

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*,

Defendants.

/

**PEOPLE'S UNITED FINANCIAL, INC. AND PEOPLE'S UNITED  
BANK, N.A.'S MEMORANDUM IN OPPOSITION TO THE  
PROPOSED LANGUAGE OF THE BAR ORDER IN FAVOR OF ARIEL QUIROS**

Defendants People's United Financial, Inc. and People's United Bank, N.A. (collectively, "People's") respectfully submit this memorandum in opposition to the proposed language of the "Bar Order" in favor of Ariel Quiros ("Quiros"), as submitted to the Court via email on January 7, 2019.

**PRELIMINARY STATEMENT**

There are two disputed issues regarding the Proposed Order, *i.e.*, whether it will: (a) preclude any discovery of Quiros by "Barred Persons;" and (b) bar "Barred Persons" from conducting any "investigation" of Quiros, even where they are pursuing, or defending against, claims of "aiding and abetting" and "conspiracy" with Quiros.

As shown below, there is no basis for the Bar Order to include such provisions. Indeed, when the Receiver initially distributed the language of the Proposed Order, it made clear that Barred Persons could take discovery from Quiros – as Quiros's counsel repeatedly

acknowledged was the intent – and could conduct an “investigation” of Quiros’s conduct.

Accordingly, People’s respectfully submits that the Court should enter that version of the

Proposed Order, which is attached hereto as Exhibit 1.<sup>1</sup>

## **FACTS**

On October 19, 2018, the Receiver and Quiros filed a joint motion for approval of a settlement they had reached, and requested the entry of a “Bar Order” in favor of Quiros, even though the parties’ settlement was not contingent upon the entry of such an order. (DE 501.) On December 6, 2018, People’s submitted its objection to the Bar Order. (DE 508.) Other parties similarly submitted their objections to the Bar Order. (*See, e.g.*, DE 515.) Among the objections, was that the proposed language of the Bar Order would preclude any discovery of Quiros, notwithstanding the existence of litigation arising from Quiros’s conduct, and would preclude any “investigation” concerning Quiros’s misconduct. (*See* DE 508, 515.)

In response to those objections Quiros’s counsel explained, “we do not intend that the bar order should prevent compliance with or enforcement of properly issued subpoenas in other matters, and we would be happy to work with you on language for inclusion in the order to confirm that.” (Exhibit A.) Quiros’s counsel also stated “we are willing to work with you to accommodate any concerns you may have regarding discovery by including the following modifications to the proposed order: The Bar Order shall not apply … (iv) to the service or

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<sup>1</sup> The Receiver sent the Proposed Order via email with “track changes,” a copy of which is attached hereto as Exhibit C. The Proposed Order attached as Exhibit 1 is simply the Receiver’s attachment with all “tracked changes” “accepted.”

enforcement of legally authorized subpoenas for documents or information in actions or proceedings not barred by this Order.” (Exhibit B.)

During the December 19, 2018 hearing on the motion for the Bar Order, People’s and other objectors confirmed their objections to the Bar Order, but noted that Quiros and the Receiver made clear that banning discovery from Quiros was never intended by the Bar Order. As counsel for other objectors stated:

On the issue of discovery, Your Honor, my understanding with my last conversation with Ms. Visconti was that that had been resolved with additional agreed to language. I am sure she will speak to it if she doesn’t agree to my representation, but we do believe that we should have the right to continue seeking discovery from Mr. Quiros, regardless of whether the bar order is entered.

(Transcript at 21.) Neither counsel for Quiros or the Receiver disputed that the discovery issue had been resolved. Nor did the Receiver or Quiros dispute Quiros’s prior representation that the Bar Order was never intended to bar discovery – or offer any legal, factual or equitable basis for barring all discovery from Quiros. Accordingly, the objectors believed this issue had been resolved by agreement of Quiros and the Receiver.

Consistent with that understanding, on December 21, 2018, the Receiver distributed a proposed Bar Order that adopted the language provided by Quiros’s counsel to make clear that it did not apply to bar the taking of discovery from Quiros or any and every “investigation” of his conduct. (A copy of the Receiver’s email and proposed order is attached hereto as Exhibit C.)

