

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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.

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**LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) SETTLEMENT  
WITH THE MARIAN DUNLAP REVOCABLE TRUST AND  
MARIAN E. DUNLAP AND (2) 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, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against Marian Dunlap Revocable Trust and Marian E. Dunlap (collectively, the "***Transferee***") and payment of counsel's contingency fee. In support of this relief, 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, “*PCI*”).

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

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (the “*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*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 (the “*Minnesota Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”



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

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

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

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

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

#### **B. The Vennes Litigation and the Adversary Proceeding**

11. The Debtors’ entry into the Petters’ fraud was made 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 (the “*Vennes Action*”). The Vennes Action seeks to avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to



hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferee, Adv. Case No. 11-03032-PGH (the “**Adversary Proceeding**”). The Adversary Proceeding sought to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties during the period from approximately June of 2000 through and including approximately January of 2004 (the “**Transfers**”).

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

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees assert that the Transferee received in the aggregate, approximately \$954,854.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

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

17. The Trustees entered into an agreement whereby they agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (the “**Allocation Agreement**”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one million dollars, the



PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

18. On November 16, 2012, the Plaintiff filed a Verified Motion for Clerk's Entry of Default [ECF No. 14] against the Transferee requesting that the Clerk of the Court enter defaults in the Adversary Proceeding, as no pleadings or other responses had been served upon the Plaintiff or his attorneys, or otherwise filed with the Court by the Transferee.

19. On November 19, 2012, the Clerk of the Court entered defaults against the Transferee [ECF Nos. 15, 16].

20. On November 26, 2012, the Liquidating Trustee filed a Motion for Final Judgment after Clerk's Default [ECF No. 19] (the "***Final Default Judgment Motion***") against the Transferee.

21. On January 9, 2013, the Florida Bankruptcy Court granted the Final Default Judgment Motion and entered a final default judgment against the Transferee in the amount of \$954,854.00 [ECF Nos. 28, 29] (the "***Final Default Judgment***").

22. Following the entry of the Final Default Judgment, the Plaintiff commenced collection proceedings against the Transferee in Minnesota. Shortly thereafter, Transferee contacted the Plaintiff through its legal counsel and the parties engaged in settlement discussions which ultimately led to a consensual resolution of the Final Default Judgment as set forth below.

## **II. Settlement Terms**

23. The key aspects of the stipulation of settlement between the parties ("***Stipulation***") are the following:<sup>1</sup>

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<sup>1</sup> A copy of the Stipulation is attached as Exhibit 1. To the extent the terms set forth in this Motion differ from those set forth in the Stipulation, the Stipulation controls.



- a) The Transferee will pay (or cause to be paid) \$340,000.00 (the “**Settlement Payment**”) as follows:
  - i. On or before February 19, 2015:
    - a. \$136,000.00 will be paid to the Liquidating Trustee;
    - b. \$204,000.00 will be paid to the PCI Trustee;
  - b) Any portion of the Settlement Payment made prior to the approval of the Stipulation by this Court and the Minnesota Bankruptcy Court will be held by counsel for the Liquidating Trustee or the PCI Trustee, as appropriate.
  - c) The parties shall exchange mutual, general releases;
  - d) Following receipt of the Settlement Amount and entry of final, non-appealable orders by this Court and the Minnesota Bankruptcy Court approving the Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, shall file a notice of satisfaction as to the Final Default Judgment with the Florida Bankruptcy Court and the Hennepin County District Court; and
  - e) The Transferee shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

24. Pursuant to the Second Amended Joint Plan of Liquidation (the “**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 (the “**Pro Rata Allocation Formula**”).

### **III. Relief Requested**

25. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) directing payment of the Contingency Fee (as defined below).

26. 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.”



