UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., et al.,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL AND CONFERENCE CENTER, L.P., et al.

Additional Receivership Defendants.
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LEÓN COSGROVE, LLP AND MITCHELL, SILBERBERG & KNUPP, LLP'S JOINT OBJECTION TO PROPOSED SETTLEMENT AND BAR ORDER AND REQUEST TO APPEAR AT FINAL APPROVAL HEARING

León Cosgrove, LLP ("LC") and Mitchell, Silberberg & Knupp, LLP ("MSK") object to the settlement and proposed bar order requested in the Receiver's motion to approve the settlement ("Ironshore Settlement") between the Receiver, Defendant Ariel Quiros, Defendant William Stenger, and Nonparty Ironshore Indemnity, Inc. ("Ironshore") [DE 523], and further request to appear and be heard at the March 20, 2019, final approval hearing.

INTRODUCTION

"Any proposed settlement that eliminates the rights the objecting parties specifically bargained for without any benefit in return cannot be fair and equitable."[1]

The Ironshore Settlement and proposed bar order are anything but fair and reasonable, and approving them would be an injustice.

LC and MSK remain owed more than $3 million in unpaid fees and costs in connection with their defense of Quiros in this SEC Action and the other actions against him. Separately, because Quiros was subject to an asset freeze and could not otherwise pay his counsel at the time, LC represented Quiros on a contingency basis against Quiros's insurer, Ironshore, to obtain advancement of defense costs in the actions against him. LC succeeded in obtaining Ironshore's agreement to an Interim Funding Agreement ("IFA") pursuant to which Ironshore would pay LC and MSK to continue representing Quiros at approved rates while the parties litigated the insurance coverage issue, subject to a $1 million cap.

The Receiver and the SEC, however, argued that any IFA payments by Ironshore violated the Court's asset freeze. Accordingly, Quiros filed a motion with this Court to confirm that payment under the IFA was not a violation of the asset freeze. Days before that hearing was set to be heard (at which point LC and MSK had already incurred more than $1 million in fees and costs),

[1] *In re Fundamental Long Term Care, Inc.*, 515 B.R. 352, 362 (Bankr. M.D. Fla. 2014).

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and with no notice to LC or MSK, Quiros hired new counsel.

Through his new counsel, Quiros reached an agreement with the SEC and the Receiver by which Quiros would: (1) withdraw his motion to approve the IFA payments to LC and MSK, and (2) file a new "agreed" motion in which the IFA funds would go to Quiros's new counsel. LC and MSK objected, and filed a motion to intervene. The Court subsequently denied LC and MSK's motion. LC and MSK appealed that ruling, and later filed a new motion in this Court to modify the asset freeze based on changed circumstances.

Ultimately, LC, MSK, the SEC, and the Receiver agreed to a modification of the asset freeze to allow up to a $1 million payment by Ironshore to LC and MSK under the IFA in exchange for LC and MSK agreeing to dismiss their appeal, withdraw their motion to modify the asset freeze, and not file any additional motions to modify the asset freeze. The Court entered an order approving that agreement.

LC and MSK next brought a lawsuit against Ironshore in New York, seeking payment of the funds due under the IFA. The current proposed settlement and request for a bar order provides for a bar against LC and MSK's case against Ironshore with no consideration whatsoever to be paid to LC and MSK—while further enriching Quiros and Ironshore. Under the terms of the settlement, the entry of a bar order triggers an additional payment of $500,000 by Ironshore to be split between the Receiver and Quiros (in addition to the hundreds of thousands of dollars guaranteed to them without any bar order)—with nothing going to LC and MSK. In other words, if the Receiver and Quiros can obtain a bar order that releases Ironshore from its $1 million liability to MSK and LC, Ironshore will pay $500,000 to the Receiver and Quiros.

That the Receiver seeks this result is even more unjust because it renders the consideration granted to LC and MSK under their prior agreement—the removal of the asset freeze as an obstacle

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to pursuing their claim against Ironshore—wholly illusory while maintaining the benefit to the Receiver of LC and MSK's dismissal of their appeal and withdrawal of their motion to modify the asset freeze. Under these facts, granting the extraordinary relief of a bar order—of a claim by nonparties to this case against another nonparty to this case—would be a perversion of justice.

For these reasons and for the reasons further set forth below, the Court should deny approval of the settlement and, whether or not it approves the settlement, should deny the bar order.

FACTS AND PROCEDURAL BACKGROUND

A. The SEC files this action and the Court appoints the Receiver and enters an asset freeze.

Defendant Ariel Quiros was the owner of the Jay Peak ski resort in Vermont. Jay Peak began offering and selling securities to hundreds of foreign investors in connection with the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program.

On April 12, 2016, the SEC filed this civil enforcement action against Quiros and others related to the offering and selling of these securities (the "SEC Action"). In its complaint, the SEC alleged that Quiros perpetrated a "massive eight-year fraudulent scheme in which [he] systematically looted more than $50 million of the more than $350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program." [DE 1 ¶ 1.]

Simultaneously with filing its complaint, the SEC moved for the appointment of a receiver over the corporate defendants and relief defendants in this action as well as for an order freezing Quiros's assets. [DE 4; DE 7.] That same day, the Court entered the requested asset freeze, which precluded Quiros from using any of his funds to pay his defense counsel. [DE 11.] The next day, the Court granted the SEC's motion for appointment of a receiver. [DE 13.]

After this SEC Action was filed, others brought actions against Quiros related to the

misconduct alleged by the SEC. These included actions brought by allegedly-defrauded investors and an action brought by the Receiver. *See Daccache et al. v. Raymond James & Assocs., Inc.*, Case No. 1:16-cv-21575-FAM (S.D. Fla.); *Goldberg v. Raymond James Fin., Inc.*, Case No. 1:16-cv-21831-JAL (S.D. Fla.); *Zheng Zhang et al. v. Raymond James & Assocs., Inc.*, Case No. 1:16-cv-24655-KMW (S.D. Fla.); *Caterina Gonzalez Calero et al. v. Raymond James & Assocs., Inc.*, Case No. 2016-017840-CA-01 (Fla. 11th Cir. Ct.) (collectively, the "Related Actions"). Quiros faced financially-ruinous exposure if these actions were successful.

MSK represented Quiros is this SEC Action since its inception until it withdrew on March 29, 2017. [DE 40; DE 298.] LC represented Quiros in this SEC Action since June 2016 until it also withdrew on March 29, 2017. [DE 178; DE 298.] In addition to the SEC action, LC and MSK represented Quiros in the Related Actions until they were terminated at the end of March 2017. Collectively, LC and MSK have incurred more than $3 million in unpaid attorneys' fees and costs in defending Quiros in this SEC Action and the Related Actions.

B. LC agrees to represent Quiros against Ironshore and obtains an agreement from Ironshore to partially fund Quiros's defense costs.

With no other way to pay for his defense in the SEC and Related Actions, Quiros made a demand on Ironshore to advance his defense costs pursuant to Directors, Officers and Private Company Liability Insurance Policies under which he is an insured. Ironshore denied the claim.

Given Quiros's inability to pay his counsel, LC agreed to represent Quiros in connection with recovering insurance proceeds and other damages from Ironshore. On November 29, 2016, Quiros executed an engagement agreement with LC. The engagement agreement expressly provides for LC's fees and costs to be paid out of any recovery against Ironshore. The engagement agreement between LC and Quiros provides for different contingency fees based on different triggering events. *See* Ex. A, Engagement Agreement at 2.

Because the applicable insurance policy provides for pre-suit mediation as a condition precedent to any action against Ironshore, Quiros and Ironshore mediated their coverage dispute in New York on November 29, 2016. LC represented Quiros at the mediation. A settlement agreement was not reached, and on December 6, 2016, LC filed an action on behalf of Quiros against Ironshore seeking insurance coverage for the advancement of defense costs, and defense costs previously incurred, in the SEC Action and other related actions against Quiros. *See Quiros v. Ironshore Indem., Inc.*, Case No. 16-cv-25073-MGC (S.D. Fla.) (the "Ironshore Action").

Due to its efforts, LC obtained a partial recovery for Quiros in January 2017 by obtaining Ironshore's agreement to an IFA. *See* Ex. B, IFA; Composite Ex. C, Email Correspondence Confirming Agreement to IFA. Under the IFA, Ironshore agreed to advance defense costs in all of the actions against Quiros incurred from December 1, 2016 going forward—up to $1 million—while the parties litigated the coverage issues. *See* Ex. B, IFA. The IFA specifically named LC and MSK as "Approved Firms" to which Ironshore was willing to advance defense costs.[2] *Id.* Furthermore, under the IFA, both Quiros and Ironshore agreed to LC and MSK's hourly rates and the reasonableness of those rates. *Id.* Under the IFA, if Ironshore prevailed in the coverage action, Quiros alone would have to repay the amounts advanced by Ironshore; LC and MSK would have no obligation to refund any amounts advanced by Ironshore. *Id.*

The purpose of the IFA was to induce LC and MSK to remain defending Quiros in the actions against him while Quiros and Ironshore litigated coverage. An agreement funding defense costs while the parties litigated coverage was beneficial to both Quiros and Ironshore because, if Quiros could not pay for a defense, massive default judgments would likely be entered in all the actions against him and would potentially expose Ironshore to massive bad-faith liability.