Incredibly, despite Quiros’s prior representations that the Bar Order was never intended to preclude such discovery, Quiros’s counsel objected to the Receiver’s proposed order, and has demanded that the Bar Order preclude anyone other than the parties expressly carved out of the

Bar Order from taking any discovery from Quiros. (Exhibit C.) After the parties' attempts to resolve the disputes regarding the language of the Proposed Order were unsuccessful, on January 7, 2019, the Receiver submitted to the Court via email a revised Proposed Order that reflected the language that Quiros demanded, but noted that there was a dispute among the parties as to the proper language.

## **ARGUMENT**

### **I. AS QUIROS ADMITS, THE BAR ORDER WAS NEVER INTENDED TO PRECLUDE DISCOVERY OF QUIROS**

There simply is no basis to bar discovery from Quiros – particularly given Quiros's prior agreement that the Bar Order was not intended to do so. As this Court is well aware, litigation arising from Quiros's misconduct continues, including litigation in which People's has been named as a defendant. While the Court made clear that the Bar Order will not preclude People's from taking discovery of Quiros, the Proposed Order would prevent any of the other parties to the litigation in which People's is a party from taking any discovery of him. Thus, it is unclear what impact that proposed bar on discovery of Quiros by others will have on People's ability to defend itself.

For example, it is unclear whether Quiros would only be required to answer questions at deposition posed by People's, and whether he could refuse to answer any questions posed by the other parties. To the extent that Quiros takes such a position, it is obviously unclear what impact it would have on People's ability to use the “unilateral” discovery elicited through such a deposition. What is most troubling is that even though such a position would be absurd, Quiros and his counsel refuse to clarify the issue in the Proposed Order, demanding that all discovery by

“Barred Persons” be precluded – making clear that they want to retain the right to assert such a spurious position.

Rather than allow Quiros to engage in such gamesmanship, the Court should adopt the Receiver’s initial Proposed Order. (Exhibit 1.)

## **II. THE PROPOSED ORDER’S PRECLUSION OF ANY “INVESTIGATION” OF QUIROS IS VAGUE AND AMBIGUOUS**

The Proposed Order precludes “Barred Parties” from conducting any “investigation” of Quiros’s conduct. (Proposed Order, ¶ 4(c).) Again, investors have commenced litigation that is based upon Quiros’s conduct – including allegations that People’s and others supposedly “aided and abetted” and “conspired” with Quiros. Of course, such claims necessarily will require an “investigation” of Quiros’s conduct by the plaintiffs/investors (who did not object to the Bar Order and who are thus “Barred Persons”). Moreover, Quiros’s prior legal counsel have been named as defendants and are alleged also to have “aided and abetted” and “conspired” with Quiros, and thus obviously will need to conduct an “investigation” into Quiros’s conduct in order to defend themselves.

Presumably, the Proposed Order was not intended to bar those investors from conducting an “investigation” into Quiros while pursuing claims against persons other than Quiros, or to bar defendants from defending themselves against claims arising out of Quiros’s misconduct.

However, the Proposed Order as drafted would bar them from doing so.<sup>2</sup> Of course, there is no basis to bar parties from conducting whatever investigation is necessary to prosecute or defend

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<sup>2</sup> Of course, if the intention is to bar any claims against parties other than Quiros that relate to Quiros’s misconduct, People’s certainly has no objection, other than that the Proposed Order should make that clear.

against claims that arise from and relate to Quiros's misconduct – and neither the Receiver nor Quiros have offered any such basis.

Indeed, the Receiver's initial Proposed Order made clear that there was no bar on an “investigation” of Quiros. (Exhibit C.) However, Quiros demanded that the Bar Order preclude any such “investigation” of Quiros, resulting in the current language of the Proposed Order – without any explanation of why such all such investigations should be barred.

Accordingly, People's respectfully requests that the Court delete “investigation” from the definition of “Barred Claims” as the Receiver initially proposed. To the extent that the Court intends to bar all “investigations” of Quiros's conduct by Barred Persons, People's respectfully requests that the Court make clear in the Proposed Order what the Barred Persons are allowed to do in prosecuting and defending against claims relating to Quiros's conduct, so that the parties are aware of what they are legally allowed to do, and what they are barred by Court-order from doing.

**CONCLUSION**

For the foregoing reasons, People's respectfully requests that the Court adopt the language that the Receiver initially proposed for the Bar Order (Exhibit A), which makes clear that it does not bar discovery of Quiros, or any "investigation" of him.

