

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

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants,

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

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

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**MOTION FOR (I) APPROVAL OF SETTLEMENT AMONG RECEIVER,
PUTATIVE CLASS PLAINTIFFS, AND MITCHELL SILBERBERG & KNUPP, LLP,
DAVID B. GORDON, AND DAVID B. GORDON, A PROFESSIONAL CORPORATION;
(II) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF
SETTLEMENT AND BAR ORDER; (III) ENTRY OF BAR ORDER; AND
(IV) SCHEDULING A HEARING; INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg, as the court-appointed receiver (the “Receiver”) for Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouses L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak GP Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC, AnC Bio VT, LLC, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC, Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, the “Receivership Entities”), in the above-captioned civil enforcement action (the “SEC Action”), files this *Motion for (i) Approval of Settlement among Receiver, Putative Class Plaintiffs, and Mitchell Silberberg & Knupp, LLP, David B. Gordon, and David B. Gordon, a Professional Corporation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law* (the “Motion”).

**I.
Introduction**

On October 5, 2018, Kozyak Tropin & Throckmorton and other counsel filed a putative class action, on behalf of the putative class plaintiffs named therein (“Putative Class Plaintiffs”), in the United States District Court for the District of Vermont captioned *Qureshi, et al. v. Mitchell Silberberg & Knupp, LLP, People’s United Bank, et al.*, Case No. 2:18-cv-163 (the “Putative”

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Class Action”). The defendants included, among others, Mitchell Silberberg & Knupp, LLP, as successor-in-interest to Richardson & Patel, LLP, Mitchell Silberberg & Knupp, LLP, David B. Gordon, and David B. Gordon, a Professional Corporation (collectively, “**MSK**”). Subsequently, the Kozyak firm was appointed Interim Class Counsel in the Putative Class Action (“**Interim Class Counsel**”).

On May 8, 2019, the Receiver commenced an action in the United States District Court for the Southern District of Florida captioned *Michael I. Goldberg, not individually, but solely in his capacity as Receiver v. Mitchell Silberberg & Knupp, LLP, et al.*, Case No. 19-cv-21862-MGC (S.D. Fla.) (the “**Receiver Action**”). On December 3, 2020, the court in the Receiver Action issued an order staying the Receiver Action.¹

The Receiver is pleased to report that, after years of litigation in two separate fora, extensive discovery, and two separate mediations, the Putative Class Plaintiffs, MSK, and the Receiver have settled the Putative Class Action and the Receiver Action for Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00) (the “**Settlement Amount**”). As set forth below, the Putative Class Plaintiffs have requested that the Settlement Amount be disbursed by the Receiver on their behalf as set forth in the settlement agreement attached to this Motion as Exhibit “1” (the “**Settlement Agreement**”).

The precise terms of the settlement are more fully set forth in the Settlement Agreement,² but in broad terms, the settlement provides recoveries to the Putative Class Plaintiffs, payment to

¹ Because of the current posture of the Putative Class Action and the Receiver Action, the Receiver need not move the Court to stay these actions pending consideration of this Motion. The Receiver reserves the right to supplement this Motion to include a request for a stay of either action should one become necessary.

² As used in this Motion, the “**Parties**” means the Putative Class Plaintiffs, the Receiver, and MSK. In addition, defined terms used but not defined in this Motion have the meaning ascribed to them in the Settlement Agreement. To the extent there is any discrepancy between a defined term in the Settlement Agreement and the same defined term herein, the definition in the Settlement Agreement shall control.

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their attorneys, an allocation to certain of the Receiver's claims, and reimbursement of a portion of the Receiver's attorneys' fees. Even after payment of such amounts, the settlement results in a recovery to the Receivership Estate of nearly \$30 million, from which at least \$20 million shall be used for an interim distribution to eligible investors with allowed claims.³ Needless to say, all Investors and Putative Class Plaintiffs will benefit from this settlement.

The residual funds have been designated in the Settlement Agreement to be used for the general administration of the receivership. Based on the current outlook of the Receivership Estate's financial situation, and given previous settlements, it is possible that the Receiver will not need all of these residual funds for general administration purposes and they can, instead, also be distributed to holders of allowed claims, but given the uncertainties associated with the COVID-19 crisis, the funds will be held for such purposes at this juncture in an abundance of caution.

In exchange for the Settlement Amount, the Putative Class Plaintiffs have agreed to: (i) provide the MSK Released Parties⁴ with broad releases; and (ii) dismiss their claims against MSK with prejudice and waive any right(s) of appeal. The Receiver has agreed: (i) to distribute the net settlement proceeds in accordance with the Settlement Agreement (as defined below) and future orders of the Court; (ii) to provide the MSK Released Parties with broad releases; (iii) to seek entry of a bar order enjoining claims relating to the Jay Peak Resort, AnC Bio, the Burke Mountain Hotel and/or the SEC Action (as described more fully below) (the "**Bar Order**"); and (iv) to dismiss his claims against MSK with prejudice. The Bar Order would not apply to any

³ As set forth in the Settlement Agreement, at Section 3(d)(v), the one exception is if funds are needed to support other assets of the Receivership Estate. Because the motion for authorization to make the interim distribution must be filed within sixty (60) days of the Bar Order becoming Final, and based on the current outlook of the Receiver Estate's financial situation, the Receiver does *not* anticipate the exception being triggered; the provision was only included in an abundance of caution given the uncertainties of the COVID-19 crisis.

⁴ As used throughout this Motion, the term "MSK Released Parties" has the same meaning as in the Settlement Agreement.

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actions brought by federal or state governmental bodies or agencies. The Bar Order also excludes claims that Ariel Quiros (“**Quiros**”) has asserted in his individual capacity only, if any, in the arbitration captioned *Quiros v. Mitchell Silberberg & Knupp LLP and David B. Gordon, JAMS NY Reference No. 1425032114* (the “**Quiros Arbitration**”). Importantly, as set forth below, the settlement is **expressly contingent** on the entry of the Bar Order.

As was the case with the prior settlements brought before this Court (with parties such as Citibank, Raymond James, Ariel Quiros, Carroll & Scribner, and Ironshore), the Receiver requests, by way of this Motion, that the Court approve the Settlement Agreement and Bar Order by means of a two-step process.⁵

First, the Receiver requests that the Court enter an order substantially in form and substance as Exhibit A to the Settlement Agreement (the “**Preliminary Approval Order**”). The Preliminary Approval Order preliminarily approves the Settlement Agreement and establishes approval procedures—including providing notice to parties potentially affected by the settlement, along with an opportunity to object and participate in the final approval hearing. The Receiver believes that the Preliminary Approval Order can be entered without a hearing on the basis of the substantial matters of law and fact set forth in this Motion, as was the case with the Receiver’s previous settlements.

Second, the Receiver requests that, after the procedures delineated in the Preliminary Approval Order have been met, the Court enter the Bar Order substantially in the form and substance as Exhibit B to the Settlement Agreement, which shall serve as the Court’s final order

⁵ The two-step procedure was utilized by the Court with the previous settlements and bar orders.

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approving the Settlement Agreement and barring all non-governmental claims against the MSK Released Parties, as further described below.⁶

As is set forth clearly and unambiguously in the Settlement Agreement, the settlement here is not at all like the settlement that was reached with Ironshore that was recently the subject of an appeal before the Eleventh Circuit. *See SEC v. Quiros*, 966 F.3d 1195 (11th Cir. 2020). This settlement is *expressly conditioned* on the MSK Released Parties receiving the Bar Order in substantially the same form as Exhibit B attached to the Settlement Agreement:

[I]n the event the Bar Order is not issued, or the Bar Order is issued and is subsequently vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the MSK Released Parties as more fully described in the Bar Order attached hereto as Exhibit B and in Recitals F, G and H, supra, then, unless thereafter mutually agreed to by the Parties in writing: *this Agreement shall be null, void, and of no further effect* (except for the Sections of this Agreement that survive the termination of this Agreement identified in Section 11(i)); the Parties shall not be bound by the releases set forth in Section 5 of this Agreement; the Parties shall proceed to litigate their claims as if this Agreement had not been executed; and the Receiver shall return the Settlement Amount, if any has been paid.

Settlement Agreement ¶ 2 (emphasis added).

II. Background

A. Commencement of the SEC Action and Appointment of the Receiver

The Court has appointed the Receiver to exercise dominion and control over and act as sole legal representative for and on behalf of the Receivership Entities in the SEC Action. Specifically, the Receiver derives his authority from the Court's Order Granting Motion for Appointment of Receiver [ECF No. 13] (the "Receivership Order"), entered at the request of the Securities and Exchange Commission (the "SEC") [ECF No. 7]. The Receiver's authority includes the authority

⁶ Again, the Bar Order also excludes claims by Quiros in his individual capacity only, if any, in the Quiros Arbitration.

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to administer “rights of action” and to compromise or settle claims of the Receivership Entities against third parties. *See* Receivership Order ¶¶ 1 & 6.

The complaint in the SEC Action alleges, *inter alia*, that defendants Quiros and William Stenger (“Stenger”), in violation of federal securities laws, controlled and utilized the various Receivership Entities in furtherance of a fraud on foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa program (the “Investors”) and sought various forms of relief including appointment of the Receiver. The first six limited partnerships (defined as Suites Phase I, Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, and Stateside Phase VI) were used to develop and expand the Jay Peak resort located in the Village of Jay, Vermont (the “Jay Peak Resort”). The seventh limited partnership (defined as Biomedical Phase VII) raised funds to purchase land and develop a biomedical research facility in Newport, Vermont (“AnC Bio”). The eighth limited partnership (defined as Q Burke Phase VIII) was used to develop and expand the Burke Mountain hotel and ski area located in East Burke, Vermont (the “Burke Mountain Hotel”).

B. The Putative Class Plaintiffs’ Contentions

As stated above, Interim Class Counsel and other counsel filed the Putative Class Action in the United States District Court for the District of Vermont. The Putative Class Plaintiffs are: Almasood Qureshi, Alexandre Daccache, Carlos Enrique Hiller Sanchez, Philip Calderwood, Jose Antonio Pietri, Jose R. Casseres-Pinto, and Tongyi Wang.

The Putative Class Plaintiffs contended that MSK breached their fiduciary duties and aided and abetted the fraud orchestrated by Quiros on each of the Putative Class Plaintiffs, the Investors, and the Receivership Entities. The Putative Class Plaintiffs sought to certify a class of nearly all Investors—a proposed class composed of hundreds of investors residing across the country.

C. The Receiver's Contentions

The Receiver, like the Putative Class Plaintiffs, brought an action against MSK in which he contended that MSK breached their fiduciary duties and aided and abetted the fraud orchestrated by Quiros on each of the Investors and the Receivership Entities. He also asserted fraudulent transfer claims. On December 3, 2020, the court in the Receiver Action issued an order staying the Receiver Action. The Receiver Action has had no activity since the stay was issued nearly eighteen months ago, other than an order extending the stay.

D. MSK's Contentions

MSK denies the allegations asserted by the Putative Class Plaintiffs in the Putative Class Actions. MSK denies that it owed, or had breached, any fiduciary duty to any Putative Class Plaintiff or any other investor. MSK also believes that no contested class could be certified. MSK moved to dismiss the Putative Class Action; that motion was granted by order dated April 30, 2020.

While MSK provided legal services to certain of the Receivership Entities before the SEC Action was filed, MSK denies the allegations asserted in the Receiver Action and contends that the Receiver's claims are barred by the *in pari delicto* doctrine, among other reasons and defenses.

E. General Terms and Conditions of the Settlement

MSK has a single policy of insurance that was or could be available to cover claims prosecuted or commenced against MSK with respect to the events and occurrences: underlying the claims in the Putative Class Action, the SEC Action, any of the other EB-5 Actions;⁷ relating in

⁷ “EB-5 Actions” is defined expansively in the Settlement Agreement and means all actions commenced by any party concerning Quiros, Stenger, the Jay Peak Resort, AnC Bio, the Burke Mountain Hotel, or any of the misconduct alleged in the SEC Action, the Putative Class Action, the Receiver Action, and includes, but is not limited to, the Putative Class Action, the Receiver Action, and any actions filed by Investors, including without limitation, *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.), *Wang, et al. v. Shen Jianming and Shenlaw, LLC*, Case No. 2:17-CV-00153 (D. Vt.), *Cason, et al. v. Edward Carroll, Esq. and Mark Scribner, Esq.*, Case No. 2:18-cv-40 (D. Vt.), *Alexandre Daccache, et al. v. People's United Financial, Inc.*, et

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any way to any of the Receivership Entities; or which arise directly or indirectly from MSK's activities, omissions, services, or counsel in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel ("MSK's Activities"). The policy is a "wasting" policy in the amount of Forty Million Dollars (\$40,000,000.00),⁸ a significant portion of which has been used in connection with the defense of the Receiver Action, the Putative Class Action, other conduct related to the EB-5 Actions, and settlement negotiations with the Receiver and the Putative Class Plaintiffs.

To avoid the continued expense, delay, and uncertainty associated with the Putative Class Action and the Receiver Action, the Parties participated in two separate mediations—one in the Fall of 2019 in Los Angeles and another in the Summer of 2020 by Zoom—but did not settle the cases. The Parties nevertheless continued their efforts, both through the mediator and directly, to attempt to settle the Putative Class Action and the Receiver Action.

The settlement was finally reached and memorialized in the Settlement Agreement. The principal terms of the Settlement Agreement are as follows:⁹

al., Case No. 1:16-cv-21575 (S.D. Fla.), *Wang, et al. v. Jianming Shen and Shenlaw LLC*, Case No. 2:19-cv-00086 (D. Vt.), *Wei, et al. v. Quiros, et al.*, Case No. 602-7-16 Cncv (Vt. Sup. Ct.), *Calero, et al. v. Raymond James & Associates, Inc.*, et al., No. 16-17840-CA-43 (Cir. Ct. Fl. Miami-Dade Co.), *Casseres-Pinto, et al. v. Quiros, et al.*, No. 16-cv-22209 (DPG) (S.D. Fla.), *Shaw, et al. v. Raymond James Financial, Inc.*, et al., No. 16-cv-00129 (GWC) (D. Vt.), *Sutton, et al. v. People's United Bank Financial, Inc.*, et al., No. 18-cv-00146 (D. Vt.), *Goldberg v. Kelly*, Case No. 0:17-CV-62157 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24753 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24746 (S.D. Fla.), *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CV-00061 (D. Vt.), *Goldberg v. Raymond James & Associates, Inc.*, et al., Case No. 1:16-cv-21831 (S.D. Fla.), *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CV-25073 (S.D. Fla.), and *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CV-21707 (S.D. Fla.).

⁸ "A 'wasting' insurance policy has coverage limits that are reduced as defense costs are incurred." *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 901 n.66 (5th Cir. 2019).

⁹ This description of the Settlement Agreement is only a summary. The Settlement Agreement memorializes all of the terms and conditions of the Parties' agreement. Parties in interest are encouraged to read the Settlement Agreement in full and consult with a lawyer, if necessary.