[2] The law firm currently representing Quiros is not an "Approved Firm" under the IFA.

Obtaining the Interim-Funding Agreement from Ironshore also satisfied an express contingency in the engagement agreement between LC and Quiros for which LC would be entitled to a contingency fee. *See* Ex. A, Engagement Agreement at 2. Quiros and Ironshore continued to litigate the coverage action, with LC continuing to represent Quiros.

D. The Receiver and SEC seek to block payments to LC and MSK.

Even though the payments would be under an agreement separate from the insurance policy and would be from Ironshore's own funds to LC and MSK, the Receiver and SEC took the position that defense-costs payments from Ironshore to LC and MSK under the IFA somehow violated the Court's asset-freeze order. LC and MSK disagreed, but out of an abundance of caution moved (on Quiros's behalf) for clarification or modification of the asset freeze to ensure that any payments under the IFA did not violate any court order. [DE 288.] The Court ultimately set a hearing on that motion for March 29, 2017. [DE 293.]

E. Quiros abruptly terminates LC and MSK and his new counsel colludes with the Receiver and SEC to prevent any payment to them.

Four days before the hearing, on March 25, 2017 (a Saturday), Melissa Visconti, Esq. of Damian & Valori, LLP ("D&V") emailed Scott Cosgrove, Esq. of LC. In that email, Ms. Visconti informed Mr. Cosgrove that Quiros had recently retained D&V to represent him in the SEC and Related Actions and would be immediately terminating MSK. *See* Ex. D, Email Correspondence. In a follow-up email that same day, Ms. Visconti said that she did not know if LC was also being terminated. *Id.* She further advised that she had, without consulting anyone at LC or MSK, engaged in discussions with the Receiver and the SEC to agree to continue the March 29, 2017 hearing. *Id.* Shortly afterward, Ms. Visconti filed a notice of appearance in this action.

On March 27, 2017, Ms. Visconti filed an "agreed" motion to continue the March 29, 2017 hearing. [DE 294; DE 295.] Despite calling the motion an "agreed" motion, no one conferred with

LC or MSK.[3] That day, the Court immediately reset the hearing for April 12, 2017. [DE 296.]

On March 29, 2017, LC learned that it too was terminated. LC and MSK filed a motion to withdraw that same day. [DE 298.] LC also moved to withdraw from the Ironshore action and filed a notice of charging lien in that case. [DE 22; DE 23 in Ironshore Action.]

Meanwhile, in the SEC Action, Quiros, now represented by D&V, took efforts to prevent LC and MSK from being paid under the IFA. On March 31, 2017, again without conferring with LC or MSK, Ms. Visconti filed an "unopposed" motion to withdraw the pending motion to clarify or modify the asset freeze order. [DE 299.] The reason for D&V's withdrawal of the motion quickly became clear—the withdrawal was bought. D&V agreed with the Receiver and SEC to withdraw LC and MSK's motion for clarification in exchange for the Receiver and SEC allowing a payment of $100,000 by Ironshore to D&V (even though D&V had not yet done any work in the case). And D&V quickly filed another "agreed" motion (again, without consulting LC or MSK) to modify the asset freeze order to allow for that $100,000 payment by Ironshore to D&V.

In short, with the SEC and Receiver's blessing, D&V sought approval to receive $100,000 from Ironshore for work it had not yet done, and simultaneously put the wheels in motion to prevent LC and MSK from receiving any payment under the IFA for work that they have done.

On the same day, without any discussion of the $100,000 payment to D&V when it had not done any work, the Court entered an endorsed order granting the "agreed" motion to modify the asset freeze. In other words, D&V was granted the right to an immediate payment of $100,000 based on LC and MSK's work (including LC's work obtaining an IFA and prosecuting the coverage action) while LC and MSK got nothing, despite being owed more than $3 million in fees

[3] Local Rule 7.1(a)(3) requires conferral with all parties "or non-parties who may be affected by the relief sought in the motion." (emphasis added).

and costs and despite D&V having been in the case for less than a week.

LC and MSK immediately sought to protect their rights under the IFA by filing a motion to intervene for the limited purpose of addressing the use of insurance proceeds at the April 12, 2017 hearing (which had not yet been cancelled). [DE 303.] The SEC-Receiver-D&V triumvirate filed oppositions to even permitting LC and MSK to be heard on the matter, despite blocking their rights to any payment under the IFA and their diversion of payments to D&V. [DE 306; DE 307; DE 308.] Notably, D&V argued on behalf of Quiros that LC and MSK's request to intervene "should be denied outright without a hearing" because "[a]ny dispute regarding payment of fees is a matter for separate litigation among those parties directly involved in such a dispute and has no place in the instant SEC enforcement action." [DE 307 at 4.] On the same day these responses were filed, and thus before LC and MSK could file a reply, the Court denied the LC and MSK's motion to intervene and cancelled the April 12, 2017 hearing in an endorsed order. [DE 310.] LC and MSK filed a motion for reconsideration, which the Court denied in another endorsed order before any responses were due. [DE 311; DE 312.]

Somewhat ironically, Quiros successfully used the asset freeze (which is supposed to restrain him from wrongdoing) as a tool to illegitimately deprive his former counsel of compensation—even from a source independent of Quiros.

F. LC and MSK engage in substantial work—and make court-approved concessions—to obtain the ability to pursue Ironshore under the IFA.

On May 8, 2017, LC and MSK filed a notice of appeal of the Court's orders denying intervention. [DE 324.] Meanwhile, in this Court, the Receiver moved for approval of a $150 million settlement with Raymond James. [DE 315.] Also, after barring payments to LC and MSK, the Court entered further orders allowing D&V to be paid $275,000 from frozen assets. [DE 320] (allowing $100,000 payment to D&V from frozen assets); [DE 346] (allowing additional $175,000

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payment to D&V from frozen assets).[4]

Accordingly, while their appeal was pending, on August 8, 2017, LC and MSK filed a new motion to modify the asset freeze based on changed circumstances in this Court. [DE 384.] LC and MSK argued that modification of the asset freeze was proper because the Raymond James settlement (and other settlements) ensured that all defrauded investors would be made whole. LC and MSK sought either an order merely allowing them to proceed under the IFA and seek payment from Ironshore of the $1 million owed to them, or payment of the balance owed to LC and MSK from the sale of the Setai Condominium or liquidation of other frozen assets. [DE 384 at 19.] That motion was fully briefed as of September 14, 2017. [DE 412.]

LC and MSK also engaged in negotiations with the Receiver and the SEC regarding their appeal and motion to modify the asset freeze. Ultimately, after LC and MSK filed their initial appellate brief, the Receiver and SEC reached an agreement to fully resolve LC and MSK's issues with the asset freeze. LC and MSK agreed that, if the Court modified the asset freeze to not apply to any payment by Ironshore up to $1 million under the IFA (thus allowing them to sue Ironshore for the $1 million), they would voluntarily dismiss their appeal, withdraw their motion to modify the asset freeze, and not seek any further modifications of the asset freeze. On September 22, 2017, pursuant to the agreement between LC, MSK, the SEC, and the Receiver, LC and MSK filed a motion to modify the asset freeze to provide that Ironshore's payment of up to $1 million to LC and MSK under the IFA would not violate the asset freeze. [DE 414.]

Quiros and D&V objected. [DE 415.] The SEC replied to Quiros/D&V's objection, stating that the agreement to modify the asset freeze "to *allow* payment of fees under the IFA subject to

[4] Those orders require Quiros/D&V to return those funds to the receivership estate if they receive funds from Ironshore. Though the settlement provides for Quiros to receive well over $275,000 from Ironshore, nothing in the settlement provides for compliance with the Court's prior orders.

further discussions or other proceedings among the law firms, Quiros and Ironshore outside this litigation" is "advantageous to investors, the Receiver and the Court," "will also save the Commission, the Receiver, this Court, the Eleventh Circuit, and Quiros the time, expense and resources of litigating this issue through LC and MSK's agreement to withdraw its pending appeal and motion for modification of the asset freeze," and "will remove the issue of the former attorneys' fees from this case, where the Commission, the Receiver, and Quiros all agree it does not belong." [DE 417 at 1–2] (underlined emphasis added). After a hearing to allow D&V to be heard [DE 418], the Court approved the agreement and modified the asset freeze to allow Ironshore to pay LC and MSK the $1 million under the IFA. [DE 420.] Pursuant to the agreement between LC, MSK, the SEC, and the Receiver, LC and MSK voluntarily dismissed their appeal and their prior motion to modify was deemed withdrawn. [DE 421; DE 422.]

Subsequently, LC and MSK sued Ironshore in New York state court for breach of the IFA. *See* Ex. E, Complaint. The litigation remains pending. Needless to say, LC and MSK have incurred additional fees prosecuting that action.

