

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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In re:

CHAPTER 11

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

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

Debtors.

**LIQUIDATING TRUSTEE'S MOTION (1) TO  
APPROVE SETTLEMENT WITH MINNESOTA TEEN CHALLENGE  
AND (2) TO APPROVE PAYMENT OF CONTINGENCY FEE**

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 Minnesota Teen Challenge ("*MTC*") and (2) to approve payment of counsel's contingency fee (the "*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

**I. 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, "*PCP*").

3. The reality though 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. (“**MGF**”; 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 (“**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 (“**Petters Receiver**”). Thereafter, the Petters Receiver filed voluntary chapter 11 petitions for PCI and was appointed chapter 11 trustee for all such entities (in such capacity, the “**Petters Trustee**”).

8. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. 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**

11. The Debtors' entry into Petters' fraud was through the Vennes Parties. Namely, based on representations made by them, 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 ("*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 MTC, Adv. Case No. 11-03022-PGH ("*PBF Action*"). The PBF Action seeks to avoid transfers made to MTC by the Vennes Parties for the period of June 2004 through July 2008.

14. After the commencement of the PBF Action, Petters Trustee filed an action to avoid and recover transfers made to MTC by PCI and other Petters affiliated debtors ("*Petters*

*Bankruptcy Action*”). Similarly, the Petters Receiver filed an action to avoid and recover transfers made by one or more of the Receivership Defendants to MTC (“*Petters Receivership Action*”; and together with the Petters Bankruptcy Action and the PBF Action, the “*Litigation*”).

15. Altogether, as set forth in the complaints filed in the Litigation, the Petters Trustee, Petters Receiver and Liquidating Trustee assert that MTC received in the aggregate, approximately \$8,247,319.51 in transfers from the Petters Receivership Defendants, the Vennes Parties and PCI. In particular:

a) During the period beginning on or about April 1998 and ending on or about December 2007, one or more of the Receivership Defendants made transfers totaling \$1,979,883.00 to MTC;

b) During the period beginning on or about August 2000 and ending on or about September 2005, PCI made transfers totaling \$476,830.00 to MTC;

c) During the period from February 4, 1998 through May 14, 2003, the Vennes Parties made transfers, including transfers made through the Fidelis Foundation, to or for the benefit of MTC in the amount of approximately \$2,817,000; and

d) During the period beginning on or about June 2004 and ending on or about July 2008, the Vennes Parties made transfers totaling \$5,790,606.51 to MTC of which (i) approximately \$2,689,606.51 of these transfers are asserted by MTC to be unrelated to donations made by the Vennes Parties and (ii) approximately \$1,451,000.00 of these transfers were made by Mr. Vennes to MTC to refurbish and repair the Hope Commons Building located in Minneapolis, Minnesota, which is partially occupied by Teen Challenge under a tenant-friendly twenty-five year lease.

16. The Petters Receiver, Petters Trustee and Liquidating Trustee assert that some or all of the above transfers are subject to avoidance and recovery for the benefit of the victims of the Petters' fraud.

17. MTC denies that it has any liability in connection with the claims asserted in the Litigation.

18. The Petters Receiver, Petters Trustee and Liquidating Trustee have recently entered into an agreement whereby they have agreed to mediate jointly with MTC 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 ("*Allocation Agreement*"). Under the terms of that 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 Petters Trustee receives sixty percent and the Liquidating Trustee receives forty percent. *See* ECF No. 1282.

19. On June 6, 2012, the parties attended a mediation in the offices of the Liquidating Trustee's local counsel in Minneapolis to resolve the Litigation. At the mediation, the parties were able to achieve a global resolution that is set forth below ("*Settlement*").