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- (i) MSK pays, or causes to be paid, \$32,500,000.00 after the Bar Order is issued and becomes Final.¹⁰
- (ii) The Putative Class Plaintiffs, MSK, and the Receiver exchange the mutual releases set forth in Section 5 of the Settlement Agreement.
- (iii) The Receiver supports, and MSK agrees not to object to, a payment by the Receiver to each of the Putative Class Plaintiffs in the amount of Ten Thousand Dollars (\$10,000.00), for a total of Seventy Thousand Dollars (\$70,000.00), for their efforts in bringing the Putative Class Action and procuring the settlement memorialized in the Settlement Agreement.
- (iv) Interim Class Counsel recovers \$1,500,000.00 in attorneys' fees from the Settlement Amount so the Investors need not pay such amounts.
- (v) The Receiver shall use \$780,000.00 to reimburse the Receivership Estate for the fraudulent transfer claim brought by the Receiver in the Receiver Action.
- (vi) The Receiver shall use \$750,000.00 to reimburse the Receivership Estate for the attorneys' fees associated with the Receiver bringing the Receiver Action.
- (vii) The balance of the Settlement Amount, \$29,400,000.00, shall be used for the benefit of the Receivership Estate from which all Investors and the Putative Class Plaintiffs benefit and which payments are being made on behalf of the Investors and the Putative Class Plaintiffs; provided, however, that unless funds are needed to support other assets of the Receivership Estate, and approval has been obtained by this Court, at least \$20,000,000.00 of this amount shall be used for an interim distribution to eligible investors with allowed claims, the exact distribution of which shall also be subject to the approval of this Court.
- (viii) The Putative Class Plaintiffs and the Receiver dismiss their claims against MSK with prejudice after the Bar Order is issued and becomes Final.
- (ix) The Receiver maintains an escrow reserve from the Settlement Amount of \$1,750,000.00) for one year after the Bar Order becomes Final to hold the MSK Released Parties harmless, and indemnify and defend the MSK Released Parties, in the event any person or entity seeks to bring a claim against any of the MSK Released Parties that may be prohibited by, or in violation of, the Bar Order (other

¹⁰ As used in this Motion, “Final” means an order unmodified after the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order. For avoidance of doubt, the Bar Order is not considered Final prior to the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order; nor is the Bar Order considered Final during the pendency of any appeal or rehearing or during the time that an appeal, rehearing, reversal, reconsideration, or modification remains possible.

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than, again, claims asserted by Quiros in his individual capacity in the Quiros Arbitration, which are excluded from the Bar Order).

Stated differently, the principal financial terms of the settlement are as follows: the settlement is for \$32,500,000.00, from which the Putative Class Plaintiffs receive \$70,000.00; Interim Class Counsel receives \$1,500,000.00; the Receiver receives \$780,000.00 for his fraudulent transfer claim and \$750,000.00 for attorneys' fees; and the balance, \$29,400,000.00, being used for the benefit of the Receivership Estate, with at least \$20,000,000.00 (unless funds are needed to support other assets of the Receivership Estate) going towards an interim distribution to eligible investors with allowed claims and \$1,750,000.00 being held as an escrow reserve for a limited period of time in the event anyone violates the Bar Order. And, as stated above, it is a condition precedent to the effectiveness of the Settlement Agreement and to the Receiver's receipt of the Settlement Amount that the Court issue the Bar Order.

F. Facts Supporting Approval of the Settlement Agreement and Entry of the Bar Order

As stated above, the Putative Class Action and the Receiver Action were both litigated for extensive periods of time, during which extensive discovery was conducted, literally hundreds of thousands of pages of documents were produced, and dozens of depositions were taken throughout the country. The settlement was the result of two mediations and countless telephone conferences. All the while, all Parties were represented by experienced and diligent counsel vigorously pressing their respective client's positions.

The Settlement Agreement provides outstanding recoveries for the Putative Class Plaintiffs and, after payment of such amounts and attorneys' fees to their counsel, still results in a recovery for the Receivership Entities of over \$30 million. These funds will fund an interim distribution to holders of allowed claims of ***at least \$20 million*** (unless the funds are needed to support other assets of the Receivership Estate, as described in footnote 3), and provide the Receivership Entities

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with much-needed liquidity in order to meet off-season difficulties facing the Jay Peak Resort and the Burke Mountain Hotel, all of which have been exacerbated by the COVID-19 virus and the closing of the American/Canadian border, from which the Jay Peak Resort and Burke Mountain Hotel obtain a large number of their patrons. The Settlement Amount will thus substantially benefit **all** of the Investors and **all** of the Receivership Entities and will be used to maximize the Receivership Estate's value.

The Bar Order has been a condition of any settlement with MSK since the commencement of the Parties' discussions. In colloquial terms, MSK's willingness to settle—for \$32,500,000—is contingent upon “global peace” with respect to all claims that could be asserted against the MSK Released Parties relating in any way whatsoever to the EB-5 Actions, the Receivership Entities, or MSK's Activities. The Bar Order is accordingly a condition precedent to the effectiveness of the Settlement Agreement and to payment of the Settlement Amount. Parties potentially affected by the Settlement Agreement or the Bar Order will receive notice in the manner set forth below and provided in the Preliminary Approval Order (as may be supplemented by the Court).

G. Settlement Approval Procedures

To afford potentially affected parties notice and an opportunity to object and participate in a hearing, the Receiver proposes the following procedures for notice, objections and a hearing (the “**Settlement Approval Procedures**”):

- (i) **Notice.** The Receiver will prepare a notice substantially in form and content as Exhibit C to the Settlement Agreement (the “**Notice**”), which will contain a description of the Settlement Agreement and the Bar Order and afford potentially affected parties the opportunity – through multiple different means – to obtain complete copies of all settlement-related papers; the notice will be distributed in accordance with items (ii), (iii) and (iv) below.
- (ii) **Service.** The Receiver will serve the Notice no later than ten (10) days after entry of the Preliminary Approval Order by first class U.S. mail, postage prepaid to:
 - a. all counsel who have appeared of record in the SEC Action;

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- b. all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of the Receivership Entities, or any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;
 - c. 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;
 - d. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver;
 - e. all parties to the SEC Action;
 - f. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;
 - g. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and
 - h. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.
- (iii) **Publication.** The Receiver will publish the Notice no later than ten (10) days after entry of the Preliminary Approval Order:
- a. twice a week for a period of not less than three (3) weeks in each of the Burlington Free Press and Vermont Digger; and
 - b. on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com), on which there is a "drop down" feature that permits viewers to convert website text to seven different languages.
- (iv) **Copies upon Request.** The Receiver will promptly provide copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto to any person who requests such documents via email to Kimberly Smiley at kimberly.smiley@akerman.com, or via telephone by calling Ms. Smiley at 954-759-8929.
- (v) **Evidence of Compliance.** No later than five (5) days before the Final Approval Hearing (defined below), the Receiver will file with the Court written evidence of compliance with items (i) through (iv) above either in the form of an affidavit or declaration.

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- (vi) **Hearing.** The Receiver requests that the Court schedule a hearing (the “**Final Approval Hearing**”) to consider final approval of the Settlement Agreement and entry of the Bar Order on a date that is at least sixty (60) calendar days after the entry of the Preliminary Approval Order.
- (vii) **Objection Deadline and Objections.**
- a. The Receiver requests that the Court require any person who objects to the Settlement Agreement or the Bar Order to file an objection with the Court no later than thirty (30) calendar days after entry of the Preliminary Approval Order (the “**Objection Deadline**”).
 - b. The Receiver requests that the Court require all such objections to
 - i. be in writing;
 - ii. be signed by the person filing the objection, or his or her attorney;
 - iii. state, in detail, the factual and legal grounds for the objection;
 - iv. attach any document the Court should review in considering the objection and ruling on the Motion;
 - v. require the person filing the objection to make a request to appear at the Final Approval Hearing, if that person intends to appear at the Final Approval Hearing; and
 - vi. be served by email and regular mail on:

Michael I. Goldberg, Esq.
Akerman LLP
The Main Las Olas
201 East Las Olas Boulevard
Suite 1800
Fort Lauderdale, FL 33301
Tel: (954) 468-2444
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

Jeffrey C. Schneider, Esq.
Levine Kellogg Lehman Schneider + Grossman, LLP
201 S. Biscayne Blvd.
22nd Floor
Miami, FL 33131
Tel: (305) 403-8788
Fax: (305) 403-8789
Email: jcs@lklsg.com

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Harley S. Tropin, Esq.
Tal J. Lifshitz, Esq.
Kozyak Tropin & Throckmorton, LLP
2525 Ponce de Leon Boulevard
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: hst@kttlaw.com
Email: tjl@kttlaw.com

David R. Atkinson, Esq.
Stephen C. Richman, Esq.
Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive
Suite 500 East
West Palm Beach, FL 33401
Tel: (561) 804-4362
Fax: (561) 671-2450
Email: datkinson@gunster.com
Email: srichman@gunster.com

Richard B. Sheldon, Esq.
General Counsel
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067
Tel: (310) 312-3752
Fax: (310) 312-3100
Email: rbs@msk.com

- c. The Receiver requests that no person be permitted to argue at the Final Approval Hearing unless such person has complied with the requirements of the foregoing procedures.
- d. The Receiver also requests that any party to the Settlement Agreement be authorized to file a response to the objection before the Final Approval Hearing.

III.
Relief Requested

The Receiver respectfully requests (i) entry of the Preliminary Approval Order, preliminarily approving the Settlement Agreement and the Settlement Approval Procedures

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outlined herein, and (ii) entry of the Bar Order, after expiration of the Objection Deadline if no objections are timely filed or after the Final Approval Hearing if objections are timely filed.

IV.
Basis for Requested Relief

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In such an action, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *See Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and *we will not overturn the court’s decision absent a clear showing of abuse of that discretion.*” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied)).

A district court also has the power to enter an order permanently enjoining third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with any the facts giving rise to the receivership—often referred to as a “bar order.” *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in SEC receivership). Bar orders are appropriate “to assist the parties in reaching a settlement.” *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case). Such bar orders have been approved by the Eleventh Circuit and in cases in this District. *See, e.g., In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (approving a bar order in a chapter 11 bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving bar order in a class action); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (Moreno, J.) (approving bar order in SEC receivership); *SEC v. Latin American Services Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002)

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(Ungaro-Benages, J.) (approving bar order in SEC receivership). Entry of a bar order is reviewed for an abuse of discretion. *See Seaside Eng'g*, 780 F.3d at 1081 (affirming entry of a bar order where “the bankruptcy court did not abuse its discretion”).

The powers of the Court also include the fixing of procedures for the grant of such relief, as long as due process is afforded to affected persons. *See Elliott*, 953 F.2d at 1566.

A. The Settlement Agreement is fair, adequate, and reasonable.

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and is not the product of collusion between the parties. *See Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986).

Upon due consideration of these governing factors, the Settlement Agreement should be approved. Before entering into the Settlement Agreement, Interim Class Counsel and the Receiver extensively litigated their claims; carefully evaluated the defenses to those claims; and considered the delay and expense of prosecution of such claims, the uncertainty of outcome in any such litigation, and the possibility of appeal of any adverse outcome. The Settlement Agreement was executed after extensive, arm’s length negotiations conducted between the Parties and their experienced counsel in good faith. It was, of course, not the product of collusion. *See Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal. 2004) (“[T]he courts respect

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the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement[.]”).

Indeed, it bears mention that the process of negotiating the terms of the Settlement Agreement occurred over a period of more than six months, during which the Parties exchanged numerous papers and participated in countless conversations, both with the mediator and directly. During that time, MSK was cooperative and forthcoming about the defenses they have asserted and their willingness to fight all claims brought against them through all appeals.

In addition to those negotiations, the Parties also attended two formal mediations presided over by the Honorable Judith M. Ryan (Ret), a retired judge and thirty-year mediator. Involvement of a skilled mediator is viewed as a positive factor in addressing the reasonableness of a settlement. *See, e.g., Poertner v. Gillette Co.*, 14-13882, 2015 WL 4310896, *6 (11th Cir. 2015) (affirming approval of class action settlement, noting the parties’ arm’s-length negotiations moderated by an experienced mediator); *Lee v. Ocwen Loan Servicing, LLC*, No. 14-CV-60649, slip op. at 25-26 (S.D. Fla. Sept. 14, 2015) (approving settlement and noting that parties’ use of a highly respected mediator supported the conclusion that the settlement was not the product of collusion); *Hamilton v. SunTrust Mortg. Inc.*, No. 13-60749-CIV, 2014 WL 5419507, at *2 (S.D. Fla. Oct. 24, 2014) (noting that the fact that the settlement occurred following significant litigation, considerable document discovery, and months of negotiations with the help of a well-respected mediator supported approval of class action settlement). During negotiations and in preparation for mediation, and thereafter, the Parties exchanged over dozens of pages of substantive legal analysis

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of the Parties' actual and potential claims and defenses. The proposed settlement marks the culmination of those efforts and is reflected in the Settlement Agreement and this Motion.

The Settlement Agreement thus provides for a total payment of \$32,500,000.00, which enables the Receiver to pay the Putative Class Plaintiffs, their counsel, and the Receiver. The settlement also results in the Receivership Estate receiving \$29,400,000.00, *net of* the foregoing payments, which allows the Receiver to make an interim distribution of at least \$20,000,000.00.

Such a recovery is undoubtedly well within the range of reasonableness and will provide the liquidity needed to maximize the value of the assets owned by the Receivership Entities for the benefit of *all* investors and other stakeholders and creditors. The Settlement Agreement, therefore, provides a substantial benefit to the Receivership Entities and all of their investors and other creditors. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and not the product of collusion.

B. The Bar Order is necessary and appropriate ancillary relief to the SEC Action.*i. The Court has the authority to approve the Bar Order.*

District courts have the power to enter bar orders in equity receiverships where necessary or appropriate as ancillary relief in the context of the underlying action. *See Kaleta*, 530 Fed. Appx. at 362. As the Fifth Circuit has explained, a district court has "inherent equitable authority to issue a variety of ancillary relief measures in actions brought by the SEC to enforce the federal securities laws." *Id.* (internal quotations omitted). *See also* All-Writs Act, 28 U.S.C. § 1651; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 338 (2d Cir. 1985). Such ancillary relief includes injunctions against non-parties as part of settlements in the receivership. *See Kaleta*, 530 Fed. Appx. at 362.

This power to enter bar orders is consistent with the Eleventh Circuit's recognition of the district court's "broad powers and wide discretion to determine relief in an equity receivership

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[that] derives from the inherent powers of an equity court [to] fashion relief[.]” *See Elliott*, 953 F.2d at 1566. Moreover, the Eleventh Circuit has *expressly* held that district courts have the power to enter bar orders. *See Seaside Eng’g*, 780 F.3d at 1081 (affirming entry of a bar order through a chapter 11 plan where “fair and equitable”); *Munford*, 97 F.3d at 455 (affirming entry of a bar order over objection of non-settling defendants where “integral to settlement in an adversary proceeding”); *In re U.S. Oil and Gas Lit.*, 967 F.2d 489 (11th Cir. 1992) (affirming entry of a bar order over objection of non-settling co-defendants).¹¹

Citing the Eleventh Circuit’s precedents in *Munford* and *U.S. Oil and Gas Litigation*, Judge Moreno concluded that bar orders are “within this Court’s jurisdiction and equitable authority to enter and enforce.” *Mutual Benefits Corp.*, No. 04-60573, slip op. [ECF No. 2345] at 8. Accordingly, courts in this District have regularly entered bar orders in SEC receiverships and in bankruptcy cases, *as has this Court on several occasions in this case*. *See, e.g., id.* (entering a bar order where it was “necessary” to administration of the receivership); *Brophy v. Salkin*, 550 B.R. 595 (S.D. Fla. 2015) (affirming bankruptcy court’s entry of bar order); *Latin Am. Services Co., Ltd.*, No. 99-2360, slip op. [ECF No. 353] at 4 (entering a bar order against all investors over investor objection); *In re Rothstein Rosenfeldt Adler, PA*, 2010 WL 3743885, at *7 (Bankr. S.D.

¹¹ The Eleventh Circuit’s approval of bar orders in bankruptcy cases is particularly persuasive here in that the Eleventh Circuit has also recognized the parallels of between bankruptcy proceedings and equity receiverships. *See Bendall v. Lancer Management Group, LLC*, 523 Fed. Appx. 554, 557 (11th Cir. 2013) (“Given that a primary purpose of both receivership and bankruptcy proceedings is to promote the efficient and orderly administration of estates for the benefit of creditors, we will apply cases from the analogous context of bankruptcy law, where instructive, due to limited case law in the receivership context.”).