G. The Receiver, Quiros, and Ironshore seek a bar order to once again prevent LC and MSK from getting paid.

Sometime after LC withdrew from the Ironshore Action, the Receiver intervened. Ultimately, the Receiver, Quiros, Ironshore, and Stenger (who is not a party to the Ironshore Action) reached a settlement. [DE 523-1; 523-2.] Under the settlement, Ironshore is to pay $1.4 million to the Receiver, who has agreed to distribute $600,000 of those funds to Quiros and $200,000 to Stenger. The settlement also purports to "cancel" the IFA, even though any cancellation as a matter of law is ineffective as to third-party beneficiaries such as LC and MSK.

Most offensively, the settlement provides for the entry of a bar order barring any claims against Ironshore and specifically includes LC and MSK's case against Ironshore. The bar order

is expressly not necessary to the effectiveness of the settlement. Even without a bar order, the settlement remains in place and all releases and payments remain effective. The entry of a bar order, however, triggers an additional payment by Ironshore of $500,000, to be split between the Receiver and Quiros. In other words, Ironshore is seeking to buy a bar order barring LC and MSK's $1 million claim for a payment of half that amount to go to the Receiver and Quiros.

The Receiver's agreement to a settlement with a provision barring LC and MSK's claims against Ironshore for the $1 million owed to them under the IFA is directly contrary to the prior agreement made between LC, MSK, the SEC, and the Receiver—and approved by the Court. In reliance on that agreement, LC and MSK gave up their appeal, pending motion, and right to further challenge the asset freeze order to obtain this Court's approval of them being able to pursue the moneys owed to them by Ironshore under the IFA. Now, the Receiver moves for a bar order that will specifically bar LC and MSK's action against Ironshore. If approved, LC and MSK will have received no compensation whatsoever for their defense of Quiros and for having a contractual claim against Ironshore forever barred, despite their prior court-approved concessions in return for the opportunity to pursue Ironshore on the very claim that the settlement now seeks to bar.

ARGUMENT

I. The Court should not approve the settlement because it is not fair and reasonable.

A. The settlement does not adequately protect LC's interests in its charging lien.

The proposed settlement agreement addresses LC's charging lien by providing that $300,000 of the settlement shall be placed in escrow pending the adjudication of the amount of LC's charging lien in the Ironshore Action. That is insufficient to protect LC's interests in its charging lien. As set forth in the engagement agreement between LC and Quiros, the contractual amount agreed to was 40% of a recovery against Ironshore. *See* Ex. A, Engagement Agreement at

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2. This contractual amount represents the upper limit of a potential charging lien award.[5] Thus, to fully protect LC's interests, the escrow amount must be 40% of the settlement amount. Given that the settlement amount is $1.4 million, the escrow amount should be 40% of that recovery, or $560,000 (or, if the bar order is entered, the settlement amount would be $1.9 million and the escrow amount should be $760,000). Alternatively, the Court should stay its decision pending the adjudication of the amount of LC's charging lien to ensure that LC's interests are fully protected. The mere inconvenience of a delay to adjudicate LC's charging lien hardly outweighs the harm that would befall LC if it turns out inadequate funds were reserved for it.

B. The settlement purports to eliminate LC and MSK's contractual rights.

The settlement is also not fair and reasonable because it seeks to "cancel" the IFA. LC and MSK are third-party beneficiaries to the IFA who reasonably and justifiably relied on it in continuing to represent Quiros. Quiros and Ironshore may not simply agree among themselves to "cancel" the IFA and eliminate the rights of LC and MSK, who accepted and acted upon it to their detriment *Excess Risk Underwriters, Inc. v. Lafayette Life Ins. Co.*, 328 F. Supp. 2d 1319, 1339 (S.D. Fla. 2004) (explaining that parties to contract may rescind contract without third-parity beneficiary's consent only "if the beneficiary has not accepted it or acted on it to his detriment").[6] For this reason, too, the settlement is not fair and reasonable, is contrary to law, and must be rejected (or any approval order should state it does not approve the purported "cancellation").

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[5] *Rosenberg v. Levin*, 409 So. 2d 1016, 1017 (Fla. 1982); *Franklin & Marbin, P.A. v. Mascola*, 711 So. 2d 46, 49 (Fla. Dist. Ct. App. 1998).

[6] *Ficor, Inc. v. Nat'l Kinney Corp*., 67 A.D.2d 659, 660 (N.Y. App. Div. 1979) (broker could recover commission as third-party beneficiary because later agreement between buyer and seller was "insufficient to defeat the claims of plaintiff, third party creditor beneficiaries whose rights had already vested"); *Drioli v. Hogan*, 2013 N.Y. Misc. LEXIS 5102 (Sup. Ct. Oct. 28, 2013) ("After the third person accepts, adopts or acts upon the contract entered into for his benefit, the parties thereto cannot rescind the same without his consent, so as to deprive him of its benefits.").

II. Entering the requested bar order would be reversible error.

A. The Court lacks the authority to bar LC and MSK's claims.

The Court's authority to enter a bar order enjoining the rights of third parties derives from the All Writs Act, which grants the Court ancillary jurisdiction to issue writs "necessary or appropriate in aid of" its jurisdiction. 28 U.S.C. § 1651; *In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985). Here, no injunction of LC and MSK's claims against Ironshore is necessary or appropriate in aid of the Court's jurisdiction over this case. The legal issues between LC, MSK, and Ironshore are not before this Court and are not part of the Receiver's or the SEC's claims. Notably, the policy underlying the Ironshore Action is a distinct contract from the IFA on which LC and MSK base their claims. No bar order as to LC and MSK's claims could credibly be said to be "in aid of" this Court's jurisdiction over this case. *Cf. In re Baldwin-United Corp.*, 770 F.2d at 335 ("This provision permits a district court to enjoin actions . . . where necessary to prevent relitigation of an existing federal judgment."). Indeed, this Court previously ruled that it would be inappropriate to inject itself in a dispute regarding LC and MSK's fees, even as to LC and MSK's fees for their representation of Quiros in this case. [DE 310] ("The Court does not find it appropriate to resolve a private attorney's fee issue between Quiros and his prior counsel in this action."). Thus, no decision relating to such fees could possibly frustrate this Court's jurisdiction.

B. The proposed bar order is not an essential and critical element of the settlement.

The entry of a bar order is extraordinary relief that "should be used 'cautiously and infrequently,' and only where essential, fair, and equitable." *In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1079 (11th Cir. 2015) (internal citation omitted) (emphasis added). It is thus error to enter a bar order that is not essential to a settlement. Here, the bar order is undisputedly not essential to the settlement. The settlement will survive—and the litigation among the settling

parties will end—regardless of whether a bar order is entered. When the settlement will be effective and end the litigation between the settling parties without a bar order, the bar order is by definition not essential to the settlement and it is error to enter it. *See In re Sentinel Funds, Inc.*, 380 B.R. 902, 905 (Bankr. S.D. Fla. 2008) ("Although the entry of bar orders which preclude third parties from pursuing independent claims is permitted under 11 U.S.C. § 105, such orders constitute an extraordinary remedy which are generally justifiable only where the bar order is integral to the settlement. The bar order sought here is not integral to the settlement . . . ."); *In re Jiangbo Pharmaceuticals, Inc.*, 520 B.R. 316, 323 (Bankr. S.D. Fla. 2014) (explaining that bar order is proper only when it is "an essential and critical element of the settlement, necessary to achieve complete resolution of the issues within the settlement agreement").

Here, the settlement is clear that a bar order is not an essential component. For example, Recital (K) states that the "settlement is contingent on the District Court approving this Agreement and that the parties shall seek the issuance of a bar order." [DE 523-1 at 3.] Notably, this does not say that the settlement is contingent on the entry of a bar order, and is carefully drafted to avoid saying that. Instead, all it states is that the parties "shall seek" a bar order. Recital (L) is more explicit. It states that the conditions precedent "to the full effectiveness of the settlement" are entry of the Preliminary Approval Order and Final Approval Order, neither of which contain a bar order. [*Id.*] It goes on to state that "[i]n addition, a Final Payment" of an additional $500,000 will be made if the Court enters the proposed bar order. [*Id.*] (emphasis added). Thus, the bar order triggers a "bonus" payment, but the settlement is fully effective without it.

Paragraph 3 also makes clear that the bar order is not essential to the settlement. It provides for three installment payments to be made "regardless of whether a Bar Order, if one is issued, becomes final and non-appealable." [*Id.* at 4.] (emphasis added). This paragraph also states that

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the releases "shall become irrevocably effective" upon payment of these installment payments, which do not include the additional $500,000 payment. [*Id.*] This ensures that the entry of the bar order and the payment of the additional $500,000 is not necessary for the litigation among the settling parties to end. Additional money to enrich the Receiver and Quiros is not a valid basis for the entry of a bar order. If the settlement is effective and resolves the litigation among the settling parties without the bar order—as it does here—it is error to enter the extraordinary relief of a bar order. And this is especially so when the bar order will bar claims by nonparties to this case (LC and MSK) against another nonparty (Ironshore), and the nonparties whose claims are being barred will not receive one cent of the settlement proceeds. *See In re Sentinel Funds*, 380 B.R. at 905–06.

