

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

Defendant Ariel Quiros, by and through undersigned counsel, and with the consent and agreement of Michael I. Goldberg, as the court-appointed Receiver (the “Receiver”), files the attached modified form of Final Order (I) Approving Settlement Between Receiver and Ariel Quiros; and (II) Barring, Restraining, and Enjoining Claims Against Ariel Quiros (the “Final Order”), and gives notice of the following:

1. On October 19, 2018, the Receiver filed a Motion for (I) Approval of Settlement Between Receiver and Ariel Quiros; (II) Entry of a Bar Order; and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order; and (IV) Incorporated Memorandum of Law. [ECF No. 501] (the “Settlement Motion”).

2. On that same date, the Court preliminarily approved the settlement and established an Objection Deadline of December 6, 2018, in advance of the December 19, 2018 hearing on final approval of the settlement. [ECF No. 502].

3. Citibank N.A. (“Citibank”) has filed no response or objection to the settlement by the Objection Deadline, based on the resolution with the Receiver and counsel for Quiros of its concern regarding the scope of the Bar Order provision contained in the proposed form of Final Order attached as Exhibit A to the Settlement Motion. Under the terms of that resolution, paragraph 5 of the Settlement Order is modified to read as follows (new language *in italics*):

The bar order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government and its agencies or departments; (ii) to *Citibank N.A.*; or (iii) to the Settling Parties' respective obligations under the Settlement Agreement.

4. The Receiver and Mr. Quiros have agreed with Citibank on the inclusion of the foregoing italicized language in paragraph 5 of the Final Order. The proposed revision does not alter the substance of the settlement between the Receiver and Mr. Quiros, nor the rights of investors and creditors of the Receivership Entities; it merely provides comfort and clarity concerning the rights of Citibank, which is not an investor or creditor of the Receivership Entities. A copy of the Final Order as modified in accordance herein is attached as **Exhibit 1**.

Dated: December 6, 2018

Respectfully submitted,

DAMIAN & VALORI LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: 305-371-3960
Facsimile: 305-371-3965

/s/ *Melissa D. Visconti*
Melissa Damian Visconti
Florida Bar No. 0068063
Email: mvisconti@dvllp.com

Melanie E. Damian
Florida Bar No. 99392
Email: mdamian@dvllp.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail via CM/ECF, on this 6th day of December 6, 2018, to all counsel of record.

/s/ Melissa D. Visconti
Melissa Damian Visconti

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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 BETWEEN RECEIVER, AND ARIEL
QUIROS; AND (II) BARRING, RESTRAINING, AND ENJOINING
CLAIMS AGAINST ARIEL QUIROS**

THIS MATTER came before the Court on the Motion for Approval of Settlement between the Receiver and Ariel Quiros [ECF No. 501] (the “**Motion**”) filed by Michael I. Goldberg, as the Court-appointed receiver (the “**Receiver**”) of the entities set forth on Exhibit A to this Order (the “**Receivership Entities**”) in the above-captioned civil enforcement action (the “**SEC Action**”) seeking authorization to settle the claims the Receiver brought against Ariel Quiros in a separate action filed by the Receiver against Ariel Quiros in the United States District Court for the Southern District of Florida, Case No.: 1:16-CV-21831-JAL (the “Receiver’s Action”). Pursuant to the Order (I) Preliminarily Approving the Settlement between Receiver and Ariel Quiros; (II) Approving Form and Content of Notice, and Manner and Method of Service and Publication; (III) Setting Deadline to Object to Approval of Settlement and Entry of Bar Order; and (IV) Scheduling a Hearing [ECF No. 502] (the “**Preliminary Approval Order**”), the Court held a hearing on _____ to consider the Motion and hear objections, if any.

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

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

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

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

The Receiver filed a Declaration with the Court in which he detailed his compliance with the notice and publication requirements contained in the Preliminary Approval Order [ECF No. 503].

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, and the arguments and evidence presented at the hearing; therefore, the Court **FINDS AND DETERMINES** as follows:

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

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

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

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

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

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

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

G. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that Ariel Quiros' (including his wife and children) waiver of any rights, claims, title and interest to the Receivership Entities or their property and proceeds provides a benefit to the Receivership Entities and the Investors that is well within the range of reasonableness. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a receivership may be approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties).

H. **Notice to Affected Parties**

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

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

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

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

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

I. **Benefits of the Settlement:**

The Settlement Agreement provides for Ariel Quiros, on behalf of himself and anyone that claims through him (including his wife and children), to fully and forever waive any rights, title, claims or interest in or against any and all Receivership Entities and any and all real or personal

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

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

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

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

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

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

3. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED**. *See Kaleta*, 530 Fed. Appx. at 362 (entering bar order and injunction in an SEC receivership proceeding where necessary and appropriate as “ancillary relief” to that proceeding). *See also In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1010 (11th Cir. 2015) (approving bar orders in bankruptcy matters); *Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554 (11th Cir. 2013) (the Eleventh Circuit “will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context”); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litig.*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

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

- a. **The “Barred Persons”**: Any non-governmental person or entity, including, without limitation, (i) owners, officer and directors, limited and general partners, investors, and creditors of the Receivership Entities; or (ii) any person or entity claiming by or through such persons or entities, and/or the Receivership Entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;
- b. **The “Barred Conduct”**: instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. **The “Barred Claims”**: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, whether arising under local, state, federal or foreign law; that in any way relate to, are based upon, arise from, or are connected with the released claims or interests of

any kind as set forth in the Settlement Agreement, with the Receivership Entities, the investments made in the eight limited partnerships which raised funds from investors, including but not limited to those events, transactions and circumstances alleged in the SEC Action;

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

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

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

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

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

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

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)¹

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

¹ The Receivership Entities includes all affiliates and subsidiaries of the Receivership Entities.