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, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AND THE STATE OF VERMONT DEPARTMENT OF FINANCIAL REGULATION; (II) APPROVAL OF FORM, CONTENT AND MANNER OF NOTICE OF SETTLEMENT AND BAR ORDER; (III) ENTRY OF BAR ORDER; AND (IV) SCHEDULING A HEARING; 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, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law* (the "Motion").

I.
Introduction

For the better part of two years, the Receiver and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") have been exchanging information and engaging in good faith discussions in support of their respective positions. The Receiver and Merrill engaged in a full day of mediation in February 2020 before a retired Bankruptcy Judge. While they did not settle at that time, they continued their discussions and continued to pose and answer questions and exchange voluminous documentation. In October 2021, the Receiver and Merrill engaged in a second full day of mediation with Michael Marks, an experienced mediator who has mediated a number of Jay Peak-related disputes, and this time, the State of Vermont Department of Financial Regulation (the "State of Vermont") participated as well.

The Receiver is pleased to report that, after several years of discussions, the parties have reached a settlement for Four Million Five Hundred Thousand Dollars ($4,500,000.00) (the "Settlement Amount"): (i) the Receiver's potential claims against Merrill have settled for the sum of Four Million Dollars ($4,000,000.00); and (ii) the State of Vermont's potential claims against Merrill have settled for the sum of Five Hundred Thousand Dollars ($500,000.00). As set forth below, the settlement, and the structure of the settlement, provides an outstanding recovery for the Receivership Estate.

In exchange for the Settlement Amount, 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 Merrill with a release; and (iii) to obtain entry of a bar order in Merrill's favor enjoining all claims relating to Jay Peak and/or the SEC Action (as described more fully below). The bar order, of course, would not apply to any actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill's Activities (both of which are defined in the Settlement Agreement). **Importantly, as set forth below, the settlement is expressly contingent on the entry of the bar order**.

The precise terms of the settlement are more fully set forth in the settlement agreement attached to this Motion as Exhibit "1" (the "Settlement Agreement"). Defined terms used but not defined in this Motion have the meaning ascribed to them in the Settlement Agreement.

As was the case with the Receiver's prior settlements (with parties such as Citibank, Raymond James, Ariel Quiros, Ironshore, Carroll & Scribner, and Mitchell Silberberg & Knupp ("MSK")), the Receiver requests, by way of this Motion, that the Court approve the settlement and bar order by means of a two-step process.[1]

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 and establishes approval procedures—including for 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 an order substantially in the form and substance as Exhibit B to the Settlement Agreement, which shall serve as the Court's final order approving the Settlement Agreement and barring all claims against the Merrill Released Parties, as further described below (the "Bar Order").

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 11th Circuit. *See SEC v. Quiros*, 966 F.3d 1195 (11th Cir. 2020). This settlement is ***expressly conditioned*** on Merrill receiving the Bar Order in substantially the same form as the proposed bar order attached to the Settlement Agreement:

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[1] The two-step procedure is the same procedure the Court utilized in approving the Receiver's previous settlements and bar orders.

> [I]n the event the Bar Order is not issued, or the Bar Order is issued and is subsequently vacated, reversed on appeal, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Merrill Released Parties as more fully described in the Bar Order attached hereto as Exhibit B, then: this Settlement Agreement shall be null, void, and of no further effect (except for the Sections of this Settlement Agreement that survive the termination of this Settlement Agreement identified in Section 9(i)).

Settlement Agreement ¶ 2.

II.
Background

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

The Court 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 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 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. 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 Receiver's Contentions

The Receiver diligently investigated all claims he believes he could have brought against Merrill, including potential claims arising from or related to the management and oversight of brokerage accounts opened by Quiros at Merrill. The Receiver's investigation revealed that the Receiver's potential claims against Merrill involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. In fact, because of the uncertainty of the claims; Merrill's vigorous defense of the claims; and because the Receivership Estate was illiquid for a period of time (resulting in at least one fee application not being paid for approximately one year), the Receiver's attorneys, at the request of the SEC, agreed to convert their arrangement to a contingency arrangement to eliminate the cash flow burden on the Receivership Estate and to place the entire risk of loss on the Receiver and his attorneys. Merrill disputes the factual and legal bases of the Receiver's claims, and has indicated its intention to defend any such claims vigorously.

C. The State of Vermont's Contentions

The State of Vermont likewise diligently investigated all claims it believes it could bring against Merrill, including claims for potential violations of the Vermont Securities Act, over which the State of Vermont has regulatory authority. These potential claims would also require substantial time and expense to litigate, and there would be significant uncertainty as to the outcome and any appeal. Merrill disputes the factual and legal bases of any such claims and has indicated its intention to defend any such claims vigorously.

D. General Terms and Conditions of the Settlement

To avoid the continued expense, delay, and uncertainty associated with the potential claims, as noted above, the Receiver, Merrill, and the State of Vermont participated in a full day mediation in October 2021 during which a settlement was reached in principle and later memorialized through the Settlement Agreement. In consideration for the amounts that Merrill is paying, Merrill specifically requested releases from the Receiver and the State of Vermont, and entry of the Bar Order.

The principal terms of the Settlement Agreement are as follows:[2]

(i) Merrill pays $4,500,000.00 after the Bar Order is issued and becomes Final.[3]

(ii) The Parties exchange the mutual releases set forth in Section 5 of the Settlement Agreement.

(iii) $500,000 of the Settlement Amount relates to settlement of the State of Vermont's potential claims against Merrill; the State of Vermont has directed the Receiver to disburse those funds in the manner delineated in the Settlement Agreement, without any deductions for attorneys' fees or other amounts.

(iv) The Receiver will use the balance of the Settlement Amount for the benefit of the Receivership Estate, after payment of contingent attorneys' fees, explained more fully below, and after payment to Raymond James & Associates, Inc., also explained more fully below.[4]

Stated differently, the principal financial terms of the settlement are as follows: Merrill shall pay $4,500,000 to the Receiver, of which $500,000 is related to the State of Vermont's

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2 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.

3 As used in this Motion, a court order is "Final" if unmodified after the conclusion of, or expiration of, any right of any person to seek any appeal, rehearing, or reconsideration of the order.