C. The proposed bar order is not fair and equitable to LC and MSK.

Even if the Court had the authority to enter the requested bar order (it does not), it would be reversible error to enter such a bar order because it would not be fair and equitable. The Eleventh Circuit has held that a bar order is improper and may not be approved unless it is "fair and equitable" to the non-settling third parties whose claims will be enjoined. *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996); *In re GunnAllen Fin., Inc.*, 443 B.R. 908, 915 (Bankr. M.D. Fla. 2011) ("When a bankruptcy settlement also seeks entry of a bar order, the bankruptcy court must also determine whether the bar order is fair and equitable to the parties whose claims will be enjoined."). "In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the barred claim, the complexity of the litigation, and the likelihood of depletion of the resources of the settling defendants." *Wald v. Wolfson* (*In re U.S. Oil & Gas Litig.*), 967 F.2d 489, 496 (11th Cir. 1992); *see also Brophy v. Salkin*, 550 B.R. 595, 599 (S.D. Fla. 2015). Any bar order in this case barring LC and MSK's claims would not be fair and equitable for multiple independent reasons.

First, in determining whether the bar order is fair and equitable, the Court must examine whether the benefit the enjoined parties will receive from the overall agreement suffices to render the inclusion of a bar order fair to those parties. *See Feld v. Zale* (*In re Zale Corp.*), 62 F.3d 746, 754 (5th Cir. 1995) (holding that ignoring third-party rights and instead "looking only to the fairness of the settlement as between the debtor and other settling claimant contravenes a basic notion of fairness"). Thus, in *Munford*, the Eleventh Circuit upheld a bar order enjoining certain non-settling defendants from raising future claims only because the settlement containing the bar order provided those defendants with a dollar-for-dollar offset of the claims against them, compensating for their loss of claims against the settling defendants. 97 F.3d at 455–56.

Contrarily, a bar order is not fair and equitable, and cannot be approved, if it fails to provide a fair exchange to the enjoined parties. In *GunnAllen*, for example, the Court rejected a bar order that would have extinguished claims belonging to the enjoined parties in return for no more than 25% of the potential worth of the claims. 443 B.R. at 916. There, the Court explained that under the circumstances such a settlement provided "little value" to the enjoined parties. *Id.* at 917. It thus held that the bar order was "not fair and equitable" and could not be approved over the objections of those parties. *Id.* Other courts reach the same result. *See, e.g., In re Covington Props., Inc.*, 255 B.R. 77, 79–80 (Bank. N.D. Fla. 2000) (rejecting bar order as not "fair and equitable" because "it would have the effect of curtailing the [enjoined parties'] state court action against [the settling parties] without conferring any real benefit on them").

Here, the settlement provides no value whatsoever to LC and MSK in exchange for barring their claims against Ironshore.[7] This is unsurprising because—unlike an investor or creditor of the

[7] It is critical that the Court understand that the amounts owed to LC in connection with its prosecution of claims against Ironshore are separate and independent from the amounts owed to LC and MSK in connection with their defense of Quiros in the various actions against him. Any

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Receivership Entities who has claims based on Quiros's and the other defendants' pre-receivership conduct—LC and MSK's interests are not represented by the Receiver. However, this also means that no settlement with a bar order enjoining LC and MSK from pursuing their claims against Ironshore can possibly be fair and equitable. *See In re Fundamental Long Term Care*, 515 B.R. at 362 ("That bar order, however, is not fair and equitable to the objecting parties because it deprives them of a valuable right without any meaningful benefit in return."); *GunnAllen*, 443 B.R. at 917 ("The absence of the payment of any meaningful consideration by the released parties has been a key consideration by courts in considering whether to approve bar orders."). Entering an order barring LC and MSK's claims against Ironshore would unjustly enrich Ironshore (and the other settling parties), allowing it to be released from a $1 million claim with zero compensation to the parties asserting that claim, LC and MSK. There is nothing fair and equitable about such a bar order. For that reason alone, entering the bar order would be a manifest injustice.

Next, the bar order is also not fair and equitable because it would bar claims that are not "interrelated" with the claims in this case or those the Receiver was empowered to pursue. Claims are "interrelated" when they "arise out of the same facts as those underlying the litigation." *Brophy*,

---

charging lien awarded in the Ironshore Action would not be compensation for LC's defense of Quiros in the SEC or Related Actions. The charging lien would be compensation solely for LC's representation of Quiros in prosecuting the coverage action against Ironshore. *Chancy v. Bauer*, 97 F.2d 293, 294 (5th Cir. 1938) (applying Florida law) ("[S]ervices rendered in one suit cannot be included in a judgment establishing the lien of an attorney for his fees on property recovered by his client in a different suit."); *Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom*, 428 So.2d 1383, 1384 (Fla. 1983) (Fla. 1983) ("The charging lien is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit." (emphasis added)). LC and MSK's defense of Quiros should not be confused or conflated with LC's prosecution of an insurance coverage action on Quiros's behalf. While the proposed settlement contains a reservation of $300,000 for LC's charging lien, that in no way compensates LC and MSK's unpaid fees and costs for their defense of Quiros, $1 million of which is payable by Ironshore under the IFA. The proposed settlement provides no consideration whatsoever to LC and MSK in exchange for barring their claims against Ironshore.

550 B.R. at 600 (quoting *In re U.S. Oil & Gas*, 967 F.2d at 496); *see also SEC v. Kaleta*, 530 F. App'x 360, 363 (5th Cir. 2013) (approving bar order because "investors continue to retain all other putative claims against the Wallace Bajjali Parties that do not arise from the allegedly fraudulent notes that underlie this action" (emphasis added)). If a claim is not interrelated with a settled claim, a court lacks any discretion to enter an order barring that claim. *See In re U.S. Oil & Gas*, 967 F.2d at 496 ("The propriety of the settlement bar order should turn upon the interrelatedness of the claims that it precludes . . . . If the cross-claims that the district court seeks to extinguish through the entry of a bar order arise out of the same facts as those underlying the litigation, then the district court may exercise its discretion to bar such claims in reaching a fair and equitable settlement.").

Any bar order enjoining LC and MSK's claims against Ironshore fails to satisfy the "interrelatedness" requirement because LC and MSK's claims do not arise out of the same facts that underlie this SEC Action. *See AAL High Yield Bond Fund v. Deloitte & Touche LLP*, 361 F.3d 1305, 1312 (11th Cir. 2004) (vacating bar order where district court expressed no justification "for barring claims that arise from causes of action brought by plaintiffs other than the instant plaintiffs or truly independent claims"). LC and MSK's claims against Ironshore were not, and could not have been, a claim properly asserted by the Receiver (or the SEC). Indeed, the Court only empowered the Receiver to file lawsuits against those who "wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendants, including the Corporate Defendants, the other Defendants, and the Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendant." [DE 13 ¶ 2.] No claim by LC and MSK against Ironshore—

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which arose after the receivership was created—can possibly be interrelated with such claims.

In short, LC's and MSK's claims do not satisfy the interrelatedness requirement because they (1) are based on post-receivership actions, (2) are not based on any of the conduct alleged in the complaint in this action, (3) are not based on anyone "wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendants" (the only claims the Receiver was authorized to bring in the first place), and (4) are based on an independent (post-receivership) contract, the IFA. Each of these facts alone renders any bar order enjoining claims by LC and MSK against Ironshore reversible error and wholly unfair and inequitable.

The bar order is also not fair and equitable to the extent it bars LC and MSK's claims because LC and MSK have a high likelihood of prevailing on their claims against Ironshore. LC and MSK are third-party beneficiaries to the interim-funding agreement between Quiros and Ironshore. "Where performance is rendered directly to a third party, it is presumed that the third party is an intended beneficiary of the contract." *Matter of White Plains Plaza Realty, LLC v. Cappelli Enters., Inc.*, 108 A.D.3d 634, 637 (N.Y. App. Div. 2013). The IFA specifically identifies MSK and LC as law firms that Ironshore would pay. Indeed, the IFA sets forth the rates at which Ironshore would pay MSK and LC for their services. LC and MSK are thus express, intended third party beneficiaries of the IFA. *Id.*; *Finch, Pruyn & Co. v. M. Wilson Control Servs.*, 239 A.D.2d 814, 816 (N.Y. App. Div. 1997) ("[T]he subcontract necessarily required MLB to directly perform services at plaintiff's facility for Wilson in order to satisfy Wilson's obligations to plaintiff. Such circumstances evidence a clear intent by Wilson, as promisee, to give [plaintiff] the benefit of the promised performance."). They thus have a high likelihood of success on the merits and should not be deprived of their right to pursue their claims (especially with no compensation in return).