## II. Settlement Terms

20. The key aspects of the Settlement as it relates to the Palm Beach Liquidating Trusts are as follows:<sup>1</sup>

- a) **Cash consideration:** upon approval of the Settlement, MTC shall pay or cause to be paid \$2,051,000.00 ("*Settlement Payment*") in settlement of

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<sup>1</sup> The parties have agreed to the form of settlement agreement, which is attached as Exhibit 1. An executed copy of this agreement will be filed prior to any hearing on the Settlement. To the extent the terms set forth in this Motion differ from those set forth in the settlement agreement, the settlement agreement controls.

the Litigation. The Settlement Payment is comprised of two components. \$600,000.00 of the Settlement Payment is directed at settling all claims the Petters Receiver and the Petters Trustee have against MTC directly based on transfers to or for the benefit of MTC made by entities for which Mr. Kelley serves as receiver or trustee (the “**Direct Claim Amount**”). The remaining \$1,451,000.00 is directed at settling all claims the Petters Trustee and the Liquidating Trustee have against MTC resulting from transfers MTC received from either of the Vennes Parties, either directly or through the Fidelis Foundation (“**Indirect Claim Amount**”).

- b) **Allocation of the Settlement Payment with respect to the Indirect Claim Amount:** The Petters Trustee, on behalf of PCI, will receive 50% (\$725,500.00) of the Indirect Claim Amount on account of his settlement of his claims that predate November 30, 2003. In general, these claims are premised on the theory that MTC was a § 550(a)(2) subsequent transferee of transfers made initially by PCI to one or both of the Vennes Parties. The remaining 50% (\$725,500.00) of the Indirect Claim Amount is allocated 50% to the Petters Trustee on behalf of PCI (\$362,750.00) and 50% to the Liquidating Trustee (\$362,750.00) (“**Palm Beach Settlement Payment**”) according to the Allocation Agreement.
- c) **Withdrawal of MTC’s motion to dismiss filed in the PBF Action:** Upon the filing of this Motion seeking approval of the Settlement, MTC shall withdraw its pending motion to dismiss filed in the PBF Action without prejudice to renewing such motion in the event this Motion is denied for any reason.
- d) **Releases and Order:** In exchange for the Settlement Payment, the parties will exchange mutual general releases. In addition, all persons will be barred from bringing an action against MTC to set aside or otherwise challenge the transfers made to MTC (“**Bar Order**”).<sup>2</sup>

21. 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 by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (“**Pro Rata Allocation Formula**”).

<sup>2</sup> The Petters Receiver and Petters Trustee will seek court approval of the Bar Order in the Minnesota Court and Bankruptcy Court for the District of Minnesota.

### III. Relief Requested

22. The Liquidating Trustee seeks (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee (as defined below).

23. 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.”

24. 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).

25. 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***

26. 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*

27. As set forth in the Complaint filed in the PBF Action, the Liquidating Trustee is seeking to avoid and recover transfers made to MTC by the Vennes Parties.

28. Although the Liquidating Trustee believes these claims are valid, the probability of success cannot be gauged with certainty at this stage.

29. Moreover, based on information provided to the Liquidating Trustee at the mediation, many of the transfers identified in the PBF Action will not be subject to avoidance due to the underlying circumstances relating to such transfers including that the transfers were not made by, or on behalf of, the Vennes Parties. As such, the face amount of the transfers at issue in the PBF Action would be reduced significantly.

30. As set forth in its papers filed in the PBF Action, MTC denies all liability associated with the claims asserted against it. Ultimately, significant fact discovery would be necessary before this Court could conclude that MTC would need to disgorge transfers made to it by the Vennes Parties or absolve it of liability.



*Collectability*

31. Collectability is not a significant consideration with respect to the Litigation.

*Complexity of litigation and attendant expense, inconvenience and delay*

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

33. 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. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

34. Moreover, a significant focus of the litigation will be the Vennes Parties themselves. To that end, the pending criminal case against Mr. Vennes is currently scheduled for trial in the fall of 2012. The possibility exists that discovery from the Vennes Parties may be delayed until the conclusion of that proceeding.

35. In addition, during the pendency of the PBF Action, the Minnesota legislature enacted an amendment to the State's version of the Uniform Fraudulent Transfer Act which purports to apply retroactively and impose certain limitations on the Liquidating Trustee's rights and remedies. While the Liquidating Trustee disputes the applicability of the amended statute, he did consider the potential risks and expenses associated with litigating this issue.