4 Indeed, the Receiver has already filed a motion to distribute $20 million [DE 705], pursuant to the terms of the settlement with Mitchell Silberberg & Knupp, LLP [DE 690]. The Court granted the Motion, in part, authorizing the distribution of $19.5 million.

claims, but which is to be distributed by the Receiver in accordance with future orders from this Court. No contingent fees or other deductions can be made from the State of Vermont's $500,000 portion.

Of the remaining $4,000,000 allocable to the Receiver's claims, the Receiver and his attorneys are entitled, pursuant to their written agreement with the Receiver, to a 39% contingency, which equates to $1,560,000. **The Receiver and his attorneys have agreed, however, to contribute $400,000.00 of their fee to the Receivership Estate, which means the total fee will only be $1,160,000.00**.[5]

Of the remaining $2,440,000 available to the Receivership Estate (computed by deducting the actual fee [$1,560,000] from the amount allocable to the Receiver's claims [$4,000,000] *before* factoring in the amount to be returned by the Receiver's attorneys), Raymond James & Associates, Inc. ("Raymond James") is entitled to $87.5% pursuant to its agreement with the Receiver in connection with its $150,000,000 settlement, as amended [DE 663]. 87.5% of $2,440,000 is $2,135,000, which will be paid to Raymond James.

This leaves $305,000.00 for the Receivership Estate, ***plus*** the $400,000 to be returned by the Receiver's counsel, ***plus*** the $500,000 that the State of Vermont is allowing the Receiver to distribute, for a total amount available for distribution to the Receivership estate of **$1,205,000**.[6] This amount will be kept by the Receiver in a restricted account until it is distributed by the Receiver in accordance with future orders from this Court.

While a large portion of the Settlement Amount is being distributed to Raymond James, it is important to remember the macro picture: the initial arrangement with Raymond James entitled

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[5] With this contribution by counsel, the effective contingency percentage is only 29%.

[6] This proposed arrangement actually results in a net sum greater to the Receivership Estate than if the percentage to Raymond James had remained at 75%.

Raymond James to 75% of every recovery obtained by the Receiver, net of attorney's and Receiver's fees. [DE 353]. That arrangement was modified, and the modification was approved by the Court earlier this year [DE 663], pursuant to which Raymond James's entitlement to a percentage was eliminated from certain cases, such as the case against Mitchell Silberberg & Knupp, LLP, and increased by 12.5%, to 87.5%, in other cases, such as this potential case against Merrill.

The Receiver is happy to report that the modification was beneficial to the Receivership Estate, because the case against Mitchell Silberberg & Knupp, LLP settled for $32,500,000 [DE 690], and Raymond James did not receive any portion of it, while this matter settled for $4,000,000. In other words, increasing Raymond James's entitlement by 12.5% in this matter helped to protect the entirety of the $32,500,000 for the Receivership Estate. But for the modification, Raymond James could have made an argument that it was entitled to 75% of the $32,500,000 (*i.e.*, $24,375,000). Because of the modification, the Receiver has already been able to move to propose a $20,000,000 distribution to the victims of this case from the Mitchell Silberberg & Knupp, LLP settlement. *See* DE 706, which was granted, in part, by the Court.

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

The Receiver has diligently investigated all claims he believes he could have brought against Merrill. The Receiver and Merrill were involved in numerous informal settlement telephone conferences and correspondence, exchanged documentation related to their potential claims and defenses, and participated in two full days of mediation. The Receiver's investigation revealed that the Receiver's potential claims against Merrill involved disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. Throughout this investigation, the Receiver and Merrill were represented by experienced and diligent counsel vigorously pressing their respective client's position, underscoring the risk of litigation in terms of time, expense and uncertainty of outcome. In fact, Merrill was represented by experienced counsel at a well-known national firm that repeatedly advised the Receiver that he would not prevail on his potential claims as a matter of law.

The Bar Order has been a condition of any settlement with Merrill since the commencement of the Parties' discussions. In colloquial terms, Merrill's willingness to settle so generously – for $4,500,000.00 – is contingent upon "global peace" with respect to all claims that could be asserted against Merrill relating in any way whatsoever to the EB-5 Actions or the Receivership Entities. The Bar Order is accordingly a condition precedent to the effectiveness of the Settlement Agreement and to payment of the full 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).

E. 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 "<u>Settlement Approval Procedures</u>"):

(i) <u>Notice</u>. The Receiver will prepare a notice substantially in form and content as Exhibit C to the Settlement Agreement (the "<u>Notice</u>"), 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) <u>Service</u>. 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;

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.

(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 give notice that they wish 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:

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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 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) (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, the Receiver and his counsel carefully considered and dutifully investigated, analyzed, and evaluated the potential claims against Merrill; the defenses that would be asserted to those claims; 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 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 almost two years, during which Merrill was cooperative and fully engaged in the discussions, by providing the Receiver with requested documents and information, and demonstrated repeatedly a good faith intention to try to resolve the dispute. At the same time, Merrill was forthcoming about the defenses it would assert to the Receiver's claims, if brought.

In addition to those informal negotiations, the Receiver and Merrill participated in two full day mediation sessions, the latter in which the State of Vermont also participated. The second formal mediation was conducted by Michael Marks, a seasoned mediator who has been successful in guiding the resolution of several Jay Peak-related disputes. 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, the Parties exchanged extensive substantive legal analysis of the Parties' 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 $4,500,000.00, which results in $1,250,000 for the Receivership Estate. 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 [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).[7]

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. 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 11th Circuit. *See SEC v. Quiros*,

[7] 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 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.").

966 F.3d 1195 (11th Cir. 2020). This settlement is ***expressly conditioned*** on Merrill receiving the Bar Order in substantially the same form as the proposed bar order 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 $4,500,000.00 from Merrill. 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 attorneys' fees; (ii) pay its contractual obligation to Raymond James (again, the original agreement and the amendment resulted in the Receivership Estate receiving tens of millions of dollars, which have been used to maintain the Receivership Estate and to pay investors); and (iii) obtain $1,250,000 for the Receivership Estate.

- The Settlement Amount allows the Receiver to continue to support and operate the operations of the Jay Peak Resort and Burke Mountain Hotel, as the Resort and Hotel continue to recover from the far-reaching effects of the global pandemic and the closing of the American/Canadian border (through which many of the Resort and Hotel patrons cross). *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"); *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, Merrill, and the State. Indeed, it is a specific condition precedent to the Settlement Agreement—in particular, to both the Receiver's receipt of the full 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, the Receiver would be involved in time-consuming and risky litigation – perhaps in in another 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 litigation).

