

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

CHAPTER 11

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

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

Debtors.

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**LIQUIDATING TRUSTEE'S MOTION (1) TO APPROVE SETTLEMENT WITH  
BMO HARRIS BANK N.A.; (2) FOR ENTRY OF A BAR ORDER;  
AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, files this motion (1) to approve settlement with BMO Harris Bank N.A., as successor by merger to M&I Marshall & Ilsley Bank ("*BMO*," and together with the Liquidating Trustee, "*Parties*"); (2) for the entry of a bar order; and (3) to approve payment of contingency fee ("*Motion*"). In support of this Motion, the Liquidating Trustee states as follows:<sup>1</sup>

**I. Factual Background**

1. On November 30, 2009, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, 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.

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<sup>1</sup> All undefined capitalized terms shall have the same meaning ascribed to them in that certain Amended and Restated Stipulation of Settlement ("*Stipulation*") between the Parties, attached to this Motion as Exhibit 1.

2. 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].

3. 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].

4. On October 21, 2010, the 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 Geoff Varga as the trust monitor for the Palm Beach Finance II Liquidating Trust ("*Trust Monitor*").

5. BMO is a national banking association with headquarters in Chicago, Illinois. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, has asserted various claims ("*PBF Claims*") against BMO as set forth in Adv. Case Nos. 11-03015-PGH ("*BMO I*") and 14-01660-PGH ("*BMO II*," and together with BMO I, "*Adversary Cases*"). BMO has expressly denied any liability.

***A. The Liquidating Trustee's Pre-Suit Discovery***

6. The Liquidating Trustee's investigation into the Debtors' claims against BMO began in May 2010, when the Trustee issued his Subpoena for Rule 2004 Examination [ECF No. 156].

7. The Liquidating Trustee received and reviewed thousands of pages of documents produced by BMO on various dates between July 2010 and July 2011.

8. Additionally, the Liquidating Trustee took sworn Rule 2004 examinations of various BMO employees from September 2010 through March 2011 in Minneapolis, Minnesota.

**B. BMO I**

9. On November 28, 2011, the Liquidating Trustee filed his Complaint to Avoid Transfers and for Tort Damages [BMO I, ECF No. 1] in BMO I.

10. In BMO I, the Liquidating Trustee seeks, in part, to avoid and recover fraudulent transfers made to BMO from February 28, 2008 through the collapse of Petters Company, Inc.'s ("**PCI**") and Petters' Ponzi scheme ("**Ponzi Scheme**") on September 24, 2008.

11. On July 3, 2012, the Court entered an Order Granting Motion to Dismiss [BMO I, ECF No. 50], dismissing the BMO I Complaint, but granting the Liquidating Trustee leave to file an amended complaint. On August 15, 2012, the Liquidating Trustee filed his Amended Complaint to Avoid Transfers and for Tort Damages [BMO I, ECF No. 65].

12. On February 26, 2013, the Court entered the Order Granting in Part and Denying in Part Defendants' Motion to Dismiss [BMO I, ECF No. 113], dismissing the Liquidating Trustee's tort claims against BMO, but denying BMO's request to dismiss the Liquidating Trustee's fraudulent transfer claims.

13. Beginning in March 2013, the Liquidating Trustee issued numerous discovery requests to BMO. After certain motion practice related to those requests, *e.g.*, BMO I ECF Nos. 131, 132, 159, and 160, BMO produced hundreds of thousands of pages of documents.

14. Following the Liquidating Trustee's review of the documents produced by BMO, on June 13, 2014, the Liquidating Trustee filed under seal his Motion for Leave to File Second Amended Complaint ("**SAC**") [BMO I, ECF No. 238] ("**Rule 15 Motion**").

15. On July 31, 2014, following an *in camera* hearing, the Court entered the Order Granting Plaintiff's Motion for Leave to File Second Amended Complaint [BMO I, ECF No. 252], granting the Liquidating Trustee's Rule 15 Motion and deeming the SAC filed (under seal).