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

*Paramount interest of creditors*

37. The settlement provides a meaningful payment of the claims asserted against MTC in the PBF Action. The Palm Beach Settlement Payment is a meaningful resolution in

light of the complexity of the Litigation, potential delay and professional costs and that the actual amount of transfers at issue in the PBF Action is markedly less than what is identified in the schedules to the complaint. As such, the Settlement is in the paramount interest of the Debtors' stakeholders. The settlement is supported by the Trust Monitor for the Palm Beach Finance Partners II Liquidating Trust.

***B. The Contingency Fee Ought to be Approved***

38. 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***").

39. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$36,275.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

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

s/ Michael S. Budwick  
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Attorneys for the Liquidating Trustee

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3 on July 3, 2003 and by U.S. Mail on those parties set forth on the attached list on Exhibit 4.

s/ Michael S. Budwick

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered effective as of the date indicated below, by and between Douglas A. Kelley, in his capacities as Petters Trustee and Petters Receiver, as defined below, Barry E. Mukamal, in his capacity as Liquidating Trustee, as defined below, and Minnesota Teen Challenge ("Teen Challenge") (each of the Petters Trustee, Petters Receiver, Liquidating Trustee, and Teen Challenge is a "Party" and collectively are the "Parties").

### RECITALS

WHEREAS, pursuant to an Order entered on October 6, 2008 and as amended on December 8, 2008, the Honorable Ann Montgomery, United States District Judge for the District of Minnesota (the "District Court") appointed Douglas A. Kelley as receiver (the "Petters Receiver") for, among others, Thomas J. Petters ("Petters"), Deanna Coleman ("Coleman"), Larry Reynolds ("Reynolds"), Nationwide International Resources, Inc. ("Nationwide"), the Thomas J. Petters Family Foundation (the "Family Foundation") Petters Company, Inc., Petters Group Worldwide, LLC and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, United States District Court, District of Minnesota, Case No. 0:08-cv-05348 Doc # 12, 127 (the "Receivership Order"). Petters, Coleman, and the Family Foundation are collectively referred to herein as the "Petters Receivership Transferors"; and

WHEREAS, on October 8, 2008, 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 (the "Minnesota Bankruptcy Court") commencing the Chapter 11 cases of Petters Company, Inc. ("PCI" or the "PCI Estate") and Petters Group Worldwide, LLC ("PGW" or the "PGW Estate") on October 11, 2008. Petitions commencing the Chapter 11 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 case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008. The Chapter 11 cases are referred to in this Agreement either individually as a "Bankruptcy Case" or collectively as the "Bankruptcy Cases." The Bankruptcy Cases are being administered jointly under *In re Petters Company, Inc., et al.*, United States Bankruptcy Court, District of Minnesota, BKY No. 08-45257. As used in this Agreement, the term "Petition Date" shall refer to the date of filing of the petitions for each Bankruptcy Case described above; and

WHEREAS, on February 26, 2009, the Bankruptcy Court approved the appointment of Douglas A. Kelley, Esq. (the "Petters Trustee"), as the Chapter 11 trustee for the Bankruptcy Cases; and

WHEREAS, prior to the entry of the Receivership Order, Palm Beach Finance Partners, L.P. ("PBFP") and Palm Beach Finance II, L.P. ("PBFII") advanced funds to debtor Palm Beach Finance Holdings, Inc. which ultimately advanced funds to PCI; and

WHEREAS, on November 30, 2009, PBFP and PBFII commenced voluntary petitions 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. Barry E. Mukamal (the “Liquidating Trustee”) was appointed as the Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust, the successors to PBFP and PBFII (collectively, the “Palm Beach Liquidating Trusts”); and