- 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 or the State. *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, because it can help maintain the Receivership Estate to maximize payments to investors. *See Kaleta*, 530 Fed. Appx. at 362 (investors may "pursue their claims by participat[ing] in the claims process for the 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 Merrill 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.

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.[8]

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*,

[8] This Court entered similar bar orders in favor of Citibank, Raymond James, Carroll & Scribner, People's United Bank, and MSK in connection with the Receiver's settlement of those claims. [D.E. 231, 353, 657, 675, and 690].

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 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 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 and enter the Preliminary Approval Order and the Bar Order in the manner set forth above. The Receiver also requests that the contingency fees be approved (in the amount of $1,560,000) and that his counsel be permitted to return $400,000 of that fee to the Receivership Estate.

Local Rule 7.1 Certification of Counsel

Pursuant to Local Rule 7.1, undersigned counsel has conferred with counsel for the SEC; the SEC supports the settlement but takes no position on the 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) has no objection to the relief sought herein.

Dated: January 6, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on January 6, 2022 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

EXECUTION COPY 1/4/22

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement 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 Settlement Agreement (collectively, the "Receivership Entities"); Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"); and the State of Vermont Department of Financial Regulation ("Vermont DFR"). (The Receiver, Merrill and the Vermont DFR 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 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. 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").

C. In or about December 2014, Quiros opened thirteen brokerage accounts at Merrill in the names of various Receivership Entities (the "Brokerage Accounts"). These accounts were opened as working capital management accounts that traded in securities. The Receiver has threatened claims against Merrill based on its interaction with, the various Receivership Entities, particularly as they relate to the Brokerage Accounts and the AnC Bio and Burke Mountain Hotel projects. The Vermont DFR has also alleged that Merrill's administration of the Brokerage Accounts represents potential violations of the Vermont Securities Act, over which DFR has regulatory authority ("Vermont Allegations"). Merrill denies any wrongdoing whatsoever with respect to its handling of the Brokerage Accounts or its interactions with the various Receivership Entities. Merrill has indicated that it would vigorously defend any claims brought by the Receiver or the Vermont DFR.

D. The Parties have been, in good faith, discussing the foregoing issues by exchanging large quantities of documents and engaging in telephonic, in-person, and written discussions. The Receiver and Merrill engaged in a full day of mediation in February of 2020; they did not resolve the matter at that time and continued their discussions. Since then, the Parties engaged in a second full day of mediation in October of 2021, during which a settlement in principle was reached for the sum of Four Million Five Hundred Thousand Dollars ($4,500,000.00) (the "Settlement Amount"). Four Million Dollars ($4,000,000.00) of the Settlement Amount relates to the Receiver's potential claims. Five Hundred Thousand Dollars ($500,000.00) of the Settlement Amount relates to the Vermont DFR's potential claims. The Vermont DFR has requested that its portion of the Settlement Amount be disbursed by the Receiver as set forth herein and in accordance with future orders of the District Court in the SEC Action.

E. As set forth above, the Parties desire to settle any and all claims brought, those that could have been brought, and those that may be brought in the future against Merrill, including its current and former employees, shareholders, of counsel, agents, attorneys, officers, directors, members, managers, principals, associates, representatives, trustees, insurers, re-insurers, general and limited partners, and each of their respective administrators, heirs, trustees, beneficiaries, assigns, directors, officers, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest including but not limited to Bank of America Corporation and Bank of America, N.A. (collectively, the "Merrill Released Parties"). The entry of the Bar Order (as defined below) is essential to Merrill's willingness to enter into this settlement, and without the entry of a Bar Order, Merrill would not enter into this Settlement Agreement. In that connection, it is essential to Merrill in entering into this Settlement Agreement that no further civil actions can or will be prosecuted or commenced against the Merrill Released Parties with respect to the facts and claims that were, or could have been, asserted in the EB-5 Actions (as defined below), or otherwise relating in any way to any of the Receivership Entities, or which arise directly or indirectly from Merrill's activities, work, conduct, omissions, or services in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, the Burke Mountain Hotel, or the Brokerage Accounts ("Merrill's Activities"). The term "EB-5 Actions" means all actions commenced by any party concerning Quiros, Stenger, the Jay Peak Resort, the Receivership Entities, AnC Bio, the Burke Mountain Hotel, the Brokerage Accounts, or any of the misconduct alleged in the SEC Action, and includes but is not limited to: (a) any Putative Class Actions, (b) *Calero, et al. v. Raymond James & Associates, Inc., et al.*, No. 16-17840-CA-43 (Cir. Ct. Fl. Miami-Dade Co.), (c) *Casseres-Pinto, et al. v. Quiros, et al.*, No. 16-cv-22209 (DPG) (S.D. Fla.), (d) *Shaw, et al. v. Raymond James Financial, Inc., et al.*, No. 16-cv-00129 (GWC) (D. Vt.), (e) *Sutton, et al. v. People's United Bank Financial, Inc., et al.*, No. 18-cv-00146 (D. Vt.), (f) *Sutton v. Vermont Regional Center*, Case No. 100-5-17 Lecv (Vt. Sup. Ct.), (g) *Wang v. Shen*, Case No. 2:17-CV-00153 (D. Vt.), (h) *Goldberg v. Kelly*, Case No. 0:17-CV-62157 (S.D. Fla.), (i) *Goldberg v. Mitchell Silberberg & Knupp, LLP*, Case No. 1:19-CV-21862 (S.D. Fla.), (j) *Goldberg v. McAleenan*, Case No. 1:19-CV-24753 (S.D. Fla.), (k) *Goldberg v. McAleenan*, Case No. 1:19-CV-24746 (S.D. Fla.), (l) *Goldberg v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 2:17-CV-00061 (D. Vt.), (m) *Quiros v. Ironshore Indemnity, Inc.*, Case No. 1:16-CV-25073 (S.D. Fla.), and (n) *Raymond James Financial, Inc. v. Federal Insurance Company*, Case No. 1:20-CV-21707 (S.D. Fla.). This Section does not apply to any enforcement actions brought by federal or state governmental bodies or agencies, with the exception of actions by the State of Vermont relating to Merrill's Activities and/or the EB-5 Actions.

