

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-EPK
Case No. 09-36396-EPK
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S MOTION (1) TO APPROVE SETTLEMENT
WITH PHILIP MANSOUR, JR.; AND (2) TO APPROVE
PAYMENT OF CONTINGENCY FEE**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, files this Motion (1) to approve settlement with Philip Mansour, Jr. ("*Mansour*" or "*Transferee*"); and (2) to approve payment of counsel's contingency fee ("*Motion*"). In support of this Motion, the Liquidating Trustee states:

Factual Background

A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "*Debtors*") operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors' fund raising and investment activities.

2. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “*PCI*”).

3. The reality, however, was that Mr. Petters and PCI were engaging in a massive *Ponzi* scheme.

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (the “*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*MGP*”; and together with Mr. Vennes, the “*Vennes Parties*”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “*Receivership Defendants*”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (the “*Minnesota Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

6. On October 6, 2008, the Minnesota Court entered an Order for Entry of Preliminary Injunction, Order Appointing Receiver, and Other Equitable Relief (including amendments thereto, the “*Petters Receivership Order*”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of

Minnesota for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

8. On November 30, 2009, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Florida. By subsequent Order of this Court, the cases are jointly administered.

9. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 trustee in both of the Debtors’ estates. [ECF No. 107].

10. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts, appointing the Liquidating Trustee as Liquidating Trustee and appointing Geoffrey Varga as Trust Monitor.

B. The Vennes Litigation and the Adversary Proceeding

11. The Debtors introduction to Petters was made through and in connection with the Vennes Parties. This includes, after being introduced by the Vennes Parties, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (the “*Vennes Action*”). The Vennes Action seeks to avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferee, Adv. Case No. 11-02996 (Bankr. S.D. Fla.) (“*Adversary Proceeding*”). The Adversary Proceeding sought to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties during the period

from approximately September of 2002 through and including approximately September of 2008 (the “*Transfers*”).

14. After the commencement of the Adversary Proceeding, on March 2, 2012, the PCI Trustee sent a letter to the Transferee indicating that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”).

15. As set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees assert that the Transferee received in the aggregate, approximately \$1,218,000 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. The Transferee denies any liability in connection with the claims asserted in connection with these claims.

17. The Trustees entered into an agreement whereby they agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (the “*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

Settlement

18. Certain key aspects of the Settlement as more fully stated in the Stipulation of Settlement attached as Exhibit 1, between the parties are the following:

- a) Within ninety (90) days following the execution of the Settlement, the Transferee shall pay \$44,343.00 to the Trustees as follows: \$17,737.20 to the Liquidating Trustee, and \$26,605.80 to the PCI Trustee (collectively, the “*Settlement Payment*”).

- b) Any portion of the Settlement Payment made prior to the approval of the Settlement by this Court will be held by counsel for the Liquidating Trustee.
- c) Thereafter, the Liquidating Trustee, on behalf of the Liquidating Trusts, shall dismiss the Adversary Proceeding with prejudice; and
- d) The Transferee shall not be entitled to any distribution from the Debtors' bankruptcy estates.

19. Pursuant to the Second Amended Joint Plan of Liquidation ("***Plan***"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. ("***Pro Rata Allocation Formula***").

I. Relief Requested

20. The Liquidating Trustee seeks an Order from this Court approving the Stipulation and directing payment of the Contingency Fee (as defined below). Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that "[o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement."

21. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

22. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567,

571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. The Settlement Ought to be Approved

23. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

24. The Liquidating Trustee could assert that the transfers made to the Transferee by the Vennes Parties were fraudulent transfers under federal or state law. The Liquidating Trustee believes that he has a significant likelihood of success in prosecuting such claims. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferee, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims. Some of those defenses have been set forth in the Transferee's court papers filed in the Adversary Proceeding.

Collectability

25. Collectability is always a significant consideration with respect to the resolution of litigation, and that is no different here. The Transferee resides outside of the State of Florida, and therefore the Liquidating Trustee believes that even if he has the financial wherewithal to satisfy a judgment, there would be significant expenses in connection with collection efforts.

Complexity of litigation and attendant expense, inconvenience and delay

26. This is a significant consideration that militates in favor of approval of the Settlement.

27. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. Prosecution of this case will result in substantial attorney's fees and costs (including for experts, travel and deposition transcripts, and other typical and ordinary litigation-related expenses). The result of these costs which would be substantial would diminish the net result of any recovery.

28. The Settlement addresses all of these concerns. The parties avoid litigating fact-specific claims with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

29. The Settlement Payment provides a meaningful payment on the Liquidating Trustee's potential claims against the Transferee when measured against the potential defenses and litigation risks, as well as the potential delay and professional costs associated therewith. Moreover, as a material creditor in the PCI bankruptcy cases, the Liquidating Trustee will receive a material percentage of the settlement payment to the PCI Trustee. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. *The Contingency Fee Ought to be Approved*

30. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without further order of the Court ("**Contingency Fee**").

31. The Liquidating Trustee requests that the Contingency Fee - in the amount of \$1,773.72 - be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court (1) enter an Order as set forth in attached Exhibit 2 approving the Settlement and directing payment of the Contingency Fee; and (2) grant such other relief this Court deems just and proper.

Dated: October 27, 2017.

s/ Solomon B. Genet
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
Solomon B. Genet, Esquire
Florida Bar No. 617911
sgenet@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on October 27, 2017, via the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit 3 and via Regular U.S. Mail upon the parties listed on the Court's Manual Notice List attached as Composite Exhibit 4, the Court's Matrices in Case No. 09-36379-BKC-EPK and Case No. 09-36396-BKC-EPK attached as Composite Exhibit 5¹, those additional addresses set forth on Composite Exhibit 6, and via e-mail on Steven M. Pincus, Esq., Anthony Ostlund Baer & Louwagie, 90 South 7th Street, 3600 Wells Fargo Center, Minneapolis, MN 55402, spincus@anthonyostlund.com.

s/ Solomon B. Genet
Solomon B. Genet, Esquire

¹ "ADDL" means these additional parties served as a courtesy. See Composite Exhibit 6.

"BAD" means that it is a known bad address; hence, no service by mail.

"DUP" means that the address appears more than once on this exhibit and is only being served one time by mail.

"INC" means that the Matrix contains an incomplete addresses; hence, no service by mail.

"NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibits 3 and is not being additionally served by mail.

"NNR" means no notice is required. Examples are professionals retained.

"PBFP" means that entity appears on both matrices and only being served once.

¹ See footnote 1.

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("**Stipulation**") is entered into on _____, 2017 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "**Liquidating Trustee**") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "**Liquidating Trusts**"), (b) Douglas A. Kelley, in his capacity as the Trustee of the PCI Liquidating Trust established pursuant to the Second Amended Chapter 11 Plan of Liquidation confirmed in the bankruptcy cases jointly-administered as *In re Petters Company Inc., et al.* (the "**PCI Trustee**"), and (c) Philip Mansour, Jr. ("**Mansour**" or the "**Transferee**") (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein as a "**Party**" or collectively, the "**Parties**"). The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 ("**Petition Date**"), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (the "**Palm Beach Funds**") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (the "**Florida Bankruptcy Court**"), Bky. Nos. 09-36379 and 09-36396 respectively (the "**Florida Bankruptcy Cases**");

B. On October 21, 2010, the Florida Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [Bky. No. 09-36379, ECF No. 444], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;

C. In an action commenced by the United States of America, by an Order entered on October 6, 2008 and as subsequently amended, the Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, appointed Douglas A. Kelley as Receiver (the "**Receiver**") for, among others, Thomas J. Petters ("**Petters**"), Petters Company, Inc. ("**PCI**"),

Petters Group Worldwide, LLC (“**PGW**”) and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, Case No. 0:08-cv-05348, ECF Nos. 12 and 127 (the “**Receivership Case**”);

D. Pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (“**Minnesota Bankruptcy Court**”) commencing the Chapter 11 cases of PCI and PGW on October 11, 2008. Petitions commencing the voluntary Chapter 11 bankruptcy cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC and MGC Finance, Inc. were filed on October 15, 2008. The petition commencing the Chapter 11 bankruptcy case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 bankruptcy case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008. The above-referenced bankruptcy cases are being jointly administered under *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257 (the “**Minnesota Bankruptcy Cases**” or “**PCI/PGW Bankruptcy Estates**”);

E. On February 26, 2009, the Minnesota Bankruptcy Court approved the Office of the United States Trustee for the District of Minnesota’s appointment of Douglas A. Kelley, as the PCI Trustee;

F. On November 29, 2011, the Liquidating Trustee commenced litigation against Frank E. Vennes, Jr. (“**Vennes**”) and Metro Gem, Inc. (“**Metro Gem**”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla.). The Liquidating Trustee asserts claims arising in tort based on certain representations Vennes made to the Palm Beach Funds regarding their advances to Palm Beach Finance Holdings, Inc.

and also for fraudulent transfers to recover certain investment transfers Vennes and Metro Gem received from the Palm Beach Funds as investors in the Palm Beach Funds;

G. On or about November 27, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding against the Transferee, *Mukamal v. Philip Mansour*, Adv. No. 11-02996 (Bankr. S.D. Fla.), asserting several claims against the Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment (the “*Adversary*”), relating to funds the Transferee received from Frank Vennes or Metro Gem (the “*Transfers*”);

H. On March 2, 2012, the PCI Trustee sent a letter to the Transferee indicating that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”). The Adversary and the Letter Demand are collectively referred to herein as the “*Trustees’ Claims*”;

I. The Transferee expressly denies any liability arising from the Trustees’ Claims;

J. The Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees’ Claims;

K. To avoid the continued expense of litigating the Trustees’ Claims and the related risk of an adverse outcome arising from the Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Trustees’ Claims pursuant to the terms and conditions of this Stipulation.

