

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.

**LIQUIDATING TRUSTEE'S MOTION (1) TO APPROVE SETTLEMENT
WITH FREDRIKSON & BYRON, P.A. (2) FOR ENTRY OF A BAR ORDER;
AND (3) 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 Fredrikson & Byron, P.A. ("*F&B*"); (2) for the entry of a bar order; and (3) to approve payment of counsel's contingency fee (the "*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

I. Factual 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. 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.

3. 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 Cases to Cases under Chapter 7 [ECF No. 100].

4. 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].

5. 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.

6. Pre-petition, the Debtors engaged in business transactions with certain entities affiliated with Thomas Petters (the "*Petters Entities*"). The Petters Entities have since been exposed as having engaged in a massive fraudulent scheme, and Mr. Petters has been indicted and sentenced to fifty years in prison for his role.

7. F&B was pre-petition counsel to certain of the Petters Entities.

8. Based on the investigation to date by the Liquidating Trustee and his professionals, the Liquidating Trustee has determined that he may assert certain claims against F&B, based upon - among other things - (i) the relationship, actions and inactions between F&B and the Petters Entities; and (ii) the relationship, actions and inactions between and among the Petters Entities, certain other entities and the Palm Beach Funds.

9. F&B expressly denies any and all liability with respect to such claims.

10. Over the past number of months, the Liquidating Trustee and F&B exchanged information and engaged in settlement negotiations.

11. Following discussions and negotiations that continued for these months, the Liquidating Trustee and F&B executed a Stipulation of Settlement attached as Exhibit 1 and described below ("**Settlement**"). The Liquidating Trustee believes that the terms of the Settlement are in the best interests of the estates and should be approved.

II. Settlement Terms

12. The key aspects of the Settlement, as more fully set forth therein, are the following:

- a) **Cash consideration** - F&B shall pay \$437,500 to the Liquidating Trustee (the "**Settlement Payment**").
- b) **Bar order** – As a pre-condition for providing the above consideration, the Liquidating Trustee will obtain an Order in favor of F&B and certain related parties (the "**F&B Released Parties**") that would bar claims being asserted against them by the following parties: (i) all creditors of the Debtors; (ii) all limited partners of the Debtors; (iii) all general partner(s) of the Debtors; and (iv) all persons or entities with respect to claims for indemnity or contribution relating to the released claims. As has been requested in the past by the SEC in connection with other settlements reached by the Liquidating Trustee, the Bar Order excepts any proceedings or actions brought by the SEC. Further, it excepts any claims that are property of the estate of certain Petters Entities.
- c) **Releases** – in exchange for the Settlement Payment, the parties will exchange mutual general releases.

13. 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**").

14. In agreeing to the above terms, the Liquidating Trustee considered the Liquidating Trustee's possible claims against F&B, and F&B's defenses to such claims.

III. Relief Requested

15. The Liquidating Trustee seeks an Order from this Court (i) approving the Settlement and directing payment of the Contingency Fee (as defined below); and (ii) entering the Bar Order.

16. 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."

17. 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).

18. 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

19. 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

20. The Liquidating Trustee could assert, among other things, the following claim against F&B:

- a) **Aiding and abetting breach of fiduciary duty:** The Liquidating Trustee could assert claims of aiding and abetting breach of fiduciary duty by F&B based upon a duty that Mr. Petters and / or the Petters Entities owed to the Debtors that F&B facilitated by, among other things, its representation of the Petters Entities.

21. Although the Liquidating Trustee believes he has a valid and colorable claim against F&B, F&B could assert substantive defenses in response. Indeed, F&B denies any liability, and has communicated that it would assert, among other things, the defenses of *in pari delicto* and imputation, and that the claim the Liquidating Trustee would assert is similar to the wrongdoing committed by the controlling persons of the Debtors. While the Liquidating Trustee has legal and factual responses to this defense, the agreed-to settlement limits any risk of an adverse decision.

Collectability and Amount of Available Insurance Coverage

22. The collectability of any judgment against F&B was not a consideration in the Liquidating Trustee's decision to reach this settlement.