F. The Parties recognize and understand that any full settlement of their respective rights, claims and defenses is contingent upon the grant of releases by the Receiver and the Vermont DFR and entry of the Bar Order (see below) that becomes Final enjoining any and all persons or entities (excluding any enforcement actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill's Activities) from commencing or continuing any and all claims against the Merrill Released Parties that relate in any manner whatsoever to the EB-5 Actions, any of the Receivership Entities, or which arise directly or indirectly from Merrill's Activities. (As used in this Settlement Agreement, in reference to any court order, being "Final" means a court order unmodified after the conclusion of, or expiration of, any right of any person to seek any appeal, rehearing, or reconsideration of the order.)

G. As a result, the Parties have agreed to a full and final settlement of their rights, claims and defenses; <u>provided, however,</u> that a condition precedent to the full effectiveness of the settlement is: (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 <u>Exhibit "A</u>" (the "<u>Preliminary Approval Order</u>"), which, *inter alia*, provides for preliminary approval of this Settlement Agreement and delineates the form, manner and substance of notices to be provided in advance of final approval of this Settlement Agreement; (ii) the entry of an order by the District Court in the SEC Action in substantially the same form and substance as attached hereto as <u>Exhibit "B</u>" (the "<u>Bar Order</u>"), which, *inter alia*, provides for final approval of this Settlement Agreement and bars commencement, amendment, and continuation of any actions against the Merrill Released Parties (excluding any actions brought by federal or state governmental bodies or agencies other than actions by the State of Vermont relating to Merrill's Activities and/or the EB-5 Actions); 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. <u>RECITALS</u>. The Parties represent, warrant and affirm that the above recitals are true and correct. The recitals set forth above are an integral part of this Settlement Agreement and are incorporated herein by reference.

2. <u>EFFECTIVENESS</u>. On the date this Settlement Agreement is fully executed by the signatories hereto (the "<u>Execution Date</u>"), this Settlement Agreement shall take effect, subject to approval and entry of the Bar Order by the District Court in the SEC Action that becomes Final. Stated differently, and as further provided herein, in the event the Bar Order is not issued, or the Bar Order is issued and is subsequently vacated, reversed on appeal, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Merrill Released Parties as more fully described in the Bar Order attached hereto as Exhibit B, then: this Settlement Agreement shall be null, void, and of no further effect (except for the Sections of this Settlement Agreement that survive the termination of this Settlement Agreement identified in Section 9(i)); the Parties shall not be not bound by the releases set forth in Section 5 of this Settlement Agreement; the Parties shall proceed to litigate their claims as if this Settlement Agreement had not been executed; and the Receiver and Vermont DFR shall return the Settlement Amount.

3. SETTLEMENT.

a. **<u>Settlement Amount</u>.** Subject to the terms and conditions of this Settlement Agreement, in full and final settlement of the claims released in Section 5 of this Settlement Agreement, and in full and final resolution of the claims subject to the Bar Order, Merrill shall pay the Settlement Amount to settle with the Receiver and the Vermont DFR. The Parties hereby affirm that the provisions of this Settlement Agreement are fair and reasonable.

b. **<u>Settlement Payment</u>.** Upon the issuance of the Bar Order, the Receiver will deliver to Merrill a properly-executed Form W-9 for his law firm. On or before the 20th day after the Bar Order becomes Final and the proper Form W-9 is received, Merrill shall transfer the Settlement Amount, Four Million Five Hundred Thousand Dollars ($4,500,000.00) (the "<u>Final Settlement Payment</u>"), to the Receiver, Five Hundred Thousand Dollars ($500,000.00) of which relates to the Vermont DFR's potential claims, which shall be disbursed by the Receiver on its behalf.

c. **<u>Payment Instructions</u>.** Merrill shall make the Final Settlement Payment set forth in Section 3(b) above to an account maintained by the Receiver by wire transfer pursuant to the following wire instructions:

Receiving Bank: SunTrust Bank, 25 Park Place NE Atlanta, GA 30303
Routing/ABA #: [redacted]
Swift Code: SNTRUS3A
Credit to: Akerman LLP IOTA Trust Account
Beneficiary Account #: [redacted]
Attention: Michael I. Goldberg; Matter No. [redacted]

d. **<u>Disbursement, Allocations, and Use of Settlement Payment</u>.** Subject to the approval of the District Court in the SEC Action and receipt of the Final Settlement Payment, the following disbursements shall be made:

i. The Vermont DFR has requested, and the Receiver has agreed, to disburse the Vermont DFR's Five Hundred Thousand Dollars ($500,000.00) for the benefit of the Receivership Estate, from which all Investors benefit, consistent with and subject to orders of the District Court in the SEC Action. No attorneys' fees or other deductions shall be made from this amount.

ii. The balance of the Final Settlement Payment shall likewise be used for the benefit of the Receivership Estate, from which all Investors benefit, consistent with and subject to orders of the District Court in the SEC Action. The Receiver will hold these amounts, net of attorneys' fees and other deductions, in a restricted account until that distribution.

iii. Any third parties that allege to have or may have claims against the Merrill 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 Merrill's Activities, may only pursue their claims by participating in the claims process described herein or which may otherwise be approved by the District Court in the SEC Action. Such claimants may not violate the Bar Order or any other court order and pursue claims against Merrill directly.

4. APPROVAL OF THE SETTLEMENT BY THE COURT.

a. **Request for Approval.** No later than twenty (20) days after the Execution Date, the Receiver shall file a motion with the District Court in the SEC Action requesting approval of this Settlement Agreement and entry of the Preliminary Approval Order and Bar Order (the "Settlement Motion").

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 Settlement Agreement; (ii) entry of the Bar Order substantially in form and substance as Exhibit B to this Settlement Agreement; and (iii) approval of the form and content of the notice attached hereto as Exhibit "C," 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 Settlement Agreement, the Settlement Motion, and the deadline to object to approval of this Settlement Agreement and the Bar Order.