Dated: January 9, 2019

Respectfully submitted,

KASOWITZ BENSON TORRES LLP  
1441 Brickell Avenue, Suite 1420  
Miami, Florida 33131  
Phone: (305) 377-1666  
Fax: (305) 377-1664  
*Attorneys for Defendants People's United Financial, Inc., and People's United Bank, N.A.*

By:/s/ *James J. Stricker*  
James J. Stricker  
Pro Hac Vice  
[jstricker@kasowitz.com](mailto:jstricker@kasowitz.com)

Jonathan E. Minsker  
Florida Bar No. 38120  
[jminske@kasowitz.com](mailto:jminske@kasowitz.com)

## **EXHIBIT A**

**James J. Stricker**

---

**From:** Melissa Visconti <mvisconti@dvlip.com>  
**Sent:** Thursday, December 13, 2018 9:39 PM  
**To:** James J. Stricker  
**Cc:** michael.goldberg@akerman.com; Melanie Damian  
**Subject:** Goldberg v Quiros

**\*\*External Email\*\***

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Hi Jim.

I am following up on our conversation earlier this evening. As both the Receiver (who is copied here) and I have expressed to you, as far as we are concerned, the bar order as written is entirely proper and appropriate and will withstand any challenge if one is raised. In an effort to resolve this in advance of the hearing and to avoid People's Bank potentially being the only objector to the settlement, I propose the following.

First, as we discussed , we do not intend that the bar order should prevent compliance with or enforcement of properly issued subpoenas in other matters, and we would be happy to work with you on language for inclusion in the order to confirm that. In addition, as I expressed to you on the phone, at this point, it appears that People's is concerned about the possibility that it may want to assert defenses in any action against it based on Mr. Quiros's alleged conduct. We believe that this can be included in the bar order and protect People's Bank's ability to do so. As an example we modified the Raymond James bar order to include the following language based on similar concerns:

**This Order is without prejudice to , and shall not impair, the right of any defendant in the SEC action, the Receiver Action, the Investor Actions, or any other action brought by or on behalf of the Receiver, the Receivership Entities, or any investor, now pending or which may be brought in the future, 1) to assert any allegations or claims against any person or entity (other than the Raymond James Released Parties, against whom all such allegations and claims are and shall be forever barred) , or 2) to assert any defense that exists under applicable law, including, without limitation, defenses based on set-off as provided in paragraph 6 hereunder and defenses based on the conduct of any person or entity.**

We would be amenable to including similar language regarding People's Bank and Mr. Quiros in the order in this action.

Please review the above and feel free to give me a call to discuss.

Thank you.

Melissa

Melissa Damian Visconti  
Of Counsel  
Damian & Valori, LLP

## **EXHIBIT B**

**James J. Stricker**

---

**From:** Melissa Visconti <mvisconti@dvllp.com>  
**Sent:** Monday, December 17, 2018 9:36 PM  
**To:** Dana Quick  
**Cc:** michael.goldberg@akerman.com; Jeffrey Bast; Maria Desvergnat  
**Subject:** RE: SEC v. Quiros, et al., Case No. 16-cv-21301

Hello Jeff and Dana,

I am just following up with you after my conversation of the other day with Dana regarding your clients' objection to the settlement order. I have not heard from you, so we are assuming your clients do not wish to resolve their objections prior to the hearing. As I previously indicated, although we do feel very confident that your clients have no standing to object, we are willing to work with you to accommodate any concerns you may have regarding discovery by including the following modification in the proposed order:

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.; (iii) to the Settling Parties' respective obligations under the Settlement Agreement; or (iv) to the service or enforcement of legally authorized subpoenas for documents or information in actions or proceedings not barred by this Order .

I am around tomorrow if you would like to discuss. Otherwise, we will see you on Wednesday.

Regards,

Melissa

Melissa Damian Visconti, P.A.  
Of Counsel  
Damian & Valori, LLP

---

**From:** Melissa Visconti  
**Sent:** Wednesday, December 05, 2018 11:25 AM  
**To:** Dana Quick  
**Cc:** michael.goldberg@akerman.com; Jeffrey Bast; Maria Desvergnat  
**Subject:** Re: SEC v. Quiros, et al., Case No. 16-cv-21301

Ok

Thank you.

