

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 FOR APPROVAL OF SETTLEMENT
WITH SFC PARTNERS II, LP AND 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 (the "*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*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 SFC Partners II, LP ("*SFC Partners*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of the Debtors*

1. The Liquidating Trusts are the successors to Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "*Debtors*"). Prepetition, the Debtors operated as hedge funds and were managed and directed through two related entities, Palm Beach Capital

Management, L.P. (“*PBCMLP*”) and Palm Beach Capital Management, LLC (“*PBCMLLC*,” and, together with PBCMLP, the “*Management Entities*”). The Management Entities were, in turn, wholly-owned and controlled by David Harrold and Bruce Prevost.

2. The Debtors were formed to lend monies in purchase financing transactions supposedly brokered by Thomas Petters and his company, Petters Company, Inc. (“*PCI*”) in the consumer goods business. The idea was that the Debtors and other lenders would supply bridge financing to PCI and then later, once goods were received by a particular big box retailer, the retailer would remit the payment to the lender or PCI.

3. In reality, the Debtors’ investments in PCI were worthless - PCI’s purchase and financing transactions were fictitious and part of an elaborate, multi-billion dollar *ponzi* scheme perpetrated by Mr. Petters, Deanna Munson a/k/a Deanna Coleman, Robert White and others. No retailer ever made any payment on the purchase and sale of goods because the deals never existed.

4. On September 24, 2008, federal agents raided Mr. Petters’ offices. Thereafter, Mr. Petters’ companies were placed into federal receivership. Ultimately, Mr. Petters was convicted of his crimes and sentenced to 50 years in prison. Other persons complicit in the fraud were sentenced to prison sentences as well.

5. On November 30, 2009 (“*Petition Date*”), the Debtors each commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (“*Bankruptcy Court*”).

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

B. Transfers Made to SFC Partners

7. SFC Partners was a limited partner in PBF I, as well as Palm Beach Diversified Income, LP (“**PBDI**”), a limited partner of the Debtors.

8. PBDI received over \$79 million in transfers from the Debtors during the four year period prior to the Petition Date, approximately \$24 million of which represented profits.

9. Based on a cash in, cash out analysis, SFC Partners received a profit in the amount of \$43,434.23 (the “**PBF I Profit Distribution**”) with respect to its limited partner investment in PBF I. Additionally, based on a cash in, cash out analysis, SFC Partners received a profit in the amount of \$42,500.00 (the “**PBDI Profit Distribution**”) with respect to its limited partner investment in PBDI.

II. Settlement Terms

10. The key aspects of the stipulation of settlement between the parties (“**Stipulation**”) are the following:¹

- a) Upon approval of the Stipulation, SFC Partners will pay (or cause to be paid) \$26,060.54 to the PBF I Liquidating Trust (the “**PBF I Settlement Payment**”). The PBF I Settlement Payment represents 60% of the PBF I Profit Distribution.
- b) Upon approval of the Stipulation, SFC Partners will additionally pay (or cause to be paid) \$10,625.00 to the Liquidating Trusts (the “**PBDI Settlement Payment**”). The PBDI Settlement Payment represents 25% of the PBDI Profit Distribution.

¹ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

- c) The parties shall exchange mutual, general releases; and
- d) SFC Partners shall not be entitled to any distribution from the Debtors' bankruptcy estates.

11. 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 PBDI Settlement Payment will be allocated and apportioned among the Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust ("**Pro Rata Allocation Formula**").

III. Relief Requested

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

13. 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."

14. 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).

15. 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*

16. 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.

Probability of success in litigation

17. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the PBF I Profit Distribution and PBDI Profit Distribution (collectively, the “*Profit Distributions*”) to SFC Partners were fraudulent transfers under federal or state law, or alternatively, that SFC Partners was unjustly enriched by the Profit Distributions.

18. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

19. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that SFC Partners, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee’s claims.

Collectability

20. Collectability is not an issue in dispute between the parties.

Complexity of litigation and attendant expense, inconvenience and delay

21. This is a meaningful consideration that militates in favor of approval of the Stipulation.

22. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still potentially require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial fees of professionals that could diminish the net result of any recovery to creditors in the Debtors' chapter 11 cases.

23. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against SFC Partners, he would then have to engage in collection efforts. Again, this would result in the estate incurring additional fees and delay.

24. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims, with the attendant expense and delay of litigation being nullified.

Paramount interest of creditors

25. The PBF I Settlement Payment represents a 60% recovery of the PBF I Profit Distribution and a waiver of any potential or corresponding claim. The PBDI Settlement Payment represents a 25% recovery of the PBDI Profit Distribution and a waiver of any potential or corresponding claim. This collective result gives certainty to the estate and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of the Debtors' creditors and should be approved.

B. The Contingency Fee Ought to be Approved

26. 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 contingency fee of 10% for any affirmative recovery it obtains on behalf of the Liquidating Trust without further order of the Court (“**Contingency Fee**”).

27. As such, MRB requests that the Contingency Fee be paid from the Settlement Payment without further Order from this Court.

WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Stipulation; (2) approving payment of the Contingency Fee and (3) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 21, 2011, 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 all parties on the attached Exhibit 4.

s/ Jessica L. Wasserstrom

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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on November __, 2011 by and between (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 ("*Liquidating Trusts*") and (b) SFC Partners II, LP ("*SFC Partners*") (the Liquidating Trustee and SFC Partners are at times individually referred to 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 a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*");

B. The Palm Beach Funds were managed and directed through two related entities, Palm Beach Capital Management, L.P. ("*PBCMLP*") and Palm Beach Capital Management, LLC ("*PBCMLLC*," and, together with PBCMLP, the "*Management Entities*");

C. Palm Beach Diversified Income ("*PBDI*") was a substantial investor in the Palm Beach Funds and received significant distributions from the Palm Beach Funds during the four year period prior to the Petition Date;

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

E. The Liquidating Trustee, on behalf of the Liquidating Trusts, asserts certain claims against SFC Partners (the "*Potential Litigation*");

F. SFC Partners expressly denies the claims that could be asserted in the Potential Litigation;

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G. The Liquidating Trustee and SFC Partners have engaged in discussions in an attempt to resolve any and all issues, including the claims that could be raised in the Potential Litigation;

H. To avoid the continued expense and risk of adverse outcome arising from the Potential Litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Potential Litigation pursuant to the terms and conditions of this Stipulation.

NOW, WHEREFORE, 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.

3. **Settlement Payment.** In full and final settlement of the Potential Litigation, SFC Partners shall pay (or cause to be paid) \$36,685.54 (the "**Settlement Payment**") within 20 days from the date the Liquidating Trustee gives SFC Partners notice of the entry of an Order by the Bankruptcy Court approving this Stipulation. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided in advance 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 3000, Miami, Florida 33131.

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4. **No entitlement to distribution.** SFC Partners agrees that it shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts, or the Palm Beach Funds. To the extent SFC Partners has scheduled or filed any proof of claim or proof of interest in the bankruptcy cases of the Palm Beach Funds, such claim or interest shall be deemed disallowed in its entirety and be stricken.

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

A. For purposes of this Stipulation, the term "*Claims*" shall mean any obligations, claims, causes of action, 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, those claims that could have been asserted in the Potential Litigation.

B. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives, releases and holds harmless, now and forever, (i) SFC Partners from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against SFC Partners; and (ii) all of SFC Partners' past and present officers, directors, insurers, employees, agents, attorneys, representatives, predecessors, successors, assigns, partners, parents, subsidiaries and other affiliates (collectively, the "SFC Partners Released Parties") from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against the SFC Partners Released Parties relating to SFC Partners' investment in the Palm Beach Funds or PBDI; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The

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scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any parties other than the SFC Partners Released Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

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

5. **Authorization to bind.** The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

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

7. **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 Bankruptcy Court; provided that 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

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and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

8. **No waiver of modification.** 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.

9. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the 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.

10. **No effect.** If the Bankruptcy Court does not approve this Stipulation, 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 approve this Stipulation 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 approve the Stipulation, or to file an amended motion to approve the Stipulation.

11. **Controlling law.** 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.

12. **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

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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.

13. **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.

14. **Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation.

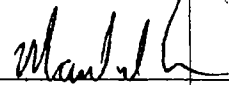
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STIPULATED AND AGREED TO BY:



Barry E. Mukama, Liquidating Trustee

Date: 11/17/11



SFC Partners II, LP
By: SFC Capital Management LP, General Partner
By: Matthew Johnson, Principal

Date: 11/15/11

PROPOSED

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 GRANTING LIQUIDATING TRUSTEE'S MOTION
FOR APPROVAL OF SETTLEMENT WITH SFC PARTNERS II, LP
AND PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with SFC Partners II, LP ("**SFC Partners**") and Payment of Contingency Fee [ECF No. ____] (the "**Motion**").¹ 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

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

compromise and settlement is sufficient to comply 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. SFC Partners shall pay (or cause to be paid) \$36,685.54 (the “*Settlement Payment*”)

within 20 days from the date of the entry of this Order. The Settlement Payment 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 3000, Miami, Florida 33131.

4. The PBDI Settlement Payment 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, and the wire transfers and/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.

5. To the extent that SFC Partners has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors’ bankruptcy cases, such claim or interest is deemed disallowed in its entirety.

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PROPOSED

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

7. MRB's Contingency Fee in the amount of \$3,668.55 is approved and the Liquidating

Trustee is authorized to pay this amount upon funding of the Settlement Payment.

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Submitted By:

s/ Jessica L. Wasserstrom

Jessica L. Wasserstrom, Esquire

Florida Bar No. 985820

jwasserstrom@melandrussin.com

MELAND RUSSIN & BUDWICK, P.A.

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Telephone: (305) 358-6363

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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.

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.

- **Geoffrey S. Aaronson** gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com;dlinder@aspalaw.com
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- **George L. Zinkler** gzinkler.ecf@rprslaw.com

EXHIBIT 3

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Alice Pugliese
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Alton Opitz
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Robert Davenport, Jr.
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ARIS Multi-Strategy Fund, LP
Aris Capital Management
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Keleen Beal
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JamiScott LLC
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Leslie Schneider
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Scott Schneider
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New York, NY 10019

Claridge Associates, LLC
c/o JamiScott, LLC
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New York, NY 10019

Leonard & Lillian Schneider
c/o JamiScott LLC
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Blackpool Absolute Return Fund, LLC
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Claude Lestage
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Attn: Andrew N. Friedman, Esq.
Cohen Milstein Sellers & Toll, PLLC
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c/o Robin E. Keller, Esq.
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New York, NY 10022

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

Special Situations Investment Fund, L.P. c/o
Robin Keller, Esq.
Hogan Lovells US LLP
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New York, NY 10022

Deer Island, LP
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Sherborn, MA 01770

Dennis Dobrinich
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Palm Beach Gardens, FL 33410

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