5. RELEASES.

a. **Release of Merrill by the Receiver:** Upon payment of the Final Settlement Payment, 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 Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Merrill Released Parties from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, Settlement Agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies 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 Receiver, and the Receivership Entities, 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 Merrill 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 which arise directly or indirectly from Merrill's Activities. For the avoidance of doubt, the foregoing includes claims or causes of action in the nature of contribution and/or indemnity. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Settlement Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Merrill from the performance of its obligations in accordance with this Settlement Agreement. Notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Settlement 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 Receiver expressly preserves all claims and causes of action he may have against any person, entity, or financial institution other than the Merrill Released Parties, including but not limited to the other defendants in the EB-5 Actions and other defendants that the Receiver has sued or may sue. Finally, notwithstanding anything contained in this Section 5(a) or elsewhere contained in this Settlement Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, claims of any federal agencies, including but not limited to the claims brought by and belonging to the SEC in the SEC Action; as set forth more fully below. Claims by the State of Vermont relating to the Receivership Entities, the EB-5 Actions and/or Merrill's Activities are released pursuant to Paragraph 5(c) below.

b. **Release of Receiver by Merrill:** Upon the payment of the Final Settlement Payment, 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 Settlement Agreement, Merrill, on behalf of itself and its subsidiaries, successors, and assigns shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Receiver and the Receivership Entities, acting directly or through their agents and counsel (collectively, the "Receiver Released Parties"), from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, Settlement Agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies 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 Merrill and its subsidiaries, successors, 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, any of the Receivership Entities, or which arise directly or indirectly from Merrill's Activities. For the avoidance of doubt, the foregoing includes claims or causes of action in the nature of contribution and/or indemnity. Notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Settlement 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 Settlement Agreement. In addition, notwithstanding anything contained in this Section 5(b) or elsewhere contained in this Settlement 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, Merrill, on behalf of itself and its subsidiaries, successors and assigns, expressly preserves all claims and causes of action it may have against any person or entity other than the Receiver Released Parties.

c. **Release of Merrill by Vermont DFR:** Upon payment of the Final Settlement Payment, 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 Vermont DFR shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Merrill Released Parties from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, Settlement Agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies 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 Vermont DFR, may have or claim to have, now or in the future, against the Merrill Released Parties that are based upon, relate to, or arise out of, in connection with, or pertain to the EB-5 Actions and/or the Vermont Allegations, including the parties, allegations, and issues in said actions or matters, any of the Receivership Entities, or which arise directly or indirectly from Merrill's Activities. For the avoidance of doubt, the foregoing includes claims or causes of action in the nature of contribution and/or indemnity. Notwithstanding anything contained in this Section 5(c) or elsewhere contained in this Settlement Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, Merrill from the performance of its obligations in accordance with this Settlement Agreement. Notwithstanding anything contained in this Section 5(c) or elsewhere contained in this Settlement 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, Vermont DFR expressly preserves all claims and causes of action it may have against any person, entity, or financial institution other than the Merrill Released Parties, including but not limited to the other defendants in the EB-5 Actions.

d. **Release of Vermont by Merrill:** Upon the payment of the Final Settlement Payment, 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 Settlement Agreement, Merrill, on behalf of itself and its subsidiaries, successors and assigns shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Vermont DFR, acting directly or through its agents and counsel (collectively, the "Vermont Released Parties"), from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, Settlement Agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies 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 Merrill and its subsidiaries, successors 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 Vermont Released Parties that are based upon, relate to, or arise out of, in connection with or pertain to the EB-5 Actions and/or the Vermont Allegations, including the parties, allegations, and issues in said actions, any of the Receivership Entities, or which arise directly or indirectly from Merrill's Activities. For the avoidance of doubt, the foregoing includes claims or causes of action in the nature of contribution and/or indemnity. Notwithstanding anything contained in this Section 5(d) or elsewhere contained in this Settlement Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Vermont Released Parties from the performance of their obligations in accordance with this Settlement Agreement. In addition, notwithstanding anything contained in this Section 5(d) or elsewhere contained in this Settlement Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, any person other than the Vermont Released Parties in any manner whatsoever. For the avoidance of doubt and not by way of limitation, Merrill, on behalf of itself and its subsidiaries, successors and assigns, expressly preserves all claims and causes of action it may have against any person or entity other than the Vermont Released Parties.

6. REVERSAL, VACATION OR MODIFICATION

a. In the event that the Bar Order is vacated, reversed on appeal, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Merrill Released Parties as more fully described in the Bar Order attached hereto, then:

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

ii. The Parties may proceed to litigate their claims as if this Settlement Agreement had not been executed.

b. Any and all applicable periods of limitations 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 Settlement 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, reversed on appeal, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Merrill Released Parties as more fully described in the Bar Order attached hereto (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.

7. REPRESENTATIONS AND WARRANTIES

a. **Representation and Warranties of Merrill.** Merrill represents and warrants that as of the Effective 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 Settlement 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 Settlement 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 Settlement 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 Settlement Agreement or to perform its obligations hereunder; (d) it will pursue the approval of this Settlement Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using its best efforts; and (e) it will perform the obligations created by this Settlement Agreement and cooperate with the Receiver and the Vermont DFR in good faith regarding this Settlement Agreement.

b. **Representation and Warranties of the Receiver.** The Receiver 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 applicable Receivership Entities to the terms of this Settlement Agreement or otherwise has been duly authorized to execute and deliver this Settlement Agreement on their behalf; (b) the Receiver will pursue the approval of this Settlement Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using his best efforts; and (c) he will perform the obligations created by this Settlement Agreement and cooperate with Merrill and the Vermont DFR in good faith regarding this Settlement Agreement.

c. **Representation and Warranties of the Vermont DFR.** The Vermont DFR represents and warrants that as of the Execution Date: (a) it is authorized to enter into this Settlement Agreement; (b) it will pursue the approval of this Settlement Agreement, including entry of the Preliminary Approval Order and the Bar Order, in good faith and using its best efforts; and (c) it will perform the obligations created by this Settlement Agreement and cooperate with the Receiver and Merrill in good faith regarding this Settlement Agreement.

8. COVENANTS, INDEMNIFICATION, AND RESERVE

a. **Covenants of Merrill.** Merrill covenants and agrees that it shall provide all cooperation reasonably necessary to obtain (and shall take no action to impede or preclude) the entry of the Preliminary Approval Order and Bar Order and the implementation of this Settlement Agreement.