Complexity of litigation and attendant expense, inconvenience and delay

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

24. Although the Liquidating Trustee's potential claim is a typical claim litigated before this Court, if brought, this would require significant discovery, and a detailed, fact-based analysis of the relationship between F&B and the Petters Entities over a decade long period, as well as significant legal issues requiring briefing and analysis based on the facts learned. Further, the Liquidating Trustee would be required to retain expert witness(es) in support of his position, which will be a significant expense to the estate. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

25. 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

26. Although a direct result of the Settlement is that creditors and limited partners will be barred from asserting any claims against the F&B Released Parties, the settlement provides that a meaningful sum of money will be tendered to the Liquidating Trustee for the eventual distribution to creditors. To the knowledge of the Liquidating Trustee, no creditor of the Debtors has asserted a claim against F&B. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Bar Order Ought to be Approved

27. This Court has the inherent power under the Bankruptcy Code, including section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11. *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499 (Bankr. S.D.N.Y. 1991). The Eleventh

Circuit Court of Appeals in *Munford* concluded that (i) public policy favors settlements, (ii) the cost of litigation can be burdensome on a bankruptcy estate, and (iii) "bar orders play an integral role in facilitating settlements." *In re Munford*, 97 F.3d 449, 454 (11th Cir. 1996).

28. This Court has the broad power to approve settlement agreements and effectuate a release of non-debtors. *Munford*, 97 F.3d at 455; *see also In re S&I Investments*, 421 B.R. 569, 583-586 (Bankr. S.D. Fla. 2009). Indeed, the Eleventh Circuit Court of Appeals has stated that:

[c]omplex litigation ...can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive. Accordingly, the Federal Rules of Civil Procedure authorize district courts to facilitate settlements in all types of litigation [B]ar orders play an integral role in facilitating settlement. Defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross claims for indemnity, contribution, and other causes related to the underlying litigation.

In re U.S. Oil & Gas Litig., 967 F.2d at 493-94.

29. The Liquidating Trustee submits that approval of the Settlement Agreement is fair, reasonable and in the best interest of the estate and its general unsecured creditors. An essential and necessary part of the Settlement Agreement is the Bar Order, and that too should be approved; without such approval, there is no Settlement.

30. Entry of the Bar Order is an essential, critical, necessary and integral element of the Settlement Agreement. The Liquidating Trustee's agreement to obtain the Bar Order was negotiated at arms-length between the parties and in good faith, as a part of the parties' settlement discussions.

31. The Eleventh Circuit Court of Appeals has stated as follows:

When determining whether to enter a bar order against nonsettling defendants, the court must make reasonable determination that bar order is fair and equitable. In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the

barred claim, the complexity of litigation, and the likelihood of depletion of the resources of the settling defendants.

Munford, 97 F.3d 455 (internal citations omitted).

32. The Liquidating Trustee submits that upon ‘reasonable determination,’ the requested Bar Order is fair and equitable. As set forth above, the Bar Order (i) bars interrelated claims; (ii) no non-settling defendants have yet brought suit; and (iii) the factual underpinnings to the litigation would be extremely complex.

33. Further, as stated above, the Bar Order was a necessary part of the Settlement, which results in the Settlement Payment to the Palm Beach Liquidating Trusts.

C. The Contingency Fee Ought to be Approved

34. 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**”).

35. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$43,750 – be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

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

s/ Solomon Genet
Solomon Genet, Esquire
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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 on August 3, 2012, via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3 and by U.S. Mail on those parties set forth on the attached list on Exhibit 4.

s/ Solomon B. Genet

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on this 3rd day of July, 2012 by and among (a) Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*") and (b) Fredrikson & Byron, P.A. ("*F&B*") (F&B and the Liquidating Trustee are sometimes referred to individually as a "*Party*," or collectively, the "*Parties*"). The terms of this Stipulation are as follows:

RECITALS

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

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

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, asserts certain claims against F&B (the "*PBF Claims*");

D. F&B expressly denies any liability in connection with the PBF Claims;

E. The Liquidating Trustee (and his legal counsel) and F&B and its legal counsel, have engaged in settlement negotiations and discussions to resolve the PBF Claims;

F. To avoid the continued expense and risk of adverse outcome arising from the PBF Claims, as well as incurring costs and expenses associated therewith, among other reasons, the

Parties have agreed to resolve the PBF Claims subject to the terms and conditions of this Stipulation and Bankruptcy Court approval.

