
Florida corporation**

  
By: SCOTT A. CURTIN  
Its: PRESIDENT, MUTUAL CLIENT GROUP

Dated: April \_\_, 2021.

Dated: April 20, 2021.

payment of all legitimate business expenses, including but not limited to, all liens, encumbrances and other valid interests, attorneys' fees, Receiver's fees, and other costs and expenses incurred in connection with obtaining such proceeds.

c. The Receiver shall not pledge or mortgage any of the proceeds of the recoveries to which Raymond James is entitled.

5. Multiple Counterparts. This Amendment may be executed in a number of identical counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment.

6. Facsimile or PDF Signatures. For purposes of this Amendment, signatures delivered by facsimile or as a PDF attached to an e-mail shall be as binding as originals upon the parties so signing.

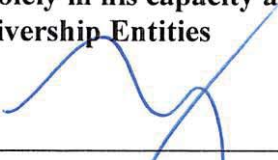
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

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

  
\_\_\_\_\_

Dated: April 20, 2021.

**Raymond James & Associates, Inc., a  
Florida corporation**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: April \_\_, 2021.

**Kozyak Tropin & Throckmorton, LLP,  
as Class Counsel**



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By: Tal J. Lifshitz

Dated: April 20, 2021.

# **EXHIBIT B**

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

**CASE NO.: 16-cv-21301-GAYLES**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,  
WILLIAM STENGER,  
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JAY PEAK HOTEL SUITES L.P.,  
JAY PEAK HOTEL SUITES PHASE II. L.P.,  
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JAY PEAK GP SERVICES LODGE, INC.,  
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JAY PEAK GP SERVICES STATESIDE, INC.,  
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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 APPROVING RECEIVER'S UNOPPOSED MOTION TO APPROVE FIRST  
AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE WITH RAYMOND  
JAMES & ASSOCIATES, INC.**

**THIS MATTER** came before the Court upon the Receiver's Unopposed Motion to

Approve First Amendment to Settlement Agreement and Release with Raymond James & Associates, Inc. [D.E. \_\_\_\_] (the "Motion").

The Court, having reviewed the Motion and being otherwise fully advised, hereby **ORDERS** and **ADJUDGES** that:

- 1 The First Amendment to Settlement Agreement and Release is in the best interest of the Receivership Estate.
- 2 The Motion is **GRANTED**.
- 3 The First Amendment to Settlement Agreement and Release is **APPROVED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this \_\_\_\_ day of April, 2021.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE

Copies furnished to: Counsel of record