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

i. The Receiver, for himself and, as applicable, on behalf of the Receivership Entities, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities 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 Settlement Agreement, including, without limitation, performing the obligations set forth in Section 4 of this Settlement Agreement.

ii. The Receiver, for himself and on behalf of the Receivership Entities, hereby covenants and agrees that he shall take, and shall cause the Receivership Entities to take, all actions reasonably necessary to enforce and carry out the Preliminary Approval Order, the Bar Order, and this Settlement Agreement, including all reasonable requests by Merrill to enforce the Preliminary Approval Order, the Bar Order, and this Settlement 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 Merrill Released Parties that may be prohibited by, or in violation of, the Bar Order. The Receiver's obligation to seek enforcement of the Bar Order described in this Section 8(b)(ii) shall continue for the duration of his appointment as the receiver for the Receivership Estate.

c. **Covenants of the Vermont DFR.** The Vermont DFR hereby covenant and agree that it 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 Settlement Agreement. The Vermont DFR hereby covenant and agree that it shall take all actions reasonably necessary, as requested by the Receiver or Merrill, to enforce and carry out the Preliminary Approval Order, the Bar Order, and this Settlement

Agreement, including cooperating in any efforts by Merrill and the Receiver to enforce the Preliminary Approval Order, the Bar Order, and this Settlement Agreement.

9. MISCELLANEOUS

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

b. **Successors and Assigns.** This Settlement 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; No Estoppel Effect.** The execution of this Settlement 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, fault, wrongdoing, omission, 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 Settlement Agreement. None of this Settlement Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Settlement 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 Merrill; (ii) is or may be deemed to be or may be used as an admission or evidence any liability, fault, wrongdoing, or omission of Merrill in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (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 Receiver's or the Vermont DFR's ability to assert claims, as applicable, against any party other than the Merrill Released Parties or (iv) is or may be deemed to be or used as an admission or evidence of or have any evidentiary, res judicata, or collateral estoppel effect as to any Florida court exercising personal jurisdiction over Merrill in any action other than an action to enforce the terms of this Settlement Agreement. None of this Settlement Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement shall be admissible in any proceeding for any purposes, except in the SEC Action, and except that the Receiver and Merrill may file this Settlement Agreement in any action for any purpose, including but not limited 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.

d. **Good Faith Negotiations.** The Parties further recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Settlement Agreement. Each of the Parties acknowledges that the negotiations leading up to this Settlement Agreement were conducted regularly, at arm's length, and in good faith; this Settlement Agreement is made and executed by and of each Party's own free will; that each Party knows or has had an opportunity to know 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 Settlement Agreement. The Parties further acknowledge that they entered into this Settlement Agreement because of their desire to avoid the further expense and inconvenience of the Receiver's potential claims and the Vermont DFR's potential claims and to compromise permanently and settle the claims and potential claims between the Parties that are settled by this Settlement Agreement.

e. **Third Party Beneficiaries.** Nothing in this Settlement 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 Settlement Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Settlement 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 and the beneficiaries hereof may seek to enforce this Settlement Agreement.

f. **Governing Law; Retention of Jurisdiction; Service of Process.** This Settlement Agreement shall be governed by and construed in accordance with the federal law, and, to the extent not applicable, with the internal laws of the State of Florida New York, without giving effect to any principles of conflicts of law. By its execution and delivery of this Settlement 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 Settlement Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, 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, and by execution and delivery of this Settlement Agreement, each Party – solely for the purposes of adjudicating any dispute concerning this Settlement Agreement and without submitting any Party to the general jurisdiction of any Florida court – hereby irrevocably accepts and submits itself to the jurisdiction of the United States District Court for the Southern District of Florida, Miami Division with respect to any such action, suit or proceeding to enforce the terms of this Settlement Agreement. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, 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(es) set forth in Section 9(k) below.

g. **Entire Settlement Agreement.** This Settlement Agreement constitutes the full and entire Settlement 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 Settlement 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 Settlement Agreement.

h. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Settlement Agreement and all of which, when taken together, shall constitute one and the same Settlement 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 Settlement Agreement is held to be prohibited, invalid, or unenforceable, then – other than the exceptions identified in the second sentence of this Section 9(i) – the Settlement Agreement as a whole shall be deemed invalid and unenforceable and shall not be binding on the Parties. The only exceptions to this Section 9(i) are: the tolling provision contained in Section 6(b) of this Settlement Agreement, which shall survive the termination of this Settlement Agreement; and the provisions of Section 9(c) of this Settlement Agreement, which shall survive the termination of this Settlement Agreement.

j. **Non-disparagement.** The Vermont DFR and the Receiver agree that they shall not, and no one vested to act, speak, or write on their behalf will, disparage the Merrill Released Parties or their respective employees, services or professional reputations. Merrill agrees that it shall not, and no one vested to speak on its behalf will, disparage the Vermont DFR or their counsel, the Receiver or his counsel, or their employees, services or professional reputations. This prohibition includes posting or commenting on any news, media social media platform or website including, but not limited to, Facebook, Twitter, Instagram, Tumblr, LinkedIn, WhatsApp, Snapchat, Pinterest, Reddit, and YouTube.

k. **Notices.** Any notice required or permitted to be provided under this Settlement 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, Receiver
201 East Las Olas Boulevard
Suite 1800
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 Merrill, to:

Timothy P. Burke, Esq.
Jeff Goldman, Esq.
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110-1726
Tel: (617) 951-8000
Fax: (617) 951-8736
Email: timothy.burke@morganlewis.com
Email: jeff.goldman@morganlewis.com

If to the Vermont DFR, to:

State of Vermont
Department of Financial Regulation
Michael S. Pieciak, Commissioner
89 Main Street
Montpelier, VT 05620-3101

With a copy to:

Jennifer Rood, Esq.
Assistant General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
Tel: (802) 828-5672
Fax: (802) 828-1919
Email: jennifer.rood@vermont.gov

l. **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 Settlement Agreement.

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

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Elizabeth Y Crean

By: ELIZABETH YBARRA CREAN
Its: ASSOCIATE GENERAL COUNSEL

Dated: 4 Jan 22

State of Vermont
Department of Financial Regulation

____
By: _______________________________
Its: _______________________________

Dated: _______________________________

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

Dated: _______________________________

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

Merrill Lynch, Pierce, Fenner & Smith Incorporated

____

By: ________________________________

Its: ________________________________

Dated: ______________________________

State of Vermont
Department of Financial Regulation

By: Michael Pieciak

Its: Commissioner

Dated: Jan 4, 2022

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

Dated: 1/4/2022

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, LLC[1]

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

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

INDEX TO EXHIBITS A-C

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

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, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AND THE STATE OF VERMONT DEPARTMENT OF FINANCIAL REGULATION; (II) APPROVING FORM AND CONTENT OF NOTICE, AND MANNER AND METHOD OF SERVICE AND PUBLICATION; (III) SETTING DEADLINE TO OBJECT TO APPROVAL OF SETTLEMENT AND ENTRY OF BAR ORDER; AND (IV) SCHEDULING A HEARING

THIS MATTER came before the Court upon the Motion for (i) Approval of Settlement among Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [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: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"); the Receiver; and the State of Vermont Department of Financial Regulation ("Vermont DFR"), 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 Merrill; the Receiver; and the Vermont DFR. Terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement.