16. On September 22, 2014, BMO filed its Motion to Dismiss Second Amended Complaint (Filed Under Seal) [BMO I, ECF No. 267] (“**BMO I MTD**”) and Motion for Summary Judgment [BMO I, ECF No. 269] (“**BMO I MSJ**,” and with the BMO I MTD, together the “**BMO I Dispositive Motions**”).

17. On February 27, 2015, the Liquidating Trustee filed his responses to the BMO I Dispositive Motions. [BMO I, ECF Nos. 332 and 334]. The BMO I Dispositive Motions remain pending.

***C. The Liquidating Trustee’s Litigation Against Certain Petters’ Co-Conspirators***

18. Nationwide International Resources, Inc. (“**Nationwide**”) and Enchanted Family Buying Company (“**Enchanted**”) (collectively, the “**Petters Suppliers**”) were co-conspirators in the PCI Ponzi scheme. PCI misrepresented to many lenders that the Petters Suppliers supplied much of the merchandise to PCI that PCI claimed to sell or “flip” to various retailers. Nationwide was a California corporation owned and controlled by Larry Reynolds (“**Reynolds**”), and Enchanted was a Minnesota corporation owned and controlled by Michael Catain (“**Catain**”).

19. On November 18, 2011, the Liquidating Trustee filed his Complaint against Nationwide, Enchanted, Reynolds, and Catain (collectively, “**Nationwide / Enchanted Parties**”), Adv. Case No. 11-02857-PGH, ECF No. 1 (“**Nationwide / Enchanted Adversary**”).

20. The Nationwide / Enchanted Adversary sought to avoid and recover transfers from the Palm Beach Funds to Nationwide and Enchanted, made from November 30, 2005 through September 24, 2008 (“**Petters Suppliers Transfers**”), pursuant to 11 U.S.C. §§ 544, 548 and 550, Fla. Stat. §§ 726.105 and 726.108, or other applicable law.

21. On October 14, 2008, the United States District Court for the District of Minnesota in the case of *U.S. v. Thomas Joseph Petters et al.*, Case No. 08-5348-ADM-JSM, entered an Order [ECF No. 43] placing Nationwide, Enchanted, Reynolds and Catain in federal receivership. The Court imposed a stay [ECF Nos. 70 and 127] that permitted the filing of the Nationwide / Enchanted Adversary to preserve any applicable statute of limitations. However, the Liquidating Trustee was not permitted to prosecute the action.

22. On February 25, 2014, the United States District Court for the District of Minnesota entered an Order [Case No. 08-5348-ADM-JSM, ECF No. 2598] granting the Liquidating Trustee's motions to intervene and for relief from the stay of litigation against Catain and Enchanted, thereby permitting the Liquidating Trustee to prosecute the Nationwide / Enchanted Adversary.

23. On July 22, 2014, this Court entered six separate Final Judgments after Clerk's Default in favor of the PBF I Liquidating Trust or the PBF II Liquidating Trust against Nationwide, Enchanted and Reynolds [Nationwide / Enchanted Adversary, ECF Nos. 68, 71, 73, 75, 77, 79]. The four Final Judgments in favor of the PBF I Liquidating Trust or the PBF II Liquidating Trust against Nationwide or Enchanted are ECF Nos. 71, 73, 75, 79 (collectively, "***Nationwide / Enchanted Final Judgments***") in the Nationwide / Enchanted Adversary.

24. The Nationwide / Enchanted Final Judgments avoided the Petters Suppliers Transfers made from November 30, 2005 through September 24, 2008 and provided that they may be recovered by the Liquidating Trustee for the benefit of the PBF I Liquidating Trust or the PBF II Liquidating Trust.

**D. BMO II**

25. Following the Court's entry of the Nationwide / Enchanted Final Judgments, on September 18, 2014, the Liquidating Trustee filed his Complaint in BMO II [BMO II, ECF No. 1], expanding his claims against BMO.