Finally, the bar order is not fair and equitable to LC and MSK because—in an agreement that included the Receiver—they already gave up valuable rights in exchange for being able to pursue their $1 million claim against Ironshore. Indeed, the Receiver should be estopped from even seeking a bar order. As noted above, LC and MSK dismissed an appeal, withdrew a motion, and agreed to not seek further modifications of the asset freeze if the Receiver and SEC agreed to a modification of the asset freeze that would allow them to obtain the $1 million owed to them by Ironshore under the IFA. All the parties understood that this would likely require LC and MSK to sue Ironshore, and that the modification of the asset freeze removed an obstacle to that payment.

Entering the bar order would render the consideration granted by the Receiver under the parties' prior agreement illusory. It would prevent LC and MSK form pursuing the very claim they sought to pursue by modifying the asset freeze, and it would render that modification wholly meaningless. Meanwhile, the Receiver would retain the benefit of LC and MSK's withdrawn appeal and motion to modify (i.e., their detrimental reliance). Principles of equity and estoppel prevent such an unjust result. *See Tefel v. Reno*, 180 F.3d 1286, 1302 (11th Cir. 1999) (listing "elements of a traditional equitable-estoppel claim: (1) 'words, acts, conduct or acquiescence causing another to believe in the existence of a certain state of things' (2) 'wilfulness or negligence with regard to the acts, conduct or acquiescence' and (3) 'detrimental reliance by the other party upon the state of things so indicated.'"); *In re Fundamental Long Term Care*, 515 B.R. at 362 ("Any proposed settlement that eliminates the rights the objecting parties specifically bargained for without any benefit in return cannot be fair and equitable.").

CONCLUSION

The Court should allow LC and MSK to be heard at the final approval hearing, and should not approve the Ironshore Settlement or enter the proposed bar order.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(3)

Counsel for LC and MSK conferred with the Receiver, counsel for the SEC, counsel for Quiros, counsel for Stenger, and counsel for Ironshore regarding this objection. Counsel for the SEC stated that the SEC does not object to LC and MSK appearing and being heard at the final approval hearing, and otherwise takes no position on the other requests for relief herein. Counsel for Stenger stated that he opposes the relief requested herein to the extent it would have any effect on any amounts of money that would go to Stenger. Counsel for Ironshore, Quiros, and the Receiver all stated that they do not object to LC and MSK appearing and being heard at the final approval hearing, but they otherwise object to the relief requested herein.

Dated: March 13, 2019

Respectfully submitted,

By: *s/ Jeremy L. Kahn*
Scott B. Cosgrove
Florida Bar No. 161365
Jeremy L. Kahn
Florida Bar No. 105277
León Cosgrove, LLP
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Email: eperez@leoncosgrove.com
Counsel for León Cosgrove, LLP and Mitchell, Silberberg & Knupp, LLP

CERTIFICATE OF SERVICE

I certify that on March 13, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which in turn will serve all counsel of record. I also certify that, pursuant to the Court's Order Preliminarily Approving Settlement [DE 530], I also served this objection by email on the following:

Michael I. Goldberg, Esq.
(michael.goldberg@akerman.com)
Akerman LLP
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, FL 33301

Jeffrey C. Schneider
(jcs@lklsg.com)
Levine Kellogg Lehman Schneider + Grossman LLP
201 S. Biscayne Blvd., 22nd Floor
Miami, FL 33131

Melissa Visconti, Esq.
(mvisconti@dvllp.com)
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
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Joseph G. Galardi
(galardi@beasleylaw.net)
Beasley & Galardi, P.A.
505 S. Flagler Dr. Suite 1500
West Palm Beach, FL 34401

s/ Jeremy L. Kahn
Jeremy L. Kahn

EXHIBIT A

LEÓN COSGROVE

Derek E. León
305.740.1977
dleon@leoncosgrove.com

November 28, 2016

BY EMAIL *(dbg@msk.com)*

Ariel Quiros
19 Grand Bay Estates Circle
Key Biscayne, FL 33149

c/o

David B. Gordon
Mitchell Silberberg & Knupp LLP
12 East 49th Street, 30th Floor
New York, NY 10017

Re: Insurance Recovery Advice and Possible Litigation against Ironshore Indemnity, Inc.

Dear Mr. Quiros:

León Cosgrove LLC appreciates the opportunity to provide legal services to Ariel Quiros ("you," or the "Client") in connection with the above matter. The purpose of this letter is to set forth our understanding as to the terms upon which we have been retained.

MUTUAL RESPONSIBILITIES

We will provide the legal services that, in our professional judgment, are appropriate for this matter and in accordance with applicable legal and ethical standards. You agree that you will be reasonably available to confer with us upon request, will provide us with such documents and information as you may possess relating to the matter, will disclose all facts and circumstances of which you are aware that may bear upon our handling of the matter, will promptly pay our fees in accordance with the terms of this letter, and will otherwise assist our efforts as we reasonably request.

SCOPE OF REPRESENTATION

Our present agreement to provide legal services to you is limited to the matters set forth above. To the extent you wish our firm to represent you regarding other matters, you will be required to sign a separate engagement agreement describing the scope of that representation prior to our initiation of services.

RETAINER

In light of the judicial freeze of your assets, the firm will not require a retainer.

DETERMINATION OF FEE

As per our prior correspondence on this subject, our fee for this particular matter will be determined as follows:

(1) Recovery of all incurred defense costs to-date. We understand there is approximately $2 million owed in fees and expenses that were incurred in defending the referenced actions. Any amounts paid by the carrier to satisfy these outstanding obligations will entitle the Firm to the lesser of a 40% contingent fee or a 2 Xs multiplier on hourly fees spent by the Firm on the representation. Notwithstanding, the Firm may petition a court for a fee award against the carrier to the maximum extent permitted by law, which shall not be subject to any cap on recovery. Any amounts recovered against the carrier directly may be used to offset the fee owed by the Client.

(2) Recovery of future defense costs. Should the carrier agree to pay any portion of future defense fees and costs associated with any of the pending matters, the Firm will be entitled to a minimum 2 Xs multiplier on hourly fees spent by the Firm on the representation. The Firm may petition a court for a fee award against the carrier to the maximum extent permitted by law. Any amounts recovered against the carrier may be used to offset the fee owed by the Client.

(3) Recovery of indemnity obligations and damages. The Firm will be entitled to a 40% contingent fee on any amounts recovered against the carrier (inclusive of any fee award) arising from the carrier's indemnity obligations under the referenced policies, as well as any extra-contractual damages awarded against the carrier in any action.

(4) The Firm will advance all costs associated with the representation. The reimbursement of such costs will be paid first out of any recovery in this matter, and will not offset or affect the percentages of recovery on fees noted above.

RESPONSIBLE ATTORNEY

I will be the partner responsible for this representation. If at any time you have questions regarding statements for our services or the management of your matter, you should feel free to contact me at 305.740.1977.

STATEMENTS AND PAYMENTS

We will prepare statements for services rendered and for expenditures made on your behalf on a monthly basis. We understand that under the present circumstances, absent payment from a settlement with the carrier, payment of our fees and costs may require an application to the Court, and that the Court must approve our fee application.

TERMINATION

We anticipate a long and mutually satisfactory relationship. However, you have the right to terminate our engagement at any time by giving us written notice of termination. We also have the right, subject to our responsibilities under applicable ethical rules, to terminate our engagement by giving you written notice if you fail to cooperate with us or to pay our bills when due or if we determine that continuing to represent you would be unethical, impractical or improper. If our relationship is terminated by either of us, you will remain obligated to pay us in full for our past services and for costs and expenses in accordance with the terms of this letter.

This agreement will apply to any additional matters we agree to undertake upon your behalf unless we enter into an express written agreement reflecting an alternate arrangement.

Please review this letter carefully, and raise and discuss with me any questions which you may have. If this letter accurately reflects your understanding of our attorney-client relationship, please indicate your approval and acceptance by dating and signing a duplicate of the letter and returning it to me.

Again, thank you for the opportunity to represent you.

Sincerely,

Derek E. León

(SIGNATURE PAGE TO FOLLOW)

AGREED AND ACCEPTED

Ariel Quiros

By: _____

Date: 11/29/16

EXHIBIT B

DRAFT – 1/13/17

INTERIM FUNDING AGREEMENT

This Interim Funding Agreement (the "Agreement") is made as of the ___ day of December, 2016 by and among Ariel Quiros ("Mr. Quiros") on the one hand, and Ironshore Indemnity Inc. ("Ironshore") on the other hand. Mr. Quiros and Ironshore are sometimes collectively referred to as the "Parties," or individually as a "Party" in this Agreement.