WHEREAS, on October 6, 2010, the Petters Trustee commenced litigation against, among others, Frank E. Vennes (“Vennes”) and Metro Gem, Inc. (“Metro Gem”). *Kelley v. Metro Gem, Inc. et al.*, Adv. No. 10-04352 (Bankr. D. Minn.) (the “Kelley v. Metro Gem/Vennes Litigation”). The Petters Trustee asserts that Vennes and Metro Gem received approximately \$2.2 billion in funds from PCI during the course of the Petters Ponzi scheme including approximately \$90 million in false profit and \$113 million in commission payments and seeks avoidance of those transfers under state and federal fraudulent transfer and other applicable laws; and

WHEREAS, on November 29, 2011 the Liquidating Trustee commenced litigation against Vennes and Metro Gem on behalf of the Palm Beach Liquidating Trusts and its beneficiaries: *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla) (the “Mukamal v. Metro Gem/Vennes Litigation”). The Liquidating Trustee asserts various tort and fraudulent transfer claims against Vennes and Metro Gem, as set forth in greater detail in the Complaint filed in Adversary Case No. 11-03041-PGH-A in the Florida Bankruptcy Court.

WHEREAS, prior to the Petition Date, Teen Challenge received, in the aggregate, approximately \$8,247,319.51 from the Petters Receivership Transferors, Vennes/Metro Gem, PCI, and PGW that the Petters Receiver, Petters Trustee and Liquidating Trustee assert some or all are subject to avoidance and recovery for the benefit of the victims of the Petters Ponzi scheme and the defrauded investors of the Palm Beach Liquidating Trusts; and

WHEREAS, during the period beginning on or about April 1998 and ending on or about December 2007, the Petters Receivership Transferors made transfers totaling \$1,979,883.00 to Teen Challenge (the “Petters Receiver Transfers”); and

WHEREAS, during the period beginning on or about August 2000 and ending on or about September 2005, PCI and PGW (including RedTag – a predecessor entity of PGW by merger) made transfers totaling \$476,830.00 to Teen Challenge (the “Petters Trustee Transfers”); and

WHEREAS, during the period from February 4, 1998 through May 14, 2003, Vennes and Metro Gem made transfers, including transfers made through the Fidelis Foundation, to or for the benefit of Teen Challenge in the amount of approximately \$2,817,000 and during the period beginning on or about June 2004 and ending on or about July 2008, Vennes and Metro Gem made transfers totaling \$5,790,606.51 to Teen Challenge (the “Vennes Transfers”). Approximately \$2,689,606.51 of the Vennes Transfers during the period from June 2004 through July 2008 are asserted by Teen Challenge to be unrelated to donations by Vennes or Metro Gem. The Vennes Transfers include \$1,451,000.00 in transfers made by Vennes to Teen Challenge during 2008, for the purpose of refurbishing and repairing the Hope Commons Building located in Minneapolis, Minnesota, which is partially occupied by Teen Challenge under a tenant-friendly twenty-five year lease; and

WHEREAS, both the Petters Trustee and the Liquidating Trustee assert claims to the Vennes Transfers (since inception of the Vennes Transfers as to the Petters Trustee and since November 30, 2003 as to the Liquidating Trustee) under either federal or state law on behalf of the victims of the Petters Ponzi scheme; and

WHEREAS, the Petters Trustee and the Liquidating Trustee have entered into an agreement whereby they have agreed to mediate jointly with Teen Challenge and other Metro Gem, Inc. and Vennes transferees and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers, including the Vennes Transfers. Under terms of that agreement the Petters Trustee and the Liquidating Trustee agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against Metro Gem, Inc. and Vennes, and their transferees and for recoveries in excess of one million dollars the Petters Trustee receives sixty percent and the Liquidating Trustee receives forty percent (the "Allocation Agreement"). The Petters Trustee and the Liquidating Trustee represent to Teen Challenge that the Allocation Agreement is a legally-binding agreement between them and further instruct Teen Challenge to make payment to them according to the terms of this Agreement;<sup>12</sup> and