Melissa Damian Visconti  
Damian & Valori, LLP

Sent from my iPhone

On Dec 5, 2018, at 11:06 AM, Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)> wrote:

Melissa, Thank you for the comments. I have accepted your changes. We inadvertently left off the name of one investor, Yao Zhang. We will add that name and file.

Thank you,  
Dana

---

**From:** Melissa Visconti [<mailto:mvisconti@dvllp.com>]  
**Sent:** Tuesday, December 04, 2018 11:02 PM  
**To:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>; [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
**Cc:** Jeffrey Bast <[jbast@bastamron.com](mailto:jbast@bastamron.com)>; Maria Desvergunat <[mdesvergunat@bastamron.com](mailto:mdesvergunat@bastamron.com)>  
**Subject:** RE: SEC v. Quiros, et al., Case No. 16-cv-21301

Dana,  
Thank you. I attach your drafts with my redlines included.  
Let me know if you have any questions.  
If you are good with the redlines, I have no objection to you filing as modified.

Regards,

Melissa

Melissa Damian Visconti, P.A.  
Of Counsel  
Damian & Valori, LLP

---

**From:** Dana Quick [[dquick@bastamron.com](mailto:dquick@bastamron.com)]  
**Sent:** Tuesday, December 04, 2018 7:04 PM  
**To:** Melissa Visconti; [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
**Cc:** Jeffrey Bast; Maria Desvergunat  
**Subject:** RE: SEC v. Quiros, et al., Case No. 16-cv-21301

Hi Melissa,

Attached please find the proposed motion and order. Let me know if you have any comments.

Thank you,  
Dana

<image001.jpg>

Dana Quick  
Of Counsel

BAST AMRON LLP  
Sun Trust International Center                    O:305.379.7904  
One Southeast Third Avenue                        D:786-219-4079  
Suite 1400    [dquick@bastamron.com](mailto:dquick@bastamron.com)  
Miami Florida 33131                                [www.bastamron.com](http://www.bastamron.com)  
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---

**From:** Melissa Visconti [<mailto:mvisconti@dvlip.com>]  
**Sent:** Tuesday, December 04, 2018 5:47 PM  
**To:** Jeffrey Bast <[jbast@bastamron.com](mailto:jbast@bastamron.com)>; [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>  
**Subject:** RE: SEC v. Quiros, et al., Case No. 16-cv-21301

Jeff,

As we discussed, we are reluctantly agreeing only because of our concern that this will delay the court's approval of the settlement and potentially open the door for other objectors. Please send us a copy of the motion before you file and please indicate that we are not opposing only insofar as a limited enlargement of time as to only your clients' response is concerned and we are not otherwise agreeing to an enlargement of the response deadline as to any other individual or entity.

Thank you  
Melissa

**Melissa Damian Visconti**

Of Counsel

<image002.jpg>  
Commercial Litigation | Real Estate Litigation | Trademark Litigation  
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**From:** Jeffrey Bast [<mailto:jbast@bastamron.com>]  
**Sent:** Tuesday, December 4, 2018 4:14 PM  
**To:** Melissa Visconti <[mvisconti@dvlip.com](mailto:mvisconti@dvlip.com)>; [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>  
**Subject:** Re: SEC v. Quiros, et al., Case No. 16-cv-21301

Thanks Melissa. We will take you up on that offer to answer questions but given the timing, we need to get the motion on file first. How about 7 days? Thanks.

<image003.png>

JEFFREY P. BAST

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**From:** Melissa Visconti <[mvisconti@dvlip.com](mailto:mvisconti@dvlip.com)>

**Date:** Tuesday, December 4, 2018 at 4:05 PM

**To:** JEFFREY BAST <[jbast@bastamron.com](mailto:jbast@bastamron.com)>, "Michael ([michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com))"  
<[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)>

**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>

**Subject:** RE: SEC v. Quiros, et al., Case No. 16-cv-21301

Hi Jeff.

I have no issue with you taking a little time to get up to speed, but if you ask for 10 days, then your response would be due the 17<sup>th</sup>, only 2 days before the hearing. That wouldn't really give us time to respond. Are there any specific questions you have that we may be able to help you with so you can use less time? Let me know so we can work with you to reduce the amount of additional time you need while giving us and/or the Receiver adequate time to respond.