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Fla. Sept. 22, 2010) (entering bar order that was “necessary to achieve the complete resolution” of the parties’ disputes and was “fair and equitable”).

ii. The Court should enter the Bar Order.

Whether a bar order should be approved turns on the specific facts and circumstance of each individual case. *See Kaleta*, 530 Fed. Appx. at 362 (“receivership cases are highly fact-specific”). And, as stated above, the settlement here is not at all like the settlement that was reached with Ironshore that was recently the subject of an appeal before the Eleventh Circuit. *See SEC v. Quiros*, 966 F.3d 1195 (11th Cir. 2020). This settlement is **expressly conditioned** on the MSK Released Parties receiving the Bar Order in substantially the same form as Exhibit B attached to the Settlement Agreement. In this case, there are ample facts establishing that the Bar Order is necessary and appropriate:

- Entry of the Bar Order is a contractual prerequisite to securing MSK to pay or cause to be paid the Settlement Amount. Indeed, the Settlement Amount is not even due until the Bar Order is issued **and becomes “Final.”** *See Seaside Eng’g*, 780 F.2d at 1080 (approving bar order where settling party made a substantial contribution); *U.S. Oil and Gas Lit.*, 967 F.2d at 494 (bar order appropriate to secure \$8.5 million in exchange for global peace for settling party); *Kaleta*, 530 Fed. Appx. at 362 (additional consideration in the form of guarantee of payment to the receivership).
- Considering the entire Settlement Amount, enough is being recovered to enable the Receiver to (i) pay the Putative Class Plaintiffs; (ii) pay the Putative Class Plaintiffs’ attorneys their fee, and reimburse their expenses; and (iii) pay the Receiver for certain claims, and reimburse attorneys’ fees; and (iv) have \$29,400,000.00 remaining for the Receivership Estate, \$20,000,000.00 of which will be the subject of an interim distribution to holders of allowed claims.
- The liquidity from the Settlement Amount is essential to continuing the operations of the Jay Peak Resort and Burke Mountain Hotel, particularly during these very difficult times involving (i) a global pandemic; (ii) the closing of the American/Canadian border (through which many of the Jay Peak Resort and Burke Mountain Hotel patrons cross); and (iii) the off-season for both properties. *See Seaside Eng’g*, 780 F.2d at 1080 (approving bar order that was essential to maintaining operations of reorganized debtor and would provide “life blood”);

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Mutual Benefits Corp., No. 04-60573, slip op. [ECF No. 2345] at 8 (bar order necessary to the administration and disposition of receivership property).

- The Bar Order is a necessary and integral condition precedent to the settlement and a full and final resolution of the disputes between the Receiver, the Putative Class Plaintiffs, and MSK. Indeed, it is a specific condition precedent to the Settlement Agreement—in particular, to both the Receiver’s receipt of the Settlement Amount and the Parties’ mutual releases. *See U.S. Oil and Gas Lit.*, 967 F.2d at 494-95 (approving bar order that was “integral” to approved settlement).
- Without the Bar Order, assets of the Receivership Entities would be depleted by time-consuming, expensive, and risky litigation in another jurisdiction and this jurisdiction without any certainty of outcome. *See Seaside Eng’g*, 780 F.3d at 1079 (bar order appropriate to stop the depletion of estate assets expended in funding litigation).
- The Bar Order is particularly important for the protection of the assets of the Receivership Entities because the Settlement Amount is being paid from a “wasting” insurance policy that would be consumed by competing litigations. *See Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 901 (5th Cir. 2019) (affirming entry of bar order in light of risk to receivership assets when “continued litigation [against a settling party] would eat away at the limited funds available under its ‘wasting’ insurance policy”); *see also SEC v. DeYoung*, 850 F.3d 1172, 1183-84 (10th Cir. 2017) (absent bar order, settling party’s wasting insurance policy would be exhausted by litigation with non-settling third party).
- Likewise, the Bar Order is needed to protect the assets of the Receivership Entities. *See DeYoung*, 850 F.3d at 1183 (bar order appropriate to protect receivership entity’s assets and limit its contractual obligation to indemnify settling party against claims by non-settling third party); *see also Zacarias*, 945 F.3d at 902 (enjoining third-party claims that “would undermine the receivership’s operation” was “well within the broad jurisdiction of the district court to protect the receivership res”).
- The Bar Order is specifically tailored to the facts underlying the SEC Action, and the barred claims are interrelated to potential claims that could be brought by the Receiver and were in fact brought by the Putative Class Plaintiffs on behalf of investors in the Receivership Entities. *See U.S. Oil and Gas Lit.*, 967 F.2d at 496 (barring interrelated claims); *Kaleta*, 530 Fed. Appx. at 362 (bar order appropriately tailored to claims that arise from the underlying fraud).
- Investors will greatly benefit from the Settlement Amount, as described above, by either receiving payments now or through a claim against the receivership after a claims process is established (or both). *See Kaleta*, 530 Fed. Appx. at 362 (investors may “pursue their claims by participat[ing] in the claims process for the

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Receiver's ultimate plan of distribution for the Receivership Estate") (alteration in original; internal quotations omitted).

- The Bar Order is "fair and equitable" to non-settling third parties whose potential claims against MSK will be enjoined because they may pursue such claims in the distribution of the receivership estate. *See Zacarias*, 945 F.3d at 903 (rejecting third party's argument that "bar order deprived them of their property (that is, their claims) without due process and without just compensation" because "the bar orders channel investors' recovery associated with [the settling parties] through the receivership's distribution process"); *see also DeYoung*, 850 F.3d at 1182-83; *cf. SEC v. Stanford Int'l Bank*, 927 F.3d 830, 848 n.18 (5th Cir. 2019) ("When compared with *DeYoung*, 850 F.3d at 1182-83, the unsustainability of the settlement and bar orders here is manifest. Unlike that case, the extracontractual claims of these Appellants do not parallel those of the Receiver, Underwriters possess no contribution/indemnity claim against the receivership estate, and Appellants have been provided no channel to assert claims in the receivership.").
- The interests of persons potentially affected by the Bar Order have been represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity, and upon the advice and guidance of his experienced counsel, as well as by Interim Class Counsel.

In light of these facts, and the authorities entering similar bar orders in comparable circumstances, entry of the Bar Order is necessary and appropriate ancillary relief.¹²

C. The Settlement Approval Procedures comply with due process; they afford persons affected by the Settlement Agreement and Bar Order notice and an opportunity to be heard in a manner that is good and sufficient under the circumstances.

"Due process requires notice and an opportunity to be heard." *Elliott*, 953 F.2d at 1566.

The procedures required to satisfy due process vary "according to the nature of the right and to the type of proceedings." *Id.* "[A] hearing is not required if there is no factual dispute." *Elliott*, 953 F.2d at 1566. Ultimately, due process requires procedures that are "fair." *Id.* The Settlement Approval Procedures delineated above meet all of these requirements.

The form and content of the Notice provide a reasonable opportunity to evaluate and object to the Motion, the Settlement Agreement, or the Bar Order. The Notice contains a description of

¹² This Court entered similar bar orders in favor of Citibank, Raymond James and Carroll & Scribner in connection with the settlements of those claims. [D.E. 231, 353].

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the settlement and the Bar Order, the parties to the Settlement Agreement, and the material terms thereof. The Notice provides a reasonable description and warning that the rights of the person receiving or reviewing it may be affected by the Settlement Agreement and Bar Order and of their right to object to the settlement and Bar Order, and the manner in which to make such an objection.

The manner and method of service and publication set forth in the Settlement Approval Procedures is reasonably calculated under the circumstances to disseminate the Notice to *all* potentially affected parties. The Notice will be served on all counsel who have appeared of record in the SEC Action; all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of the Receivership Entities or any Investors; and all known Investors in each one of the Receivership Entities. The Notice will be served on all known non-investor creditors; all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's other settlements for which bar orders were requested and issued; all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued. In short, all investors, creditors, and other interested persons of which the Receiver has actual knowledge will receive actual service of the Notice.

In addition, the Notice will be published in the *Burlington Free Press*, which is the regional paper of widest circulation in Vermont, and the *Vermont Digger*, which has run countless stories on the Jay Peak projects and is believed to be followed by many stakeholders in the Receivership Entities. The Notice will also be published on the Receiver's website, which has been online since the Receiver's appointment in 2016 and which is available in seven different languages. Such

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publication is reasonably calculated to apprise persons not receiving actual service of the Notice that their rights may be affected and of their opportunity to object.

Accordingly, the Settlement Approval Procedures furnish all parties in interest a full and fair opportunity to evaluate the Motion, the Settlement Agreement and the Bar Order, and to object thereto.

V.
Conclusion

WHEREFORE, the Receiver respectfully requests that the Court grant this Motion, in full, and enter the Preliminary Approval Order and the Bar Order, approving the Settlement Agreement and Bar Order, in the manner set forth above.

Local Rule 7.1 Certification of Counsel

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for the SEC; the SEC does not object to the settlement, but takes no position for or against the proposed Bar Order. In addition, chair lead interim class counsel appointed in the Jay Peak class action filed on behalf of all Jay Peak investors (Harley S. Tropin) obviously has no objection to the relief sought herein.

Dated: June 4, 2021

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

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on June 4, 2021 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

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

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among: Michael I. Goldberg, in his capacity as receiver (the “Receiver”) for the entities identified on Schedule A to this Agreement (collectively, the “Receivership Entities”); Almasood Qureshi, Alexandre Daccache, Carlos Enrique Hiller Sanchez, Philip Calderwood, Jose Antonio Pietri, Jose R. Casseres-Pinto, and Tongyi Wang (collectively, the “Putative Class Plaintiffs”); and Mitchell Silberberg & Knupp, LLP (including, but not limited to, as successor-in-interest to Richardson & Patel LLP), David B. Gordon, and David B. Gordon, a Professional Corporation (collectively, “MSK”). (The Receiver, the Putative Class Plaintiffs, and MSK shall each be referred to as a “Party” and shall collectively be referred to as the “Parties.“)

RECITALS

A. The Receiver has been appointed as receiver over the Receivership Entities in a civil enforcement action commenced by the Securities and Exchange Commission (the “SEC”) captioned *SEC v. Quiros et al.*, Case No. 16-CV-21301-DPG and pending in the United States District Court for the Southern District of Florida (the “SEC Action”) before the Honorable Darrin P. Gayles. The Receiver derives his authority over the Receivership Entities from the District Court’s *Order Granting Motion for Appointment of Receiver* [DE #13] entered at the request of the SEC [DE #7], and as expanded on April 22, 2016 and September 7, 2018, to include other entities [DE #60 and DE #493]. The District Court subsequently entered a Preliminary Injunction, thereby continuing the Receiver’s appointment over the Receivership Entities [DE #238]. (The Receivership Entities and all property subject to the Receiver’s authority are collectively referred to as the “Receivership Estate.“)

B. The complaint in the SEC Action alleges, *inter alia*, that defendants Ariel Quiros (“Quiros”) and William Stenger (“Stenger”), in violation of federal securities laws, controlled and utilized the various Receivership Entities in furtherance of a fraud on foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa program (the “Investors”) and sought various forms of relief including appointment of the Receiver. As alleged in the SEC Action, the first six limited partnerships (also known as Suites Phase I, Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, and Stateside Phase VI) were used to develop and expand the Jay Peak resort located in the Village of Jay, Vermont (the first six limited partnerships identified above, the resulting projects, and the Jay Peak resort are hereinafter referred to as the “Jay Peak Resort”). As alleged in the SEC Action, the seventh limited partnership (also known as Biomedical Phase VII) raised funds to purchase land and develop a biomedical research facility in Newport, Vermont (the seventh limited partnership and the resulting project is hereinafter referred to as “AnC Bio”). As alleged in the SEC Action, the eighth limited partnership (also known as Q Burke Phase VIII) was used to develop and expand the Burke Mountain hotel and ski area located in East Burke, Vermont (the eighth limited partnership and the resulting project is hereinafter referred to as the “Burke Mountain Hotel”).

C. On October 5, 2018, Kozyak Tropin & Throckmorton as Interim Class Counsel in the Putative Class Action (“Interim Class Counsel”) and the Putative Class Plaintiffs commenced a putative class action in the United States District Court for the District of Vermont captioned *Qureshi, et al. v. People’s United Bank, Mitchell Silberberg & Knupp, LLP, et al.*, Case No. 2:18-

cv-163 (the “Putative Class Action”). MSK denies the allegations asserted in the Putative Class Action.

D. On May 8, 2019, the Receiver commenced an action in the United States District Court for the Southern District of Florida captioned *Michael I. Goldberg, not individually, but solely in his capacity as Receiver v. Mitchell Silberberg & Knupp, LLP, et al.*, Case No. 19-cv-21862-MGC (S.D. Fla.) (the “Receiver Action”). On December 3, 2020, the court in the Receiver Action issued an order staying the Receiver Action [DE #95]. MSK denies the allegations asserted in the Receiver Action and contends that the Receiver’s claims are barred by the *in pari delicto* doctrine, among other reasons and defenses.

E. Discovery efforts in the Receiver Action progressed and MSK and the Receiver engaged in meaningful discovery, which the Receiver coordinated with Interim Class Counsel. The Parties engaged in two separate mediations—one in the Fall of 2019 and another in the Summer of 2020—but did not settle the cases. Since then, the Parties have continued in their efforts to attempt to settle the Putative Class Action and the Receiver Action. A settlement in principle was thereafter reached for the sum of Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00) (the “Settlement Amount”). Interim Class Counsel has requested, and the Receiver has agreed, that the Receiver shall disburse the Settlement Amount on behalf of the Putative Class Action as described herein and subject to the approval of the District Court in the SEC Action.

F. The Parties desire to settle all claims brought, those that could have been brought, and those that may be brought in the future against MSK, including, its current and former employees, shareholders, of counsel, agents, attorneys, insurers, officers, directors, members, managers, managing members, principals, associates, representatives, trustees, general and limited partners, partners, owners, affiliated professional corporations, as well as all other persons serving in a corporate capacity, and each of their respective administrators, heirs, trustees, beneficiaries, spouses, assigns, directors, officers, shareholders, owners, partners, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest (collectively, the “MSK Released Parties”). MSK enters into this Agreement and seeks assurance that, upon settlement of the claims brought in the Putative Class Action and the Receiver Action, and issuance of the Bar Order (as defined and discussed in this Recital F as well as in Recitals G and H, infra), no further civil actions can or will be commenced or continued against the MSK Released Parties with respect to the events and occurrences underlying the claims in the EB-5 Actions (as defined herein), or otherwise relating in any way to any of the Receivership Entities, the Receivership Estate, or which arise directly or indirectly from MSK’s activities, omissions, or services, or alleged activities, omissions, or services, in connection with the Receivership Entities, the Receivership Estate, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (“MSK’s Activities”), to the broadest extent permitted by law. This bar on civil actions includes but is not limited to: continued assertion of the Putative Class Action; continued assertion of the Receiver Action; amendment of the actions filed by Investors, including without limitation, *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.), *Wang, et al. v. Shen Jianming and Shenlaw, LLC*, Case No. 2:17-CV-00153 (D. Vt.), *Cason, et al. v. Edward Carroll, Esq. and Mark Scribner, Esq.*, Case No. 2:18-cv-40 (D. Vt.), *Alexandre Daccache, et al. v. People’s United Financial, Inc., et al.*, Case No. 1:16-cv-21575 (S.D. Fla.), *Wang, et al. v. Jianming Shen and Shenlaw LLC*, Case No. 2:19-cv-00086 (D. Vt.), *Wei, et al. v. Quiros, et al.*, Case No. 602-7-16

Cncv (Vt. Sup. Ct.), *Calero, et al. v. Raymond James & Associates, Inc.*, et al., No. 16-17840-CA-43 (Cir. Ct. Fl. Miami-Dade Co.), *Casseres-Pinto, et al. v. Quiros, et al.*, No. 16-cv-22209 (DPG) (S.D. Fla.), *Shaw, et al. v. Raymond James Financial, Inc., et al.*, No. 16-cv-00129 (GWC) (D. Vt.), and *Sutton, et al. v. People's United Bank Financial, Inc., et al.*, No. 18-cv-00146 (D. Vt.) (collectively, the “Investor Actions”) to include the MSK Released Parties; amendment of the other actions filed by the Receiver, including without limitation, *Goldberg v. Kelly*, Case No. 0:17-CV-62157 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24753 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24746 (S.D. Fla.), *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CV-00061 (D. Vt.), and *Goldberg v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-21831 (S.D. Fla.) (collectively, the “Related Receiver Actions”) to include the MSK Released Parties; amendment of the actions relating to the Receivership Entities or the Receivership Estate filed by other parties, including without limitation, *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CV-25073 (S.D. Fla.), and *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CV-21707 (S.D. Fla.) (collectively, the “Related Actions”) (the Related Actions, the Putative Class Action, the Receiver Action, the SEC Action, the Investor Actions, and the Related Receiver Actions are all referred to collectively as the “EB-5 Actions”) to include the MSK Released Parties; or commencement of future actions against the MSK Released Parties by third parties or by or on behalf of Investors, the Receivership Entities, or the Receivership Estate (including their past and present general or limited partners, partners, owners, shareholders, officers, directors, employees, shareholders, of counsel, agents, attorneys, members, managers, managing members, principals, associates, representatives, trustees and insurers) relating to the events and occurrences underlying the claims in the EB-5 Actions, relating to any of the Receivership Entities or the Receivership Estate, or which arise directly or indirectly from MSK’s Activities, to the broadest extent permitted by law. The Bar Order discussed herein does not apply to any actions brought by federal or state governmental bodies or agencies.