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

1. 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. 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.

3. In full and final settlement of the PBF Claims, F&B shall pay (or cause to be paid) \$437,500 within 20 days of the Bar Order (as defined below) (the "**Settlement Payment**"). The Settlement Payment shall be made *via* wire transfer pursuant to written instructions to be provided by the Liquidating Trustee to F&B.

4. The Liquidating Trustee, with the cooperation of F&B, shall obtain the entry of a final, non-appealable order (the "**Bar Order**") by the Bankruptcy Court substantially in the form of Exhibit 1, which approves this Stipulation and bars and permanently enjoins the prosecution of any and all Claims (as defined below) against any F&B Released Party (as defined below) by any and all of the following entities: (1) all creditors of either of the Debtors; (2) all limited partners of either of the Debtors; (3) all general partner(s) of either of the Debtors; and (4) all persons or entities in respect of any claim for indemnity or contribution arising out of or relating to any Claims released hereby (collectively, the "**Enjoined Parties**") provided that the Bar Order shall not bar any Claims that are property of the bankruptcy estate of any Petters Entity (as

defined below) and that could be asserted by Douglas A. Kelley, in either his capacity as receiver or chapter 11 trustee for the Petters Entities (as defined below). This Stipulation is contingent upon the entry of the Bar Order and if for any reason the Bar Order is not entered, this Stipulation shall be null and void in its entirety.

5. For purposes of this Stipulation:

A. The term “*Claims*” shall mean any obligations, claims, causes of action, demands, liabilities, losses, costs, charges and expenses 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, contingent, known or unknown, discovered or undiscovered.

B. For purposes of this Stipulation, the term “*Petters Entities*” shall mean Petters Company, Inc. and Petters Group Worldwide, LLC and shall include those of their respective subsidiaries or affiliates for which Mr. Kelley is the Chapter 11 trustee. Each may be referred to as a “*Petters Entity*.”

6. Upon the Effective Date (defined below) of this Stipulation and payment of the Settlement Payment, the Liquidating Trustee on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates and any person or entity claiming through the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors or their estates, waives, releases and holds harmless, now and forever, F&B, its present and former attorneys, employees, insurers and agents and the heirs, executors, administrators, beneficiaries, predecessors, successors and assigns of any of the foregoing (the “*F&B Released Parties*”) from any and all Claims that the Liquidating Trustee, the Palm Beach Liquidating Trusts or the Debtors or any of them may have against any F&B Released Party related in any way to or arising out of services provided to the

Petters Entities by any F&B Released Party; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of this release shall not (i) impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, the Debtors or their estates, may have against any parties other than any F&B Released Party, including but not limited to Claims against alleged concurrent or consecutive tortfeasors (ii) impact, impair or alter in any manner any right of the Liquidating Trustee, the Palm Beach Liquidating Trusts or the Debtors to participate in any recovery obtained by Douglas A. Kelley on behalf of, in connection with or related to any of the Petters Entities as against any F&B Released Party in connection with any Claims related in any way to the Petters Entities except to the extent that such recovery under any Claim could be reduced by the Settlement Payment. The Parties expressly understand and agree that the scope of the release contemplated herein relates to any asserted (albeit disputed) Claims held by the Liquidating Trustee that are independent, separate and apart from any claims held by Mr. Kelley. No alleged claims that are the property of the bankruptcy estate of any Petters Entity and asserted by Mr. Kelley as against any F&B Released Party shall be deemed impacted, impaired or altered in any way by virtue of this Stipulation.