NOW, THEREFORE, it is stipulated, consented to, and agreed, by and among the Parties as follows:

1. **No admission of liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation. Notwithstanding the foregoing, the Transferee is also a party to an Agreement with the PCI Liquidating Trustee related to an adversary proceeding filed in the United States Bankruptcy Court for the District of Minnesota, and that Agreement is not superseded by this Stipulation of Settlement and remains in full force and effect.

3. **Settlement Payment Settlement Payment.** In full and final settlement of the Trustees' Claims, the Transferee will pay (or cause to be paid) \$44,343.00 (the "***Settlement Payment***") to the Trustees within ninety (90) days following the full execution of this Stipulation by all Parties. The Liquidating Trustee's portion of the Settlement Payment (\$17,737.20) will be paid to the Liquidating Trustee via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel to the Transferee or his counsel; or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. The PCI Trustee's portion of the Settlement Payment (\$26,605.80) will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel to the Transferee or his

counsel; or (ii) check made payable to “Douglas A. Kelley, Trustee” and delivered to Josiah Lamb, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. Any portion of the Settlement Payment made prior to the approval of this Stipulation by the Florida Bankruptcy Court shall be placed into the trust account for counsel for the Liquidating Trustee or the PCI Trustee, as appropriate.

4. **No entitlement to distribution.** The Transferee agrees that he will not be entitled to any monetary distribution whatsoever, directly or indirectly, from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates. To the extent that the Transferee was scheduled (i) by the Palm Beach Funds in the Florida Bankruptcy Cases, or (ii) by PCI, PGW or any of the related administratively-consolidated debtors in the Minnesota Bankruptcy Cases, as having a claim or has filed any proof of claim or proof of interest in the Palm Beach Funds bankruptcy cases or the Minnesota Bankruptcy Cases, the Transferee agrees such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

5. **General releases between the Parties.**

A. For purposes of this Stipulation, the term “*Claims*” means any obligations, claims (including those arising under section 502(h) of the Bankruptcy Code), causes of action, or demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions, and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered, including, but not limited to, the Trustees’ Claims.

B. Upon approval of this Stipulation by orders of the Florida Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, and the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, each waives and releases, now and forever, the Transferee, as well as the Transferee's spouse, children, and trusts for the benefit of the Transferee's spouse and children, from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, against the Transferee, as well as the Transferee's spouse, children, and trusts for the benefit of the Transferee's spouse and children; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

C. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court and payment of the Settlement Payment, the Transferee, as well as the Transferee's spouse, children, and trusts for the benefit of the Transferee's spouse and children, waive and release, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee, as well as the Transferee's spouse, children, and trusts for the benefit of the Transferee's spouse and children, may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Dismissal of Adversary.** Within ten (10) business days following the entry of final, non-appealable orders by the Florida Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, will prepare and file and the Parties shall, to the extent necessary, execute the appropriate court papers and documents providing for the dismissal of the Adversary with prejudice, each Party to bear his/its own costs, expenses and fees.

7. **Representations of the Transferee.** The individual executing this Stipulation on behalf of the Transferee represents and warrants that he has the authority to execute this Stipulation on behalf of the applicable Party and bind it to its terms. Such individual further represents and warrants on behalf of the Transferee that the Transferee received \$556,622.00 in total net profits from Vennes or one of his related entities, including Metro Gem.

8. **Representations of the Liquidating Trustee and the PCI Trustee.** The Liquidating Trustee and the PCI Trustee signing below each represents and warrants that he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and the PCI/PGW Bankruptcy Estates, respectively, and bind them to its terms.

9. **Allocation of Settlement Payment.** The Transferee's Settlement Payment is in settlement of claims for repayment of transfers paid to the Transferee by Vennes or one of his related entities, including Metro Gem, and reported to the Transferee as interest income in the years 2002, 2003, and 2004.

10. **Review/No Duress.** Each of the Parties acknowledges that he, she, or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her, or its own choosing or knowingly and voluntarily waived such opportunity, and enters into those terms voluntarily and without duress.

11. **Amendments, Waiver.** This Stipulation may not be terminated, amended, or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

12. **Assignability.** No Party hereto may assign its rights under this Stipulation without the prior written consent of each of the other Parties hereto.

13. **Successors Bound.** This Stipulation shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently-appointed trustee in the Minnesota Bankruptcy Cases or trustee of the Liquidating Trusts.

14. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than the Parties hereto and their respective successors, permitted assigns and each and every one of their subsequent transferees.

15. **Attorneys' fees and costs.** Each Party shall bear his/its own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Florida Bankruptcy Court, and each Party shall bear any mediation fees incurred in accordance with the Mediation Procedures Order entered in the Adversary; provided that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

16. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable orders of the

Florida Bankruptcy Court and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

17. **No effect.** If the Florida Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation, and the Settlement Payment shall be returned to the Transferee by the Liquidating Trustee and the PCI Trustee in the amounts stated in Paragraph 3, respectively. Notwithstanding the foregoing, if the Florida Bankruptcy Court does not approve this Stipulation because any of the Parties has failed to provide the Florida Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

18. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed wholly within the State of Minnesota and by federal law to the extent the same has preempted the laws of the State of Minnesota.

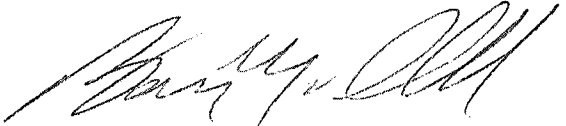
19. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

20. **Construction.** This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed

and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

21. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Florida Bankruptcy Court or the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in either the Minnesota Bankruptcy Court or the Florida Bankruptcy Court.

STIPULATED AND AGREED TO BY:



Barry E. Mukamal, Liquidating Trustee

Date: 8/2/17

Douglas A. Kelley, PCI/PGW Trustee

Date: _____

Philip Mansour, Jr.

Date: _____

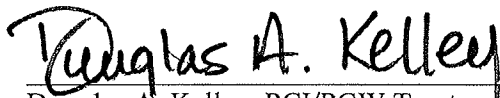
and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

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STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____



Douglas A. Kelley, PCI/PGW Trustee

Date: July 31, 2017

Philip Mansour, Jr.

Date: _____

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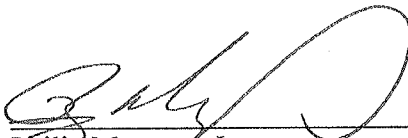
STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

Douglas A. Kelley, PCI/PGW Trustee

Date: _____



Philip Mansour, Jr.

Date: 8/2/2017

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-EPK
Case No. 09-36396-EPK
(Jointly Administered)

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
(1) TO APPROVE SETTLEMENT WITH PHILIP MANSOUR, JR.;
AND (2) PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion (1) to Approve Settlement with Philip Mansour, Jr.; and (2) to Approve Payment of Contingency Fee [ECF No. ____] ("**Motion**").¹ The Court, having reviewed the Motion and Movant by submitting this order having represented that the motion was served on all parties required by Bankruptcy Rule 2002 or Local Rule 2002-1(H), (I) or (J), that the 21-day response the time

¹ All capitalized terms not defined in this Order shall have the meaning ascribed to such term as set forth in the Motion.

provided by Local Rule 9013-1(D) has expired, that no one has filed, or served on the movant, a response to the motion, and that the form of order was attached as an exhibit to the motion, and any other applicable notice requirement, and accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. The Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. Liquidating Trust and 82% to Palm Beach Finance II, L.P. Liquidating Trust (the “*Pro Rata Allocation Formula*”).
4. The Contingency Fee is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee from each of the Trusts without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.
5. The Court retains jurisdiction to enforce or interpret this Order.

###

Submitted By:

Solomon B. Genet, Esquire
Florida Bar No. 617911
sgenet@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies Furnished To:

Solomon B. Genet, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

Mailing Information for Case 09-36379-EPK

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- **Melissa Alagna** mma@gordichalagna.com, mtjierino@hollywoodfl.org
- **Vincent F Alexander** vfa@kttl.com, lf@kttl.com
- **Keith T Appleby** kappleby@bankerlopez.com, service-kappleby@bankerlopez.com
- **Paul A Avron** pavron@bergersingerman.com, efile@bergersingerman.com; efile@ecf.inforuptcy.com; mday@bergersingerman.com
- **Scott L. Baena** sbaena@bilzin.com, eservice@bilzin.com; lflores@bilzin.com
- **Marc P Barmat** mbarmat@furrcohen.com, rriviera@furrcohen.com; atty_furrcohen@bluestylus.com
- **Rachel K Beige** rachel.beige@csklegal.com, joseph.valdivia@csklegal.com
- **Sean M. Berkowitz** sean.berkowitz@lw.com, cheffiling@lw.com; roger.schwartz@lw.com; russell.mangas@lw.com; robert.malione@lw.com; megan.fitzpatrick@lw.com; barbara.pipchok@lw.com; alicia.davis@lw.com
- **Steven M Berman** sberman@slk-law.com, bgoodall@slk-law.com
- **Mark D. Bloom** bloomm@gtlaw.com, MiaLitDock@gtlaw.com; miaecfbky@gtlaw.com
- **Ira Bodenstein** ibodenstein@shawgussis.com
- **Noel R Boeke** noel.boeke@hklaw.com, wendysue.henry@hklaw.com
- **Michael S Budwick** mbudwick@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; mbudwick@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Michael S Budwick** mbudwick@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; mbudwick@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Dennis M. Campbell** dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net
- **Rilyn A Carnahan** rilyn.carnahan@gmlaw.com, efileu1092@gmlaw.com; efileu1089@gmlaw.com; melissa.bird@gmlaw.com; efileu1435@gmlaw.com; efileu1094@gmlaw.com; efileu1093@gmlaw.com; gregory.stolz
- **Francis L. Carter** flc@flcarterpa.com
- **Francis L. Carter** flc@katzbarron.com
- **Francis L. Carter** flc@katzbarron.com
- **Lisa M. Castellano** lcastellano@bplegal.com, kmurphy@bplegal.com; kpacifico@bplegal.com
- **Helen Davis Chaitman** , jgorchkova@beckerny.com; lblanco@beckerny.com; cdavis@beckerny.com
- **Helen Davis Chaitman** hchaitman@beckerny.com, jgorchkova@beckerny.com; lblanco@beckerny.com; cdavis@beckerny.com
- **Franck D Chantayan** franck@chantayan.com
- **Daniel DeSouza** ddesouza@desouzalaw.com
- **John R. Dodd** doddj@gtlaw.com, miaecfbky@gtlaw.com; mialitdock@gtlaw.com
- **John D Eaton** jeaton@shawde-eaton.com, sramirez@shawde-eaton.com
- **C Craig Eller** celler@broadandcassel.com
- **Darren D. Farfante** darren.farfante@bipc.com, Denise.Strand@bipc.com
- **Dyanne E Feinberg** def@kttl.com, hst@kttl.com; gam@kttl.com; ems@kttl.com
- **Heidi A Feinman** Heidi.A.Feinman@usdoj.gov
- **Jonathan S. Feldman** jfeldman@pbyalaw.com, eservicemia@pbyalaw.com
- **G Steven Fender** efileu1113@gmlaw.com, efileu1094@gmlaw.com; efileu1092@gmlaw.com; leslie.marder@gmlaw.com; efileu1435@gmlaw.com; efileu1093@gmlaw.com; melissa.bird@gmlaw.com; gregory.st
- **Robert G Fracasso Jr** rfracasso@shutts.com, fsantelices@shutts.com
- **Robert C Furr** mortman@furrcohen.com, atty_furrcohen@bluestylus.com
- **Solomon B Genet** sgenet@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; sgenet@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **John H Genovese** jgenovese@gjb-law.com, hburke@gjb-law.com; gjbecf@gjb-law.com
- **Daniel L. Gold** dgold@goldbergsegalla.com, mmartinez@goldbergsegalla.com
- **Michael I Goldberg** michael.goldberg@akerman.com, charlene.cerda@akerman.com
- **Lawrence Gordich** LAG@gordichalagna.com, mma@gordichalagna.com
- **Gregory S Grossman** ggrossman@sequorlaw.com, ngonzaez@sequorlaw.com
- **Scott M. Grossman** grossmansm@gtlaw.com, scottla@gtlaw.com; MiaLitDock@gtlaw.com; FTLitDock@GTLaw.com; miaecfbky@gtlaw.com
- **Matthew W Hamilton** e-notice@fulcruminv.com
- **Zachary N James** zjames@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; zjames@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Karl J. Johnson** , jsamples@hjlawfirm.com
- **Kenneth M Jones** kjones@moodyjones.com
- **Michael A Kaufman** michael@mkaufmanpa.com, diamondmk@aol.com; kaufmanesq@gmail.com; glebron@mkaufmanpa.com; gstolzberg@mkaufmanpa.com
- **Stephen J Kolski Jr** stevekolski@skolskilaw.com, jessica@skolskilaw.com
- **Harris J. Koroglu** hkoroglu@shutts.com, fsantelices@shutts.com
- **James A Lodoen** jlodoen@lindquist.com, ghildahl@lindquist.com
- **Coral Lopez-Castro** clc@kttl.com, rcp@kttl.com
- **David S Mandel** dmandel@mandel-law.com, susan@mandel-law.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Aleida Martinez Molina** amartinez@wsh-law.com, jfuentes@wsh-law.com
- **Paul J McMahon** pjmc@pjmiamiami.com
- **Brian M Mckell** brian.mckell@wilsonelser.com, lourdes.riestra@wilsonelser.com
- **Thomas M. Messana** tmessana@messana-law.com, emair@messana-law.com; blieberman@messana-law.com; thurley@messana-law.com; tmessana@bellsouth.net; nbarrus@messana-law.com; mwslawfirm@gmail.com; cbroussard@messana-law.com
- **Yvonne F Mizusawa** yvonne.f.mizusawa@frb.gov
- **James C. Moon** jmoon@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com; jmoon@ecf.courtdrive.com; ltannenbaum@ecf.courtdrive.com; phornia@ecf.courtdrive.com
- **Patrick M Mosley** pmosley@hwhlaw.com, telam@hwhlaw.com
- **Barry E Mukamal** bemtrustee@kapilamukamal.com, FL64@ecfbis.com
- **Barry E Mukamal** bankruptcy@marcumllp.com, FL64@ecfbis.com
- **Barry E. Mukamal** bemtrustee@kapilamukamal.com
- **David J Myers** myers@fsblegal.com
- **Office of the US Trustee** USTPRegion21.MM.ECF@usdoj.gov

- **Leslie S. Osborne** office@rorlawfirm.com, 4275819420@filings.docketbird.com
- **Kristopher E Pearson** kpearson@stearnsweaver.com, rross@stearnsweaver.com, larrazola@stearnsweaver.com, cgraver@stearnsweaver.com
- **Jennifer H Pinder** jennifer.pinder@myfloridalegal.com, zivile.rimkevicius@myfloridalegal.com, angela.godbey@myfloridalegal.com
- **Leanne McKnight Prendergast** Leanne.Prendergast@fisherbroyles.com, patricia.fugee@fisherbroyles.com
- **Chad P Pugatch** cpugatch.ecf@rprslaw.com
- **Cristopher S Rapp** csrapp@kelleykronenberg.com, IRGeservice@kelleykronenberg.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com, rross@stearnsweaver.com, cgraver@stearnsweaver.com, sdaddese@akingump.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com, rross@stearnsweaver.com, cgraver@stearnsweaver.com, sdaddese@akingump.com
- **Jason S Rigoli** jrigoli@furrcohen.com, rriviera@furrcohen.com, atty_furrcohen@bluestylus.com
- **Kenneth B Robinson** krobison.ecf@rprslaw.com
- **Joseph Rodowicz** bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- **Robin J. Rubens** rjr@klsg.com, esf@klsg.com
- **Peter D. Russin** prussin@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com, prussin@ecf.courtdrive.com, ltannenbaum@ecf.courtdrive.com, phornia@ecf.courtdrive.com
- **Luis Salazar** Luis@Salazar.Law, Aguilar@Salazar.Law, Cabrera@Salazar.Law, Davila@Salazar.Law, Lee-Sin@Salazar.Law
- **Franklin H Sato** fsato@wickersmith.com, alazaro@wickersmith.com
- **Bradley M Saxton** bsaxton@whww.com, scolgan@whww.com, rweinman@whww.com, dfarias@whww.com, dfarias@ecf.courtdrive.com
- **Michael L Schuster** gjbecf@gjb-law.com, mchang@gjb-law.com, chopkins@gjb-law.com, ekelly@gjb-law.com
- **Patrick S. Scott** patrick.scott@gray-robinson.com
- **Michael D. Seese** mseese@seeselaw.com, sseward@seeselaw.com
- **Steven E Seward** steven.seward@gmail.com
- **Bradley S Shraiberg** bss@slp.law, dwoodall@slp.law, scusack@slp.law, blee@slp.law, bshraibergecfmail@gmail.com, ematteo@slp.law
- **Paul Steven Singerman** singerman@bergersingerman.com, mdiaz@bergersingerman.com, efile@bergersingerman.com, efile@ecf.inforuptcy.com
- **Jeffrey I. Snyder** jsnyder@bilzin.com, eservice@bilzin.com, lflores@bilzin.com
- **James S Telepman** jst@fcohenlaw.com
- **Charles W Throckmorton** cwt@kttl.com, lf@kttl.com, ycc@kttl.com
- **Charles W Throckmorton** cwt@kttl.com, lf@kttl.com, ycc@kttl.com
- **Trustee Services Inc 2** court@trusteeservices.biz, sandirose.magder@gmail.com
- **Skipper J Vine** jonathan.vine@csklegal.com, jake.goodman@csklegal.com, leslie.vargo@csklegal.com, denise.allwine@csklegal.com
- **Skipper J Vine** jonathan.vine@csklegal.com, jake.goodman@csklegal.com, leslie.vargo@csklegal.com, denise.allwine@csklegal.com
- **Joseph Wasserkrug** jwasserkrug@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com, jwasserkrug@ecf.courtdrive.com, ltannenbaum@ecf.courtdrive.com, phornia@ecf.courtdrive.com
- **Jessica L Wasserstrom** jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com, jwasserstrom@ecf.courtdrive.com, ltannenbaum@ecf.courtdrive.com, phornia@ecf.courtdrive.com
- **Jessica L Wasserstrom** jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com, mrbnefs@yahoo.com, jwasserstrom@ecf.courtdrive.com, ltannenbaum@ecf.courtdrive.com, phornia@ecf.courtdrive.com
- **Morris D. Weiss** morris.weiss@wallerlaw.com, sherri.savala@wallerlaw.com, annmarie.jezisek@wallerlaw.com
- **George L. Zinkler** gzinkler.ecf@rprslaw.com