27. 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. *See In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

28. 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 Stipulation Ought to be Approved***

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

30. The Liquidating Trustee, on behalf of the Liquidating Trusts, believes that the Final Default Judgment in the Adversary Proceeding is fully-enforceable and believes that he will likely succeed in his current efforts to collect on the Final Default Judgment. However, the Transferee has asserted certain defenses to the Final Default Judgment, including a challenge to the service address used by the Liquidating Trustee for the Transferee in connection with the



Adversary Proceeding. Given that there are risks inherent in all litigation, the Liquidating Trustee acknowledges that there is the possibility that the issues or defenses raised by the Transferee could potentially impact the Liquidating Trustee's ability to collect on the Final Default Judgment. Moreover, litigating such issues will likely require substantial attorney's fees on both sides which would diminish the net result of any recovery.

31. The Stipulation addresses these concerns while providing a meaningful recovery to the Liquidating Trusts. The parties avoid litigating fact-specific claims with the attendant expense and delay of such litigation being nullified. As such, the Stipulation is in the paramount interest of the Liquidating Trusts and their stakeholders and the Liquidating Trustee asserts that this settlement falls well above the lowest point of reasonableness.

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

32. 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**").

33. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$13,600.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

**WHEREFORE**, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (i) approving the Stipulation; (ii) approving payment of the Contingency Fee; and (iii) granting such other relief this Court deems just and proper.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on December 23, 2014, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3 and via U.S. Mail to those parties on the service list attached as Composite Exhibit 4.<sup>2</sup>

s/ Jessica L. Wasserstrom  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
[jwasserstrom@melandrussin.com](mailto:jwasserstrom@melandrussin.com)  
MELAND RUSSIN & BUDWICK, P.A.  
3200 Southeast Financial Center  
200 South Biscayne Boulevard  
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Telecopy: (305) 358-1221  
*Attorneys for Barry E. Mukamal,*  
*Liquidating Trustee*

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<sup>2</sup> "NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 3 and is not being additionally served by mail.

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

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

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

"ADDL" means these additional parties served as a courtesy. See Exhibit 5.



**EXECUTION COPY**

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("*Stipulation*") is entered into on \_\_\_\_\_, 2014 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* (the "*PCI Trustee*"), and (c) Marian Dunlap Revocable Trust and Marian E. Dunlap (individually or collectively, the "*Transferee*") (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein as a "*Party*" or collectively, the "*Parties*"). The terms of this Stipulation are as follows:

**RECITALS**

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

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

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



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

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

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

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



G. On or about November 29, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, filed an Adversary Proceeding asserting several claims against the Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment (the "*Adversary*"), relating to funds the Transferee received from Frank Vennes or Metro Gem (the "*Transfers*");

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

I. On November 16, 2012, the Liquidating Trustee filed a Verified Motion for Clerk's Entry of Default against the Transferee [ECF No. 14] requesting the Clerk of the Florida Bankruptcy Court (the "*Clerk*") to enter a default in the Adversary, as no pleadings or other responses had been served upon the Liquidating Trustee, his attorneys or filed with the Florida Bankruptcy Court by the Transferee in the Adversary;

J. On November 19, 2012, the Clerk entered defaults against each Transferee [ECF Nos. 15, 16] (collectively, the "*Clerk's Defaults*");

K. On November 26, 2012, the Liquidating Trustee filed a Motion for Final Judgment after Clerk's Default against the Transferee [ECF No. 19] (the "*Final Default Judgment Motion*");

L. On January 9, 2013, the Florida Bankruptcy Court granted the Final Default Judgment Motion and entered a final default judgment against the Transferee in the amount of \$954,854.00 [ECF Nos. 28, 29] (the "*Final Default Judgment*");



M. The Transferee expressly denies any liability arising from the Trustees' Claims and has asserted defenses based on the statute of limitations and lack of service of process;

N. Following entry of the Final Default Judgment, the Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees' Claims;

O. To avoid the continued expense of collecting on the Final Default Judgment, among other reasons, the Parties have agreed to resolve the Trustees' Claims pursuant to the terms and conditions of this Stipulation.