WHEREAS, on November 29, 2011, the Liquidating Trustee commenced litigation against Teen Challenge captioned *Barry E. Mukamal, in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust v. CitySites Urban Media, Inc. et al.*, Adv. Case No. 11-03022 in the Florida Bankruptcy Court (the "Liquidating Trustee v. Teen Challenge Litigation") to recover, among other transfers, the Vennes Transfers; and

WHEREAS, on March 30, 2012, the Petters Receiver commenced litigation against Teen Challenge captioned *Douglas A. Kelley, in his capacity as the court-appointed Receiver of Thomas Joseph Petters; Deanna Coleman aka Deanna Munson; Larry Reynolds, and/or dba Nationwide International Resources aka NIR; Thomas J. Petters Family Foundation v. Minnesota Teen Challenge*, Case No. 12-00810 (PJS/JJK) in United States District Court for the District of Minnesota (the "Petters Receiver v. Teen Challenge Litigation") to recover the Petters Receiver Transfers; and

WHEREAS, on March 30, 2012, the Petters Trustee commenced litigation against Teen Challenge captioned *Douglas A. Kelley, in his capacity as the court-appointed Chapter 11 Trustee of Debtors Petters Company, Inc. and Petters Group Worldwide, LLC v. Minnesota Teen Challenge*, Adv. Case No. 12-04087 in the Minnesota Bankruptcy Court (the "Petters Trustee v. Teen Challenge Litigation") to recover the Petters Trustee Transfers; and

<sup>1</sup> Pursuant to Fed.R.Bankr.P. Rule 9019, the Liquidating Trustee filed his motion to approve the Allocation Agreement on June 14, 2012 as the Allocation Agreement is subject to the approval of the Florida Bankruptcy Court [Docket Entry 1282]. As of the date of the execution of this Agreement, the Florida Bankruptcy Court has not yet entered an Order approving such motion.

<sup>2</sup> Pursuant to Fed. R. Bankr. P. Rule 9019, the Minnesota Bankruptcy Court entered an Order approving the Allocation Agreement on June 20, 2012. Case No. 08-45257 [Docket Entry 1720].



WHEREAS, on June 6, 2012, the Parties and their counsel and representatives attended a non-binding mediation held at the Law Offices of Parker Rosen, LLC before the Honorable James Gilbert (Ret.), former Justice of the Minnesota Supreme Court; and

WHEREAS, Teen Challenge, without admitting liability, wishes to settle all claims arising from the facts on which the claims are based regarding the Petters Receiver Transfers, the Petters Trustee Transfers, and the Vennes Transfers (collectively, the “Claims”) with the Petters Receiver, the Petters Trustee, and the Liquidating Trustee (collectively, the “Claimants”) through this settlement agreement without the expense, delay and uncertainty of litigation; and

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

#### AGREEMENT

1. Recitals Incorporated. The Recitals set forth above are incorporated herein by reference and agreed to as if fully set forth herein.
2. The Settlement Payment. Teen Challenge shall, by wire transfer or check, deliver to the Petters Receiver, the Petters Trustee, and the Liquidating Trustee two million, fifty-one thousand dollars and 00/100 (\$2,051,000.00) (the “Settlement Payment”) in full and final settlement of the Claims. The Settlement Payment will be made within seven calendar days after the date on which this Agreement becomes effective on the Parties under paragraph 6 of this Agreement. Upon receipt of the Settlement Payment, the releases contained in paragraphs 4 and 5 shall become effective without further action by any of the Parties. The Settlement Payment is comprised of two components. \$600,000.00 of the Settlement Payment is directed at settling all claims the Petters Receiver and the Petters Trustee have against Teen Challenge directly (the “Direct Claim Amount”). The remaining \$1,451,000.00 is directed at settling all claims the Petters Trustee and the Liquidating Trustee have against Teen Challenge resulting from transfers Teen Challenge received from either Metro Gem or Vennes, either directly or through the Fidelis Foundation (the “Indirect Claim Amount”).
3. Allocation and Payment of Settlement Proceeds. Teen Challenge will deliver the Settlement Payment to the Claimants in the following manner which the Claimants have each represented to Teen Challenge is the proper application of the Allocation Agreement to this Settlement:
  - 3.1. The Direct Claims. Direct Claims are allocated on a *pro rata* basis among the Petters Receiver and the Petters Trustee. The Petters Receiver will receive 80.5% or \$483,600.00 of the Direct Claim Amount, the Petters Trustee on behalf of PCI will receive 14.3% or \$85,800.00 and the Petters Trustee on behalf of PGW will receive 5.2% or \$31,200.00 of the Direct Claim Amount.