26. In BMO II, the Liquidating Trustee asserts claims against BMO under 11 U.S.C. § 550, as a subsequent transferee of the avoided Petters Suppliers Transfers.

27. BMO II also asserts claims under 11 U.S.C. § 541 and Minnesota state law to avoid and recover *all* of the transfers from Nationwide and Enchanted to BMO in connection with the Ponzi scheme dating from six years before the implosion of the Petters' Ponzi Scheme, from November 27, 2002 through February 27, 2008. The Liquidating Trustee took this position consistent with Bankruptcy Judge Kishel's decision in *In re Petters Company, Inc.*, in which Judge Kishel held that the statute of limitations applicable to constructively fraudulent transfer claims under the Minnesota Uniform Fraudulent Transfer Act ("**MUFTA**") is Minn. Stat. § 541.05, subd. 1(6) ("**Discovery Rule**").<sup>2</sup> Per the Discovery Rule, the six-year statute of limitations does not begin to accrue until "the discovery by the aggrieved party of the facts constituting the fraud."

28. BMO II was filed while the Minnesota Supreme Court was considering the applicability of the Discovery Rule to MUFTA claims in *Finn v. Alliance Bank*, 838 N.W.2d 585, 588 (Minn. Ct. App. 2013), *review granted* (Nov. 12, 2013). On February 18, 2015, the Minnesota Supreme Court issued its ruling in *Finn*. *Finn v. Alliance Bank*, 2015 WL 672406 (Feb. 18, 2015). The Minnesota Supreme Court held that with respect to actual fraud claims, the Discovery Rule applies because actual fraud claims constitute "relief on the ground of fraud."

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<sup>2</sup> Case No. 08-45257 (Bankr. D. Minn. June 19, 2013), ECF No. 1951, at 31.

*Id.* at \*\*2, 17. While the Minnesota Supreme Court did not find it necessary to rule on whether the Discovery Rule applies to constructive fraud claims, it suggested that it would apply and that Judge Kishel's ruling on this issue is the correct one.<sup>3</sup>

29. In the interim, on October 23, 2014, BMO sought to stay the BMO II adversary proceeding through its Motion to Stay Adversary Proceeding [BMO II, ECF No. 7] (“**BMO II Motion to Stay**”). The Liquidating Trustee filed a response in opposition to the BMO II Motion to Stay [BMO II, ECF No. 11]. Following a hearing on the BMO II Motion to Stay on November 12, 2014, the Court entered the Order Denying Defendant's Motion to Stay Adversary Proceeding [BMO II, ECF No. 15].

30. On January 19, 2015, in BMO II, BMO filed its Motion to Dismiss Complaint and Dismiss or Strike Certain Requests for Relief [BMO II, ECF No. 26] (“**BMO II MTD**”).

31. On February 27, 2015, the Liquidating Trustee filed his response to the BMO II MTD [BMO II, ECF No. 38]. The BMO II MTD remains pending.

### ***E. The Experts***

32. On May 2, 2011, the Court authorized the Liquidating Trustee's retention of Peter Hagan [ECF No. 646], who was retained to provide expert consulting services to the Liquidating Trustee on banking relationships and banking-related activities. Mr. Hagan has more than 30 years of experience in the financial services industry, including serving as chairman and CEO of Merrill Lynch's US banks, as managing director (COO) of Merrill Lynch's international bank, and as director of Merrill Lynch's Swiss and Cayman banks.

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<sup>3</sup> *Id.* at \*17 (“We have never suggested that ‘relief on the ground of fraud’ is so narrow that it includes only those claims that qualify as common-law fraud. To the contrary, ‘actions for relief on the ground of fraud’ may include not only such actual frauds as may form the basis for actions at law, but also all such transactions as a court of equity will adjudge to be frauds, actual **or constructive**.”) (emphasis added, quotations omitted).