7. Upon the Effective Date and payment of the Settlement Payment, F&B waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates from any and all Claims that F&B may have against the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

8. This Stipulation is effective only upon the Bar Order becoming final and non-appealable (the “*Effective Date*”). On the Effective Date, this Stipulation shall be binding on all of the Parties’ hereto, and their successors or assigns.

9. 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 voluntarily waived such right, and enters into those terms voluntarily and without duress.

10. The Liquidating Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order. The Liquidating Trustee shall provide a copy of the motion and related pleadings to F&B no less than 5 business days before the same is filed with the Court and agrees to make reasonable changes to the motion as suggested by F&B. The Liquidating Trustee shall comply with the local and national rules for service and filing of the motion in the above-referenced bankruptcy case, including serving by U.S. Mail notice of motion(s) upon all persons and entities whose rights would or could be affected by the Bar Order, including, without limitation, (1) all creditors of the Debtors; (2) all limited partners of the Debtors; (3) all general partner(s) of the Debtors; and (4) all shareholders of the Debtors.

11. Each Party shall bear its own attorneys’ fees and costs in connection with the PBF Claims, the negotiation and drafting of this Stipulation and the submission of such Stipulation, motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; 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 reasonable attorneys’ fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

12. This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

13. If the Bankruptcy Court does not enter the Bar Order, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not enter the Bar Order because any of the Parties have failed to provide the 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 enter the Bar Order, or to file an amended motion for entry of the Bar Order.

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

15. 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 or email shall be effective as delivery of a manually executed counterpart of this Stipulation.

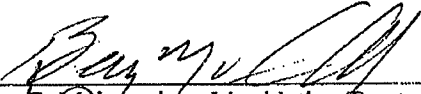
16. This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

17. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Stipulation.

18. The individuals signing below represent and warrant that (a) each Party on behalf of whom they are signing is the sole and lawful owner of all right, title and interest in and to the matters released and settled by such Party, and has not assigned, transferred, pledged or hypothecated, or subrogated any Claim released hereby or any portion of such Claim, and (b) they have the authority to execute this Stipulation on behalf of the persons / entities identified and as set forth herein and have the authority to bind the respective parties represented by them.


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STIPULATED AND AGREED TO BY:



Barry E. Mukamal, as Liquidating Trustee

Date: June __, 2012



Fredrikson & Byron, P.A.

Date: ^{July 8}
~~June~~ __, 2012

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PROPOSED

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

In re:
PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING MOTION FOR ENTRY OF
BAR ORDER IN FAVOR OF FREDRIKSON & BYRON, P.A.**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with Fredrikson & Byron, P.A.* (the "**Motion**") [ECF No. ____].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
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In its Motion, the Liquidating Trustee, on behalf of the Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against F&B as described in detail below (the “*Bar Order*”).

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Stipulation of Settlement is **APPROVED**.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
4. F&B shall pay (or cause to be paid) \$437,500 (the “*Settlement Payment*”) within 20 days from the date that this Order becomes a final, non-appealable order. The Settlement Payment shall be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Michael S. Budwick, Esq. Meland Russin & Budwick, P.A. 200 South Biscayne Blvd., Suite 3000, Miami, Florida 33131.
5. The Settlement payment will be allocated and apportioned among the estates 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 or checks referenced in paragraph 4 above shall be made in the amounts in accordance with this allocation.
6. MRB’s Contingency Fee in the amount of \$43,750 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need for

further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

7. To the extent that F&B has a scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

8. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.

9. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Liquidating Trustee with F&B is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

10. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 6 below:

"Releasors" shall mean (1) all creditors of either of the Debtors; (2) all limited partners of either of the Debtors; and (3) all general partner(s) of either of the Debtors.

“Claims” shall mean all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, including but not limited to those pertaining to any dealings with, loans to or investments in the Debtors, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that relate in any manner whatsoever to the Debtors or the Liquidating Trusts.