- 3.2. The Indirect Claims. The Petters Trustee and the Liquidating Trustee agree that the Indirect Claim Amount will be allocated as follows: The Petters Trustee, on behalf of PCI, receives 50% or \$725,500.00 of the Indirect Claim Amount on account of his settlement of his claims as to the Vennes Transfers that predate November 30, 2003 and the remaining 50% or \$725,500.00 of the Indirect Claim Amount is allocated 50% to the Petters Trustee on behalf of PCI and 50% to the Liquidating Trustee according to the Allocation Agreement. The 50% or \$725,500.00 of the Indirect Claim Amount allocated between the Petters Trustee on behalf of PCI and the Liquidating Trustee according to the Allocation Agreement comprise aggregate recoveries under the Allocation Agreement.
- 3.3. Payment of the Settlement Payment. Pursuant to this Agreement and the Allocation Agreement, and notwithstanding the fact that Teen Challenge is not a party to the Allocation Agreement, Teen Challenge shall pay the Settlement Payment as allocated in paragraph 3 of this Agreement to: (i) the Petters Trustee on behalf of PCI in the amount of \$1,174,050.00; (ii) the Petters Trustee on behalf of PGW in the amount of \$31,200.00; (iii) the Petters Receiver in the amount of \$483,000.00; and (iv) the Liquidating Trustee in the amount of \$362,750.00.
4. Release by the Claimants. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon delivery of the Settlement Payment, the Claimants and each of them will be deemed to have released, remised and forever discharged Teen Challenge from any and all past, present or future claims or causes of action (including any suit, petition, demand or other claims in law, equity or arbitration) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract (including unjust enrichment), statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorney's fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by the Claimants against Teen Challenge and that are based on or arise out of the Claims or any transfer to Teen Challenge by the Petters Receivership Transferors, PCI, PGW (including RedTag), Vennes, Metro Gem, or the Fidelis Foundation of funds that sourced from any of them, excepting, however, any claims arising out of this Agreement.
5. Release by Teen Challenge. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Teen Challenge hereby releases, remises and forever discharges the Claimants from any and all past, present or future claims or causes of action (including any suit, petition, demand or other claims in law, equity or arbitration) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorney's fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by Teen Challenge and that are based on or arise out of the Claims or any transfer to Teen Challenge by the Petters



Receivership Transferors, PCI, PGW (including RedTag), Vennes, Metro Gem, or the Fidelis Foundation of funds that sourced from any of them. Teen Challenge further covenants and agrees that it waives its right to assert a claim against any of the Bankruptcy Cases, including, but not limited to, pursuant to section 502(h) of the Bankruptcy Code. Teen Challenge further covenants and agrees that it waives any right to assert any claim in any forfeiture action brought in any administrative, criminal, or civil proceeding to all and any portion of the funds paid as the Settlement Payment.