G. The Parties recognize and understand that any full settlement of their respective rights, claims and defenses is expressly and entirely contingent upon the grant of releases by the Putative Class Plaintiffs and the Receiver, and entry of the Bar Order attached hereto as Exhibit B, which shall have become Final as defined herein, enjoining any and all persons or entities (excluding claims Quiros has asserted in his individual capacity only, in the arbitration captioned *Quiros v. Mitchell Silberberg & Knupp LLP and David B. Gordon*, JAMS NY Reference No. 1425032114 (the “Quiros Arbitration”), if any, and any actions brought by federal or state governmental bodies or agencies) from commencing or continuing any and all claims and actions against the MSK Released Parties that relate in any manner whatsoever to the EB-5 Actions, any of the Receivership Entities or the Receivership Estate, or which arise directly or indirectly from MSK’s Activities, to the broadest extent permitted by law. As used in this Agreement, in reference to any court order, “Final” means a court approving and issuing an order unmodified after the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order. For avoidance of doubt, an order, including the Bar Order, is not considered Final prior to the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order. Without in any way limiting the foregoing, an order, including the Bar Order, is not considered Final as used herein during the pendency of any appeal or rehearing of the order, or during the time that an appeal, rehearing, reversal, reconsideration, or modification of the order remains possible. The Bar Order is a material term of this Agreement as are the releases set forth herein.

MSK would not enter into this Agreement absent the entry of the Bar Order and the Bar Order becoming Final.

H. As a result, the Parties have agreed to a full and final settlement of their rights, claims and defenses; provided, however, that condition precedents to the effectiveness of the settlement are: (i) the entry of an order by the District Court in the SEC Action in substantially the same form and substance as attached hereto as Exhibit “A” (the “Preliminary Approval Order”), which, *inter alia*, provides for preliminary approval of this Agreement, gives notice to all affected and interested parties, and delineates the form, manner and substance of notices to be provided in advance of final approval of this Agreement; (ii) the entry of a Final Approval and Bar Order by the District Court in the SEC Action in substantially the same form and substance as attached hereto as Exhibit “B” (the “Bar Order”), which, *inter alia*, provides for Final approval of this Agreement and bars commencement and continuation of any actions against the MSK Released Parties as set forth in this Recital as well as Recitals F and G, supra (excluding claims Quiros has asserted in his individual capacity only, in the Quiros Arbitration, if any, and any actions brought by federal or state governmental bodies or agencies); and (iii) that the Bar Order becomes Final.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is **HEREBY AGREED** as follows:

1. RECITALS. The Parties represent, warrant and affirm that the above recitals are true and correct, except for such recitals based on the allegations asserted by one or more Parties. The recitals set forth above are an integral and material part of this Agreement and are incorporated herein by reference.

2. EFFECTIVENESS. On the date this Agreement is fully executed by the signatories hereto, meaning the date that the final signatory executes this Agreement (the “Execution Date”), this Agreement shall take effect, subject to: (i) approval and entry of the Preliminary Approval Order by the District Court in the SEC Action; (ii) approval and entry of the Bar Order by the District Court in the SEC Action; and (iii) the Bar Order becoming Final. Stated differently but without limiting the foregoing, and as further provided herein, in the event the Bar Order is not issued, or the Bar Order is issued and is subsequently vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the MSK Released Parties as more fully described in the Bar Order attached hereto as Exhibit B and in Recitals F, G and H, supra, then, unless thereafter mutually agreed to by the Parties in writing: this Agreement shall be null, void, and of no further effect (except for the Sections of this Agreement that survive the termination of this Agreement identified in Section 11(i)); the Parties shall not be bound by the releases set forth in Section 5 of this Agreement; the Parties shall proceed to litigate their claims as if this Agreement had not been executed; and the Receiver shall return the Settlement Amount, if any has been paid.

3. SETTLEMENT.

a. **Settlement Amount.** Subject to the terms and conditions of this Agreement, in full and final settlement of the claims released in Section 5 of this Agreement, and in full and final resolution of the claims subject to the Bar Order, MSK shall pay or cause to be paid the

Settlement Amount to settle the Putative Class Action and the Receiver Action. IRS Form 1099s shall be timely issued as appropriate to Interim Class Counsel and/or the Receiver reporting any payments to Interim Class Counsel and/or the Receiver under this Section 3.

b. **Settlement Payment.** On or before the 21st day after the Bar Order becomes Final, MSK shall make or cause to be made payment of the Settlement Amount to Interim Class Counsel, in the manner provided for in Section 3(c), below. Payment of the Settlement Amount is the only payment required to be made or caused to be made by MSK under this Agreement. Interim Class Counsel shall provide a properly completed IRS W-9 form to MSK's counsel or its assignee no later than seven (7) days after the Execution Date and before payment of the Settlement Amount. Interim Class Counsel and/or the Receiver shall thereafter bear sole and complete responsibility for collecting W-9 forms, as appropriate, and for issuing 1099 forms, as appropriate, for any payments of any monies, or for any distributions of any monies, to anyone, as a result of MSK making or causing to have made the payment of the Settlement Amount, as provided for in this Section 3(b).

c. **Payment Instructions.** MSK shall make, or cause to be made, the payment set forth in Section 3(b), above, to an attorney trust account maintained by Interim Class Counsel by wire transfer pursuant to the following wire instructions:

Receiving Bank: Iberiabank, 2109 Ponce De Leon Blvd., Coral Gables, FL 33134
Routing/ABA #: [REDACTED]
Swift Code: [REDACTED]
Credit to: Kozyak Tropin Throckmorton LLP Trust Account
Beneficiary Account #: [REDACTED]
Attention: Harley S. Tropin; Matter No. [REDACTED]

Interim Class Counsel shall thereafter transfer the Settlement Amount to the Receiver to be distributed in accordance with this Agreement, subject to the approval of the District Court in the SEC Action.

d. **Disbursement, Allocations, and Use of Settlement Amount.** Subject to the approval of a distribution protocol by the District Court in the SEC Action, and receipt of the Settlement Amount from Interim Class Counsel, Interim Class Counsel has requested, and the Receiver has agreed, that the Receiver disburse the amounts delineated below and described herein on their behalf as follows:

i. The Receiver supports, and MSK agrees not to object to, a payment by the Receiver to each of the Putative Class Plaintiffs in the amount of Ten Thousand Dollars (\$10,000.00), for a total of Seventy Thousand Dollars (\$70,000.00), for their efforts in bringing the Putative Class Action and procuring the settlement memorialized herein.

ii. The Receiver shall establish an attorneys' fund of One Million Five Hundred Thousand Dollars (\$1,500,000.00) pursuant to Section 7 of this Agreement to compensate Interim Class Counsel and co-counsel for their efforts in bringing the Putative Class Action.

iii. The Receiver shall use Seven Hundred and Eighty Thousand Dollars (\$780,000.00) to reimburse the Receivership Estate for the fraudulent transfer claim brought by the Receiver in the Receiver Action.

iv. The Receiver shall use Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to reimburse the Receivership Estate for the attorneys' fees associated with the Receiver bringing the Receiver Action.

v. The balance of the Settlement Amount, Twenty Nine Million Four Hundred Thousand Dollars (\$29,400,000.00), shall be used for the benefit of the Receivership Estate from which all Investors and the Putative Class Plaintiffs benefit and which payments are being made on behalf of the Investors and the Putative Class Plaintiffs, subject to the approval of the District Court in the SEC Action; provided, however, that unless funds are needed to support other assets of the Receivership Estate, and approval has been obtained by the District Court in the SEC Action, at least Twenty Million Dollars (\$20,000,000.00) of this amount shall be used for an interim distribution to eligible investors with allowed claims, as described below, the exact distribution of which shall also be subject to the approval of the District Court in the SEC Action.

vi. The Receiver will file a motion for authorization and guidance to make the interim distribution in the amount of Twenty Million Dollars (\$20,000,000.00) no later than sixty (60) days after the Bar Order becomes Final. The Receiver will make such distribution as directed by the District Court in the SEC Action, but the Receiver will make the following recommendations: (a) that Seventy Percent (70%) of the Twenty Million Dollars (\$20,000,000.00) be distributed to those investors who do not have approved I-829 Petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII; (b) that Twenty-Seven and a Half Percent (27.5%) of the Twenty Million Dollars (\$20,000,000.00) be distributed to those investors who do have approved I-829 Petitions in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII; and (c) that Two and a Half Percent (2.5%) of the Twenty Million Dollars (\$20,000,000.00) be distributed to those investors in Biomedical Phase VII who did not redeploy their funds into another project.

vii. Any third parties that have or may have claims against the MSK Released Parties relating to or arising out of the events and occurrences underlying the claims in the EB-5 Actions, relating to or arising out of any of the Receivership Entities or the Receivership Estate, or which arise directly or indirectly from MSK's Activities, may only pursue their claims by participating in the claims process for the plan of distribution described in this Section and may not violate the Bar Order, or any other court order.

4. APPROVAL OF THE SETTLEMENT BY THE COURT.

a. **Request for Approval.** No later than twenty one (21) days after the Execution Date, the Receiver shall file a motion with the District Court in the SEC Action requesting approval of this Agreement and entry of the Preliminary Approval Order and Bar Order (the "Settlement Motion"). The Receiver shall share a copy of the Settlement Motion with MSK at least five (5) days before filing the Settlement Motion. The Settlement Motion shall seek, among other things required by this Agreement, a court-imposed deadline by which objections to this Agreement and

the Bar Order must be filed with the District Court in the SEC Action or else they will be deemed to be waived.

b. **Contents of Settlement Motion.** The Receiver shall request in the Settlement Motion: (i) entry of the Preliminary Approval Order substantially in form and substance as Exhibit A to this Agreement; (ii) entry of the Bar Order substantially in form and substance as Exhibit B to this Agreement; and (iii) approval of the form and content of the notice attached hereto as Exhibit “C,” (the “Notice”) and the manner and method of publication of such notice.

c. **Service and Publication of Notice.** In accordance with the Preliminary Approval Order, the Receiver shall use best efforts to provide good and sufficient notice of this Agreement, the Settlement Motion, and the deadline to object to approval of this Agreement and the Bar Order to all affected and interested persons and parties. Thirty (30) days after the Bar Order has become Final, the Receiver shall be reimbursed from the Settlement Amount for the costs of providing such notice.

5. RELEASES.

a. **Release of MSK:** Upon payment of the Settlement Amount, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court in the SEC Action, the Putative Class Plaintiffs and their counsel, and any person or entity claiming by or through them, along with the Receiver¹, on behalf of the Receivership Entities and the Receivership Estate, or any of them, or anyone claiming through them, including but not limited to the Investors and anyone claiming by or through them, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the MSK Released Parties, and all of their counsel, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys’ fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Putative Class Plaintiffs, the Receiver, the Receivership Entities and the Receivership Estate, or any of them, or anyone claiming through them, on their behalf or for their benefit, may have or claim to have, now or in the future, against the MSK Released Parties that are based upon, relate to, or arise out of, in connection with, or pertain to the EB-5 Actions, including the parties, allegations, and issues in said actions, any of the Receivership Entities or the Receivership Estate, or which arise directly or indirectly from MSK’s Activities, or which arise directly or indirectly from activities regarding the Jay Peak Resort, AnC Bio, or the

¹ For purposes of this release, the term “Receiver” shall include without limitation all present and former officers, directors, owners, partners, limited partners, general partners, affiliated professional corporations, managers, members, managing members, principals, associates, shareholders, employees, representatives, trustees, of counsel, agents, attorneys, and all other persons serving in a corporate capacity of all of the Receivership Entities, and each of their respective administrators, heirs, trustees, beneficiaries, spouses, assigns, directors, officers, shareholders, owners, partners, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest, including but not limited to Quiros, Stenger, William Kelly, George Gulisano, Heather Whipkey, Steven Wright, Jake Webster, and Jong Weon Choi a/k/a Alex Choi, to the extent he exists, in their corporate capacities.

Burke Mountain Hotel, to the broadest extent permitted by law. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, MSK from the performance of its obligations in accordance with this Agreement. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, any other party or financial institution in any manner whatsoever; for the avoidance of doubt and not by way of limitation, the Putative Class Plaintiffs and the Receiver expressly preserve all claims and causes of action they may have against any other person, entity, or financial institution, including but not limited to the other defendants in the EB-5 Actions and other defendants that the Receiver and the Putative Class Plaintiffs have sued. Finally, notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, claims of any federal or state governmental bodies or agencies, including but not limited to the claims brought by and belonging to the SEC in the SEC Action, or claims Quiros has asserted in his individual capacity only, against MSK, if any, in the Quiros Arbitration.

b. **Release of Putative Class Plaintiffs:** Upon the payment of the Settlement Amount, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court in the SEC Action, except as expressly provided in this Agreement, the MSK Released Parties shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge each and every one of the Putative Class Plaintiffs and their counsel, and any person or entity claiming by or through them (collectively, the “Class Released Parties”), from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys’ fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the MSK Released Parties, and their affiliates, subsidiaries, and assigns, or any of them, or anyone claiming through them, on their behalf or for their benefit may have or claim to have, now or in the future, against the Class Released Parties that are based upon, relate to, or arise out of, in connection with, or pertain to the EB-5 Actions, including the parties, allegations, and issues in said actions, or which arise directly or indirectly from activities regarding the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel, to the broadest extent permitted by law. Notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Class Released Parties from the performance of their obligations in accordance with this Agreement. In addition, notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, any person other than the Class Released Parties in any manner whatsoever; for the avoidance of doubt and not by way of limitation, the MSK Released Parties expressly preserve all claims and causes of action they may have against any other person or entity, including but not limited to Quiros, in his individual capacity only, and Ironshore Indemnity, Inc. or any of its affiliated entities.

c. **Release of Receiver:** Upon the payment of the Settlement Amount, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court in the SEC Action, except as expressly provided in this Agreement, the MSK Released Parties and the Class Released Parties shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Receiver and the Receivership Entities, along with his agents and counsel (collectively, the “Receiver Released Parties”), from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys’ fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the MSK Released Parties and the Class Released Parties, along with their affiliates, subsidiaries, and assigns, or any of them, or anyone claiming through them, on their behalf or for their benefit may have or claim to have, now or in the future, against the Receiver Released Parties that are based upon, relate to, or arise out of, in connection with or pertain to the EB-5 Actions, including the parties, allegations, and issues in said actions, or which arise directly or indirectly from activities regarding the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel, to the broadest extent permitted by law. Notwithstanding anything contained in this Section 5(c) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Receiver Released Parties from the performance of their obligations in accordance with this Agreement. In addition, notwithstanding anything contained in this Section 5(c) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to operate as a release by the Putative Class Plaintiffs of the Receiver Released Parties with respect to other distributions to be made by the Receiver in the SEC Action, subject to approval by the District Court in the SEC Action. Finally, notwithstanding anything contained in this Section 5(c) or elsewhere contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, any person other than the Receiver Released Parties in any manner whatsoever; for the avoidance of doubt and not by way of limitation, the Class Released Parties and the MSK Released Parties expressly preserve all claims and causes of action they may have against any other person or entity, including but not limited to Quiros, in his individual capacity only, and Ironshore Indemnity, Inc., or any of its affiliated entities. (The MSK Released Parties, the Class Released Parties and the Receiver Released Parties are collectively referred to herein as the “Released Parties.”)

d. **Injunctive Relief.** Except as otherwise expressly set forth in this Agreement, the Parties, and any persons, entities or individuals they control, as well as any person or entity acting on behalf of any of the foregoing pursuant to and memorialized in a writing, shall not sue or otherwise bring any suit or claim in any court, arbitration or other tribunal against each other for any of the claims released by the Parties to this Agreement. Any Party who violates Section 5 agrees that the non-violating Party is entitled to injunctive relief against the violating Party. The Parties further agree that any Party violating this section is solely liable for any and all reasonable attorneys’ fees and expenses of any other Party as a result of any such suit or claim by the violating Party.