Also, you may want to review the docket in Case Number 16-21575-CV-Moreno. You will see that Moreno entered a substantive order dismissing all investor claims against Mr. Quiros in that case. Not sure what the basis for possibly objection may be, but it may be helpful to you in assessing the landscape.

Let me know if you would like to discuss. I am around.

Thanks,  
Melissa

**Melissa Damian Visconti**

Of Counsel

<image004.jpg>

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**From:** Jeffrey Bast [mailto:[jbast@bastamron.com](mailto:jbast@bastamron.com)]  
**Sent:** Tuesday, December 4, 2018 3:54 PM  
**To:** [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com); Melissa Visconti <[mvisconti@dvlpp.com](mailto:mvisconti@dvlpp.com)>  
**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>  
**Subject:** Re: SEC v. Quiros, et al., Case No. 16-cv-21301

Thanks Michael. Melissa, Please let us know if we can represent that the requested enlargement is agreed. Thank you. Jeff

<image005.png>

JEFFREY P. BAST

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**From:** "Michael ([michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com))" <[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)>  
**Date:** Tuesday, December 4, 2018 at 3:51 PM  
**To:** JEFFREY BAST <[jbast@bastamron.com](mailto:jbast@bastamron.com)>, "[mvisconti@dvllp.com](mailto:mvisconti@dvllp.com)" <[mvisconti@dvllp.com](mailto:mvisconti@dvllp.com)>  
**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>  
**Subject:** Re: SEC v. Quiros, et al., Case No. 16-cv-21301

Jeff, I have copied Melissa Visconti on this email as she represents Quiros. I have no objection to the extension, but refer to Melissa as she represents Mr. Quiros who is the beneficiary of the bar order and she must also consent.

Michael I. Goldberg  
Akerman, LLP  
Office (954)468-2444  
Cell (954)770-8800

On Dec 4, 2018, at 3:39 PM, Jeffrey Bast <[jbast@bastamron.com](mailto:jbast@bastamron.com)> wrote:

Yes it is. We are going to file a motion to enlarge. Please let us know if we can file it as agreed.

<image001.png>

JEFFREY P. BAST

BAST AMRON LLP  
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**From:** "Michael ([michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com))"  
[<michael.goldberg@akerman.com>](mailto:michael.goldberg@akerman.com)  
**Date:** Tuesday, December 4, 2018 at 3:02 PM  
**To:** JEFFREY BAST <[jbast@bastamron.com](mailto:jbast@bastamron.com)>  
**Cc:** Dana Quick <[dquick@bastamron.com](mailto:dquick@bastamron.com)>  
**Subject:** Re: SEC v. Quiros, et al., Case No. 16-cv-21301

Jeff, is this to object to the settlement with Quiros and the bar order?

Michael I. Goldberg  
Akerman, LLP  
Office (954)468-2444  
Cell (954)770-8800

On Dec 4, 2018, at 2:19 PM, Jeffrey Bast <[jbast@bastamron.com](mailto:jbast@bastamron.com)> wrote:

Michael,

I hope all is well with you. I tried to call you at your office this morning and heard you are travelling today. We are reaching out to you because we have recently been retained by a group of Phase VII investors in this receivership case. We are working to get up to speed, and we understand there's a deadline on December 6<sup>th</sup> with regard to a pending motion to approve a settlement. Would you agree to an extension of that deadline for 10 days to allow us to get up to speed and gather documents from our clients? During that time, we would also like to set aside some time to chat with you to get a better sense of the landscape. I am copying Dana Quick here as she will be working on the case with me. Feel free to reach out to either of us.

Please confirm your agreement to the extension, and we will file an agreed motion with the court.

Thank you,

Jeff

<image001.png>

JEFFREY P. BAST

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## **EXHIBIT C**

**James J. Stricker**

---

**From:** joan.levit@akerman.com  
**Sent:** Friday, December 21, 2018 11:15 AM  
**To:** mvisconti@dvllp.com; James J. Stricker; dquick@bastamron.com; bloomm@gtlaw.com  
**Cc:** michael.goldberg@akerman.com  
**Subject:** Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al  
**Attachments:** SEC v. Quiros - Final Order Approving Quiros Settlement.DOCX

**\*\*External Email\*\***

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Please review the attached proposed revisions to the Final Order Approving Settlement Between Ariel Quiros and the Receiver, and circulate your comments and changes. Thanks.

