

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

In Re:

Chapter 11

PALM BEACH FINANCE PARTNERS, LP  
PALM BEACH FINANCE II, LP

Case No. 09-36379-BKC-PGH  
Case No. 09-36396-BKC-PGH  
(Jointly Administered)

Debtors.

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**MOTION OF GOLDEN SUN CAPITAL MANAGEMENT, LLC FOR (I) LEAVE TO  
FILE A PROOF OF CLAIM OUT OF TIME AND (II) FOR ORDER  
DEEMING THAT THE PROOF OF CLAIM IS TIMELY FILED**

Golden Sun Capital Management, LLC and Golden Sun Multi-Manager Fund, L.P. (collectively, "Golden Sun") hereby files its Motion for (I) Leave to file a Proof of Claim Out of Time and (II) for Order Deeming that the Proof of Claim Is Timely Filed (the "Motion"). In support, Golden Sun respectfully states:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this motion (the "Motion") pursuant to 28 U.S.C. §§157 and 1334. The subject matter of the Motion is a core proceeding pursuant to 28 U.S.C. §157. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

2. The statutory predicate for the relief sought by the Motion is § 105(a) of Title 11, United States Code (the "Bankruptcy Code") and Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the "FRBP").

### **BACKGROUND**

3. On November 30, 2009 (the “Petition Date”), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

4. Upon the filing of their petitions, the Debtors filed a Creditor Address Matrix as required by FRBP 1007(a). On the Creditor Address Matrix, the Debtors listed Golden Sun’s notice address as 1919 14<sup>th</sup> Street, #450, Boulder, CO 80302 (the “Old Location”) [*see* C.P. # 1, page 21]. Through the date of the filing of this Motion, the Old Location is the only address for Golden Sun which appears on the Clerk’s service matrix.

5. On December 1, 2009, the Clerk of the Bankruptcy Court set April 6, 2010 as the deadline for all non-governmental entities to file proofs of claim against the Debtor’s estate (the “Claims Bar Date”) [*see* C.P. # 15].

6. On December 15, 2009, the Debtors filed their Schedules and Statements of Financial Affairs. The Debtors did not list any claims held by Golden Sun.

7. Also on December 15, 2009, Debtor Palm Beach Finance II L.P. filed its Equity Security Holders list [C.P. # 21 in Case No. 09-36396]. Palm Beach Finance II L.P. listed Golden Sun as a 3.0494% equity security holder, and also listed Golden Sun’s address as 885 Arapahoe Avenue, Boulder CO 80302 (the “New Location”). However, neither the Debtor nor the Trustee updated the Creditor Address Matrix to include the New Location.

8. The first meeting of creditors was held on January 6, 2010.

9. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying United States Trustee's Motion to Convert Case to Cases Under Chapter 7 [C.P. # 100].

10. On January 29, 2010, the United States Trustee entered its Notice of Appointment of Barry Mukamal as Chapter 11 Trustee [C.P. # 107].

11. Golden Sun wishes to file a claim in order to preserve its right to contest the Debtors' characterization of Golden Sun's claims as equity interests, and to assert that Golden Sun is a creditor of one or both of the Debtors by virtue of significant investments beginning in 2004. Golden Sun believes that the value of its claims exceeds \$6,000,000.

**RELIEF REQUESTED AND BASIS THEREFOR**

12. Golden Sun has not operated at the Old Location, or had any affiliation therewith, for at least one year prior to the Petition Date. Accordingly, any notices which may have been sent to the Old Location during the course of the Debtor's bankruptcy case were not received by Golden Sun.

13. As a result, Golden Sun did not learn of the pendency of the Debtors' Bankruptcy Cases until April 29, 2010, and did not have notice of the Claims Bar Date prior to the expiration thereof.

14. FRBP 9006(b)(1) states that:

When an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . on motion made after the expiration of the specified period permit the act to be done or where the failure to act was the result of excusable neglect.

15. The court analyzes the following factors in determining whether a creditor should be allowed to file a late claim: "the danger of prejudice to the debtor, the length of the delay and

its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *In re Celotex Corp.*, 245 B.R. 174, 177 (M.D. Fla. 2000) (quoting *Pioneer Investment Services, Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 396 (1993)).

16. Moreover, “[c]ourts have been most willing to find excusable neglect where the movant failed to comply with the bar date because, through no fault of its own, it had no notice of that date.” *South Atlantic Fin. Corp. v. Biscayne 21 Condominium Assn, Inc.*, 767 F.2d 814 (11<sup>th</sup> Cir. 1985).

17. Golden Sun, through no fault of its own, was omitted from the Debtors schedules and did not receive any notices within the Debtors’ Bankruptcy Cases, including the Claims Bar Dates.

18. The delay in Golden Sun’s ability to file its claims was not caused by Golden Sun and constitutes excusable neglect due to the Debtors’ failure to list Golden Sun in its Schedules or to otherwise provide Golden Sun notice of the Debtors’ Bankruptcy Cases at the correct address.

19. This Motion has been timely filed following actual notice of Debtors’ bankruptcy filings. Counsel for Golden Sun has contacted counsel for the Trustee, and will continue to negotiate in good faith towards a consensual resolution of the relief requested herein through submission of an agreed order.

WHEREFORE Golden Sun respectfully requests entry of an Order substantially in the form attached hereto as Exhibit “A”: (I) granting Golden Sun leave to file its proof of claim within thirty (30) days of the entry of an order hereon, (II) deeming Golden Sun’s claim to have

been timely filed once entered onto the Claim Register, and (III) granting such other and further relief as is proper.

Dated: July 6, 2010

Respectfully submitted,

**I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A)**

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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF upon all parties listed below this 6th day of July 2010. Upon the issuance of a Notice of Hearing hereon, Golden Sun shall serve all parties entitled to notice with a copy of this Motion and the Notice of Hearing, and file a supplemental Certificate of Service.

By: /s/ Michael L. Schuster  
Michael L. Schuster

**SERVICE LIST**

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[EXHIBIT "A"]

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

In Re:

Chapter 11

PALM BEACH FINANCE PARTNERS, LP  
PALM BEACH FINANCE II, LP

Case No. 09-36379-BKC-PGH  
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(Jointly Administered)

Debtors.

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**ORDER GRANTING MOTION OF GOLDEN SUN CAPITAL MANAGEMENT, LLC  
FOR (I) LEAVE TO FILE A PROOF OF CLAIM OUT OF TIME AND (II) FOR ORDER  
DEEMING THAT THE PROOF OF CLAIM IS TIMELY FILED**

THIS MATTER came before the Court upon the Motion filed by Golden Sun Capital Management, LLC and Golden Sun Multi-Manager Fund, L.P. (collectively, "Golden Sun") for (I) Leave to file a Proof of Claim Out of Time and (II) for Order Deeming that the Proof of Claim Is Timely Filed (the "Motion"); and the Court having reviewed the Motion; and finding that good and sufficient cause has been shown in support of the relief granted herein, it is



ORDERED as follows:

1. The Motion is GRANTED.
2. Golden Sun is permitted thirty (30) days from the date of docketing of this Order to file a Proof of Claim in these proceedings.
3. Any Proof of Claim filed by Golden Sun within thirty (30) days from the date of docketing of this Order shall be deemed a timely filed Proof of Claim.
4. The rights of the Debtors, Chapter 11 Trustee or any other party in interest to otherwise object to any Proof of Claim filed by Golden Sun Capital Management, LLC are specifically preserved in their entirety.
5. This Court hereby retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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Submitted by:  
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Copy to: Michael L. Schuster, Esq.  
(Attorney Schuster is directed to serve a copy of this Order on all parties in interest)