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

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

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation, except that the Mediated Settlement Agreement in the Adversary dated November 19, 2014 shall remain in effect as to the mediation process and responsibility for mediation costs.

3. **Settlement Payment.** In full and final settlement of the Trustees' Claims, including the Final Default Judgment, the Transferee will pay (or cause to be paid) \$340,000.00 (the "**Settlement Payment**") to the Trustees on or before February 19, 2015. The Liquidating Trustee's total portion of the Settlement Payment (\$136,000.00) will be paid to the Liquidating



Trustee via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. The PCI Trustee's total portion of the Settlement Payment (\$204,000.00) will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) check made payable to "Douglas A. Kelley, Trustee" and delivered to Douglas A. Kelley, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. Any portion of the Settlement Payment made prior to the approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court shall be placed into the trust account for counsel for the Liquidating Trustee or the PCI Trustee, as appropriate.

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

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



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

B. Upon approval of this Stipulation by orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, and the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, each waives and releases, now and forever, the Transferee from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may have against the Transferee; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

C. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.



6. **Notice of Dismissal and Satisfaction of Final Default Judgment.** Upon (i) receipt of the Settlement Amount and (ii) entry of final, non-appealable orders by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, agrees to file a notice of dismissal with prejudice in the Adversary and a notice of satisfaction as to the Final Default Judgment with the Florida Bankruptcy Court and the Hennepin County District Court.

7. **Representations of the Transferee.** The individuals executing this Stipulation on behalf of the Transferee represent and warrant that he or she has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms. Such individuals further represent and warrant on behalf of the Transferee that the Transferee received \$954,854.00 in excess of the amount Transferee invested in Vennes or one of his related entities, including Metro Gem.

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

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

10. **Amendments, Waiver.** This Stipulation may not be terminated, amended, or modified in any way except in a writing signed by all the Parties. No waiver of any provision of



this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

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

12. **Successors Bound.** This Stipulation shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently-appointed Chapter 7 trustee in the Minnesota Bankruptcy Cases or trustee of the Liquidating Trusts.

13. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

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

15. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable orders of the Minnesota Bankruptcy Court and the Florida Bankruptcy Court and payment of the Settlement



Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns. The PCI and the Liquidating Trustee shall move promptly for an order approving this Stipulation in the Minnesota Bankruptcy Court and the Florida Bankruptcy Court, respectively.

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

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

18. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same

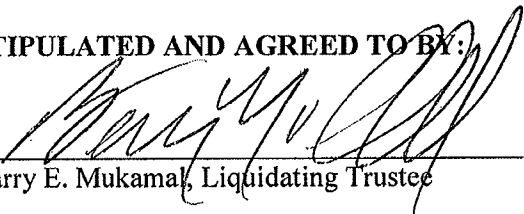


Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

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

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

**STIPULATED AND AGREED TO BY:**

  
Barry E. Mukamal, Liquidating Trustee

Date: 12/17/14

\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

Date: \_\_\_\_\_

\_\_\_\_\_  
Marian Dunlap Revocable Trust

Date: \_\_\_\_\_

By its: \_\_\_\_\_

\_\_\_\_\_  
Marian E. Dunlap

Date: \_\_\_\_\_



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

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

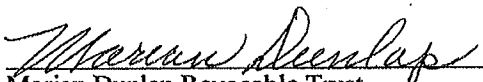
**STIPULATED AND AGREED TO BY:**

\_\_\_\_\_  
Barry E. Mukamal, Liquidating Trustee

Date: \_\_\_\_\_


\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Marian Dunlap Revocable Trust