“F&B Released Parties” shall mean F&B, its present and former attorneys, employees, insurers and agents and the heirs, executors, administrators, beneficiaries, predecessors, successors and assigns of any of the foregoing.

“Petters Entities” shall mean Petters Company, Inc. and Petters Group Worldwide, LLC and shall include those of their respective subsidiaries or affiliates for which Mr. Kelley is the Chapter 11 trustee. Each may be referred to as a ***“Petters Entity.”***

“Petters Representative” shall mean Douglas A. Kelley, in either his capacity as chapter 11 trustee or receiver for any and all of the Petters Entities.

11. Bar Order

a. Except as expressly provided below, Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against any F&B Released Party, any Claims that any Releasor now has, ever had or may claim to have in the future, and any and all persons or entities are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against any F&B Released Party, any Claims for indemnity or contribution that any such person or entity now has, ever had or may claim to have in the future arising out of or relating to any Claims released by the Releasors related in any way to or arising out of services provided to the Petters Entities by any F&B Released Party; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission (***“SEC”***) from commencing or continuing any Claims, causes of action, proceedings or investigations against any person or entity, including

any F&B Released Party, (ii) release or discharge any person or entity, including any F&B Released Party, from any Claims, rights, powers or interests held or assertable by the SEC; (iii) enjoin, impair, delay or impact the Petters Representative from commencing, asserting, pursuing or continuing on behalf of any of the Petters Entities any Claims against any person or entity, including any F&B Released Party, held by any Petters Entity in its own right and not derivatively or by, through, under, on behalf of, or in the place of the Debtors; or (iv) release or discharge any person or entity, including any F&B Released Party, from any Claims held or assertable by the Petters Representative on behalf of any of the Petters Entities in its own right and not derivatively or by, through, under, on behalf of, or in the place of the Debtors. No such alleged Claims that are the property of the bankruptcy estate of any Petters Entity and asserted by the Petters Representative as against any F&B Released Party shall be deemed impacted, impaired or altered in any way by virtue of the Settlement or this Order except to the extent that recovery under any such Claim could be reduced by the Settlement Payment (as such term is defined in the Stipulation). Moreover, no aspect of the Settlement or this Order shall impact, impair or alter in any manner any right of the Liquidating Trustee, the Palm Beach Liquidating Trusts or the Debtors to participate in any recovery obtained by the Petters Representative on behalf of, in connection with or related to any of the Petters Entities as against any F&B Released Party in connection with any Claims, litigation or matters related in any way to the Petters Entities.

b. In the event that (i) any of the Debtors or any person asserting rights derivative of any Debtor, including without limitation any past or present partner, principal, officer, director, shareholder, employee, related entity, subsidiary entity, affiliated entity, parent entity, administrator, predecessor, successor, assign, debtor-in-possession, bankruptcy trustee, agent, attorney, accountant, representative or insurer thereof (the Debtors and all such persons, collectively, "*Initiators*"), initiates any suit, action, cause of action or other proceeding, including proceedings in arbitration, whether in the nature of a claim, cross-claim or

counterclaim, against any person (each a “*Defendant/Third-Party Plaintiff*”, such term to include any subrogee thereof) with respect to any matter (a “*Proceeding*”), and (ii) such Defendant/Third-Party Plaintiff brings a cross-claim for contribution or indemnity against F&B or any other F&B Released Party (each an “*Indemnified Party*,” such term to include any subrogee thereof) seeking to recover any loss, liability, cost or expense suffered or incurred by such Defendant/Third-Party Plaintiff, as a result of or relating to the Proceeding (an “*Indemnified Claim*”), then the court or tribunal hearing said Indemnified Claim shall reduce any judgment in favor of the Debtors, jointly and severally, against a Defendant/Third-Party Plaintiff asserting said Indemnified Claim by an amount equal to the amount of the judgment multiplied by the aggregate proportionate share of fault of the Indemnified Party, or the amount of the Settlement Payment, whichever is greater.

12. The Court retains jurisdiction to enforce or interpret this Order.

###

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(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

5172851_2.DOC

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