33. On June 21, 2013, the Court granted the Liquidating Trustee's Application to Employ Catherine A. Ghiglieri [ECF No. 1893], a former Texas Banking Commissioner, Chairman of the Texas State Banking Board, and Field Office Director of the Office of the Comptroller of the Currency. Ms. Ghiglieri was retained to provide expert consulting services relating to, among other things, banking procedures and practices, and banking regulatory and industry standards.

34. Mr. Hagan and Ms. Ghiglieri, among other experts retained by the Liquidating Trustee, have provided substantial assistance to the Liquidating Trustee's investigation and prosecution of the PBF Claims in the Adversary Cases, as well as to the Liquidating Trustee's analysis as to the appropriate settlement value of the Adversary Cases.

***F. Mediation And Settlement***

35. On March 10 and 11, 2015, the Parties met in Miami for a mediation before Ed Dobbs, Esq. of the Atlanta law firm of Parker Hudson Rainer & Dobbs to negotiate a resolution of the Adversary Cases. Mr. Dobbs is a Fellow of the American College of Bankruptcy and a nationally renowned bankruptcy attorney and mediator. The Parties appreciate the efforts and dedication of Mr. Dobbs in assisting the parties in resolving the Adversary Cases.

36. After two full days of in person mediation, negotiations on many key issues continued actively thereafter for two and a half months with Mr. Dobbs' assistance. Aside from many conference calls, the Liquidating Trustee's counsel, along with the Trust Monitor, met with BMO's counsel in Chicago to discuss a number of issues.

37. After extensive discussions and negotiations, on May 26, 2015, the Liquidating Trustee (with the consent of the Trust Monitor) and BMO executed an Amended and Restated Stipulation of Settlement resolving the Adversary Cases ("***Settlement***"). See Exhibit 1.



38. Per Paragraph 14 of the Stipulation, the Parties agreed to a sixty (60) day period of confidentiality with respect to the Settlement, after which time the Liquidating Trustee would file the present Motion. BMO exercised its option under Paragraph 14 of the Stipulation to terminate the period of confidentiality, and requested the filing of this Motion at this time.

## II. Settlement Terms

39. The Liquidating Trustee, in his informed business judgment, believes that approval of the Settlement is in the best interests of the Debtors' estates.

40. The key aspects of the Settlement, as more particularly described in the Stipulation, are the following:<sup>4</sup>

- a) **Cash consideration:** BMO shall pay (or cause to be paid) sixteen million dollars (\$16,000,000) ("**Settlement Payment**"), by no later than the Settlement Payment Date, which is defined in the Stipulation as the 10th business day from the later of the following events: (i) the date on which this Court's Order approving the Stipulation becomes a final non-appealable order; (ii) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to the Court's Order approving the Stipulation, unless such appeals have been determined by a court of appropriate jurisdiction to have been rendered moot; and (iii) the receipt by BMO from the Liquidating Trustee of: (x) wire transfer instructions; and (y) a fully completed and executed, current W-9 form to allow BMO to process the Settlement Payment.
- b) **Bar order:** As a pre-condition for providing the above consideration, the Liquidating Trustee must obtain an Order in favor of BMO and affiliated parties ("**BMO Parties**") in substantially the form attached to the Stipulation ("**Bar Order**"). As stated therein, the Bar Order would bar all shareholders, limited partners, and past or present creditors of the Debtors, including Varga and the Participant (as defined in the Stipulation), other than the PCI Trustee (collectively, "**Releasors**") from bringing any claims against the BMO Parties that are Barred Claims, as said term is defined in the Bar Order. Specifically, Barred Claims include any and all direct, indirect and/or derivative Claims,<sup>5</sup> whether known or unknown, and

<sup>4</sup> To the extent the terms of this Motion differ from those set forth in the Stipulation, the Stipulation shall control.