6. STAY AND DISMISSAL OF ACTIONS

a. **Stay of Putative Class Action and Receiver Action.** The Settlement Motion described in Section 4(a) above shall also seek to stay the Putative Class Action as it relates to MSK and the Receiver Action in full.

b. **Dismissal of Putative Class Action and Receiver Action.** Ten (10) days after MSK's payment of the Settlement Amount in accordance with Section 3, above, the Putative Class Plaintiffs and MSK shall file a Stipulation of Dismissal in the Putative Class Action, which dismisses all claims against MSK with prejudice, and waives any right(s) of appeal, with each party bearing their own attorneys' fees and costs; and the Receiver and MSK shall file a Stipulation of Dismissal in the Receiver Action, which dismisses the Receiver Action with prejudice in its entirety, with each party bearing their own attorneys' fees and costs.

7. DISTRIBUTION OF ATTORNEYS' FUND

a. The Receiver and Interim Class Counsel have agreed that a portion of the Settlement Amount shall be used to compensate Interim Class Counsel and their co-counsel for bringing the Putative Class Action (the "Attorneys' Fund"). The Attorneys' Fund shall be One Million Five Hundred Thousand Dollars (\$1,500,000.00). The Attorneys' Fund represents the entire amount of the attorneys' fee for bringing the Putative Class Action as to MSK and achieving the settlement memorialized in this Agreement.

b. Subject to the terms of this Section 7(b), the Receiver supports, and MSK agrees not to oppose or otherwise object to, the application by Interim Class Counsel in the SEC Action for an award of attorneys' fees (and reimbursement of expenses) in the amount of the Attorneys' Fund, payable solely from the Settlement Amount. The Attorneys' Fund shall be distributed by the Receiver in accordance with the following provisions:

i. Within thirty (30) days after entry of the Preliminary Approval Order, Interim Class Counsel shall advise the Receiver, in writing, that they have agreed on an allocation of the Attorneys' Fund. If approved by the District Court in the SEC Action, the Receiver shall disburse the Attorneys' Fund in accordance with this Section 7, and that allocation.

ii. The Receiver can only disburse the Attorneys' Fund to Interim Class Counsel upon satisfaction of the following: (1) after the Bar Order has become Final; (2) MSK has made or caused to be made payment of the Settlement Amount, and (3) MSK has been dismissed, with prejudice, from both the Putative Class Action and the Receiver Action.

iii. No counsel for the Putative Class Plaintiffs shall be entitled to further compensation from the Receivership Estate or MSK. The Attorneys' Fund shall be the sole source of compensation for all counsel for the Putative Class Plaintiffs; they shall not be entitled to further funds from the Receivership Estate or MSK.

iv. The resolution of the distribution of the Attorneys' Fund shall have no impact on the other terms of this Agreement. All other terms of this Agreement shall remain in full force and effect irrespective of any issues regarding the allocation or distribution of the

Attorneys' Fund and irrespective of any decision by the District Court in the SEC Action regarding the allocation or disbursement of the Attorneys' Fund.

8. REVERSAL, VACATION OR MODIFICATION

a. MSK's willingness to enter into this Agreement is expressly and entirely contingent upon the Bar Order becoming Final. In the event that the Bar Order is not entered in substantially the form submitted by the Parties, vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the MSK Released Parties as more fully described in the Bar Order attached hereto and in Recitals F, G and H, supra, then:

i. The Receiver shall return the Settlement Amount to MSK, if any has been paid.

ii. The Parties are not bound by the releases set forth in Section 5 of this Agreement.

iii. The Parties shall proceed to litigate their claims as if this Agreement had not been executed (except the Putative Class Action and the Receiver Action will remain subject to orders issued before this Agreement was executed by the courts in the Putative Class Action and the Receiver Action, including without limitation Judge Cooke's December 3, 2020 *Order Granting Unopposed Motion to Extend Stay*, ECF No. 95).

b. Any and all applicable periods of limitations, as well as any and all applicable time-related defenses (including, without limitation, any and all time-related defenses based upon waiver, laches or estoppel), are hereby tolled as to any claim, counterclaim, crossclaim, and/or defense that the Parties could assert against any other Party. The tolling period shall commence as of the Execution Date of this Agreement and shall continue until ninety (90) days after the District Court in the SEC Action refuses to issue the Bar Order, or the Bar Order, after having been issued by the District Court in the SEC Action, is vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the MSK Released Parties as more fully described in the Bar Order attached hereto and in Recitals F, G and H, supra (the "End Date"). This Section is intended to preserve the status quo as to any and all statutes of limitations regarding all of the Parties' claims and defenses from the Execution Date until the End Date.

9. REPRESENTATIONS AND WARRANTIES

a. **Representation and Warranties of MSK.** MSK represents and warrants that as of the Execution Date: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to carry on the business in which it is engaged, to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby; (b) it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it, and (ii) are not in

contravention of its organizational documents or any material agreements specifically applicable to it; (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would materially and adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; (d) it will pursue the approval of this Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using its best efforts; (e) it will perform the obligations created by this Agreement and cooperate with the Receiver and the Putative Class Plaintiffs in good faith regarding this Agreement; and (f) it has not assigned any of the claims released herein.

b. **Representation and Warranties of the Receiver.** The Receiver hereby represents and warrants that as of the Execution Date: (a) subject to the entry of the Preliminary Approval Order and Bar Order, he has the power and authority to bind the Receivership Entities and the Receivership Estate to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on their behalf; (b) the Receiver will pursue the approval of this Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using his best efforts; (c) he will perform the obligations created by this Agreement and cooperate with MSK and the Putative Class Plaintiffs in good faith regarding this Agreement; (d) he has not assigned any of the claims being released herein; (e) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against the Receiver or the Receivership Estate which would materially and adversely affect the Receiver's ability to enter into this Agreement or to perform his obligations hereunder; and (f) the definition of EB-5 Actions includes all civil actions, of which the Receiver is aware, relating to or arising out of the alleged fraud on foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa program in connection with the Jay Peak Resort, AnC Bio and/or the Burke Mountain Hotel.

c. **Representation and Warranties of the Putative Class Plaintiffs.** The Putative Class Plaintiffs hereby represent and warrant that as of the Execution Date: (a) they are authorized to enter into this Agreement; (b) they will pursue the approval of this Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using their best efforts; (c) they will perform the obligations created by this Agreement and cooperate with the Receiver and MSK in good faith regarding this Agreement; (d) they have not assigned any of the claims released herein; and (f) the definition of EB-5 Actions includes all civil actions, of which Interim Class Counsel are aware, relating to or arising out of the alleged fraud on foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa program in connection with the Jay Peak Resort, AnC Bio and/or the Burke Mountain Hotel.

d. **No Assignment.** For avoidance of doubt, the Parties represent and warrant that, as of the Execution Date, there has been no assignment of any claims that are being released, or are purporting to be released, by the Parties to this Agreement, such that the Parties are able to give the releases provided for herein to the broadest extent permitted by law.

10. COVENANTS, INDEMNIFICATION, AND RESERVE

a. **Covenants of MSK.** MSK hereby covenants and agrees that it shall provide all cooperation reasonably necessary to obtain (and shall take no unreasonable action to impede or

preclude) the entry of the Preliminary Approval Order and the Bar Order, and the implementation of this Agreement.

b. **Covenants, and Post-Closing Responsibilities, of the Receiver.**

i. The Receiver, for himself and, as applicable, on behalf of the Receivership Entities and the Receivership Estate, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities and the Receivership Estate to take, all actions reasonably necessary to obtain (and shall take no action to impede or preclude) the entry of the Preliminary Approval Order and the Bar Order, and the implementation of this Agreement, including, without limitation, performing the obligations set forth in Section 4 of this Agreement.

ii. The Receiver, for himself and on behalf of the Receivership Entities and the Receivership Estate, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities and the Receivership Estate to take, all actions reasonably necessary to enforce and carry out the Preliminary Approval Order, the Bar Order, and this Agreement, including all reasonable requests by MSK to enforce the Preliminary Approval Order, the Bar Order, and this Agreement. For the avoidance of doubt, it shall be the Receiver and his professionals who will seek enforcement of the Bar Order in the event any person or entity brings or seeks to bring a claim against any of the MSK Released Parties that may be prohibited by, or in violation of, the Bar Order. The Receiver's obligation, as described in this Section 10(b)(ii), to seek enforcement of the Bar Order, shall continue for the duration of his appointment as the receiver for the Receivership Estate; for the avoidance of doubt and not by way of limitation, the Receiver's obligation to seek enforcement of the Bar Order shall continue irrespective of the Receiver's obligations set forth in Section 10(b)(iii) below.

iii. Other than for any claims asserted by Quiros in his individual capacity only, if any, in the Quiros Arbitration, the Receiver agrees to maintain an escrow reserve from the Settlement Amount of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00), until one (1) year after the Bar Order becomes Final, should anyone at any time in any jurisdiction seek to bring a claim against the MSK Released Parties that may be prohibited by, or may be in violation of, the Bar Order. The Receiver further agrees to timely reimburse the MSK Released Parties up to Twenty Five Thousand Dollars (\$25,000.00) for attorneys' fees and expenses that may be incurred by them monitoring the Receiver's efforts to seek enforcement of the Bar Order. The Receiver shall, at the expense of the Receivership Estate, up to the amount held in escrow, as set forth herein, hold the MSK Released Parties harmless, and indemnify and defend the MSK Released Parties, from and against any and all judgments, claims, or liabilities arising from or related in any manner to any person or entity who brings or seeks to bring a claim against any of the MSK Released Parties that may be prohibited by, or in violation of, the Bar Order.

iv. Under no circumstances does this Agreement obligate the Receiver or his professionals to intervene in the Quiros Arbitration or otherwise take action in the Quiros Arbitration to enforce the Bar Order against Quiros; provided, however, in the event MSK seeks to dismiss or otherwise eliminate claims in the Quiros Arbitration that MSK contends are released by this Agreement and/or barred by the Bar Order, the Receiver shall support MSK's efforts by executing documents and providing them to MSK which state the Receiver's position that, by this

Agreement and upon its approval by the District Court in the SEC Action, the Receiver has released any and all claims Quiros may have held in any corporate capacity for any of the Receivership Entities and that the Bar Order explicitly precludes Quiros from bringing or maintaining any claims against the MSK Released Parties, including but not limited to in the Quiros Arbitration, that may have been held by Quiros in any corporate capacity for any of the Receivership Entities. At the request of MSK, the Receiver shall further include discussion of the applicable terms of Quiros' court-approved settlement agreement with the Receiver, including those related to his waiver of his rights, titles and interests in the Receivership Entities and its properties/assets, as set forth in that agreement.

v. In the event Quiros, or any person or entity acting on his behalf, files any claims against any of the MSK Released Parties in any court, tribunal or forum, other than in the Quiros Arbitration, that are released by this Agreement and/or barred by the Bar Order, the Receiver shall be obligated to fully comply with his obligations in Section 10(b)(i)-(iii), above, and as otherwise set forth in this Agreement.

c. **Covenants of the Putative Class Plaintiffs.** The Putative Class Plaintiffs hereby covenant and agree that they shall not object to and shall take all actions reasonably necessary to obtain (and shall take no action to impede or preclude) the entry of the Preliminary Approval Order and the Bar Order, and the implementation of this Agreement. The Putative Class Plaintiffs hereby covenant and agree that they shall take all actions reasonably necessary, as requested by the Receiver or MSK, to enforce and carry out the Preliminary Approval Order, the Bar Order, and this Agreement, including cooperating in any efforts by MSK and the Receiver to enforce the Preliminary Approval Order, the Bar Order, and this Agreement.

11. MISCELLANEOUS

a. **Amendments.** This Agreement may not be modified, amended or supplemented except by a written agreement executed by the Parties and approved by the District Court in the SEC Action.

b. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, including without limitation upon any successor receiver in the SEC Action, or any trustee, custodian, or other estate representative appointed in a case under title 11 of the United States Code.

c. **No Admission of Liability.** The execution of this Agreement is not intended to be, nor shall it be construed as, an admission or evidence in any pending or subsequent suit, action, proceeding or dispute of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party to any other Party or any other person with respect to any of the matters addressed in this Agreement. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the validity of any claim, or any allegation made against MSK; (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault or omission of MSK in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may

be deemed to be or used as admission or evidence of or have any evidentiary, res judicata, or collateral estoppel effect on the Putative Class Plaintiffs' or the Receiver's ability to assert claims, as applicable, against any party other than the MSK Released Parties. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purposes, except in the SEC Action and solely for the purposes of determining whether to approve this Agreement or to enforce rights under this Agreement, and except that the Receiver and the MSK Released Parties may file this Agreement in any action to enforce this Agreement, to enforce the Bar Order, or to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim. For the avoidance of doubt, MSK expressly denies that it is liable to any Party.

d. **Good Faith Negotiations.** The Parties further recognize and acknowledge that each of the Parties hereto is represented by independent counsel of that Party's own choosing, and such Party received independent legal advice with respect to the dispute giving rise to this Agreement and the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly, at arm's length, and in good faith; this Agreement is made and executed by and of each Party's own free will based on its own investigation and evaluation of the matters in dispute and after consultation with independent counsel of its own choosing; that each Party knows all of the relevant facts and his or its rights in connection therewith; and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any Party to this Agreement. Each Party further acknowledges and agrees that it is not entering into this Agreement in reliance upon any statement or representation made by any other Party, or the lack of any statement or representation made by any other Party, except for the statements or representations that are expressly made in this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense and inconvenience of the Putative Class Action and the Receiver Action, the uncertainties and risks associated with continued litigation, and to compromise permanently and settle the claims and potential claims between the Parties that are settled by this Agreement.

e. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the signatories hereto and the "Released Parties" defined in Section 5 any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the signatories hereto, the "Released Parties" defined in Section 5, and their respective successors and assigns. For the avoidance of doubt, only the signatories hereto, the "Released Parties" defined or referenced in Section 5, and their respective successors and assigns may seek to enforce this Agreement.