RECITALS

WHEREAS, Ironshore has issued its Directors, Officers and Private Company Liability Insurance Policies Numbered 001100502 and 001100504 (together, the "Policies") to Qdevelopment LLC dba QResorts Inc.;

WHEREAS, capitalized terms used in this Agreement that are not otherwise defined shall have the meanings ascribed to them in the Policies;

WHEREAS, Mr. Quiros constitutes an Insured Person under the Policies;

WHEREAS, Mr. Quiros is a defendant in the following pending civil actions (collectively, the "Actions"):

1. *Securities and Exchange Commission v. Ariel Quiros, et al.*, Case No. 1:16-cv-21301-DPG in the United States District Court for the Southern District of Florida;

2. *State of Vermont v. Ariel Quiros, et al.*, Docket No. 217-4-16 Wncv in the Superior Court of the State of Vermont;

3. *Alexandre Daccache, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-21575-FAM in the United States District Court for the Southern District of Florida;

4. *Michael I. Goldberg v. Raymond James Financial, Inc., et al.*, Case No. 1:16-cv-21831-JAL in the United States District Court for the Southern District of Florida;

5. *Caterina Gonzalez Calero, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 2016-017840-CA-01 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida; and

6. *Zheng Zhang, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-24655-KMW in the United States District Court for the Southern District of Florida;

WHEREAS, Mr. Quiros has asserted claims under the Policies against Ironshore for payment, advancement and/or reimbursement of Loss, including Costs of Defense, in connection with the Actions;

WHEREAS, the Approved Firms, as defined herein, have represented Mr. Quiros in connection with his defense of the Actions;

WHEREAS, Ironshore has taken the position that the Policies do not provide coverage to Mr. Quiros for such Loss;

WHEREAS, on November 30, 2016, Mr. Quiros and Ironshore engaged in a mediation in a good faith effort to determine whether any resolution of claims and questions existing among them regarding Mr. Quiros's claims under the Policies for payment, advancement and/or reimbursement of Loss arising from the Actions could be reached (the "Mediation");

WHEREAS, the Mediation concluded without the Parties reaching a resolution of such claims and questions;

WHEREAS, on December 6, 2016, Mr. Quiros filed a civil action captioned *Ariel Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-cv-25073 in the United States District Court for the Southern District of Florida (the "Declaratory Judgment Action"), seeking, among other things, a declaration that Ironshore is obligated to advance Mr. Quiros's Costs of Defense in connection with the Actions;

WHEREAS, Mr. Quiros and Ironshore are desirous of achieving an interim resolution of claims and questions existing among them regarding Mr. Quiros's claims for advancement of Costs of Defense in connection with the Actions; and

WHEREAS, Mr. Quiros and Ironshore mutually reserve all rights with respect to Mr. Quiros' claim for coverage under the Policy, including any claim for reimbursement for Costs of Defense, and Ironshore's positon that the Policies do not provide any coverage for Loss in connection with the Actions.

AGREEMENT

NOW, THEREFORE, in consideration of the respective covenants, undertakings, representations and conditions hereinafter set forth, the Parties agree as follows:

1. This Agreement does not in any way, directly or indirectly, change the terms and conditions of the Policies or the respective rights and obligations of the Parties thereunder, all of which remain in full force and effect; provided, however, that Ironshore has agreed not to enforce the requirement in Section IX.I. of the Policies that no judicial proceeding concerning any dispute that arises in connection with the Policies shall be commenced until at least 90 days have passed from the termination of a non-binding mediation.

2. Subject to all of the other covenants, undertakings, representations and conditions set forth in this Agreement and a continuing full reservation of all of Ironshore's rights, privileges and defenses under the Policies, at law and in equity, during the pendency of

the Declaratory Judgment Action, Ironshore will advance the Costs of Defense up to a maximum amount of One Million Dollars and Zero Cents ($1,000,000.00), billed to Mr. Quiros in connection with the Actions by the following law firms (the "Approved Firms") at the following rates (the "Approved Rates"):

Law Firm	Rates of Partners/Of Counsel	Rates of Associates	Rates of Paralegals/Project Assistants
Mitchell Silberberg & Knupp LLP	$500-$825/hour	$340-$600/hour	$150/hour
León Cosgrove, LLC	$485-$585/hour	$305-$465/hour	$150/hour
Dinse, Knapp & McAndrew, P.C.	$500/hour	$300/hour	$150/hour
O'Connor & Kirby, P.C.	$450/hour	N/A	$150/hour

3. Ironshore's obligation to advance Costs of Defense under this Agreement includes only those Costs of Defense billed to Mr. Quiros by the Approved Firms at the Approved Rates, beginning with amounts billed for work performed and expenses incurred in December, 2016 in connection with the defense of Mr. Quiros in the Actions. Ironshore has absolutely no obligation under this Agreement to advance any Costs of Defense: (i) billed by any law firm or vendor other than the Approved Firms or any firm or vendor that is approved by Ironshore subsequent to the execution of this agreement; (ii) billed at rates in excess of the Approved Rates; (iii) billed for work performed or expenses incurred prior to December, 2016; or (iv) billed for representation of Mr. Quiros in connection with any other action, proceeding or matter of any kind Notwithstanding the foregoing, Ironshore agrees to advance as Costs of Defense under this Agreement costs incurred by the Approved Firms in defending Mr. Quiros in the Actions for amounts paid or owed to the Approved Firms' usual and customary vendors for amounts not to exceed $5000.00; the Approved Firms shall seek Ironshore's written consent to any vendor fees in excess of $5000.00, such consent not to be unreasonably withheld.

4. In order to be eligible for advancement by Ironshore under this Agreement, all invoices of the Approved Firms for Costs of Defense which Mr. Quiros is seeking advancement must be submitted by or on behalf of Mr. Quiros to a third party vendor to be determined by Ironshore. Ironshore will provide Mr. Quiros, through his counsel, León Cosgrove, LLC, with the name and contact information of such third party within seven (7) days after this Agreement becomes effective. The Approved Firms shall follow the procedures required by the third party vendor, including submission of a defense budget. Advancement of Costs of Defense listed on such invoices will be made promptly by Ironshore after a full review of such invoices is completed by the third party designated by Ironshore. All advancements of Costs of Defense made by Ironshore pursuant to this Agreement will be subject to the terms and conditions of the Policies. Invoices will be considered for advancement in the order in which they are received by the third party designated by Ironshore.

5. Ironshore's obligation to advance Costs of Defense under this Agreement shall terminate immediately upon the occurrence of one or more of the following events (collectively, the "Termination Events"):

A. Ironshore's advancement of Costs of Defense totaling $1,000,000.00 in the aggregate;

B. A final determination by the United States District Court for the Southern

District of Florida (without regard to appeals to a higher court) in the Declaratory Judgment Action that Mr. Quiros is not entitled to coverage under the Policies for amounts incurred in connection with the Actions. and

C. Any criminal conviction, in a U.S. federal or state court after a trial or guilty plea, of Mr. Quiros for a crime based on Mr. Quiros allegedly making fraudulent misrepresentations to foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program and/or misappropriating investor monies with respect to investments connected to Jay Peak, Inc. or its subsidiaries

D. A final determination by the trial court judge or jury in any of the Actions (without regard to appeals to a higher court) that Mr. Quiros: (i) gained any profit, advantage or remuneration to which he was not legally entitled; and/or (ii) committed a deliberately fraudulent act.

However, Ironshore agrees to pay any invoices of the Approved Firms for work performed, or costs incurred, subsequent to December 1, 2016 and prior to the occurrence of a Termination Event even if payment has not been made by Ironshore for such work or costs as of the date of such Termination Event.

6. Mr. Quiros hereby agrees to promptly repay to Ironshore all Costs of Defense advanced by Ironshore under this Agreement in the event that there is a final determination in the Declaratory Judgment Action that Mr. Quiros is not entitled to coverage under the Policies for Costs of Defense incurred in connection with the Actions. In no event shall the Approved Firms have any obligation to repay any funds received under the Agreement.

7. The Parties hereby acknowledge and agree that this Agreement shall not constitute an admission by either Party of any disputed matter between them. Furthermore the Parties hereby acknowledge and agree that this Agreement, the payment of Costs of Defense pursuant to this Agreement and any acceptance of advancement of Costs of Defense by the Approved Firms shall not constitute a waiver by either party with respect to any claims or defenses asserted by either party.

8. The Parties also understand, acknowledge and agree that this Agreement, its terms and the negotiations leading hereto are confidential and may not be disclosed to any person or entity other than the Parties' respective attorneys, except as necessary in the Declaratory Judgment Action, any future coverage or "bad-faith" action related to the Policies, or any Civil Remedy Notice related to the Policies.

9. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

10. Mr. Quiros and Ironshore represent, warrant and covenant that each respective Party enters into this Agreement after having an opportunity to consult with legal counsel of their choice, and that they have carefully read and fully understand the contents of this Agreement. Each signatory of this Agreement further declares, warrants and represents that he or she has the general and specific authority to enter into and execute this Agreement on behalf of the Party

identified above his or her signature.

11. Mr. Quiros and Ironshore also represent and warrant that they each enter into this Agreement without any inducement other than that which is described herein.