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

| | | |
|--|---|---|
| Michael B Apfeld 780 North Water Street Milwaukee, WI 53202 | James F Bendernagel 1501 K St, NW BAD Washington, DC 20005 | John B Berringer 599 Lexington Ave 22nd Fl New York, NY 10022 |
| Debra Bogo-Ernst 71 S Wacker Drive Chicago, IL 60606 | Sean O'D. Bosack 833 East Michigan Street Suite 1800 Milwaukee, WI 53202 | Carl D. Ciochon 1111 Broadway 24th Floor Oakland, CA 94607 |
| Alicia C. Davis 330 N Wabash Ave #2800 Chicago, IL 60611 | Andrew Davis 150 S Fifth St. #2300 Minneapolis, MN 55402 | Gregory W Deckert 12912 63 Ave N Maple Grove, MN 55369 |
| Mary Sue Donohue 5355 Town Center Rd #801 Boca Raton, FL 33486 | Gonzalo R Dorta 334 Minorca Ave Coral Gables, FL 33134 | Edward J Estrada 599 Lexington Ave 22 Flr New York, NY 10022 |
| William Evanoff 1 S Dearborn St Chicago, IL 60603 | Evan K Farber 599 Lexington Ave 22nd Fl New York, NY 10022 | Michael B Fisco 90 S 7th St #2200 Minneapolis, MN 55402 |
| Megan C. Fitzpatrick 330 N Wabash Ave #2800 Chicago, IL 60611 | John Harper 100 S 5 St #1400 Minneapolis, MN 55402 | Jonathan R. Ingrisano 780 N Water St. Milwaukee, WI 53202 |
| Matthew B Kaplan 1100 New York Ave, NW #500 Washington, DC 20005 | John B Kent POB 447 Jacksonville, FL 32201 | Paula S Kim 161 N Clark St #4200 Chicago, IL 60601 BAD |
| John L. Kirtley 833 East Michigan Street Suite 1800 Milwaukee, WI 53202 | Bryan Krakauer 1 S Dearborn St Chicago, IL 60603 | Robert T. Kugler 150 S Fifth St. #2300 Minneapolis, MN 55402 |
| Joshua D. Yount 71 S Wacker Drive Chicago, IL 60606 BAD | Steven Thomas 14 27th Ave Venice, CA 90291 | Lucia Nale 71 S Wacker Drive Chicago, IL 60606 |
| Jerry L Switzer 161 N Clark St #4200 Chicago, IL 60601 BAD | Roger G. Schwartz Latham & Watkins LLP 885 Third Ave New York, NY 10022-4834 | Miles N. Ruthberg ADDL 885 Third Avenue New York, NY 10022 |
| Thomas Manisero ADDL 1133 Westchester Avenue White Plains, NY 10604 | Julie P Vianale BAD 2499 Glades Rd #112 Boca Raton, FL 33431 | Richard G. Wilson DUP 90 South Seventh St. Minneapolis, MN 55402 |
| Robert J. Malioneck ADDL 885 Third Avenue New York, NY 10022 | | |

| | | | | | |
|---|-----|--|-----|--|------|
| Label Matrix for local noticing 113C-9 Case 09-36379-EPK Southern District of Florida West Palm Beach Fri Sep 1 10:30:16 EDT 2017 | NNR | Ashton Revocable Living Trust c/o Helen Chaitman 45 Broadway New York, NY 10006-3007 | NEF | BMO Harris Bank, N.A. c/o Charles W. Throckmorton 2525 Ponce de Leon 9th Floor Coral Gables, FL 33134-6039 | NEF |
| Blackpool Absolute Return Fund, LLC c/o Douglas Ralston 3633 Driftwood Drive Long Grove, IL 60047-5235 | | Blackpool Partners, LLC c/o Douglas Ralston 3633 Driftwood Drive Long Grove, IL 60047-5235 | | Calhoun Multi-Series Fund, L.P. c/o Transcontinental Fund Administrator 11 South LaSalle #1730 Suite 300 Chicago, IL 60603-1204 | PBFP |
| Crown Financial Ministries, Inc. c/o Timothy M. Obitts, Esq. Gammon & Grange, P.C. 8280 Greensboro Dr., 7th Floor McLean, VA 22102-3885 | | Douglas A. Kelly, Chapter 11 Trustee c/o Bradley M. Saxton PO Box 1391 Orlando, FL 32802-1391 | NEF | Father's Heart-A Ranch for Children Inc Shumaker, Loop, & Kendrick, LLP 101 E. Kennedy Blvd Suite 2800 Tampa, FL 33602-5153 | |
| First Baptist Church of Tequesta, Inc. c/o Roberto M. Vargas, Esq. Jones Foster Johnston & Stubbs, P.A. 505 S. Flagler Drive Suite 1100 West Palm Beach, FL 33401-5950 | | Fulcrum Credit Partners LLC c/o Matthew W Hamilton 111 Congress Ave #2550 Austin, TX 78701-4044 | NEF | General Electric Capital Corporation c/o Patricia A. Redmond, Esq. Stearns Weaver Miller, et al Museum Tower, Suite 2200 150 West Flagler Street Miami, FL 33130-1536 | NEF |
| General Electric Credit Corporation c/o Patricia A. Redmond Stearns Weaver Miller 150 W. Flagler St., #2200 Miami, FL 33130-1545 | NEF | Geoff Varga, as Liquidating Trust Monitor fo Levine Kellogg, et al. c/o RobinJRubens 201 S. Biscayne Blvd., 34th Floor Miami, FL 33131-4332 | NEF | Geoff Varga, as Liquidator c/o Robin Rubens 201 S Biscayne Blvd 34 Fl Miami, FL 33131-4332 | NEF |
| Golden Gate VP Absolute Return Fund, LP H. Thomas Halen III, President 1750 Montgomery St, First Floor San Francisco, CA 94111-1000 | NEF | Golden Sun Capital Management, LLC c/o Michael L. Schuster, Esq. 100 SE 2nd Street Suite 4400 Miami, f 33131-2118 | NEF | HSBC USA, INC c/o Franck D. Chantayan Carlton Fields, P.A. 525 Okeechobee Blvd., Suite 1200 West Palm Beach, FL 33401-6350 | NEF |
| JDFF Master Fund, LP c/o Patrick M. Mosley Hill Ward Henderson PA 101 E. Kennedy Blvd., Suite 3700 Tampa, FL 33602-5195 | NEF | KBC Financial Products (Cayman Islands) Ltd. | INC | Kaufman Rossin, P.A. c/o Daniel L. Gold 100 Southeast Second St #3800 Miami, FL 33131-2126 | NEF |
| Kaufman, Rossin & Co. c/o Rice Pugatch Robinson & Schiller 101 NE 3rd Avenue Suite1800 Fort Lauderdale, FL 33301-1162 | NEF | Kinetic Partners (Cayman) Ltd c/o Robin Rubens, Esq. at LKLSG 201 S. Biscayne Blvd., 22 FL Miami, FL 33131-4338 | NEF | Levine Kellogg Lehman Schneider & Grossman L LKLSG c/o Robin Rubens 201 S. Biscayne Blvd., 34th Fl Miami, FL 33131-4332 | NEF |
| M&I Marshall & Ilsley Bank c/o Charles W. Throckmorton 2525 Ponce de Leon 9th Floor Coral Gables, FL 33134-6039 | NEF | MIO Partners Inc c/o Robin E Keller Esq 590 Madison Ave New York, NY 10022-2524 | DUP | Minnesota Teen Challenge, Inc. c/o Paul Joseph McMahon, P.A. Miami, FL 33129 US | NEF |
| Mosaic Fund, L.P. c/o Kristopher E. Pearson Stearns Weaver Miller 150 W. Flagler St. Ste. 2200 Miami, FL 33130-1545 | NEF | Palm Beach Finance II, L.P. 3601 PGA Blvd Suite 301 Palm Beach Gardens, FL 33410-2712 | NNR | Palm Beach Finance Partners, L.P. 3601 PGA Blvd Suite 301 Palm Beach Gardens, FL 33410-2712 | NNR |

Prison Fellowship Ministries, Inc.
c/o Timothy M. Obitts, Esq.
Gammon & Grange, P.C.
8280 Greensboro Dr., 7th Floor
McLean, VA 22102-3885

Raymond G. Feldman Family Ventures, L.P.
c/o of Richard Feldman
4644 Balboa Ave.
Encino, CA 91316-4105

Reed Smith LLP
599 Lexington Ave 22 Flr
New York, NY 10022-7650

Reed Smith LLP
c/o Sequor Law, P.A.
1001 Brickell Bay Drive
9th Floor
Miami, FL 33131-4937

SCALL, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Sali Multi-Series Fund, LP
6850 Austin Center Blvd Ste 300
Austin, TX 78731-3132

Sims Moss Kline & Davis, LLP
Davis Gillett Mottern & Sims LLC
c/o Jerry L Sims
Promenade #2445
1230 Peachtree St NE
Atlanta, GA 30309-3574

DUP

Sky Bell Select, LP
c/o Thomas M. Messana
401 East Las Olas Blvd #1400
Ft. Lauderdale, FL 33301-2218