f. **Governing Law; Retention of Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law. The prior sentence does not preclude reliance on other law as necessary in the Putative Class Action to obtain dismissal of that lawsuit in the United States District Court for the District of Vermont. By its execution and delivery of

this Agreement, each of the Parties hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding between the Parties with respect to any matter under or arising out of or in connection with this Agreement shall be brought in the District Court for the Southern District of Florida, Miami Division, before the District Court Judge presiding over the SEC Action, except that such action may be brought in any other court of competent jurisdiction if the District Court for the Southern District of Florida declines or lacks jurisdiction, and by execution and delivery of this Agreement, each Party hereby irrevocably accepts and submits itself to the jurisdiction of such court, generally and unconditionally, with respect to any such action, suit or proceeding. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party in any such action, suit or proceeding, may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address set forth in Section 11(j) below.

g. **Entire Agreement.** This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise), except for those that may be expressly set forth in this Agreement.

h. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

i. **Not Severable.** If any portion of this Agreement is held to be prohibited, invalid, or unenforceable, then – other than the exceptions identified in the second sentence of this Section 11(i) – the Agreement as a whole shall be deemed invalid and unenforceable and shall not be binding on the Parties. The only exceptions to this Section 11(i) are: the tolling agreements contained in Section 8(b) of this Agreement, which shall survive the termination of this Agreement; and the provisions of Section 11(c) of this Agreement, which shall survive the termination of this Agreement.

j. **Notices.** Any notice required or permitted to be provided under this Agreement shall be in writing and served by electronic mail and either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

If to the Receiver, to:

Michael I. Goldberg, Esq.
Akerman LLP
350 East Las Olas Boulevard
Suite 1600
Fort Lauderdale, FL 33301
Tel: (954) 468-2444
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

with a copy to:

Jeffrey C. Schneider, Esq.
Levine Kellogg Lehman Schneider + Grossman LLP
201 S. Biscayne Blvd.
Citigroup Center
22nd Floor
Miami, FL 33131
Tel: (305) 403-8788
Fax: (305) 403-8789
Email: jcs@lklsg.com

If to the Putative Class Plaintiffs, to:

Harley S. Tropin, Esq.
Tal J. Lifshitz, Esq.
Kozyak Tropin & Throckmorton, LLP
2525 Ponce de Leon Boulevard
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: hst@kttlaw.com
Email: tjl@kttlaw.com

If to MSK, to:

David R. Atkinson, Esq.
Stephen C. Richman, Esq.
Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive
Suite 500 East
West Palm Beach, FL 33401
Tel: (561) 804-4362
Fax: (561) 671-2450
Email: datkinson@gunster.com
Email: srichman@gunster.com

with a copy to:

Richard B. Sheldon, Esq.
General Counsel
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067
Tel: (310) 312-3752
Fax: (310) 312-3100
Email: rbs@msk.com

k. **Further Assurances.** Each of the Parties agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request, in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

l. **Tax Treatment and Obligations.** Any Party receiving funds under this Agreement is responsible for its or his/her own tax payments, filings and obligations relating to the receipt of such funds and takes sole and complete responsibility for any tax characterization of such funds or any tax obligations relating to the receipt of such funds.

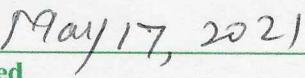
m. **Voluntary, Knowing and Complete Agreement.**

i. Each Party executing this Agreement acknowledges and represents that such Party has read this Agreement carefully and in its entirety; that this Agreement and the exhibits referenced herein, including but not limited to the Bar Order, express all of the understandings and agreements between and among the Parties concerning the subject of this Agreement; and that each Party has executed this Agreement freely and voluntarily, and without duress or other undue influence, after consulting with his, her, or its independent legal counsel.

ii. Each Party hereto acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the causes of action, claims, liabilities, demands, obligations, or damages of any nature whatsoever that are the subject of the releases set forth above, and each Party expressly agrees to assume the risk of the possible discovery of additional or different facts, and agrees that this Agreement shall be and shall remain effective in all respects regardless of the later discovery of such additional or different facts.

n. **Execution.** By executing this Agreement, all of the undersigned persons represent to each of the other Parties to this Agreement that they are legally and mentally competent, fully advised as to the meaning of this Agreement, including through consultation with counsel of their own choosing, that they are fully authorized to execute this Agreement on behalf of themselves individually or their respective Parties, and that upon the execution by the undersigned, the Parties will be bound by the terms of this Agreement.


Almasood Qureshi


Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)

By: Richard Sheldon, General Counsel for,
and authorized representative of,
Mitchell, Silberberg & Knupp, LLP

Dated

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

Almasood Qureshi



Alexandre Daecache

Dated

5/12/2021

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

**Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)**

**By: Richard Sheldon, General Counsel for,
and authorized representative of,
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Dated

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Almasood Qureshi

Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez
Carlos Enrique Hiller Sanchez

05/24/2021
Dated

Philip Calderwood

Dated

Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

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Dated

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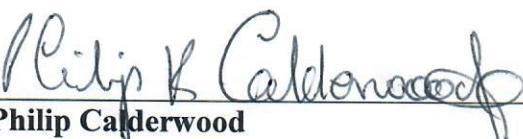
Almasood Qureshi

Dated

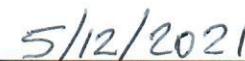
Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez


Philip Calderwood

Dated



Dated

Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

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**By: Richard Sheldon, General Counsel for,
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Dated

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Almasood Qureshi

Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

Jose Antonio Pietri



May 12, 2021

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

**Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)**

**By: Richard Sheldon, General Counsel for,
and authorized representative of,
Mitchell, Silberberg & Knupp, LLP**

Dated

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Almasood Qureshi

Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang

Dated

**Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)**

**By: Richard Sheldon, General Counsel for,
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Mitchell, Silberberg & Knupp, LLP**

Dated

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Almasood Qureshi

Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

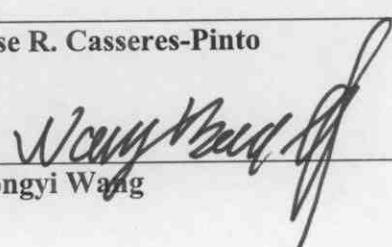
Jose Antonio Pietri

Dated

Jose R. Casseres-Pinto

Dated

Tongyi Wang



Dated

2021/05/12

Dated

**Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)**

**By: Richard Sheldon, General Counsel for,
and authorized representative of,
Mitchell, Silberberg & Knupp, LLP**

Dated

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

Almasood Qureshi

Dated

Alexandre Daccache

Dated

Carlos Enrique Hiller Sanchez

Dated

Philip Calderwood

Dated

Jose Antonio Pietri

Dated

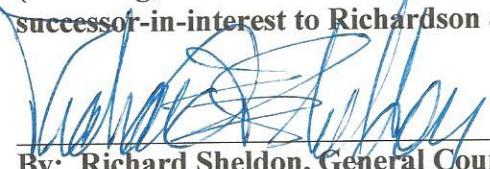
Jose R. Casseres-Pinto

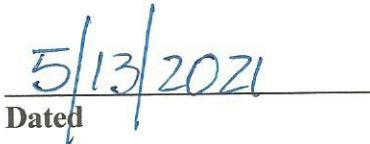
Dated

Tongyi Wang

Dated

**Mitchell Silberberg & Knupp, LLP
(including, but not limited to, as
successor-in-interest to Richardson & Patel LLP)**


**By: Richard Sheldon, General Counsel for,
and authorized representative of,
Mitchell, Silberberg & Knupp, LLP**


Dated

David B. Gordon, a Professional Corporation

DJM

**By: David B. Gordon, as authorized representative
of David B. Gordon, a Professional Corporation**

5/13/21

Dated

DJM
David B. Gordon, individually

5/13/21

Dated

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

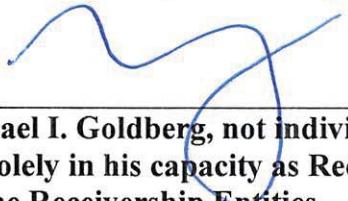
Dated

David B. Gordon, a Professional Corporation

**By: David B. Gordon, as authorized representative
of David B. Gordon, a Professional Corporation**

Dated

David B. Gordon, individually



Dated

5/18/21

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

Dated

David B. Gordon, a Professional Corporation

**By: David B. Gordon, as authorized representative
of David B. Gordon, a Professional Corporation**

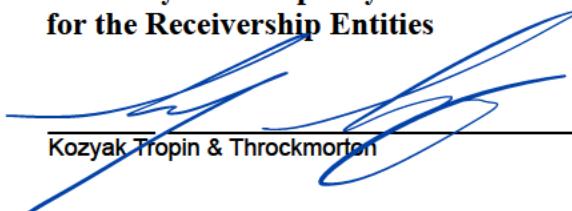
Dated

David B. Gordon, individually

Dated

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

Dated



Kozyak Tropin & Throckmorton

5/20/21

Dated

Schedule A

(List of Receivership Entities)

Jay Peak, Inc.

Q Resorts, Inc.

Jay Peak Hotel Suites L.P.

Jay Peak Hotel Suites Phase II L.P.

Jay Peak Management, Inc.

Jay Peak Penthouse Suites L.P.

Jay Peak GP Services, Inc.

Jay Peak Golf and Mountain Suites L.P.

Jay Peak GP Services Golf, Inc.

Jay Peak Lodge and Townhouses L.P.

Jay Peak GP Services Lodge, Inc.

Jay Peak Hotel Suites Stateside L.P.

Jay Peak GP Services Stateside, Inc.

Jay Peak Biomedical Research Park L.P.

AnC Bio Vermont GP Services, LLC

AnC Bio VT, LLC²

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.³

Q Burke Mountain Resort, LLC

² Also referred to as: AnC Bio Vt LLC; AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont. See SEC Action, DE #492 and 493.

³ Also referred to as: North East Contract Services, LLC.

INDEX TO EXHIBITS A-C

Exhibit	Identity	Settlement Agreement Para.
A	Preliminary Approval Order	4(b)
B	Final Approval and Bar Order	4(b)
C	Notice	4(b)

ACTIVE:13264229.2

EXHIBIT A

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

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants,

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

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

/

**ORDER (I) PRELIMINARILY APPROVING SETTLEMENT
AMONG RECEIVER, PUTATIVE CLASS PLAINTIFFS, AND MSK;
(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**

THIS MATTER came before the Court upon the Motion for (i) Approval of Settlement among Receiver, Putative Class Plaintiffs, and Mitchell Silberberg & Knupp, LLP (including, but not limited to, as successor-in-interest to Richardson & Patel LLP), David B. Gordon, and David B. Gordon, a Professional Corporation (collectively “MSK”); (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [D.E. ____] (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”). The Motion concerns the Receiver’s request for approval of a proposed settlement among: a group of investors that filed suit in the United States District Court for the District of Vermont (defined below as the “Putative Class Plaintiffs”); the Receiver; and MSK, which is memorialized in the settlement agreement attached to the Motion as Exhibit 1 (the “Settlement Agreement”).

As used in this Order, the “Parties” means the Putative Class Plaintiffs; the Receiver; and MSK. Terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement. To the extent there is any discrepancy between a defined term in the Settlement Agreement and the same defined term herein, the definition in the Settlement Agreement shall control.

By way of the Motion, the Receiver seeks an order preliminarily approving the Settlement Agreement and establishing procedures to provide notice of the settlement and an opportunity to object, setting a deadline to object, and scheduling a hearing. After reviewing the terms of the Settlement Agreement, reviewing the Motion and its exhibits, and considering the arguments and proffers set forth in the Motion, the Court preliminarily approves the Settlement Agreement and hereby establishes procedures for final approval of the Settlement Agreement and entry of the Final Approval and Bar Order attached as Exhibit B to the Settlement Agreement (the “Bar Order”) as follows:

- 1. Preliminary Approval.** Based upon the Court’s review of the Settlement Agreement, the Motion and its attachments, and upon the arguments and proffers set forth in the Motion, the Court preliminarily finds that the settlement is fair, adequate and reasonable, is a prudent exercise of the business judgment by the Receiver, the Putative Class Plaintiffs and MSK, and is the product of good faith, arm’s length and non-collusive negotiations between the Putative Class Plaintiffs, MSK, and the Receiver. The Court, however, reserves a final ruling with respect to the terms of the Settlement Agreement, including the Bar Order, until after the Final Approval Hearing (defined below) occurs, or is cancelled pursuant to Section 7, infra.
- 2. Notice.** The Court approves the form and content of the notice attached as Exhibit C to the Settlement Agreement (the “Notice”). Service or publication of the Notice in accordance with the manner and method set forth in this paragraph constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all interested parties of the Motion, the Settlement Agreement, and the Bar Order, and of their opportunity to object thereto and attend the Final Approval Hearing (defined below) concerning these

matters; furnishes all parties in interest a full and fair opportunity to evaluate the settlement and object to the Motion, the Settlement Agreement, the Bar Order, and all matters related thereto; and complies with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the United States Constitution. Accordingly:

- a. The Receiver is directed, no later than 10 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement to be served by first class U.S. mail, postage prepaid, to:
 - i. all counsel who have appeared of record in the SEC Action;
 - ii. all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of the Receivership Entities, in the EB-5 Actions, or any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action of the EB-5 Actions;
 - iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein;
 - iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver;
 - v. all parties to the SEC Action;
 - vi. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;
 - vii. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and
 - viii. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.

- b. The Receiver is directed, no later than 10 days after entry of this Order, to cause the Notice in substantially the same form as attached to the Settlement Agreement to be published:
 - i. twice a week for three consecutive weeks in each of The Burlington Free Press and Vermont Digger; and
 - ii. on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).
- c. The Receiver is directed to promptly provide copies of the Motion, the Settlement Agreement, and all exhibits and attachments thereto, to any person who requests such documents via email to Kimberly Smiley at kimberly.smiley@akerman.com, or via telephone by calling Ms. Smiley at 954-759-8929. The Receiver may provide such materials in the form and manner that the Receiver deems most appropriate under the circumstances of the request.
- d. The Receiver is directed, no later than 5 days before the Final Approval Hearing (defined below), to file with this Court written evidence of compliance with the subparts of this paragraph, which may be in the form of an affidavit or declaration.

3. Final Hearing. The Court will conduct a hearing via Zoom before the Honorable Darrin P. Gayles in the United States District Court for the Southern District of Florida, Wilkie D. Ferguson United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at _____.m. on _____, 2021 (the “**Final Approval Hearing**”). The link for the Zoom hearing will be circulated before the Final Approval Hearing. The purposes of the Final Approval Hearing will be to consider final approval of

the Settlement Agreement, entry of the Bar Order, and award of attorneys' fees as described in paragraph 7 of the Settlement Agreement.

4. Objection Deadline; Objections and Appearances at the Final Approval Hearing.

Any person who objects to the terms of the Settlement Agreement, the Bar Order, the Motion, or any of the relief related to any of the foregoing, must file an objection, in writing, with the Court pursuant to the Court's Local Rules, no later than thirty (30) days before the Final Approval Hearing. All objections filed with the Court must:

- a. Contain the name, address, telephone number of the person filing the objection or his or her attorney;
- b. Be signed by the person filing the objection, or his or her attorney;
- c. State, in detail, the factual and legal grounds for the objection;
- d. Attach any document the Court should review in considering the objection and ruling on the Motion; and
- e. If the person filing the objection intends to appear at the Final Approval Hearing, make a request to do so.