12. This Agreement shall be deemed to have been drafted jointly by Mr. Quiros and Ironshore; accordingly, any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. All understandings and agreements heretofore had between the Parties relating to the subject matter hereof are merged in this Agreement, which alone fully and completely expresses their agreement. This Agreement may not be modified, changed, or amended orally. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original but such counterparts shall together constitute one and the same instrument and agreement. Copies of all or part of this Agreement, including signatures thereto, which are transmitted by facsimile or electronic mail, shall be presumed valid. Facsimile, electronic or PDF transmitted signatures shall be deemed to have the full force and effect of the original ink signatures. The respective obligations of the Parties are mutually reciprocal, interdependent and not subject to severability.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

Ariel Quiros

IRONSHORE CLAIMS LLC, on behalf of IRONSHORE INDEMNITY INC.

By_____

Name: _____

Title: _____

#1458430v1

COMPOSITE EXHIBIT C

Erika Perez

From: Barry, MaryJo <MJBarry@damato-lynch.com>
Sent: Tuesday, January 24, 2017 4:03 PM
To: Jeremy Kahn
Subject: RE: Ironshore Claims Billing and Reporting Guidelines

I will get that to you

From: Jeremy Kahn [mailto:jkahn@leoncosgrove.com]
Sent: Tuesday, January 24, 2017 4:02 PM
To: Barry, MaryJo
Cc: Derek Leon ; Erika Perez
Subject: RE: Ironshore Claims Billing and Reporting Guidelines
Thank you, Mary Jo. Do you also have an executed copy of the IFA?
Jeremy L. Kahn
León Cosgrove, LLC
255 Alhambra Circle, Suite 800
Coral Gables, FL 33134
D 305.570.3237 | F 305.437.8158
jkahn@leoncosgrove.com
Assistant: Helen Vidal
hvidal@leoncosgrove.com
LEÓN COSGROVE

From: Barry, MaryJo [mailto:MJBarry@damato-lynch.com]
Sent: Tuesday, January 24, 2017 3:57 PM
To: Jeremy Kahn <jkahn@leoncosgrove.com>
Subject: Ironshore Claims Billing and Reporting Guidelines
Jeremy: I am attaching the billing guidelines from Ironshore. The Vendor used by Ironshore for billing purposes is Legal X/Bottom Line. If you could forward the proper contact person for each firm Bottom Line will contact them individually to set the firm up on the Bottom Line system.

Mary Jo Barry

Disclaimer

Erika Perez

From: Barry, MaryJo <MJBarry@damato-lynch.com>
Sent: Thursday, January 26, 2017 12:22 PM
To: Derek Leon; Jeremy Kahn; 'Gordon, David'
Subject: Defense Costs

Since we have not yet received any budgets, could you give me an approximation of the amount of fees that are going to be submitted for Jan? I need to let Ironshore know so they can budget Feb payments on their side

Mary Jo Barry
D'Amato & Lynch, LLP
Two World Financial Center
New York, NY 10281
MJBarry@Damato-Lynch.com
Direct Line: 212-909-2188
Fax Number: 212-269- 3559

Erika Perez

From: Barry, MaryJo <MJBarry@damato-lynch.com>
Sent: Friday, March 10, 2017 11:56 AM
To: Jeremy Kahn
Cc: Derek Leon; Scott Cosgrove; Erika Perez; galardi@beasleylaw.net
Subject: RE: Quiros - Asset Freeze Clarification

Ironshore has no objection to the reference to the IFA. We do ask however that the motion not state or suggest any position or motivation of Ironshore. Accordingly on page 4, first full paragraph we ask that the following highlighted statements be deleted:

With the risks of losing his defense and subsequently defaulting imminent, Quiros obtained an Interim Funding Agreement from Ironshore under which Ironshore agreed to advance Quiros's future defense costs up to a specified amount while Quiros and Ironshore litigated the coverage dispute. The advancement of defense costs was critical to both Quiros and Ironshore because, without such advancement, Quiros's attorneys would have moved to withdraw, Quiros would have defaulted in all the actions against him in the face of financially-ruinous liability, and Ironshore would face bad-faith exposure for the entire amount of liability resulting from Quiros defaulting in all of the actions.

Let me know if you have any questions.
Mary Jo Barry
D'Amato & Lynch
(212) 909-2188

From: Jeremy Kahn [mailto:jkahn@leoncosgrove.com]
Sent: Friday, March 10, 2017 11:11 AM
To: Barry, MaryJo <MJBarry@damato-lynch.com>
Cc: Derek Leon <dleon@leoncosgrove.com>; Scott Cosgrove <scosgrove@leoncosgrove.com>; Erika Perez <eperez@leoncosgrove.com>
Subject: Quiros - Asset Freeze Clarification

Good morning Mary Jo,
Attached please find the motion for clarification re the asset freeze and advancement of defense costs, which we plan on filing today. Please confirm that our references to the IFA (which do not specify the amount being paid) will not be considered a breach of the IFA's confidentiality provisions.
As we are filing as an emergency motion today (and such motions are not well received when filed after COB), please let us know as soon as possible today.
Thank you,
Jeremy

Jeremy L. Kahn
León Cosgrove, LLC
255 Alhambra Circle, Suite 800
Coral Gables, FL 33134
D 305.570.3237 | F 305.437.8158
jkahn@leoncosgrove.com
Assistant: Erika Perez
eperez@leoncosgrove.com

LEÓN COSGROVE

EXHIBIT D

Erika Perez

From: Melissa Visconti <mvisconti@dvllp.com>
Sent: Saturday, March 25, 2017 7:45 PM
To: Scott Cosgrove
Cc: James Bryan; Melanie Damian; Derek Leon; Jeremy Kahn
Subject: RE: Ariel Quiros

Hi Scott,
Thank you for your email.
We are aware that there are several matters that you are involved in.
We would like to discuss everything with you this week to get up to speed.
We will be continuing Wednesday's hearing so that we can prepare for it.
The SEC and Receiver have agreed to the continuance, so you can stop preparing for that for now.
I do not know if Mr. Quiros intends to terminate your firm at this point.
He has asked us to get up to speed on everything you are and have been handling for him so that an informed decision can be made.
Let me know your availability to speak on Monday. Otherwise, I am tied up in depositions on Tuesday and Wednesday, so we may have to wait until Thursday.
Thanks.
Regards
Melissa

From: Scott Cosgrove [mailto:scosgrove@leoncosgrove.com]
Sent: Saturday, March 25, 2017 5:59 PM
To: Melissa Visconti
Cc: James Bryan ; Melanie Damian ; Derek Leon ; Jeremy Kahn
Subject: RE: Ariel Quiros
Hello Melissa,
We are in several cases for Mr. Quiros (SEC case, Receiver case, class action case, two direct cases, and an insurance recovery action against Ironshore). As you may know, Mr. Quiros presently owes quite a bit of money to his lawyers. To that end, my firm filed a lawsuit and secured an IFA with Ironshore to pay fees commencing December 2016 forward, up to $1 million. The Receiver and SEC have argued that Mr. Quiros is not entitled to use insurance proceeds to pay his defense costs, which they contend violates the asset freeze. The insurance company will not pay on the IFA until it has comfort that it is not violating the asset freeze, and we have an expedited hearing on the issue on Wednesday. I was in the midst of preparations for that argument, so let me know if the client wants me to stop prepartions.
When you say Mr. Quiros will be terminating David Gordon's firm, I assume that means he intends to terminate my firm as well (which, of course, is his right). Can you confirm?
Many thanks,
Scott

From: Melissa Visconti [mailto:mvisconti@dvllp.com]
Sent: Saturday, March 25, 2017 5:02 PM
To: Scott Cosgrove
Cc: James Bryan; Melanie Damian
Subject: Ariel Quiros
Hi Scott,
I just wanted to let you know that we have been formally retained by Ariel Quiros to represent him in the SEC/Jay Peak matters.

He will be terminating David Gordon immediately, so all future communications should go through me and/or Melanie Damian.
Mr. Quiros has informed us that he is working with your office on an insurance claim/matter.
We would like to set up a time early next week to discuss so we can get up to speed.
Meanwhile, if there is anything you need from us, please do not hesitate to let me or Melanie know.
Thank you.
Kind regards,
Melissa

Melissa Damian Visconti
Of Counsel

Commercial Litigation | Real Estate Litigation | Trademark Litigation
Employment Litigation and Counseling | Receiverships | Bankruptcy & Creditor's Rights

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Miami, Florida 33131

305-371-3960 (office)
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mvisconti@dvllp.com | www.dvllp.com

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LEÓN COSGROVE, LLC and MITCHELL SILBERBERG & KNUPP LLP

Plaintiffs,

v.

IRONSHORE INDEMNITY, INC.

Defendant.

INDEX NO.

