

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

CASE NO.: 1:16-cv-21301-GAYLES/LOUIS

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 (I) APPROVING SETTLEMENT AMONG
RECEIVER, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
AND THE STATE OF VERMONT DEPARTMENT OF FINANCIAL REGULATION;
AND (II) BARRING, RESTRAINING, AND ENJOINING CLAIMS AGAINST
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

THIS MATTER came before the Court on the Motion for (i) Approval of Settlement among Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (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 (the “**Motion**”) [ECF No. 710] 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**”). On January 11, 2022, the Court issued an Order (I) preliminarily approving settlement among Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (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 (the “**Preliminary Approval Order**”). [ECF No. 711]. The Court set a Final Approval Hearing for 10:00 A.M. on March 11, 2022, to consider the Motion and hear any objections. [ECF No. 710 at 5 ¶ 3]. However, no objections were timely filed. *See* [ECF No. 714 at 2 ¶ 5].

By way of the Motion, the Receiver requests final approval of a proposed settlement among: Merrill Lynch, Pierce, Fenner & Smith Incorporated (“**Merrill**”); the Receiver; and the State of Vermont Department of Financial Regulation (“**Vermont DFR**”). 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 Merrill, the Receiver, and the

Vermont DFR. 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 Merrill 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 Merrill’s activities, work, conduct, omissions, or services in connection with the Receivership Entities, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (the “**Merrill Activities**”) by all persons and entities (excluding any enforcement actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill’s Activities), including but not limited to claims by or on behalf of any Investor (as defined below), by the Receiver, or by the Receivership Entities (including their past and present general partners, owners, shareholders, officers, and directors).

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

¹ As used in this Order, the term “**EB-5 Actions**” means all actions commenced by any party concerning Quiros, Stenger, the Jay Peak Resort, AnC Bio, the Burke Mountain Hotel, or any of the misconduct alleged in the SEC Action, and includes but is not limited to: (a) the Putative Class Actions, (b) *Calero, et al. v. Raymond James & Associates, Inc., et al.*, No. 16-17840-CA-43 (Cir. Ct. Fl. Miami-Dade Co.), (c) *Casseres-Pinto, et al. v. Quiros, et al.*, No. 16-CIV-22209-DPG (S.D. Fla.), (d) *Shaw, et al. v. Raymond James Financial, Inc., et al.*, No. 16-CIV-00129-GWC (D. Vt.), (e) *Sutton, et al. v. People’s United Bank Financial, Inc., et al.*, No. 18-CIV-00146 (D. Vt.), (f) *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.), (g) *Wang v. Shen*, Case No. 2:17-CV-00153 (D. Vt.), (h) *Goldberg v. Kelly*, Case No. 0:17-CIV-62157 (S.D. Fla.), (i) *Goldberg v. Mitchell Silberberg & Knupp, LLP*, Case No. 1:19-CIV-21862 (S.D. Fla.), (j) *Goldberg v. McAleenan*, Case No. 1:19-CIV-24753 (S.D. Fla.), (k) *Goldberg v. McAleenan*, Case No. 1:19-CIV-24746 (S.D. Fla.), (l) *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CIV-00061 (D. Vt.), (m) *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CIV-25073 (S.D. Fla.), and (n) *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CIV-21707 (S.D. Fla.).

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, AnC Bio Phase VII, and/or Q Burke Phase VIII (collectively, “**Investors**”). The Preliminary Approval Order and related documents were served by mail 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 no objections were filed.

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 (the “**Declaration**”). [ECF No. 713].

This Court is fully advised of the issues in the various actions, as it has previously received evidence and heard argument concerning the events, circumstances, and transactions in the SEC Action, which resulted in the appointment of the Receiver and the issuance of the Preliminary Injunction [ECF No. 238], the Permanent Injunction [ECF No. 260], and the Asset Freeze Order [ECF No. 11]. In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record, and the arguments and evidence presented at the hearing. Accordingly, 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 any 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 years; their negotiations included the exchange and review of documents, numerous depositions, and many telephone conferences; and two mediations—one between the Receiver and Merrill in person and one by Zoom, at which counsel for all 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 Receiver has diligently investigated all claims he believes he could have brought against Merrill, including potential claims based on its interaction with the various Receivership Entities, particularly as they relate to the Brokerage Accounts and the AnC Bio and Burke Mountain Hotel projects. The Receiver's investigation revealed that the Receiver's potential claims against Merrill 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. Merrill disputes the factual and legal bases of any such claims and has indicated its intention to defend any such claims vigorously.
- ii. The Vermont DFR has diligently investigated all claims it believes it could have brought against Merrill, including potential claims based on Merrill's administration of the Brokerage Accounts, over which the Vermont DFR has regulatory authority. The Vermont DFR's investigation revealed that the Vermont DFR's potential claims against Merrill 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. Merrill disputes the factual and legal bases of any such claims and has indicated its intention to defend any such claims vigorously.