By way of the Motion, the Receiver 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 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, and is the product of good faith, arm's length and non-collusive negotiations between the Receiver, Merrill, and the Vermont DFR. 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).

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, or any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;

   iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein;

   iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver;

   v. all parties to the SEC Action;

   vi. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;

   vii. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and

   viii. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.

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 ___________ ___, 202__ (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 and entry of the Bar Order.

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, give notice that the objector intends 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 giving notice that they intend 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

Timothy P. Burke, Esq.
Jeff Goldman, Esq.
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110-1726
Tel: (617) 951-8000
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Email: timothy.burke@morganlewis.com
Email: jeff.goldman@morganlewis.com

Jennifer Rood, Esq.
Assistant General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
Tel: (802) 828-5672
Fax: (802) 828-1919
Email: jennifer.rood@vermont.gov

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 the SEC 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. **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.**

7. **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 or any other case or proceeding.

8. **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 ______, 202__.

____
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, LLC[1]

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

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

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

THIS MATTER came before the Court on the Motion for (i) Approval of Settlement among Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [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, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (II) approving form and content of notice, and manner and method of service and publication; (III) setting deadline to object to approval of settlement and entry of bar order; and (IV) scheduling a hearing [D.E. ___] (the "**Preliminary Approval Order**"), the Court held a hearing on ___________ ___, 202__ to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests final approval of a proposed settlement among: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**Merrill**"); the Receiver; and the State of Vermont Department of Financial Regulation ("**Vermont DFR**"). The settlement is memorialized in the settlement agreement attached to the Motion as Exhibit 1 (the "**Settlement Agreement**"). As used in this Order, the "**Settling Parties**" means Merrill, the Receiver, and the Vermont DFR. Defined terms used but not defined in this Order have the meaning ascribed to them in the Settlement Agreement.

By way of the Motion, the Receiver requests entry of a bar order (the "**Bar Order**") permanently barring, restraining and enjoining any person or entity from pursuing claims against any of the Merrill Released Parties (as defined below) relating to the events and occurrences underlying the claims in the SEC Action or any of the other EB-5 Actions,[1] relating to any of the Receivership Entities, or which arise directly or indirectly in any manner whatsoever from Merrill's activities, work, conduct, omissions, or services in connection with the Receivership Entities, the Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (the "**Merrill Activities**") by all persons and entities (excluding any enforcement actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill's Activities)., including but not limited to claims by on behalf of any Investor (as defined below), by the Receiver, or by the Receivership Entities (including their past and present general partners, owners, shareholders, officers, and directors).

The Court's Preliminary Approval Order preliminarily approved the Settlement Agreement, approved the form and content of the Notice, and set forth procedures for the manner and method of service and publication of the Notice to all affected parties, including all foreign 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

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

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**").

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 several years; their negotiations included the exchange and review of documents, numerous depositions, and many telephone conferences; and two mediations – one between the Receiver and Merrill in person and one by Zoom, at which counsel for all of the Settling Parties were present.

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

i. The Receiver has diligently investigated all claims he believes he could have brought against Merrill, including potential claims based on its interaction with, the various Receivership Entities, particularly as they relate to the Brokerage Accounts and the AnC Bio and Burke Mountain

Hotel projects. The Receiver's investigation revealed that the Receiver's potential claims against Merrill involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. Merrill disputes the factual and legal bases of any such claims, and has indicated its intention to defend any such claims vigorously.

ii. The Vermont DFR has diligently investigated all claims it believes it could have brought against Merrill, including potential claims based on Merrill's administration of the Brokerage Accounts, over which the Vermont DFR has regulatory authority. The Vermont DFR's investigation revealed that the Vermont DFR's potential claims against Merrill involve disputed facts that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation and any ensuing appeal. Merrill disputes the factual and legal bases of any such claims, and has indicated its intention to defend any such claims vigorously.

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

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

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

I. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that the Settlement Amount provides a recovery to the Receiver for the benefit of the Receivership Entities and the Investors that is well within the range of reasonableness. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a receivership may be approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties).

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

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

L. The Investors made investments in eight limited partnerships created to meet the requirements of the EB-5 program, through which an investor who invested $500,000 in a project that created ten or more jobs per investor would be eligible to apply for unconditional, permanent residency in the United States on an expedited basis. The eight limited partnerships into which the investments were made were intended to create economic assets that would operate, generate income, and possibly be sold to return capital.

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

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

O. **Notice to Affected Parties**

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

i. all counsel who have appeared of record in the SEC Action;

ii. all counsel who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any of the Receivership Entities, or any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;

iii. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein;

iv. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver;

v. all parties to the SEC Action;

vi. all professionals, financial institutions, and consultants of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued;

vii. all owners, officers, directors, and senior management employees of the Receivership Entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued; and

viii. all other persons or entities that previously received notice of the Receiver's settlements for which bar orders were requested and issued.

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

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

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

P. **Benefits of the Settlement:**

1. The Settlement Amount authorizes payments directly to Investors in the AnC Bio project to reimburse them for a portion of their Administrative Fees, without any deductions for attorneys' fees.
2. The Settlement Amount allows the Receiver to pay attorneys' fees and other costs of administration so that other assets of the Receivership need not be used for such amounts.

3. The balance of the Settlement Amount will be used to protect and substantially increase the value of the assets of the Receivership Estate for all of the remaining Investors.
4. The Settlement Amount thus enhances the value of each Phase of the Receivership Estate and benefits all Investors, creditors, and stakeholders.