NEF

Sumnicht Money Masters Fund I Liquidating Tr
Custodian & Trustee, National Advisors
8717 W. 110th St #700
Suite 300
Overland Park, KS 66210-2103

BAD

Sumnicht Money Masters Fund LP
Sumnicht Hedge Fund Advisors, LLC
c/o Vern Sumnicht
W6240 Communication Court
Appleton, WI 54914-8549

The Christensen Group, Inc.
Wicker Smith O'Hara McCoy & Ford, P
515 North Flagler Drive
Suite 1600
West Palm Beach, FL 33401-4346

Thomas J. Ginley Life Ins. Trust Dated 1-22-
6650 N. Tower Circle Drive
Lincolnwood, IL 60712-3218

Toledo Fund, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Trustee Services Inc 2
Ken Welt
3790 N 28 Tr
Hollywood, FL 33020-1112

NEF

West Capital Management
c/o Simon B. Paris
1 Liberty Pl 52 FL
1650 Market St
Philadelphia, PA 19103-7301

ZCALL, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Agile Safety Fund (International)
730 17th Street
Suite 550
Denver, CO 80202-3539

Agile Safety Fund (Master Fund)
730 17th Street
Suite 550
Denver, CO 80202-3539

Agile Safety Variable Fund, L.P.
730 17th Street
Suite 550
Denver, CO 80202-3539

Albert Liguori
16590 Crownsbury Way, #201
Ft. Myers, FL 33908-5695

Alton Opitz
144 Newhaven Ln
Butler, PA 16001-7910

Amy Davenport
3 Greenwich Dr
Midland, TX 79705-6418

Amy Davenport
POB 3511
Midland, TX 79702-3511

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514-1000

BTA Oil Producers
104 S Pecos St
Midland, TX 79701-5099

Barry Beal
104 S Pecos St
Midland, TX 79701-5021

BayRoc Associates
c/o JamiScott
15 W 53rd St. #24-B
New York, NY 10019-5401

Beacon Partners, Ltd
3030 McKinney Ave, #305
Dallas, TX 75204-7472

Beal Family Trust FBO Kelly S Beal
104 S Pecos St
Midland, TX 79701-5021

Beal GST Exemption Trust
104 S Pecos St
Midland, TX 79701-5021

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire N-WD
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive, Suite
Boca Raton, Florida 33431-8579

Bruce Prevost #15810-041
9595 W Quincy Ave
Littleton, CO 80123-1159

Calhoun Multi-Series Fund, L.P.
c/o Transcontinental Fund Administrator
33 N. LaSalle Street #2210
Chicago, IL 60602-3848

Cannonball Funds/Globefin Asset Manageme
PO Box 218
Wickatunk, NJ 07765-0218

Carlton Beal Family Trust FBO Barry Beal
104 S Pecos St
Midland, TX 79701-5021

Christopher J Topolewski, West Capital Manag
c/o Simon B. Paris
1 Liberty Pl 52 FL
1650 Market St
Philadelphia, PA 19103-7301

Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005-3964
Attn: Andrew N. Friedman, Esq.

Compass Special Situations Fund LP
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Ave
New York, NY 10022-7222

David W Harrold BAD
RRM Miami
Residential ReEntry Office
401 N Miami Avenue
Miami, FL 33128-1830

Davis Gillett Mottern & Sims LLC
c/o Bob Mottern-Sky Bell
1230 Peachtree St NE Ste 2445
Atlanta, GA 30309-7500

Deer Island, LP
c/o Jonathan Spring
4 Nason Hill Lane
Sherborn, MA 01770-1281

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410-4755

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
Moss and Barnett
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402-4129

Douglas A. Kelley, Chapter 11 Trustee
Attn: Terrence J. Fleming, Esq.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2100

Father's Heart Family Foundation Inc. (
5155 W Quincy Ave E 102
Denver, CO 80236-3255

Frank Vennes #05123-059
FPC Butner
POB 1000
Butner, NC 27509-1000

Freestone Capital Management, Inc
701 Fifth Ave 74th Floor
Seattle, WA 98104-7016

Fulbright & Jaworski
Norton Rose Fulbright US LLP
RBC Plaza
60 South Sixth St #3100
Minneapolis, MN 55402-1114

George & Nancy Slain
1517 Conifer Ridge Lane
Prescott, AZ 86303-4946

George Novograder
875 N Michigan Ave #3612
Chicago, IL 60611-1947

Gillett Mottern and Walker, LLP
1230 Peachtree St. NE #2445 DUP
Atlanta, GA 30309
At. Bob Mottern - Sky Bell
Pete L DeMahy, Esquire 30309-7500

Golden Gate VP Absolute Return Fund, LP
c/o Michael J Cordone, Esq
2600 One Commerce Square
Philadelphia, PA 19103-7018

Golden Sun Capital Management
Attn: Solomon Halpern
885 Arapahoe Ave
Bolder, CO 80302-6011

Golden Sun Multi-Manager Fund
ATTN: Paul Flynn (Old Hill Partners)
1120 Post Rd.
Darien, CT 06820-5447

Guy M. Hohmann, Esq.
100 Congress Ave BAD
18th Floor
Austin, TX 78701-4042

HSBC USA, Inc.
c/o Franck D. Chantayan NEF
Carlton Fields, PA
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401-6350

Holland & Knight, LLP
701 Brickell Ave
Suite 3000
Attn: Mitchell Herr
Miami, FL 33131-2847

JamiScott
c/o Leonard & Lillian Schneider
15 W 53rd St #24-B
New York, NY 10019-5401

JamiScott LLC
15 W 53rd St #24-B
New York, NY 10019-5401

Janet Bonebrake
13956 San Pablo Ave., Apt. 336
San Pablo, CA 94806-5304

Janette Bancroft
c/o Kurt G. Bancroft
9052 SW 103 Ave
Ocala, FL 34481-8230

John Bergman
c/o Erika L. Morabito, Esq.
Foley k Lardner LLP
3000 K St NW, Ste 600
Washington, DC 20007-5111

John Daniel
225 Wellington Lane
Cape Girardeau, MO 63701-9540

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030-1021

K&K Capital Management, Inc.
8701 N. Merrill St
Niles, IL 60714-1922

KBC Finance Products (Cayman Islands) Ltd.
111 Old Broad Street
London, England
EC2N 1FP

Kaufman Rossin & Co.
2699 S Bayshore Dr
Miami, FL 33133-5486

Keleen H. Beal Estate
104 S Pecos St
Midland, TX 79701-5021

Kelly Beal
104 S Pecos St
Midland, TX 79701-5021

LAB Investments Fund, LP
ATTN: Larry Bowman
P.O. Box 620234
Woodside, CA 94062-0234

Leslie Schneider
c/o JamiScott
15 W 53rd St., #24-B
New York, NY 10019-5401

Lewis B. Freeman & Partners, Inc.
c/o Kenneth A. Welt, Receiver
1776 North Pine Island Road
Suite 101
Plantation, Florida 33322-5200

NEF

Lionheart LP
by and through David A. Kite, Agent
160 N Wacker Dr, 4th Fl
Chicago, IL 60606-1566

Lynda Beal
104 S Pecos St
Midland, TX 79701-5021

M. Lee Toothman
216 Barbados Dr
Jupiter, FL 33458-2917

MB Investments, LLC
1 N Franklin St #625
Chicago, IL 60606-3532

MIO Partners Inc
Attn: Casey S Lipscomb
Vice President-Legal and Secretary
245 Park Ave 13 Flr
New York, NY 10167-2300

Marder Investment Advisors Corp.
8033 Sunset Blvd, #830
Los Angeles, CA 90046-2401

Mark Prevost
2372 Hidden Ridge Ln
Jasper, AL 35504-7268

Martin Casdagli
554 E Coronado Rd
Santa Fe, NM 87505-0347

McKinsey Master Retirement Trust
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Ave
New York, NY 10022-7222

Mosaic Capital Fund LLC
c/o Philadelphia Financial
Attn.: John F Reilly
One Liberty Place
1650 Market St 54th Place
Philadelphia, PA 19103-7309

Nancy Beal
104 S Pecos St
Midland, TX 79701-5021

Nancy Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410-4755

Nancy Hollingsworth
30777 Riverside Ln
Trappe, MD 21673-1798

NetWide Capital LLC
P.O. Box 957
Boulder, CO 80306-0957

Office of the US Trustee
51 S.W. 1st Ave.
Suite 1204
Miami, FL 33130-1614

NEF

Palm Beach Finance Holdings, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402-2223

Palm Beach Offshore II, Ltd
Admiral Financial Center, 5th Floor
90 Fort Street, PO Box 32021
Grand Cayman KY - 1208
Cayman Islands

Palm Beach Offshore LTD
Anchorage Centre, 2nd Floor
PO Box 32021 SMB
Grand Cayman, Cayman Islands

Pemco Partners, LP
8 Lyman St, #204
Westborough, MA 01581-1487

Petters Company, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth St, Ste 4200
Minneapolis, MN 55402-2223

Prateek Mehrotra, CFA, CAIA
Sumnicht & Associates
W6240 Communication Ct, #1
Appleton, WI 54914-8549

Randall Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426-7824

Robert Davenport
POB 3511
Midland, TX 79702-3511

Robert Davenport, Jr
104 S Pecos St
Midland, TX 79701-5021

Ron Priestley
5565 N Espina Rd
Tuscon, AZ 85718-5101

Ronald R. Peterson
Jenner & Block LLP
353 North Clark St.
Chicago, IL 60654-5474

Ronald R. Peterson
c/ Wilkie Farr & Gallagher, LLP
Attn: Michael S. Schachter, Esq.
787 Seventh Ave
New York, NY 10019-6099