F. The Settlement Agreement provides for Merrill to pay a total amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "**Settlement Amount**"). Four Million Dollars (\$4,000,000.00) of the Settlement Amount relates to the Receiver's potential claims; Five Hundred Thousand Dollars (\$500,000.00) of the Settlement Amount relates to the Vermont DFR's potential claims. The Vermont DFR has requested that its portion of the Settlement Amount be disbursed for the benefit of the Receivership Estate, from which all Investors benefit, consistent with and subject to the orders of this Court, with no deductions for attorneys' fees. The balance of the Settlement Amount shall be used for the benefit of the Receivership Estate, including payment of attorneys' fees and/or other costs of administration, from which all Investors benefit because other assets are not being utilized for such amounts, which

permits the Receiver to protect and substantially increase the value of the remaining assets of the Receivership Estate for the Investors.

G. Indeed, without use of the Settlement Amount in these ways, the other assets of the Receivership Estate would be wasted and have diminished value.

H. The Court finds that the allocations and consideration for the Investors among the Vermont DFR and the Receiver delineated in the Settlement Agreement are fair and reasonable, both individually and as a whole.

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 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).

J. Merrill has expressly conditioned its willingness to enter into the Settlement Agreement, or pay 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 Merrill 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 Merrill's Activities (the "Barred Claims," as more fully defined below). A necessary condition to Merrill's 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.

K. Merrill is 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 Merrill is paying a fair share of the potential damages for which it is alleged it could be liable, though Merrill denies any wrongdoing or liability.

L. 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.

M. The Receiver and the Vermont DFR have investigated potential claims arising from Merrill's alleged conduct with the respect to the funds invested in the EB-5 program.

N. The Settlement Amount creates a fund that protects and substantially increases the value of the assets of the Receivership Estate for all of the remaining Investors, creditors, and stakeholders.

O. **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.

P. **Benefits of the Settlement:**

1. The Settlement Amount authorizes payments directly to Investors in the AnC Bio project to reimburse them for a portion of their Administrative Fees, without any deductions for attorneys' fees.

2. The Settlement Amount allows the Receiver to pay attorneys' fees and other costs of administration so that other assets of the Receivership need not be used for such amounts.

3. The balance of the Settlement Amount will be used to protect and substantially increase the value of the assets of the Receivership Estate for all of the remaining Investors.

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

Q. 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 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 Merrill relating to the Barred Claims. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

R. 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, and the Final Approval Hearing at 10:00 A.M. on March 11, 2022 is **CANCELLED**. 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.

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 Mgmt. Grp., 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 Sec. 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 MERRILL RELEASED PARTIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

- a. **The “Barred Persons”**: all persons or entities (excluding any enforcement actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill’s Activities), 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; or (iv) 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 (including by filing any motion to vacate any

previously issued order), 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 facts and claims that were, or could have been asserted, in the EB-5 Actions; with the Receivership Entities, or which arise directly or indirectly from Merrill’s activities, work, conduct, omissions, or services in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, the Burke Mountain Hotel, or the Brokerage Accounts; 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 Merrill’s Activities.

- d. **The “Merrill Released Parties”**: Merrill, including without limitation Bank of America Corporation and Bank of America, N.A., and each of their parents, affiliates, and subsidiary companies, all current and former employees, shareholders, of counsel, agents, attorneys, officers, directors, members, managers, principals, associates, representatives, trustees, insurers, re-insurers, general, and limited partners; and each of their respective administrators, heirs, trustees, 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 Merrill 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 amount allocated to the claims of the Vermont DFR; 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 (other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill’s Activities); 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.

9. No Merrill 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 Merrill, the Receiver, or the Vermont DFR against any party not released in the Settlement Agreement.

12. All Barred Claims against Merrill are stayed until this Order is Final.² To the extent reasonably necessary for the Receiver or the Investors to pursue claims against others, Merrill shall produce witnesses or documents within their custody or control but shall be reimbursed for any reasonable expenses or costs incurred in doing so.

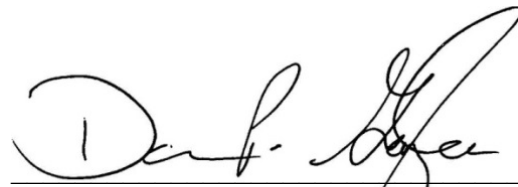
² As used in this Order, in reference to any court order, being "**Final**" means a court order unmodified after the conclusion of, or expiration of, any right of any person to seek any appeal, rehearing, or reconsideration of the order.

13. 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.

14. 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.

15. 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 1st day of March, 2022.



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, LLC³

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

³ Also referred to as: AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont. *See* SEC Action, [ECF Nos. 492 & 493].