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
October 5, 2017

Respectfully submitted,

By: _____

Jeffrey M. Movit
Lillian J. Lee
Mitchell Silberberg & Knupp LLP
12 East 49th Street, 30th Floor
New York, New York 10017-1028
Telephone: (212) 509-3900
Facsimile: (212) 509-7239

Attorneys for Plaintiffs

Plaintiffs designate New York County as the place of trial. The basis of venue is that at least one of the parties maintains a place of business in New York County.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LEÓN COSGROVE, LLC and MITCHELL SILBERBERG & KNUPP LLP Plaintiffs, v. IRONSHORE INDEMNITY, INC. Defendant.	INDEX NO. **COMPLAINT**

Plaintiffs León Cosgrove, LLC ("LC") and Mitchell Silberberg & Knupp LLP ("MSK"), for their Complaint against Defendant Ironshore Indemnity, Inc. ("Ironshore"), allege as follows:

PARTIES

1. Plaintiff LC, a Florida limited liability company, is a law firm with an office located at 255 Alhambra Circle, Suite 800, Coral Gables, Florida 33134.

2. Plaintiff MSK, a California limited liability partnership, is a law firm with an office located at 12 East 49th Street, 30th Floor, New York, New York 10017.

3. Defendant Ironshore, a Minnesota corporation, is an insurance company with its principal place of business in New York.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendant pursuant to CPLR §§ 301 and 302.

5. Venue is proper pursuant to CPLR § 503 because at least one of the parties is situated in New York County.

FACTS

6. Plaintiffs LC and MSK are former counsel to Ariel Quiros ("Quiros"). As his counsel, Plaintiffs performed legal services in connection with numerous, multidistrict matters against Quiros: *Alexandre Daccache, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-21575-FAM in the United States District Court for the Southern District of Florida; *Michael I. Goldberg v. Raymond James Financial, Inc., et al.*, Case No. 1:16-cv-21831-JAL in the United States District Court for the Southern District of Florida; *Caterina Gonzalez Calero, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 2016-017840-CA-01 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida; *Securities and Exchange Commission v. Ariel Quiros, et al.*, Case No. 16-cv-21301-DPG in the United States District Court for the Southern District of Florida; *State of Vermont v. Ariel Quiros, et al.*, Docket No. 217-4-16 in the Superior Court of the State of Vermont; *Zheng Zhang, et al. v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-24655-KMW in the United States District Court for the Southern District of Florida.

7. The cases centered on allegations that Quiros orchestrated a massive Ponzi scheme related to a ski resort in Vermont and other projects. The SEC alleged that Quiros had defrauded hundreds of vulnerable foreign investors through his solicitation of investments under the federal government's EB-5 program, which allows foreigners to acquire residency in the United States when they make specified investments of at least $500,000 that generate jobs in certain areas in the United States. In all, Quiros faced an SEC enforcement action and lawsuits in multiple states including class actions and individual actions. Upon information and belief,

potential civil liability against Quiros in the various actions filed against him exceeded $100 million in compensatory damages alone.

8. Quiros denied the material allegations made against him and needed experienced, sophisticated counsel to defend him. However, the SEC obtained a Court order freezing effectively all of Quiros's assets, claiming that they were the product of Quiros's alleged wrongful conduct.

9. At all relevant times, Quiros was a policyholder of Directors & Officers insurance coverage by Ironshore (the "Ironshore Policy"). However, Ironshore denied coverage.

10. By late 2016, LC and MSK had incurred approximately $2 million of attorneys' fees in connection with the various matters involving Quiros. Citing the need to protect defrauded investors (and not at all criticizing the amount of time spent, work quality, or amount charged by LC and MSK), the District Court hearing the SEC enforcement action allowed only $80,000 of frozen assets to be used to pay Quiros's attorneys' fees.

11. In light of the District Court's ruling on fees, LC and MSK intended to withdraw as counsel to Quiros unless Quiros was able to arrange a way to pay their fees.

12. Quiros then engaged LC to pursue an insurance recovery claim against Ironshore.

13. In connection with the insurance recovery litigation, LC advised Ironshore that LC and MSK would have to withdraw as counsel to Quiros in connection with the litigations discussed in paragraph 6 absent an immediate funding arrangement.

14. Ironshore understood that if LC and MSK withdrew, Ironshore could be subject to a bad faith claim.

15. Subsequently, LC secured from Ironshore a contract separate from the Ironshore Policy. The agreement was called the Interim Funding Agreement ("IFA"). The purpose of the IFA was to prevent LC and MSK from withdrawing as counsel for Quiros; indeed, the IFA specifically named LC and MSK as "approved firms."

16. While the parties to the IFA were Ironshore (as insurer) and Quiros (as insured), the IFA specifically names LC and MSK as among the law firms that Ironshore agreed to pay for future legal services provided to Quiros from December 1, 2016 forward. LC and MSK were therefore express and intended third-party beneficiaries of the IFA. The IFA provided that Ironshore would pay LC and MSK fees and costs from December 1, 2016 up to a sum certain (the "Capped Amount") and sets forth the billing rates agreed to by LC and MSK, and Quiros.

17. The IFA was entered into for the express benefit of LC and MSK in that, in exchange for LC's and MSK's continued representation of Quiros, Ironshore agreed to pay Plaintiffs' fees and costs up to the Capped Amount. Ironshore further indicated it would consider increasing the Capped Amount as it had been reached.

18. Acting in reliance on the IFA and with knowledge of its terms and existence, LC and MSK did not move to withdraw as counsel for Quiros. Rather, LC and MSK continued to work on the Quiros matters.

19. Ironshore sent LC and MSK its billing guidelines, and asked LC and MSK to comply with the billing guidelines when submitting invoices.

20. In accordance with the IFA, LC and MSK sent Ironshore their invoices on a monthly basis.

21. When LC and MSK inquired as to the status of payment, Ironshore advised that the invoices were "being processed."

22. Later, when pressed, Ironshore advised LC and MSK that it received a phone call from the Receiver's counsel, and it was concerned that the Receiver would claim that a payment from the insurance policy violated the asset freeze.

23. With the agreement of the SEC, the Receiver, LC and MSK, the District Court judge in the SEC enforcement action entered an order authorizing payment to LC and MSK under the IFA (the "Comfort Order").

24. LC and MSK have submitted the Comfort Order to Ironshore.

25. Ironshore has continued to refuse to make payment to LC and MSK.

26. In derogation of the IFA and in disregard of their promises and assurances to LC and MSK, Ironshore continues to refuse to pay the promised amount of fees owed to Plaintiffs. From December 1, 2016 (the effective date of the IFA) to March 2017, LC and MSK have incurred legal fees and costs in the sum of not less than $103,178.50 and $956,858.55, respectively.

27. Ironshore's actions are not only unlawful and commercially unjustified, they are a violation of the trust that LC and MSK put in Ironshore. That trust is typical in the relationship between insurers and defense counsel. Most insurers recognize that law firms and their lawyers place themselves in a vulnerable position when they work diligently for a client on the promise of payment by the client's insurer.

28. By the IFA, Ironshore secured an agreement that induced LC and MSK to incur hundreds of hours of time doing challenging and difficult work for a client facing extensive

potential liability to well-funded and represented plaintiffs. After persuading LC and MSK to remain as counsel on the promise of payment under the IFA, Ironshore has refused to pay LC and MSK *anything under that agreement*. Ironshore has effectively obtained more than $1 million of LC's and MSK's time and work product for its benefit and that of its insured, without paying a penny to Plaintiffs for that benefit.

29. Ironshore's failure to pay LC and MSK was in breach of the IFA and enriched Defendant at the substantial expense of Plaintiffs.

30. All conditions precedent have been performed, have occurred, or have been waived.

FIRST CAUSE OF ACTION
(Breach of Contract – Third Party Beneficiary)

31. Plaintiffs repeat and reallege each and every allegations contained in the preceding paragraphs as though set forth herein at length.

32. The IFA is a valid and enforceable contract between Defendant and Quiros.

33. Pursuant to its terms, the IFA was entered into for the express benefit of Plaintiffs.

34. In reliance of the IFA, Plaintiffs continued to represent Quiros and performed all of their obligation under the IFA.

35. Defendant breached the IFA by failing and refusing to pay Plaintiffs the legal fees incurred to date.

36. As a result of Defendant's breach, LC and MSK have been damaged in the total amount of not less than $1,000,000.

SECOND CAUSE OF ACTION
(Quantum Meruit)

37. Plaintiffs repeat and reallege each and every allegations contained in the preceding paragraphs as though set forth herein at length.

38. Plaintiffs performed their obligations under the IFA in good faith.

39. Defendant accepted Plaintiffs' services.

40. Plaintiffs reasonably expected payment from Defendant.

41. Defendant failed to compensate Plaintiffs as required by the IFA.

42. LC has been damaged in the amount of not less than $103,178.50. MSK has been damaged in the amount of not less than $956,858.55.

WHEREFORE, Plaintiffs demand judgment against Defendant on their Causes of Action in the amount of not less than $1,060,037.05, plus interest and costs, together with any further relief as this Court deems just and proper.

DATED: New York, New York
October 5, 2017

Respectfully submitted,

By: _____

Jeffrey M. Movit
Lillian J. Lee
Mitchell Silberberg & Knupp LLP
12 East 49th Street, 30th Floor
New York, New York 10017-1028
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Attorneys for Plaintiffs