Subject to the discretion of this Court, no person will be permitted to appear at the Final Approval Hearing without first filing a written objection and requesting to appear at the hearing in accordance with the provisions of this paragraph. Copies of any objections filed must be served by email and regular mail on:

Michael I. Goldberg, Esq.
Akerman LLP
The Main Las Olas
201 East Las Olas Boulevard
Suite 1800
Fort Lauderdale, FL 33301
Tel: (954) 468-2444
Fax: (954) 463-2224
Email: michael.goldberg@akerman.com

Jeffrey C. Schneider, Esq.
Levine Kellogg Lehman Schneider + Grossman, LLP
201 S. Biscayne Blvd.
22nd Floor
Miami, FL 33131
Tel: (305) 403-8788
Fax: (305) 403-8789
Email: jcs@lklsg.com

Harley S. Tropin, Esq.
Tal J. Lifshitz, Esq.
Kozyak Tropin & Throckmorton, LLP
2525 Ponce de Leon Boulevard
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: hst@kttlaw.com
Email: tjl@kttlaw.com

David R. Atkinson, Esq.
Stephen C. Richman, Esq.
Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive
Suite 500 East
West Palm Beach, FL 33401
Tel: (561) 804-4362
Fax: (561) 671-2450
Email: datkinson@gunster.com
Email: srichman@gunster.com

Richard B. Sheldon, Esq.
General Counsel
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067
Tel: (310) 312-3752
Fax: (310) 312-3100
Email: rbs@msk.com

Any person failing to file an objection by the time and in the manner set forth in this paragraph shall be deemed to have waived the right to object (including any right to appeal) and to appear at the Final Approval Hearing, and such person shall be forever barred from

raising such objection in this action or any other action or proceeding, subject to the discretion of this Court.

- 5. Responses to Objections.** Any party to the Settlement Agreement may respond to an objection filed pursuant to this Order by filing a response in this Action. To the extent any person filing an objection cannot be served by the Court's CM/ECF system, a response must be served to the email address provided by that objector, or, if no email address is provided, to the mailing address provided.
- 6. Attorneys' Fees.** As set forth in the Settlement Agreement, within thirty (30) days of the entry of this Order, Interim Class Counsel must advise the Receiver that they have agreed on an allocation of the Attorneys' Fund. The procedures for distribution of the Attorneys' Fund set forth in the Settlement Agreement are hereby approved by this Court.
- 7. Adjustments Concerning Hearing and Deadlines.** The date, time and place for the Final Approval Hearing, and the deadlines and other requirements in this Order, shall be subject to adjournment, modification or cancellation by the Court without further notice other than that which may be posted by means of the Court's CM/ECF system in the SEC Action. **If no objections are timely filed or if the objections are resolved before the hearing, the Court may cancel the Final Approval Hearing.**
- 8. No Admission.** Nothing in this Order or the Settlement Agreement is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the settling parties with regard to the SEC Action, the action brought by the Putative Class Plaintiffs, or any other case or proceeding.

9. Jurisdiction. The Court retains jurisdiction to consider all further matters relating to the Motion or the Settlement Agreement, including, without limitation, entry of an Order finally approving the Settlement Agreement and the Bar Order.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of _____, 2021.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)

Jay Peak, Inc.

Q Resorts, Inc.

Jay Peak Hotel Suites L.P.

Jay Peak Hotel Suites Phase II L.P.

Jay Peak Management, Inc.

Jay Peak Penthouse Suites L.P.

Jay Peak GP Services, Inc.

Jay Peak Golf and Mountain Suites L.P.

Jay Peak GP Services Golf, Inc.

Jay Peak Lodge and Townhouses L.P.

Jay Peak GP Services Lodge, Inc.

Jay Peak Hotel Suites Stateside L.P.

Jay Peak GP Services Stateside, Inc.

Jay Peak Biomedical Research Park L.P.

AnC Bio Vermont GP Services, LLC

AnC Bio VT, LLC¹

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.²

Q Burke Mountain Resort, LLC

¹ Also referred to as: AnC Bio Vt LLC; AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont. See SEC Action, DE #492 and 493.

² Also referred to as: North East Contract Services, LLC.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants,

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

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

/

**FINAL ORDER (I) APPROVING SETTLEMENT AMONG RECEIVER,
PUTATIVE CLASS PLAINTIFFS, AND MSK; AND (II) BARRING,
RESTRANDING, AND ENJOINING CLAIMS AGAINST MSK**

THIS MATTER came before the Court on the Motion for (i) Approval of Settlement among Receiver, Putative Class Plaintiffs, and Mitchell Silberberg & Knupp, LLP (including, but not limited to, as successor-in-interest to Richardson & Patel LLP), David B. Gordon, and David B. Gordon, a Professional Corporation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [D.E. ____] (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**”). Pursuant to this Court’s Order (I) preliminarily approving settlement among Receiver, Putative Class Plaintiffs, and MSK; (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 [D.E. ____] (the “**Preliminary Approval Order**”), the Court held a hearing on _____, 2021 to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests final approval of a proposed settlement among: (1) a group of investors that filed the complaint in the litigation in the United States District Court for the District of Vermont captioned *Qureshi, et al. v. People’s United Bank, N.A., Mitchell Silberberg & Knupp, LLP, et al.*, Case No. 2:18-cv-163 (the “**Putative Class Action**”), Almasood Qureshi, Alexandre Daccache, Carlos Enrique Heller Sanchez, Philip Calderwood, Jose Antonio Pieri, Jose R. Casseres-Pinto, and Tongyi Wang (collectively, the “**Putative Class Plaintiffs**”); (2) the Receiver, who filed the complaint in the litigation in the United States District Court for the Southern District of Florida captioned *Michael I. Goldberg, not individually, but solely in his capacity as Receiver v. Mitchell Silberberg & Knupp, LLP, et al.*, Case No. 19-cv-21862-MGC

(S.D. Fla.) (the “**Receiver Action**”); and (3) Mitchell Silberberg & Knupp, LLP (including, but not limited to, as successor-in-interest to Richardson & Patel LLP), David B. Gordon, and David B. Gordon, a Professional Corporation (collectively, “**MSK**”). The settlement is memorialized in the settlement agreement attached to the Motion as Exhibit 1 (the “**Settlement Agreement**”).¹

By way of the Motion, the Receiver requests entry of a bar order (the “**Bar Order**”) permanently barring, restraining and enjoining any person or entity—other than: (1) any federal or state governmental bodies or agencies; and (2) Ariel Quiros (“**Quiros**”) solely for claims Quiros has asserted in his individual capacity in the Quiros Arbitration, if any (as discussed herein)—from pursuing claims against any of the MSK Released Parties (as defined herein) relating to the events and occurrences underlying, relating to or arising out of the claims in the SEC Action and/or the EB-5 Actions,² or otherwise relating in any way to any of the Receivership Entities, the

¹ As used in this Order, the “**Settling Parties**” means MSK, the Receiver, and the Putative Class Plaintiffs. Defined and/or initial capped terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement. To the extent there is any discrepancy between a defined term in the Settlement Agreement and the same defined term herein, the definition in the Settlement Agreement shall control.

² As used in this Order, the term “**EB-5 Actions**” means all actions commenced by any party concerning Quiros, Stenger, the Jay Peak Resort, AnC Bio, the Burke Mountain Hotel, or any of the misconduct alleged in the SEC Action, the Putative Class Action and the Receiver Action, and includes but is not limited to: (a) the Putative Class Action, (b) the Receiver Action; (c) any actions filed by Investors, including without limitation, *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.), *Wang, et al. v. Shen Jianming and Shenlaw, LLC*, Case No. 2:17-CV-00153 (D. Vt.), *Cason, et al. v. Edward Carroll, Esq. and Mark Scribner, Esq.*, Case No. 2:18-cv-40 (D. Vt.), *Alexandre Daccache, et al. v. People's United Financial, Inc., et al.*, Case No. 1:16-cv-21575 (S.D. Fla.), *Wang, et al. v. Jianming Shen and Shenlaw LLC*, Case No. 2:19-cv-00086 (D. Vt.), *Wei, et al. v. Quiros, et al.*, Case No. 602-7-16 Cncv (Vt. Sup. Ct.), *Calero, et al. v. Raymond James & Associates, Inc., et al.*, No. 16-17840-CA-43 (Cir. Ct. Fl. Miami-Dade Co.), *Casseres-Pinto, et al. v. Quiros, et al.*, No. 16-cv-22209 (DPG) (S.D. Fla.), *Shaw, et al. v. Raymond James Financial, Inc., et al.*, No. 16-cv-00129 (GWC) (D. Vt.), and *Sutton, et al. v. People's United Bank Financial, Inc., et al.*, No. 18-cv-00146 (D. Vt.); (d) any other actions filed by the Receiver, including without limitation, *Goldberg v. Kelly*, Case No. 0:17-CV-62157 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24753 (S.D. Fla.), *Goldberg v. McAleenan*, Case No. 1:19-CV-24746 (S.D. Fla.), *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CV-00061 (D. Vt.), and *Goldberg v. Raymond James & Associates, Inc., et al.*, Case No. 1:16-cv-21831 (S.D. Fla.); (e) any actions relating to the Receivership Entities or the Receivership Estate filed by other parties, including without limitation, *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CV-25073 (S.D. Fla.), and *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CV-21707 (S.D. Fla.); or (f) any future actions commenced against the MSK Released Parties by third parties or by or on behalf of Investors, the Receivership Entities, or the Receivership Estate (including their past and present general or limited partners, partners, owners, shareholders, officers, directors, employees, shareholders, of counsel, agents, attorneys, members, managers, managing members, principals, associates, representatives, trustees and insurers) relating to the events and

Receivership Estate, or which arise directly or indirectly from MSK's activities, omissions, or services, or alleged activities, omissions, or services, in connection with the Receivership Entities, the Receivership Estate, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel ("MSK's Activities"), to the broadest extent permitted by law.

The Court's Preliminary Approval Order preliminarily approved the Settlement Agreement, approved the form and content of the Notice, and set forth procedures for the manner and method of service and publication of the Notice to all affected parties, including all foreign investors who invested in certain limited partnerships under the federally-created EB-5 visa programs known as Suites Phase I, Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, AnC Bio Phase VII, and/or Q Burke Phase VIII (collectively, "Investors"). The Preliminary Approval Order and related documents were served by mail on all identifiable interested parties and publicized in an effort to reach any unidentified persons.

The Preliminary Approval Order set a deadline for affected parties to object to the Settlement Agreement or the Bar Order, and scheduled the hearing for consideration of such objections, as well as the Settling Parties' argument and evidence in support of the Settlement Agreement and the Bar Order. That deadline has passed, and Objections were filed at D.E. Nos. _____, _____, and _____.

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 [D.E. No. ____] (the "Declaration").

occurrences underlying the claims in the EB-5 Actions, relating to any of the Receivership Entities or the Receivership Estate, or which arise directly or indirectly from MSK's Activities, to the broadest extent permitted by law.

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 [D.E. No. 238], the Permanent Injunction [D.E. No. 260], and the Asset Freeze Order [D.E. 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, enter the Bar Order, and award attorneys' fees. *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 was reasonably calculated under the circumstances to notify all affected persons of the Motion, the Settlement Agreement and the Bar Order, and of their opportunity to object thereto, of the deadline for objections, and of their opportunity to appear and be heard at the hearing concerning these matters. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, the Bar Order and all matters related thereto and to be heard at the hearing; therefore, the service and publication of the Notice complied with all

requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's local rules, and the due process requirements of the United States Constitution.

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

D. The Settling Parties negotiated over a period of many months; their negotiations included the exchange and review of documents, numerous depositions, many telephone conferences; and two mediations—one in person and one by Zoom—at which counsel for all of the Settling Parties were present or available by telephone.

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

- i. The claims the Putative Class Plaintiffs brought against MSK involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation, the measurement of damages, the allocation of benefits to each plaintiff, and any ensuing appeal. Such litigation is costly and burdensome, involves complex transactions, multiple witnesses in multiple fora, and substantial legal arguments. MSK denies that it is liable in any way to the Putative Class Plaintiffs.
- ii. The claims the Receiver brought against MSK likewise involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation, the measurement of damages, and any ensuing appeal. Such litigation is costly and burdensome, involves complex transactions, multiple witnesses in multiple fora, and substantial legal arguments. MSK denies that it is liable in any way to the Receiver.

F. The Settlement Agreement provides for MSK to pay or cause to be paid a total amount of Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00) (the "Settlement Amount") to settle the Putative Class Action and the Receiver Action—a recovery for the Receivership Entities, in net and absolute terms, of over Thirty Million Dollars (\$30,000,000.00)—

which permits the Receiver to make an interim distribution to eligible Investors with allowed claims of at least Twenty Million Dollars (\$20,000,000.00) and to otherwise support the assets of the Receivership Estate for the benefit of all Investors. The payment of attorneys' fees to counsel for the Putative Class Plaintiffs relieves the Putative Class Plaintiffs from the obligation to pay attorneys' fees and costs out of their own recoveries with respect to their claims against MSK.

G. At the request of counsel for the Putative Class Plaintiffs, the Receiver will act as disbursing agent for the Settlement Amount. After the Putative Class Plaintiffs and their counsel receive their share of the recovery from the Settlement Amount, and subject to the approval and control of the Court, the Receiver will be permitted to distribute the balance, as provided for by the Settlement Agreement, to preserve and maximize the value of the assets in the Receivership Entities for the benefit of the remaining Investors and other creditors and stakeholders. Without payment of these portions of the Settlement Amount, the assets of the Receivership Estate could be wasted and have diminished value.

H. The Court finds that the allocations and consideration for the Investors among the Putative Class Plaintiffs and the Receivership Entities delineated in the Settlement Agreement are fair and reasonable, both individually and as a whole.

I. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, the Putative Class Plaintiffs and MSK, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that the Settlement Amount provides a recovery to the Receiver for the benefit of the Receivership Entities and the Investors that is well within the range of reasonableness. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a

receivership may be approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties).

J. MSK has expressly conditioned its willingness to enter into the Settlement Agreement, and pay, or cause to be paid, the Settlement Amount, on a full and final resolution with respect to any and all claims instituted now or hereafter by any and all of the Barred Persons (as defined below) against any and all of the MSK Released Parties (as defined below) that relate in any manner whatsoever to the events and occurrences underlying the claims in the EB-5 Actions, the Receivership Entities, the Receivership Estate, or MSK's Activities (the "Barred Claims," as more fully defined below). A necessary condition to MSK's ultimate acceptance of the terms and conditions of the Settlement Agreement is the issuance of the Bar Order and that the Bar Order becomes Final³. Pursuant to the terms of the Settlement Agreement, entry of the Bar Order and the Bar Order becoming Final is a necessary condition precedent to the payment of the Settlement Amount.

K. To be clear, MSK is only willing to pay the Settlement Amount in exchange for finality as to the Barred Claims. The Court finds that the Settling Parties have agreed to the settlement in good faith and that MSK is paying a fair share of the potential damages for which it is alleged to be liable, though MSK denies any wrongdoing or liability.

L. As alleged by the Putative Class Plaintiffs, the Investors made investments in eight limited partnerships created to meet the requirements of the EB-5 program, through which an

³ As used in this Order, any court order being "Final" means a court approving and issuing an order unmodified after the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order. For avoidance of doubt, an order, including this Order, is not considered Final prior to the conclusion or expiration of any right or time period of any person or party to seek any objection, appeal, rehearing, reversal, reconsideration or modification, in whole or in part, of the order. Without in any way limiting the foregoing, an order, including this Order, is not considered Final as used herein during the pendency of any appeal or rehearing of the order, or during the time that an appeal, rehearing, reversal, reconsideration, or modification of the order remains possible.

investor who invested \$500,000 in a project that created ten or more jobs per investor would be eligible to apply for unconditional, permanent residency in the United States on an expedited basis. The eight limited partnerships into which the investments were made were intended to create economic assets that would operate, generate income, and possibly be sold to return capital.

M. The Putative Class Action and the Receiver Action arise from MSK's alleged conduct with the respect to the funds invested in the EB-5 program by the Putative Class Plaintiffs and the Receivership Entities.

N. The Settlement Amount also creates a fund that is being provided to the Receiver to make an interim distribution to Investors that are holders of allowed claims of at least Twenty Million Dollars (\$20,000,000.00) and to protect and substantially increase the value of the assets of the Receivership Estate for all of the remaining Investors, creditors, and stakeholders.