6. Court Approval; Binding; Effective Date; Termination. This Agreement is subject to approval by the District Court, the Minnesota Bankruptcy Court, and the Florida Bankruptcy Court (the "Approving Courts"). The Claimants shall use their best efforts to obtain such approvals as promptly as practicable after the date of this Agreement. In the event no objections are filed or such objections are consensually resolved at or before a hearing seeking approval of this Agreement, the Agreement will become effective thirty days after the date of entry of the last of the Orders entered by the Approving Courts approving the Agreement. In the event objections to any of the motions of the Claimants to approve the Agreement are filed and the relevant Approving Court overrules such objections, the Agreement will become effective upon the date on which the last of the Orders entered by the Approving Courts approving the Agreement becomes final and non-appealable. The Claimants agree to seek entry of a bar order from the Approving Courts in substantially the form as paragraph 4 of the draft proposed order attached hereto as **Exhibit A**. If this Agreement does not become effective, (a) this Agreement shall terminate and be null and void for all purposes, (b) all of the statements, admissions, consents and agreements contained in the Agreement shall be null and void, and (c) neither the Claimants nor Teen Challenge may use or rely on any such statement, admission, consent or agreement in any public statement or litigation involving the Claimants. In that event the parties shall return to the positions they had in the actions identified above as of June 5, 2012.
7. Authority. The Parties represent and warrant that, as of the date hereof, they have taken all necessary actions to authorize the execution, delivery, and performance of their respective obligations under this Agreement and have the full power, authority, and legal right to execute, deliver, and perform their respective obligations under this Agreement. Teen Challenge represents to Claimants that approval of this Agreement was obtained by resolution of its Board of Directors on June 25, 2012.
8. Statutes of Limitation and Repose. The Parties agree that all statutes of limitations and statutes of repose that are applicable to any and all of the Claims or defenses shall be tolled and suspended from June 6, 2012 until the Settlement Payment has been received by the parties identified in paragraph 3 herein and has cleared the banking system, or if this Agreement is not approved by a final and non-appealable order, until the later of (a) any applicable statutes of limitation or repose limitations, or (b) 120 days following a final and non-appealable order denying approval of the Agreement. Notwithstanding the foregoing, the provisions of this paragraph shall expressly survive the expiration or termination of this agreement.

9. No Claims. Consistent with the releases contained within paragraphs 4 and 5 of this Agreement, the Parties covenant and agree not to bring any action, claim, litigation or other proceeding against the other, directly or indirectly regarding or relating to the Claims, and Teen Challenge further covenants and agrees that this Agreement is a bar to any such action, claim, litigation or other proceeding, including, but not limited to, the assertion of any claim in the Bankruptcy Cases, the District Court, or against the Palm Beach Liquidating Trusts relating to the Claims. Teen Challenge further covenants and agrees that it waives its right to assert directly or indirectly a claim against any of the Bankruptcy Cases. Teen Challenge further covenants and agrees that it waives any right to assert any claim in any forfeiture action brought by any governmental authority in any administrative, criminal, or civil proceeding to all and any portion of the funds paid as the Settlement Payment.
10. Assignment of Claim. Teen Challenge, its successors and assigns, for good and valuable consideration, the sufficiency of which is hereby acknowledged, hereby agrees to absolutely and unconditionally sell, transfer, and assign to the Petters Trustee, in consideration for the releases contained in paragraph 4 of this Agreement any claim to a distribution Teen Challenge may receive from the Fidelis Foundation on account of an allowed claim, if any, of the Fidelis Foundation in the Bankruptcy Cases. In the event Teen Challenge receives funds from the Fidelis Foundation in regard to such claims, Teen Challenge agrees to pay those funds to the Petters Trustee within 14 calendar days of receiving those funds.
11. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by any of them after the date of this Agreement to effectuate the intent of this Agreement.
12. Withdrawal of Motion to Dismiss. In anticipation of the date on which this Agreement becomes effective under paragraph 6 of this Agreement and the consummation of the transactions set forth herein and contemplated by this Agreement, Teen Challenge will withdraw its Motion to Dismiss in the *Liquidating Trustee v. Teen Challenge* Litigation, subject to leave for Teen Challenge to reinstate the Motion to Dismiss in the event that this Agreement shall not be approved by the Approving Courts at the same time the Liquidating Trustee files for approval of this Agreement with the Florida Bankruptcy Court.
13. Dismissal. Promptly upon receipt of the Settlement Payment, the Petters Receiver, the Petters Trustee and the Liquidating Trustee on the one hand, and Teen Challenge on the other hand will file jointly a stipulation of dismissal (to the extent that the applicable Court does not enter its own standard form of dismissal) with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii) of: (i) the *Petters Receiver v. Teen Challenge* Litigation; (ii) the *Petters Trustee v. Teen Challenge* Litigation; and (iii) the *Liquidating Trustee v. Teen Challenge* Litigation in each of their respective cases.
14. Entire Agreement. This Agreement between the Parties constitutes the entire agreement and understanding between and among the Parties and supersede all prior agreements, representations and understandings concerning the subject matter thereof.