DUP

Ronald R. Peterson
c/o McDermott Will & Emery, LLP
Attn: Lazar P. Raynal, Esq.
227 West Monroe Street
Chicago, IL 60606-5058

SALI Fund Services, LLC
6850 Austin Center St #300
Austin, TX 78731-3132

SBL-DIF
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Ave
New York, NY 10022-7222

SSR Capital Partners, LP
c/o R. James George, Jr., Esq
114 W 7th St #1100
Austin, TX 78701-3015

N-WD

SSR Capital Partners, LP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

N-WD

Sage Capital Resources
3006 Julia St W, Unit A
Tampa, FL 33629-8809

Sandra Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426-7824

Sarah Stroebe, Snr Corp Counsel
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402-2511

Scott Schneider
c/o JamiScott
15 W 53rd St, #24-B
New York, NY 10019-5401

Special Situations Investment Fund, LP
c/o Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022-7222

Spencer Beal
104 S Pecos St
Midland, TX 79701-5021

Spencer Evans Beal Family Trust
104 S Pecos St
Midland, TX 79701-5021

Spring Investor Services Inc.
4 Nason Hill Lane
Sherborn, MA 01770-1281

Spring Investor Services Inc.
By Agent, Philip J. Davis, CPA
50 Congress St, Ste 330
Boston, MA 02109-4062

Sterling Management Inc.
c/o Dave Engstrom
14 Basswood Dr
Santa Rosa Beach, FL 32459-4366

Steven Feder
730 17th Street
Suite 550
Denver, CO 80202-3539

Strategic Stable Return Fund (ID), LP
c/o CVP SPV LLC
Attn: General Counsel
49 W Putnam Ave
Greenwich, CT 06830-5328

Strategic Stable Return Fund II, LP
c/o CVP SPV LLC
Attn: General Counsel
49 W Putnam Ave
Greenwich, CT 06830-5328

Sumnicht Money Masters Fund I
Liquidating Trust I
Cust/Ttee Nat'l Advisors Trust Co
800 E 101st Ter Ste 300
Kansas City, MO 64131-5309

Sumnicht Money Masters Fund I
Liquidating Trust I
c/o John E. Page
2385 NW Executive Center Dr. #300
Boca Raton, FL 33431-8530

N-WD

Sumnicht Money Masters Fund, LP
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau PA
2385 NW Executive Center Dr. #300
Boca Raton, FL 33431-8530

N-WD

Table Mountain Capital, LLC
1035 Pearl St. #400
Boulder, CO 80302-5127

Ted Goldsmith
3 Water Ln
Manhasset, NY 11030-1021

The Beal Trust U/A 4/17/68
104 S Pecos St
Midland, TX 79701-5021

Tradex Global Advisors
35 Mason St, 4th Fl
Greenwich, CT 06830-5433

U.S. Bank National Association
c/o Richard G. Wilson, Esq.
Maslon Edeman Borman & Brand LLP
90 S 7th Street, Suite 3300
Minneapolis, MN 55402-4104

VAS Partners, LLC
Attn: Vincent P Allegra
4401 W Roosevelt Rd
Hillside, IL 60162-2031

Vincent Allegra
449 S Evergreen St
Bensenville, IL 60106-2505

West Capital Management
1818 Market St, #3323
Philadelphia, PA 19103-3655

Wilbur Hobgood
2189 Radnor Ct
North Palm Beach, FL 33408-2157

Barry Mukamal CPA
1 SW 3 Ave, Ste 2150
Miami, FL 33131

NEF

Barry E Mukamal
1 SE 3 Avenue Ste 2150
Box 158
Miami, FL 33131-1716

NEF

Barry E. Mukamal
1 SE 3 Ave. Ste 2150
Miami, FL 33131-1716

NEF

Barry E. Mukamal
1 SE 3rd Ave 10th FL #2150
Miami, FL 33131-1716

NEF

Boris Onefater
305 Madison Ave #2036
New York, NY 10165-0027

NNR

Brett A Stillman
PC Doctor
3300 N Palmaire Dr #407
Pombano Beach, FL 33069-4235

NNR

Brian Cummins
Champion Legal Graphics and Video
306 Alcazar Ave #201
Coral Gables, FL 33134-4318

NNR

Bruce Prevost
c/o Rappaport Osborne & Rappaport PL
1300 N Federal Hwy #203
Boca Raton, FL 33432-2848

NEF

Carolyn Robbins Manley
Carolyn Robbins Jury Simulations, Inc
1933 S Oak Haven Cir
North Miami Beach, FL 33179-2834

NNR

Catherine A Ghiglieri
Ghiglieri & Company
2300 Cypress Point West
Austin, TX 78746-7117

NNR

Chad P. Pugatch
RPRS, PA
101 NE 3rd Ave., #1800
Ft. Laud., FL 33301-1252

NEF

Christopher Flynn
c/o Charles W. Throckmorton
2525 Ponce de Leon
9th Floor
Coral Gables, FL 33134-6039

NEF

Christopher Laursen
National Economic Research Associates,
1255 23rd St NW
Washington, DC 20037-1169

NNR

Daniel N. Rosen
300 Avenue North #200
Minneapolis, MN 55425-5527

NNR

David Harrold
c/o Rappaport Osborne & Rappaport, PL
1300 N Federal Hwy #203
Boca Raton, FL 33432-2848

NEF

Elliot B Kula
Kula & Samson, LLP
17501 Biscayne Blvd
Aventura, FL 33160-4804

NNR

Eric Rubin
6861 SW 196 Ave #201
Ft. Lauderdale, FL 33332-1658

NNR

Gerard A McHale, Jr
1601 Jackson St #200
Ft Myers, FL 33901-2968

NNR

Harley Tropin
2525 Ponce de Leon, 9 Fl
Miami, FL 33134

NNR

Hubert Thomas Wilkins III
Robert Hughes Associates, Inc
508 Twilight Trail #200
Richardson, TX 75080-8100

NNR

Ira H Holt Jr
Analytic Focus, LLC
11467 Huebner Rd, #4200
San Antonio, TX 78230-1075

NNR

James S. Feltman
600 Brickell Ave #2525
Miami, FL 33131-3082

NNR

Jay P Tarshis
Arnstein & Lehr LLP
120 S. Riverside Plaza #1200
Chicago, IL 60606-3910

NNR

Jeffrey H Sloman
1 SE Third Ave #1820
Miami, FL 33131-1704

NNR

Jerome M Hesch
21113 NE 38 Ave
Aventura, FL 33180-4021

NNR

John Daniel
c/o Patrick M. Mosley
Hill Ward Henderson PA
101 E Kennedy Blvd, Suite 3700
Tampa, FL 33602-5195

John D. Eaton
Rasco Klock Reininger
283 Catalonia Avenue, 2nd Floor
Coral Gables, FL 33134-6712

NNR

John H Genovese
100 SE 2 St Ste 4400
Miami, FL 33131-2118

NEF

Jonathan Guy Manning
Campbells Law Firm
Willow House Cricket Sq
POB 884
Grand Cayman KY1-1103 Cayman Islands
George Town

Kenneth A Ralston
c/o Douglas Ralston
3633 Driftwood Drive
Long Grove, IL 60047-5235

Kenneth A Welt
Trustee Services, Inc.
8255 West Sunrise Boulevard
Suite #177
Plantation, FL 33322-5403

NEF

Kevin O'Halloran
Newbridge Management, LLC
1720 Peachtree St #425N
Atlanta, GA 30309-2449

NNR

Leslie Roy Grossman
9132 Vander Cove
Boynton Beach, FL 33473-4994

NNR

Luke Dalchow
c/o Fabian Hoffner
310 4th Ave South
Suite 5010
Minneapolis, MN 55415-1053

Lynn E Turner
Hemming Morse, LLP
725 S Figueroa St #2950
Los Angeles, CA 90017-5474

NNR

Marc Hurwitz
Crossroads Investigations, Inc.
1835 NE Miami Gardens Dr #547
North Miami Beach, FL 33179-5035

NNR

Marie Ashton
c/o Helen Chaitman
45 Broadway
New York, NY 10006-3007

NEF

Michael Lesser
68 Mountainview Rd
Millburn, NJ 07041-1532

NNR

Michael R Slade
Callaway & Price Inc
1639 Forum Pl #5
West Palm Beach, FL 33401-2330

NNR

Michael S Budwick Esq
200 S Biscayne Blvd # 3200
Miami, FL 33131-5323

NEF

Michelle Harrold
c/o Furr and Cohen, P.A.
2255 Glades Road
Suite 337W
Boca Raton, FL 33431-7379

NEF

Nancy B Rapoport
530 Farrington Court
Las Vegas, NV 89123-0622

NNR

Patrick M. Mosley
Hill Ward Henderson
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602-5195

Paul A Avron Esq.
One Town Center Road, Ste. 301
Boca Raton, FL 33486-1014

NEF

Paul Steven Singerman Esq
1450 Brickell Ave #1900
Miami, FL 33131-3453

NEF

Peter Hagan
Berkeley Research Group
2200 Powell St., Ste. 1200
Emeryville, CA 94608-1833

NNR

Richard Painter
7128 Mark Terrace Dr
Edina, MN 55439-1628

NNR

Sharon Brown-Hruska
National Economic Research Associates
c/o Michael Budwick
Meland Russsin & Budwick P.A.
200 S. Biscayne Blvd, Ste 3200
Miami, FL 33131-5323