O. **Notice to Affected Parties**

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

- i. all counsel who have appeared of record in the SEC Action;
- ii. all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of the Receivership Entities, in the EB-5 Actions, or any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action or the EB-5 Actions;
- iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein;
- iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver;
- v. all parties to the SEC Action;

- vi. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;
- vii. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and
- viii. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.

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

In addition, the Receiver has published the Notice approved by the Preliminary Approval Order in the Vermont Digger, and The Burlington (Vermont) Free Press, twice a week for three (3) consecutive weeks. The Receiver has also maintained the Notice on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).

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

P. Benefits of the Settlement:

1. The Settlement Amount authorizes payments of \$10,000.00 to each of the seven Putative Class Plaintiffs, for a total of Seventy Thousand Dollars (\$70,000.00) for their efforts in bringing the claim and procuring the settlement.
2. The Settlement Amount allows the Receiver, as disbursing agent, to pay attorneys' fees and reimbursement of expenses in the total amount of One Million Five Hundred Thousand

Dollars (\$1,500,000.00) to counsel for the Putative Class Plaintiffs so that the Putative Class Plaintiffs do not need to pay such amounts.

3. The Settlement Amount allows the Receiver to reimburse the Receivership Estate Seven Hundred and Eighty Thousand Dollars (\$780,000.00) for the fraudulent transfer claim brought by the Receiver in the Receiver Action.
4. The Settlement Amount allows the Receiver to reimburse the Receivership Estate Seven Hundred and Fifty Thousand Dollars (\$750,000.00) for the attorneys' fees associated with the Receiver bringing the Receiver Action.
5. The balance of the Settlement Amount—Twenty Nine Million Four Hundred Thousand Dollars (\$29,400,000.00)—shall be used for the benefit of the Receivership Estate from which all Investors and the Putative Class Plaintiffs benefit and which payments are being made on behalf of the Investors and the Putative Class Plaintiffs, subject to the approval of this Court, with the further proviso that unless funds are needed to support other assets of the Receivership Estate, and approval has been obtained by this Court, at least Twenty Million Dollars (\$20,000,000.00) shall be used for an interim distribution to eligible Investors with allowed claims.
6. The Settlement Amount thus enhances the value of each Phase of the Receivership Estate and benefits all Investors, creditors, and stakeholders.

Q. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate to maximize the value of the Receivership Entities for the benefit of the Investors and other stakeholders and creditors. The Receiver will establish a distribution process through which Investors and other interested parties may seek disbursement of funds, including the Settlement Amount to the extent such amounts have not been

used to administer the Receivership Estate or for the benefit of the Receivership Estate. The interests of persons affected by the Bar Order and the releases in the Settlement Agreement were well represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and upon the advice and guidance of his experienced counsel. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and in the best interests of all creditors of, Investors in, or other persons or entities claiming an interest in, having authority over, or asserting claims against the Receivership Entities, and of all persons who could have claims against the MSK Released Parties relating to the Barred Claims. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

R. Approval of the Settlement Agreement and the Bar Order and adjudication of the Motion are discrete from other matters in the SEC Action, and, as set forth above, the Settling Parties have shown good reason for the approval of the Settlement Agreement and Bar Order to proceed expeditiously. Therefore, there is no just reason for delay of the finality of this Order.

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

1. The Motion is **GRANTED** in its entirety. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved. Any other objections to the Motion or the entry of this Order, including, but not limited to, those not filed as of the date of this Court's execution of this Order, are deemed waived and overruled.

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.

3. The Receiver shall disburse the Settlement Amount in accordance with the terms and conditions of the Settlement Agreement and a plan of distribution to be approved by this Court. Without limitation of the foregoing, upon payment of the Settlement Amount as set forth in the Settlement Agreement, the releases set forth in Section 5 of the Settlement Agreement are **APPROVED** and are final and binding on the Parties and their successors and assigns as provided in the Settlement Agreement. The Court further approves the use of One Million Five Hundred Thousand Dollars (\$1,500,000.00) to establish the Attorneys' Fund to be disbursed in accordance with the terms of the Settlement Agreement.

4. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED** as a necessary and appropriate component of the settlement. *See Kaleta*, 530 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).

5. **BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE MSK RELEASED PARTIES 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) all present and former officers, directors, owners, partners, limited partners, general partners, affiliated professional corporations, managers, members, managing members, principals, associates, shareholders, employees, representatives, trustees, of counsel, agents, attorneys, insurers and all other persons serving in a corporate capacity of all of the Receivership Entities as well as all Investors of the Receivership Entities; (ii) any Defendant in the SEC Action, or in any action now pending or which may hereafter be brought in connection with the Barred Claims; (iii) any party to the EB-5 Actions; or (iv) any person or entity claiming by or through such persons or entities, Investors 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;⁴
- b. **The “Barred Conduct”:** instituting, reinstating, amending, intervening in, initiating, commencing, maintaining, continuing (including by filing any motion to vacate any previously issued order), filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise

⁴ Barred Claims, as used in this Order, excludes claims Quiros has asserted in his individual capacity only, if any, in the arbitration captioned *Quiros v. Mitchell Silberberg & Knupp LLP and David B. Gordon, JAMS NY Reference No. 1425032114* (the “Quiros Arbitration”). The Receiver’s obligations under this Order with respect to those claims is set forth in the Settlement Agreement, which process this Court approves.

recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

- c. **The “Barred Claims”:** any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, Canada or elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to, are based upon, arise from, or are connected: with the released claims or interests of any kind as set forth in the Settlement Agreement; with the facts and claims that were, or could have been asserted, in the EB-5 Actions; with the Receivership Entities, or which arise directly or indirectly from MSK’s Activities, work, conduct, omissions, or services, or alleged work, conduct, omissions, or services, in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel; with the Receivership Estate; or with the investments made in the eight limited partnerships at issue in the SEC Action or in any of the EB-5 Actions, including but not limited to those events, transactions and circumstances alleged, or which could have been alleged, in the SEC Action or relating in any way to MSK’s Activities.

- d. **The “MSK Released Parties”:** MSK, including, its current and former employees, shareholders, of counsel, agents, attorneys, insurers, officers, directors, members, managers, managing members, principals, associates, representatives, trustees,

general and limited partners, partners, owners, affiliated professional corporations, as well as all other persons serving in a corporate capacity, and each of their respective administrators, heirs, trustees, beneficiaries, spouses, assigns, directors, officers, shareholders, owners, partners, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest.

7. Any non-settling defendants in any action commenced by the Receiver or in any other actions by or on behalf of the Investors or any of them who would otherwise be entitled to contribution or indemnity from the MSK Released Parties in connection with any claim asserted against them by the Receiver or the Investors shall be entitled to a dollar-for-dollar offset against any subsequent judgment entered against such party for: (1) with respect to the Receiver, the Settlement Amount, less the amounts paid to the Putative Class Plaintiffs for their share of the Settlement Amount and counsel for the Putative Class Plaintiffs; and (2) with respect to the Investors, any portion of the Settlement Amount received by each such Investor pursuant to the Settlement Agreement. This provision is without prejudice to whatever rights, if any exist, any non-settling defendant may have to setoff under applicable law in any action brought by or on behalf of the Receiver or the Receivership Entities or by any Investor now pending or which may be brought in the future. Any and all claims for indemnity and/or contribution against the MSK Released Parties, whether contractual, equitable, statutory, or otherwise, are barred hereby and included within the Barred Claims.

8. Paragraph 5 of this Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government; (ii) the claims Quiros has asserted in his individual capacity only in the Quiros Arbitration, if any; or (iii) to the Settling Parties' respective obligations under the Settlement Agreement.

9. Nothing in this Order bars the MSK Released Parties from pursuing claims and causes of action they may have against any person or entity not specifically released by them in the Settlement Agreement, including but not limited to Quiros, in his individual capacity only, and Ironshore Indemnity, Inc. or any of its affiliated entities.

10. Nothing in this Order or the Settlement Agreement, and no aspect of the Settling Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Settling Parties with regard to any case or proceeding, including the Putative Class Action.

11. No MSK Released Party shall have any duty or liability with respect to the administration of, management of, or other performance by the Receiver of his duties relating to the Receivership Entities, including, without limitation, the process to be established for filing, adjudicating and paying claims against the Receivership Entities or the allocation, disbursement or other use of the Settlement Amount.

12. Neither the Settlement Agreement, nor this Order, shall be impaired, modified or otherwise affected in any manner other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Federal Rules of Civil Procedure.

13. 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 MSK, the Putative Class Plaintiffs, the Receiver, or the Investors against any party not released in the Settlement Agreement.

14. All Barred Claims against the MSK Released Parties, including those in the Putative Class Action, are stayed until this Order is Final. To the extent reasonably necessary for the Receiver or the Investors to pursue claims against others, MSK shall produce non-privileged witnesses or documents within their custody or control, subject to all appropriate objections, but shall be reimbursed for any reasonable expenses or costs incurred in doing so.

15. The Putative Class Plaintiffs and the Receiver are directed and authorized to dismiss their claims against MSK with prejudice, when this Order is Final within the meaning of the Settlement Agreement, in accordance with the terms of the Settlement Agreement with no party admitting to wrongdoing or liability and all parties responsible for their attorneys' fees and costs.

16. 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.

17. 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.

18. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the injunction, the Bar Order and releases herein or in the Settlement Agreement. This retention of jurisdiction is not a bar to any person, including the Settling Parties, from raising the injunction or Bar Order to obtain its benefits in establishing reductions to damage awards or seeking to dismiss a claim.

DONE AND ORDERED in Chambers at Miami, Florida, this _____ day of _____, 2021.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)

Jay Peak, Inc.

Q Resorts, Inc.

Jay Peak Hotel Suites L.P.

Jay Peak Hotel Suites Phase II L.P.

Jay Peak Management, Inc.

Jay Peak Penthouse Suites L.P.

Jay Peak GP Services, Inc.

Jay Peak Golf and Mountain Suites L.P.

Jay Peak GP Services Golf, Inc.

Jay Peak Lodge and Townhouses L.P.

Jay Peak GP Services Lodge, Inc.

Jay Peak Hotel Suites Stateside L.P.

Jay Peak GP Services Stateside, Inc.

Jay Peak Biomedical Research Park L.P.

AnC Bio Vermont GP Services, LLC

AnC Bio VT, LLC⁵

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.⁶

Q Burke Mountain Resort, LLC

⁵ Also referred to as: AnC Bio Vt LLC; AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont. See SEC Action, DE #492 and 493.

⁶ Also referred to as: North East Contract Services, LLC.

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants,

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

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P.,
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC

Additional Defendants

/

**NOTICE OF PROCEEDINGS TO APPROVE
SETTLEMENT AMONG RECEIVER, PUTATIVE
CLASS PLAINTIFFS, AND MSK, AND BAR ORDER**

PLEASE TAKE NOTICE that Michael I. Goldberg, as the Court-appointed receiver (the “Receiver”) of the entities (the “Receivership Entities”) in the above-captioned civil enforcement

action (the “**SEC Action**”), has filed a request for approval of a proposed settlement between: a group of investors that filed a complaint in the United States District Court for the District of Vermont (“**Putative Class Plaintiffs**”); the Receiver; and Mitchell Silberberg & Knupp, LLP (including, but not limited to, as successor-in-interest to Richardson & Patel LLP), David B. Gordon, and David B. Gordon, a Professional Corporation (collectively, “**MSK**”). The proposed settlement settles all claims that were and could have been asserted against MSK by the Putative Class Plaintiffs or the Receiver; such settlement is **expressly conditioned** on the Court approving the Settlement Agreement and including in the order approving such Settlement Agreement a provision permanently barring, restraining and enjoining any person or entity from pursuing claims, **including claims you may possess**, against any of the MSK Released Parties relating to the SEC Action or any of the other EB-5 Actions (as defined therein), or otherwise relating in any way to any of the Receivership Entities, the Receivership Estate, or which arise directly or indirectly from MSK’s activities, omissions, or services, or alleged activities, omissions, or services, in connection with the Receivership Entities, the Receivership Estate, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel, to the broadest extent permitted by law (the “**Bar Order**”).¹

PLEASE TAKE FURTHER NOTICE that the material terms of the Settlement Agreement are that MSK shall pay or cause to be paid the sum of Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00), in exchange for broad releases from the Putative Class Plaintiffs, the Receiver, and the Receivership Entities, and entry of the Bar Order.

PLEASE TAKE FURTHER NOTICE that the Settlement Agreement establishes an Attorneys’ Fund to reimburse costs and compensate the attorneys for the Putative Class Plaintiffs.

PLEASE TAKE FURTHER NOTICE that copies of the Settlement Agreement; the Motion for (i) Approval of Settlement between Receiver, Putative Class Plaintiffs, and MSK; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [D.E. ____] (the “**Motion**”); the proposed Bar Order; and other supporting and related papers, may be obtained from the Court’s docket in the SEC Action or from the website created by the Receiver (www.JayPeakReceivership.com). Copies of the Motion may also be obtained by email request to Kimberly Smiley at kimberly.smiley@akerman.com or by telephone by calling Ms. Smiley at 954-759-8929.

PLEASE TAKE FURTHER NOTICE that the final hearing on the Motion, at which time the Court will consider approval of the Settlement Agreement including the grant of the releases and the issuance of the Bar Order, is set by Zoom before the Honorable Darrin P. Gayles, the United States Courthouse, 400 North Miami Avenue, Miami, Florida 33128, in Courtroom 11-1, at _____.m. on _____, 2021 (the “**Final Approval Hearing**”). The link for the Zoom hearing will be circulated before the Final Approval Hearing.

Any objection to the Settlement Agreement, the Motion or any related matter, including, without limitation, entry of the Bar Order, must be filed, in writing, with the Court in the SEC Action, and served by email and regular mail, on: (1) Michael I. Goldberg, Esq., Akerman LLP,

¹ Defined terms used but not defined in this Notice are more fully defined in the Settlement Agreement.

The Main Las Olas, 201 East Las Olas Boulevard, Suite 1800, Fort Lauderdale, FL 33301, Email: michael.goldberg@akerman.com; (2) Jeffrey C. Schneider, Esq., Levine Kellogg Lehman Schneider + Grossman, LLP, 201 S. Biscayne Blvd., 22nd Floor, Miami, FL 33131, Email: jcs@lklsg.com; (3) Harley S. Tropin, Esq., Tal J. Lifshitz, Esq., Kozyak Tropin & Throckmorton, LLP, 2525 Ponce de Leon Boulevard, Miami, FL 33134, Email: hst@kttlaw.com and Email: tjl@kttlaw.com; (4) David R. Atkinson, Esq., Stephen C. Richman, Esq., Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401, Email: datkinson@gunster.com and Email: srichman@gunster.com; and (5) Richard B. Sheldon, Esq., General Counsel, Mitchell Silberberg & Knupp LLP, 2049 Century Park East, 18th Floor, Los Angeles, CA 90067, Email: rbs@msk.com, no later than _____, 2021 (the “**Objection Deadline**”), and such objection must be made in accordance with the Court’s Order (I) preliminarily approving settlement between Receiver, Putative Class Plaintiffs, and MSK; (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 [D.E. __] (the “Preliminary Approval Order”).

PLEASE TAKE FURTHER NOTICE that any person or entity failing to file an objection on or before the Objection Deadline and in the manner required by the Preliminary Approval Order shall not be heard by the Court, shall be deemed to have waived the right to object (including any right to appeal) as well as to appear at the Final Approval Hearing, and shall be forever barred from raising such objection in this action or any other action or proceeding, subject to the discretion of this Court. Those wishing to appear and present objections at the Final Approval Hearing must include a request to appear in their written objection. **If no objections are timely filed, the Court may cancel the Final Approval Hearing without further notice.**

This matter may affect your rights. You may wish to consult an attorney.

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