**Joan Levit**

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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, and**

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

**Relief Defendants.**

Q BURKE MOUNTAIN RESORT, HOTEL,<sup>a</sup>  
AND CONFERENCE CENTER, L.P.<sup>a</sup>  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC<sup>1</sup>  
AnC BIO VT, LLC<sup>2</sup>

<sup>3</sup>

**Additional Receivership Defendants<sup>3</sup>**

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<sup>1</sup>[See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 \[ECF No. 60\].](#)

<sup>2</sup>[See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, \*Nunc Pro Tunc\* dated September 7, 2018 \[ECF No. 493\].](#)

<sup>3</sup>[See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 \[ECF No. 60\].](#)

**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 December 19, 2018 to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requesteds final approval of the proposed settlement with Ariel Quiros set forth in the Settlement Agreement dated June 13August, 2018 (the “Settlement Agreement”) attached as Exhibit 2A 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

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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 by People's United Financial, Inc. and People's United Bank, N.A. at [ECF No. 508], León Cosgrove, LLP [ECF No. 510]<sup>4</sup>, and an Ad Hoc Group of Phase VII Investors<sup>5</sup> [ECF No. 515].

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 No. 238], the Permanent Injunction [ECF No. 260], and the Asset

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<sup>4</sup> Pursuant to the Joint Stipulation Between León Cosgrove, LLP, Ariel Quiros and the Receiver [ECF No. 516], León Cosgrove, LLP has withdrawn its objection.

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<sup>5</sup> The Ad Hoc Group of Phase VII Investors are Wei Wang, Xinjie Hu, Xiaofeng Feng, Guangyi Xiong, Fan Cui, Yinyin Qi, Weiting Lv, Xiaofu Zhang, Yi Wang, Wenxing Yan, Meiyue Pan, Manwei You, Hongjun Lai and Qi Zuo (the "Ad Hoc Group of Investors").

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 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](http://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. [Except as otherwise provided herein.](#)  
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, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or

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

- c. **The “Barred Claims”:** any and all claims, actions, lawsuits, causes of action, ~~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; ~~or~~ (ii) Citibank, N.A.; (iii) People’s United Financial, Inc. and People’s United Bank, N.A.; (iv) the Ad Hoc Group of Investors; (v) to the Settling Parties’ respective obligations under the Settlement Agreement; ~~or to (vi) any request by anyone for discovery from Ariel Quiros or any entity which he controls or has an ownership interest, including but not limited to the service or enforcement~~

of legally authorized subpoenas for documents, deposition or information in actions or proceedings not barred by this Order.

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)<sup>6</sup>**

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  
Q Burke Mountain Resort, Hotel and Conference Center, L.P.  
Q Burke Mountain Resort GP Services, LLC  
AnC Bio VT, LLC

---

<sup>6</sup> The Receivership Entities includes all affiliates and subsidiaries of the Receivership Entities.

## **EXHIBIT D**

**James J. Stricker**

---

**From:** Melissa Visconti <mvisconti@dvllp.com>  
**Sent:** Friday, December 21, 2018 11:26 AM  
**To:** joan.levit@akerman.com; James J. Stricker; dquick@bastamron.com; bloomm@gtlaw.com  
**Cc:** michael.goldberg@akerman.com  
**Subject:** RE: Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al

\*\*External Email\*\*

---

Joan,  
That is not the correct order  
Please call me  
That cannot go out

---

**From:** joan.levit@akerman.com [mailto:[joan.levit@akerman.com](mailto:joan.levit@akerman.com)]  
**Sent:** Friday, December 21, 2018 11:15 AM  
**To:** Melissa Visconti <mvisconti@dvllp.com>; jstricker@kasowitz.com; dquick@bastamron.com; bloomm@gtlaw.com  
**Cc:** michael.goldberg@akerman.com  
**Subject:** Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al

Please review the attached proposed revisions to the Final Order Approving Settlement Between Ariel Quiros and the Receiver, and circulate your comments and changes. Thanks.

**Joan Levit**

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**James J. Stricker**

---

**From:** joan.levit@akerman.com  
**Sent:** Friday, December 21, 2018 11:58 AM  
**To:** James J. Stricker; mvisconti@dvlip.com; dquick@bastamron.com; bloomm@gtlaw.com; jbast@bastamron.com  
**Cc:** michael.goldberg@akerman.com  
**Subject:** RE: Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al  
**Attachments:** SEC v. Quiros - Final Order Approving Quiros Settlement (4).DOCX

Thanks for your quick responses. Please see the final version provided by Melissa, and circulate your comments. I have also added Jeff Bast to the circulation group.