NNR

Soneet R Kapila
Kapila & Company
1000 S Federal Hwy #200
Ft. Lauderdale, FL 33316-1237

NEF

Stephen Williams
59 Damonte Ranch Pkwy #3360
Reno, NV 89521-1907

Steven Bakaysa
2251 Wigwam Pkwy #1026
Hendesron, NV 89074-6235

Steven I Fried
4400 Bayou Blvd #6
Pensacola, FL 32503-1905

NNR

| | | | | | |
|--|------|--|------|--|------|
| Label Matrix for local noticing 113C-9 Case 09-36396-EPK Southern District of Florida West Palm Beach Fri Sep 1 10:58:03 EDT 2017 | NNR | Geoff Varga, as Liquidator c/o Robin J. Rubens 201 S Biscayne Blvd 34 Fl Miami, FL 33131-4332 | NEF | Palm Beach Finance II, L.P. 3601 PGA Blvd Suite 301 Palm Beach Gardens, FL 33410-2712 | NNR |
| US Trust, Co-Trustee of the Maxine B Adler T 5200 Town Center Road #500 Boca Raton, FL 33486-1018 | | ARIS Capital Management 200 Biscayne Blvd. Way, # 4902 Miami, FL 33131-2165 | DUP | ARIS Multi-Strategy Fund, LP Aris Capital Management 200 Biscayne Blvd. Way, # 4902 Miami, FL 33131-2165 | |
| Agile Safety Fund (Master Fund) 730 17th Street Suite 550 Denver, CO 80202-3539 | PBFP | Agile Safety Variable Fund, L.P. 730 17th Street Suite 550 Denver, CO 80202-3539 | PBFP | Alton Opitz 144 Newhaven Ln Butler, PA 16001-7910 | PBFP |
| Barnett Capital Ltd. 450 Skokie Blvd, #604 Northbrook, IL 60062-7914 | | Barry Beal 104 S Pecos St Midland, TX 79701-5021 | PBFP | BayRoc Associates LLC c/o JamiScott LLC 15 West 53rd St #24-B New York NY 10019-5401 | PBFP |
| Blackpool Absolute Return Fund, LLC c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579 | N-WD | Blackpool Partners, LLC c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579 | N-WD | Bruce Prevost #15810-041 9595 West Quincy Avenue Littleton, CO 80123-1159 | PBFP |
| Centermark Asset Management 21320 Baltic Dr Cornelius, NC 28031-6425 | | Clarridge Associates LLC c/o JamiScott LLC 15 West 53rd St #24-B New York NY 10019-5401 | | Cohen Milstein Sellers & Toll, PLLC 1100 New York Avenue, N.W. Suite 500, West Tower Washington, D.C. 20005-3964 Attn: Andrew N. Friedman, Esq. | PBFP |
| Compass Offshore Special Situations, PCC c/o Compass ITV LLC 245 Park Ave FL 13 New York, NY 10167-2300 | | David Harrold RRM Miami Residential ReEntry Office 401 N Miami Avenue Miami, FL 33128-1830 | BAD | Douglas A. Kelley, Chapter 11 Trustee Attn: James A. Rubenstein, Esq. 4800 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3903 | PBFP |
| Douglas A. Kelley, Chapter 11 Trustee Attn: Terrence J. Fleming, Esq. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402-2100 | PBFP | Frank Vennes #05123-059 FPC Butner POB 1000 Butner NC 27509-1000 | PBFP | Fulbright & Jaworski Norton Rose Fulbright US LLP RBC Plaza 80 South Sixth Stt Minneapolis, MN 55402 | PBFP |
| Genesis Capital Attention: Mike Dubinsky 7191 Wagner Way NW, Suite 302 Gig Harbor, WA 98335-6909 | | Geoffrey Varga and Neil Morris Joint Liquidators of Palm Beach Offshore c/o Mark W. Eckard, Esq. 1201 N. Market Street, Suite 1500 Wilmington, DE 19801-1163 | | Gillett Mottern and Walker LLP 1230 Peachtree Street NE #2445 Atlanta, GA 30309 Attn: Bob Mottern - Sky Bell Pete L. DeMahy, Esquire 30309-7500 | PBFP |
| Golden Sun Capital Management ATTN: Keith Wellner (Old Hill Partners) 1120 Post Rd. Darien, CT 06820-5447 | PBFP | Golden Sun Multi-Manager Fund, LP ATTN: Paul Flynn (Old Hill Partners) 1120 Post Rd. Darien, CT 06820-5447 | | Guardian Capital, LLC 3018 Devon Road Durham, NC 27707-4544 | |

| | | | | |
|---|------|--|------|---|
| Guy M. Hohmann, Esq. 100 Congress Ave 18th Floor Austin, TX 78701-4042 | BAD | HSBC USA, INC. c/o Franck D. Chantayan Carlton Fields, P.A. 525 Okeechobee Blvd., Suite 1200 West Palm Beach, FL 33401-6350 | NEF | HSBC USA, Inc. HSBC Alternative Fund Services 330 Madison Ave, 5th Floor New York, NY 10017-5042 |
| Hillcrest Properties, c/o Stephen Willia 59 Damonte Ranch Pkwy, #B-360 Reno, NV 89521-1907 | | Holland & Knight, LLP 701 Brickell Ave Suite 3000 Attn: Mitchell Herr Miami, FL 33131-2847 | PBFP | James Corydon 6650 N Tower Circle Dr Lincolnwood, IL 60712-3218 |
| Jamiscott, LLC 15 W 53 St, #24-B New York, NY 10019-5401 | PBFP | Jamiscott, LLC, c/o Leonard & Lillian Sc 1089 S Ocean Blvd Palm Beach, FL 33480-4932 | | John Daniel 225 Wellington Ln Cape Girardeau, MO 63701-9540 |
| Judith Goldsmith 3 Water Ln Manhasset, NY 11030-1021 | PBFP | Kaufman Rossin & Co. 2699 S Bayshore Dr Miami, FL 33133-5486 | PBFP | Kenneth A. Ralston c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579 |
| Kenneth Ralston 1008 Mackenzie Pl Wheaton, IL 60187-3333 | | Kenneth Ralston c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579 | N-WD | LAB Investments Fund, LP 1875 S Grant St, #600 San Mateo, CA 94402-7013 |
| Laulima Partners, LP C/O Smithfield Trust Co. Attn:Robert Kopf Jr. 20 Stanwix St, #650 Pittsburgh, PA 15222-1330 | | Leslie Schneider c/o JamiScott LLC 15 West 53rd St #24-B New York NY 10019-5401 | PBFP | Lewis B. Freeman & Partners, Inc. c/o Kenneth A. Welt, Receiver 1776 North Pine Island Road Suite 102 Plantation, Florida 33322-5200 |
| Lynn E Maynard Gollin Godron & Reese LLP 200 S Biscayne Blvd #4300 Miami FL 33131-2362 | BAD | Marder Investment Advisors Corp. 8033 Sunset Blvd, #830 Los Angeles, CA 90046-2401 | PBFP | Maxine Adler 109 Los Patios Los Gatos, CA 95032-1127 |
| Maxine Adler c/o US Trust/Bank of America and Patrici 150 E. Palmetto Park Road, Suite 200 Boca Raton, FL 33432-4831 | PBFP | McKinsey Master Retirement Trust c/o Robin Keller, Esq. Hogan Lovells US LLP 875 Third Avenue New York, NY 10022-7222 | PBFP | Mosaic Capital Fund LLC c/o Philadelphia Financial attn: John F. Reilly One Liberty Place 1650 Market St 54th Pl Philadelphia, PA 19103-7309 |
| Ocean Gate Capital Management, LP 5 Sewall Street Marblehead, MA 01945-3396 | | Office of the US Trustee 51 S.W. 1st Ave. Suite 1204 Miami, FL 33130-1614 | NEF | Palm Beach Finance Holdings, Inc. c/o Lindquist & Vennum, PLLP 80 South Eighth Street, Ste 4200 Minneapolis, MN 55402-2223 |
| Palm Beach Offshore II, Ltd. Admiral Financial Center, 5th Floor 90 Fort Street, PO Box 32021 Grand Cayman KY-1208 Cayman Islands | PBFP | Palm Beach Offshore, Ltd. Anchorage Centre, 2nd Floor PO Box 32021 SMB Grand Cayman Cayman Islands | PBFP | Pemco Partners, LP 8 Lyman St, #204 Westborough, MA 01581-1487 |

Pete L Demahy
150 Alhambra Cir PH
Coral Gables, FL 33134-4505

Petters Company, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402-2223

PBFP

Quantum Family Office Group, LLC
6619 S Dixie Hwy #251
Miami, FL 33143-7919

Raymond Feldman
4644 Balboa Ave
Encino, CA 91316-4105

Raymond G. Feldman Family Ventures, L.P.
c/o John E. Page, Esquire
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive, #
Boca Raton, Florida 33431-8579

N-WD

Ronald R. Peterson
Jenner & Block LLP
353 North Clark St.
Chicago, IL 60654-5474

PBFP

Ronald R. Peterson
c/ Wilkie Farr & Gallagher, LLP
Attn: Michael S. Schachter, Esq.
787 Seventh Ave
New York, NY 10019-6099

PBFP

Ronald R. Peterson
c/o McDermott Will & Emery, LLP
Attn: Lazar P. Raynal, Esq.
227 West Monroe Street
Chicago, IL 60606-5058