15. Amendments, Waiver. This Agreement 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 Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.
16. Assignability. No Party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto.
17. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently appointed Chapter 7 trustee in the Bankruptcy Cases.
18. No Third Party Beneficiary. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.
19. No Admission of Liability or Wrongdoing. By entering into this Agreement, Teen Challenge does not admit and it expressly denies that it owes any liability to the Claimants or to any other person or that it engaged in any wrongdoing.
20. Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota without regard to the conflicts of law principles of any jurisdiction. Any action brought to enforce any provision of this Agreement shall be brought in either the District Court or the Minnesota Bankruptcy Court, and the Parties hereto hereby consent to the jurisdiction of such courts.
21. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.

22. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

<b>If to the Receiver or Petters Trustee, c/o:</b>	<b>If to the Liquidating Trustee, c/o:</b>
Douglas A. Kelley Kelley, Wolter, and Scott, P.A. 431 S. Seventh St. Suite 2530 Minneapolis, MN 55415 F: (612) 371-0574 E: dkelley@kelleywolter.com -and- James A. Lodoen Lindquist & Vennum P.L.L.P. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 F: (612) 371-3207 E: jlodoen@lindquist.com	Barry E. Mukamal Marcum LLP One SE Third Avenue, 10 <sup>th</sup> Floor Miami, FL 33131 F: (305) 995-9601 E: barry.mukamal@marcumllp.com -and- Michael S. Budwick Meland Russin Budwick, P.A. 3200 Southeast Financial Center 200 South Biscayne Blvd Miami, FL 33131 F: (305) 358-1221 E: mbudwick@melandrussin.com
<b>If to Teen Challenge, c/o:</b>	
Eric Vagle Minnesota Teen Challenge 1619 Portland Ave Minneapolis, MN 55404-1598 -and- Timothy D. Kelly Kelley & Hannah, P.A. 3720 IDS Center 80 South Eighth St. Minneapolis, MN 55402 -and- Chuck Shreffler Shreffler Law, PLLC 410 11th Ave So Hopkins, MN 55343	

23. Counterparts; Electronic Copy of Signatures. This Agreement and attachments may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

**\*\*\* SIGNATURE PAGE FOLLOWS \*\*\***

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

Debtors.

**ORDER APPROVING LIQUIDATING TRUSTEE'S MOTION (1) TO  
APPROVE SETTLEMENT WITH MINNESOTA TEEN CHALLENGE  
AND (2) TO APPROVE PAYMENT OF CONTINGENCY FEE**

The Court conducted a hearing on \_\_\_\_\_ on the Liquidating Trustee's Motion for Approval of Settlement with Minnesota Teen Challenge and Payment of Contingency Fee [ECF No. \_\_\_\_\_] (the "*Motion*").<sup>1</sup> For the reasons stated on the record, which are incorporated here by reference, it is:

**ORDERED** as follows:

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

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. The Palm Beach Settlement Payment 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. (the “*Pro Rata Allocation Formula*”), and the wire transfers and/or checks related to the Palm Beach Settlement Payment shall be made in the amounts in accordance with this allocation.
4. MRB’s Contingency Fee in the amount of \$36,275.00 is approved. The Liquidating Trustee is authorized and directed make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

###

**Submitted By:**

s/ Jonathan S. Feldman, Esq.  
Jonathan S. Feldman, Esquire  
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Miami, Florida 33131  
Telephone: (305) 358-6363  
Telecopy: (305) 358-1221  
Attorneys for the Liquidating Trustee

**Copies Furnished To:**

Jonathan S. Feldman, 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-PGH

### 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.

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EXHIBIT 3



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