Date: 12/17/14

By its: \_\_\_\_\_

  
\_\_\_\_\_  
Marian E. Dunlap

Date: 12/17/14



Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

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

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

**STIPULATED AND AGREED TO BY:**

\_\_\_\_\_  
Barry E. Mukamal, Liquidating Trustee

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

Date: 12/18/14

\_\_\_\_\_  
Marian Dunlap Revocable Trust

Date: \_\_\_\_\_

By its: \_\_\_\_\_

\_\_\_\_\_  
Marian E. Dunlap

Date: \_\_\_\_\_



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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 GRANTING LIQUIDATING TRUSTEE'S MOTION TO  
APPROVE (1) SETTLEMENT WITH MARIAN DUNLAP REVOCABLE  
TRUST AND MARIAN E. DUNLAP AND (2) PAYMENT OF CONTINGENCY FEE**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with Marian Dunlap Revocable Trust and Marian E. Dunlap and Payment of Contingency Fee [ECF No. \_\_\_\_] (the "*Motion*").<sup>1</sup> The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply

<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.



with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

**ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The Stipulation is **APPROVED**.
3. The Transferee shall pay (or cause to be paid) \$340,000.00 (the “*Settlement Payment*”) as follows:

- a) On or before February 19, 2015:
  - i) \$136,000.00 will be paid to the Liquidating Trustee; and
  - ii) \$204,000.00 will be paid to the PCI Trustee

4. The Liquidating Trustee’s portion of the Settlement Payment (\$136,000.00) may 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 Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

5. The Liquidating Trustee’s portion of the Settlement Payment (\$136,000.00) will be held in the trust account of counsel for the Liquidating Trustee pending approval of the Stipulation by the Minnesota Bankruptcy Court.

6. The Liquidating Trustee’s portion of the Settlement Payment (\$136,000.00) will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “*Pro Rata Allocation Formula*”), and the wire transfers or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.



7. MRB's Contingency Fee in the amount of \$13,600.00 is approved. The Liquidating Trustee is authorized and directed to 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.

8. To the extent that the Transferee has any 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.

9. The Court retains jurisdiction to enforce the terms of the Stipulation.

###

**Submitted By:**

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Florida Bar No. 985820  
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Telephone: (305) 358-6363  
Telecopy: (305) 358-1221  
Attorneys for the Liquidating Trustee

**Copies Furnished To:**

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.



12/23/2014

CM/ECF LIVE - U.S. Bankruptcy Court:flsb

**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**



12/23/2014

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Label Matrix for local noticing  
113C-9  
Case 09-36379-PGH  
Southern District of Florida  
West Palm Beach  
Tue Oct 14 10:23:14 EDT 2014

INC

Blackpool Absolute Return Fund, LLC  
c/o John E. Page, Esquire  
Shraiberg, Ferrara & Landau, P.A.  
2385 N.W. Executive Center Drive  
Suite 300  
Boca Raton, FL 33431-8530  
  
Crown Financial Ministries, Inc.  
c/o Timothy M. Obitts, Esq.  
Gammon & Grange, P.C.  
8280 Greensboro Dr., 7th Floor  
McLean, VA 22102-3885

NEF

First Baptist Church of Tequesta, Inc.  
c/o Roberto M. Vargas, Esq.  
Jones Foster Johnston & Stubbs, P.A.  
505 S. Flagler Drive  
Suite 1100  
West Palm Beach, FL 33401-5950

Geoff Varga, as Liquidator  
c/o Robin Rubens  
201 S Biscayne Blvd 34 Fl  
Miami, FL 33131-4332

NEF

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

Kinetic Partners (Cayman) Ltd  
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DUP

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Boca Raton, FL 33431-8530

NEF

Ashton Revocable Living Trust  
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New York, NY 10006-3007

NEF

Blackpool Partners, LLC  
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General Electric Credit Corporation  
c/o Patricia A. Redmond  
Stearns Weaver Miller  
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Richman Greer, P.A.  
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KBC Financial Products (Cayman Islands) Ltd.

Levine Kellogg Lehman Schneider & Grossman L  
LKLSG c/o Robin Rubens  
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Minnesota Teen Challenge, Inc.  
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SCALL, LLC  
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COMPOSITE EXHIBIT 4



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Alton Opitz  
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Armadillo Fund  
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Midland, TX 79701-5021

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ZCALL, LLC  
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