Q. The Bar Order and the releases in the Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate to maximize the value of the Receivership Entities for the benefit of the Investors and other stakeholders and creditors. The Receiver will establish a distribution process through which Investors and other interested parties may seek disbursement of funds, including the Settlement Amount to the extent such amounts have not been used to administer the Receivership Estate or for the benefit of the Receivership Estate. The interests of persons affected by the Bar Order and the releases in the Settlement Agreement were well represented by the Receiver, acting in the best interests of the Receivership Entities in his fiduciary capacity and upon the advice and guidance of his experienced counsel. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and in the best interests of all creditors of, Investors in, or other persons or entities claiming an interest in, having authority over, or asserting claims against the Receivership Entities, and of all persons who could have claims against Merrill relating to the Barred Claims. The Bar Order is a necessary and appropriate order granting ancillary relief in the SEC Action.

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

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

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

2. The Settlement Agreement is **APPROVED** and are final and binding upon the Settling Parties and their successors and assigns as provided in the Settlement Agreement. The Settling Parties are authorized to perform their obligations under the Settlement Agreement.

3. The Receiver shall disburse the Settlement Amount in accordance with the terms and conditions of the Settlement Agreement and a plan of distribution to be approved by this Court. Without limitation of the foregoing, upon payment of the full Settlement Amount, the releases set forth in Section 5 of the Settlement Agreement are **APPROVED** and are final and binding on the Parties and their successors and assigns as provided in the Settlement Agreement.

4. The Bar Order as set forth in paragraph 5 of this Order is **APPROVED** as a necessary and appropriate component of the settlement. *See Kaleta*, 530 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. 1955).

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

a. **The "Barred Persons"**: All persons or entities (excluding any enforcement actions brought by federal or state governmental bodies or agencies, other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill's Activities), including, without limitation, (i) owners, officers, directors, limited and general partners, and Investors of the Receivership Entities; (ii) any Defendant in the SEC Action, or in any action now pending or which may hereafter be brought in connection with the Barred Claims; (iii) any party to the EB-5 Actions; or (iv) any person or entity claiming by or through such persons or entities, and/or the Receivership Entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;

b. **The "Barred Conduct"**: instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing (including by filing any motion to vacate any previously issued order), filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

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

d. **<u>The "Merrill Released Parties"</u>**: Merrill, including without limitation Bank of America Corporation and Bank of America, N.A., and each of their parents, affiliates, and subsidiary companies, all current and former employees, shareholders, of counsel, agents, attorneys, officers, directors, members, managers, principals, associates, representatives, trustees, insurers, re-insurers, general and limited partners; and each of their respective administrators, heirs, trustees, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest.

5. Any non-settling defendants in any action commenced by the Receiver or in any other actions by or on behalf of the Investors or any of them who would otherwise be entitled to contribution or indemnity from the Merrill Released Parties in connection with any claim asserted against them by the Receiver or the Investors shall be entitled to a dollar-for-dollar offset against any subsequent judgment entered against such party for: (1) with respect to the Receiver, the Settlement Amount, less the amount allocated to the claims of the Vermont DFR; and (2) with respect to the Investors, any portion of the Settlement Amount received by each such Investor pursuant to the Settlement Agreement. This provision is without prejudice to whatever rights, if any exist, any non-settling defendant may have to setoff under applicable law in any action brought by or on behalf of the Receiver or the Receivership Entities or by any Investor now pending or which may be brought in the future.

6. Paragraph 5 of this Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government (other than actions by the State of Vermont relating to the EB-5 Actions and/or Merrill's Activities); or (ii) to the Settling Parties' respective obligations under the Settlement Agreement.

7. 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.

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

9. 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.

10. Nothing in this Order or the Settlement Agreement, nor the performance of the Settling Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of Merrill, the Receiver, or the Vermont DFR against any party not released in the Settlement Agreement.

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

12. 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.

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

13. 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.

14. 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 _________, 202__.

____
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, LLC[3]

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC

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

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, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AND THE STATE OF VERMONT DEPARTMENT OF FINANCIAL REGULATION 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: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"); the Receiver; and the State of Vermont Department of Financial Regulation ("Vermont DFR"). The proposed settlement settles all claims that were and could have been asserted against Merrill by the Vermont DFR 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 Merrill Released Parties relating to the SEC Action or any of the other EB-5 Actions, including but not limited to claims by on behalf of any Investor, by the Receiver, by the Receivership Entities (including their past and present general partners, owners, shareholders, officers, and directors), by any Defendant in the SEC Action, or in any action now pending or which may hereafter be brought in connection with the Barred Claims; any party to the EB-5 Actions; or by any other person or entity (other than federal or state governmental bodies or agencies, with the exception of actions by the State of Vermont relating to Merrill's Activities and/or the EB-5 Actions) with respect to facts and claims that were, or could have been, asserted in the EB-5 Actions, or otherwise relating in any way to any of the Receivership Entities, or which arise directly or indirectly from Merrill's Activities in connection with the Receivership Entities, Jay Peak Resort, AnC Bio, or the Burke Mountain Hotel (the "Bar Order").[1]

PLEASE TAKE FURTHER NOTICE that the material terms of the Settlement Agreement are that Merrill will pay Four Million Five Hundred Thousand Dollars ($4,500,000.00) in exchange for broad releases from the Receiver, and Receivership Entities, Vermont DFR, and the Bar Order; Four Million Dollars ($4,000,000.00) relates to the Receiver's potential claims and Five Hundred Thousand Dollars ($500,000.00) relates to the Vermont DFR's potential claims.

PLEASE TAKE FURTHER NOTICE that copies of the Settlement Agreement; the Motion for (i) Approval of Settlement between Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (ii) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (iii) Entry of Bar Order; and (iv) Scheduling a Hearing; with Incorporated Memorandum of Law [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 ______ ___ 202__ (the "Final Approval Hearing"). The link for the Zoom hearing will be circulated before the Final Approval Hearing.

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

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, 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) Timothy P. Burke, Esq. and Jeff Goldman, Esq., Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726, Emails: timothy.burke@morganlewis.com and jeff.goldman@morganlewis.com; and (4) Jennifer Rood, Esq., Assistant General Counsel, Vermont Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620-3101, Email: jennifer.rood@vermont.gov, **no later than _______ __, 202__ (the "Objection Deadline"),** and such objection must be made in accordance with the Court's Order (I) preliminarily approving settlement between Receiver, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and the State of Vermont Department of Financial Regulation; (II) approving form and content of notice, and manner and method of service and publication; (III) setting deadline to object to approval of settlement and entry of bar order; and (IV) scheduling a hearing [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. Those wishing to appear and present objections at the Final Approval Hearing must give notice in their written objection that they intend to appear at the Final Approval Hearing. **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.

# # #