**Joan Levit**

Of Counsel  
Akerman LLP | 350 East Las Olas Boulevard, Suite 1600 | Ft. Lauderdale, FL 33301  
D: 954 468 2457  
[joan.levit@akerman.com](mailto:joan.levit@akerman.com)

---

**From:** James J. Stricker <[JStricker@kasowitz.com](mailto:JStricker@kasowitz.com)>  
**Sent:** Friday, December 21, 2018 11:42 AM  
**To:** Levit, Joan (OC-Ftl) <[joan.levit@akerman.com](mailto:joan.levit@akerman.com)>; mvisconti@dvlip.com; dquick@bastamron.com; bloomm@gtlaw.com  
**Cc:** Goldberg, Michael (Ptnr-Ftl) <[michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)>  
**Subject:** RE: Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al

Looks good to us.

Happy Holidays.

Jim

James J. Stricker  
Kasowitz Benson Torres LLP  
1633 Broadway  
New York, New York 10019  
Tel. (212) 506-1734  
Fax. (212) 835-5034  
[JStricker@kasowitz.com](mailto:JStricker@kasowitz.com)

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**From:** [joan.levit@akerman.com](mailto:joan.levit@akerman.com) [mailto:[joan.levit@akerman.com](mailto:joan.levit@akerman.com)]  
**Sent:** Friday, December 21, 2018 11:15 AM  
**To:** [mvisconti@dvlip.com](mailto:mvisconti@dvlip.com); James J. Stricker <[JStricker@kasowitz.com](mailto:JStricker@kasowitz.com)>; [dquick@bastamron.com](mailto:dquick@bastamron.com); [bloomm@gtlaw.com](mailto:bloomm@gtlaw.com)  
**Cc:** [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)  
**Subject:** Case 1:16-cv-21301-DPG Securities and Exchange Commission v. Quiros et al

\*\*External Email\*\*

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JAY PEAK MANAGEMENT, INC.,  
JAY PEAK PENTHOUSE SUITES, L.P.,  
JAY PEAK GP SERVICES, INC.,  
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,  
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AnC BIO VERMONT GP SERVICES, LLC,

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Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

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AND CONFERENCE CENTER, L.P.,  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,<sup>1</sup>  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants

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<sup>1</sup>See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

<sup>2</sup>See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, *Nunc Pro Tunc* dated September 7, 2018 [ECF No. 493].

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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 December 19, 2018 to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requested final approval of the proposed settlement with Ariel Quiros set forth in the Settlement Agreement dated June 13, 2018 (the “Settlement Agreement”) attached as Exhibit 2 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 by People's United Financial, Inc. and People's United Bank, N.A. [ECF No. 508], León Cosgrove, LLP [ECF No. 510],<sup>3</sup> and an Ad Hoc Group of Phase VII Investors<sup>4</sup> [ECF No. 515].

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 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

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<sup>3</sup> :Pursuant to the Joint Stipulation Between León Cosgrove, LLP, Ariel Quiros and the Receiver [ECF No. 516], León Cosgrove, LLP has withdrawn its objection.

<sup>4</sup> The Ad Hoc Group of Phase VII Investors are Wei Wang, Xinjie Hu, Xiaofeng Feng, Guangyi Xiong, Fan Cui, Yinyin Qi, Weiting Lv, Xiaofu Zhang, Yi Wang, Wenxing Yan, Meiyie Pan, Manwei You, Hongjun Lai and Qi Zuo (the "Ad Hoc Group of Investors").

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](http://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. Except as otherwise provided herein, 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) Citibank, N.A.; (iii) People’s United Financial, Inc. and People’s United Bank, N.A.; (iv) the Ad Hoc Group of Investors; (v) 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.

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DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE

## **Exhibit A**

### **(List of Receivership Entities)<sup>5</sup>**

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  
Q Burke Mountain Resort, Hotel and Conference Center, L.P.  
Q Burke Mountain Resort GP Services, LLC  
AnC Bio VT, LLC

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<sup>5</sup> The Receivership Entities includes all affiliates and subsidiaries of the Receivership Entities.