PBFP

SSR Capital Management LLC
CVP SPY LLC
ATTN: General Counsel
49 West Putnam Avenue
Greenwich, CT 06830-5328

SSR Capital Partners, LP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

PBFP

Santa Barbara Investment Capital
327 Los Cerros
San Luis Obispo CA 93405-1272

Scotia Capital
The Bank of Nova Scotia
40 King St W
P.O. Box 4085, Station A
Toronto, Ontario M5W 2X6 Canada

Scott Schneider
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019-5401

PBFP

Select Access Management
15 Valley Dr
Greenwich, CT 06831-5205

Special Olympics
Northern California, Inc
Attn: Rebecca Thompson, General Counsel
3480 Buskirk Ave #340
Pleasant Hill, CA 94523-4382

Steven Feder
730 17th Street
Suite 550
Denver, CO 80202-3539

PBFP

Strategic Stable Return Fund (ID), LP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

PBFP

Strategic Stable Return Fund II, LP
c/o J. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

PBFP

Strategic Stable Return Fund, II, LP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

PBFP

Table Mountain Capital, LLC
850 Quince Ave
Boulder, Co 80304-0746

PBFP

Ted Goldsmith
3 Water Ln
Manhasset, NY 11030-1021

PBFP

Thomas J Ginley Life Insurance Trust
c/o Julie Elizabeth Hough
2450 Hollywood Blvd #706
Hollywood, FL 33020-6628

PBFP

U.S. Bank Natl Assoc
c/o Richard G Wilson, Esq
90 S 7 St #3300
Minneapolis, MN 55402-4104

PBFP

U.S. Trust and Patricia Scwab
Successor Trustees, TUA Maxine B Adler
POB 842056
Dallas, TX 75284-2056

UC Davis Foundation
ATTN: Colleen Oys
Center / 2nd Floor
One Shields Avenue
Davis, CA 95616-5270

UC Davis School of Veterinary Medicine
Office of the Dean - Development
One Shields Avenue
Davis, CA 95616-5270

Umbach Financial Group, LLC
525 South Flagler Drive, #100
West Palm Beach, FL 33401-5932

Zimmer Lucas Capital
PO Box 238
Florham Park, NJ 07932-0238

Barry E Mukamal
1 SE 3 Avenue Ste 2150
Box 158
Miami, FL 33131-1716

NEF

Patricia Schwab, Co-Trustee of the Maxine B
1511 NE 57 Ct
Ft Lauderdale, FL 33334-5976

Paul A Avron Esq.
One Town Center Road, Ste. 301
Boca Raton, FL 33486-1014

NEF

Paul Steven Singerman Esq
1450 Brickell Ave #1900
Miami, FL 33131-3453

NEF

James L. Volling, Esquire
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Lionheart Insurance Fund Series Interests of the SALI
Multi-Fund Series Fund, LP
6836 Austin Center Blvd. Ste 320
Austin, TX 78731

Edwin G. Schallert, Esquire
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Ron Robertson, President
Strategic Capital Group
7191 Wagner Way NW, Suite 302
Gig Harbor, WA 98335

Andrew P. O'Brien, Esquire
U.S. Securities and Exchange Commission Chicago
Regional Office
175 West Jackson Blvd., Suite 900
Chicago, IL 60604

Global Securities Services
2600 Airport Business Park
Kinsale Road
Co.Cork
Ireland

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Monica Hanlet
PO Box 321255
Palm Coast, FL 32135-1255

Michael R. Band, Esquire
Band Law Firm
169 East Flagler Street
Suite 1200
Miami, FL 33131

Peggy Adams Animal Rescue League of the Palm
Beaches, Inc.
c/o Andrew Helgesen, Esq.
11380 Prosperity Farms Road, Suite 201
Palm Beach Gardens, FL 33410

Bear Stearns Capital Markets, Inc.
c/o Mark W. Page, Esquire
Kelley Drye & Warren LLP
333 West Wacker Drive
26th Floor
Chicago, IL 60606

Deutsche Bank (Cayman) Ltd
c/o Deutsche International Trust Corporation
Mauritius Limited
Level 5 Altima Building,
56 Ebene Cybercity
Mauritius

KAT TNR, Inc.
17600 Wagon Wheel Drive
Boca Raton, FL 33496
Contact: Phyllis Toon, President

AVDA (Aid to Victims of Domestic Violence)
P.O. Box 6161
Delray Beach, FL 33482
Contact: Pamela A. O'Brien, Executive Director

Town Cats
P.O. Box 1828
Morgan Hill, CA 95038
Contact: Rosemary Mirko, Principal

Special Olympics Florida
1915 Don Wickham Drive
Clermont, FL 34711
Contact: Larry Daniel, VP of Direct Marketing

Next Door Solutions to Domestic Violence
234 E. Gish Road, Suite 200
San Jose, CA 95112
Contact: Kathleen Krenek, Executive Director

Eden Rock Capital Management
50 Curzon Street
London W1J 7UW
United Kingdom

Aaron M. Dorfner, Esq.
Cotton Bledso et al.
500 W. Illinois Ste. 300
Midland, TX 79701

David C. Cimo, Esquire
Genovese Joblove & Battista, P.A.
100 Southeast Second Street, 44th Floor
Miami, Florida 33131

Harvest Investments LP
c/o Deer Island, LP
Red Bird Farm
89 Nason Hill Rd
Sherborn, MA 01770-1233

Eric N. Assouline, Esq.
Assouline & Berlowe, P.A.
213 E. Sheridan Street
Suite 3
Dania Beach, FL 33004

Thomas F. Miller, Esq.
Thomas F. Miller, P.A.
1000 Superior Blvd., Suite 303
Wayzata, MN 55391-1873

HSBC USA, Inc.
Phillips Lytle LLP
Attn: Angela Z. Miller, Esq.
3400 HSBC Center
Buffalo, NY 14203

ABR Capital, LLC
c/o Alan B. Rosenthal
4645 Delafield Ave
Riverdale, NY 10471

The Gantcher Group
c/o Nathan Gantcher
EXOP Capital, LLC
767 Third Ave, 16 FL
New York, NY 10017

Harborlight Capital Management, LLC
2502 Rocky Point Drive
Suite 560
Tampa, FL 33607

Thomas Sandlow / Tremont Group Holdings, Inc.
305 Riverside Dr, Apt 7A
New York, NY 10025-5214

Lionheart, LP
by and through Robert A. Mandel, GP
8383 Wilshire Blvd., # 400
Beverly Hills, CA 90211

Nancy Mishkin / Mondiale Partners
211 E 53rd St, Apt 12-D
New York, NY 10022-4807

Frank Carruth
c/o Linda Carruth Strugar
240 Summa St
West Palm Beach, FL 33405-4718

Lionheart, L.P.
Craig H. Averch, Esq.
Shiva Delrahim, Esq.
White & Case LLP
555 South Flower Street, Suite 2700
Los Angeles, CA 90071-2433

Second City Alternatives
c/o Premier Advisors Fund, LLC
801 Park Ave
Wilmette, IL 60091

Blackpool Partners, LLC
Attn: Mr. Douglas Ralston
318 W. Half Day Road, Suite 291
Buffalo Grove, IL 60089

Blackpool Absolute Return Fund, LLC
Attn: Mr. Douglas Ralston
318 W. Half Day Road, Suite 291
Buffalo Grove, IL 60089

Robert J. Malione, Esq.
Latham & Watkins, LLP
885 Third Avenue
New York, NY 10022-4834

Miles N. Ruthberg, Esq.
Latham & Watkins, LLP
885 Third Avenue
New York, NY 10022-4834

Thomas R. Manisero, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604

PENSCO Trust Company
FBO George C. Slain IRA
P.O. Box 173859
Denver, CO 80217-3859

Alice Pugliese
1644 Oak Berry Circle
Wellington, FL 33414

Fleming Financial Services
514 S Main Street
Suite A
Bel Air, MD 21014

Golden Gate Financial Group
900 N Pointe St
Suite D405
San Francisco, CA 94109

Keith Rudman
PO Box 249
Tuckasegee, NC 28783

Leon Meyers Management
850 3rd Avenue
New York, NY 10022

Sonata Funds
3300 E 1st Avenue
Suite 490
Denver, CO 80206

Linda Lozier
340 W 8th Street
Hinsdale, IL 60521

Barbara Bluhm
189 E Lake Shore Drive
Suite 19
Chicago, IL 60611

Lee S. Shalov, Esq.
Thomas G. Ciarlone, Esq.
Shalov Stone Bonner & Rocco
145 West 45 Street, Ste 701
New York, NY 10036

Fortis Prime Fund Solutions (IOM) Ltd
Attn: Daniel Kermode
PO Box 58
Finch Hill House
Ducks Road
Douglas, Isle of Man, IM99 1DT, UK

Stillwater Capital Partners, Inc.
165 Remsen Street
2nd Floor
Brooklyn, NY 11201

ABN Amro Custodial Services (Ireland)
Limited
2nd Floor, 1-2 Victoria Buildings,
Haddington Road,
Dublin 4, D04 XN32
Ireland

ADDITIONAL VIA EMAIL (ADDL-E)

GMB Capital Management by Email: kanderson@gmbcapital.com

Harvest Investments LP by Email: jonathan@springonline.net

SSR Capital Management LLC by Email: shelland@ssrcm.com

Harborlight Capital Management, LLC by Email: dean@harborlightcapital.com