<sup>5</sup> All undefined capitalized terms in this subparagraph shall have the same meaning ascribed to them in the Bar Order.

whether arising under federal, state, or local statute, law, regulations or common law by any and all Releasors against the BMO Parties that: (i) constitute Adversary Claims, (ii) were threatened by the Liquidating Trustee, (iii) are in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Claims, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, or the Enchanted/Nationwide Adversary; and (iv) any and all Claims in any way related to Tom Petters, PCI, and/or any Petters related or affiliated company. The Bar Order does not release or enjoin any of the Releasors from commencing, prosecuting, or asserting any claims against any party other than the BMO Parties, and it does not release or enjoin any of the Releasors from commencing, prosecuting, or asserting any Claims against the BMO Parties other than Barred Claims.

- c) **Releases:** The Settlement provides for an exchange of releases between the Parties effective upon certain conditions, such as approval of the Stipulation, entry of the Bar Order, and payment of the Settlement Payment.
- d) **Litigation against BMO by the PCI Trustee:** The PCI Trustee has asserted claims against BMO as set forth in Adv. Case No. 12-04288 in the United States Bankruptcy Court for the District of Minnesota (“*MN BMO Adversary Case*”). The Settlement provides that the Liquidating Trustee is to turn over to BMO the Palm Beach Liquidating Trusts’ distributions from the PCI Trustee in excess of \$2,000,000, to the extent there are any, solely in connection with and attributable to the PCI Trustee’s resolution of the MN BMO Adversary Case. The Parties understand and acknowledge that as of the filing of this Motion, any such distribution is entirely contingent and unliquidated.

41. Pursuant to the Second Amended Joint Plan of Liquidation (“*Plan*”), approved by the 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*”). Under all the circumstances, given the nature of the avoidance and tort claims asserted against BMO, the Liquidating Trustee believes that the Pro Rata Allocation Formula should apply to the Settlement. Through this Motion, the Liquidating Trustee seeks that specific relief.

42. In agreeing to the above terms, the Liquidating Trustee considered the substantive defenses asserted by BMO, as well as other factors including the costs (fees and expenses) and risks of litigation.

### **III. Relief Requested**

43. The Liquidating Trustee seeks: (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee (as defined below); and (2) an Order from this Court entering the Bar Order.

44. Federal Rule of Bankruptcy Procedure 9019(a) provides in relevant part that "[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement."

45. 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 B.R. 886, 890-91 (Bankr. S.D. Fla. 1988).

46. 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, 801 (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) (citing *Protective Comm.*, 390 U.S. at 424).

***A. The Settlement Should Be Approved***

47. 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*

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

49. BMO has filed dispositive motions in each of the Adversary Cases, and the Liquidating Trustee has filed his responses to each of the dispositive motions. Following execution of the Stipulation, the Parties sought and obtained Orders from the Court abating each of the Adversary Cases [BMO I, ECF No. 345; BMO II, ECF No. 49]. Thus, BMO has yet to file its replies and the dispositive motions remain pending, but has advised the Liquidating Trustee that it continues to deny any liability whatsoever and, in the absence of an acceptable settlement, would continue to pursue a dismissal of (and otherwise defend against) the Adversary Cases.

50. Although the Liquidating Trustee believes the PBF Claims are meritorious, the probability of success cannot be gauged with certainty at this stage of the Adversary Cases, and material risk certainly exists.

51. Recognizing the uncertainty of success in either direction, the Parties mediated the Adversary Cases prior to the Court entering any Orders in connection with the dispositive motions.

*Collectability*

52. This is not an issue with respect to the Settlement.

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

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

54. The Adversary Cases engender myriad sophisticated, novel and complex issues concerning BMO's alleged role, legal obligations, and liability in connection with the massive fraud scheme orchestrated through PCI and its affiliates. These issues have already entailed extensive fact discovery, expert analysis and opinions, and substantial motion practice, though the Parties have not commenced taking any depositions to date. The Liquidating Trustee has already incurred substantial fees and costs; in his settlement analysis, the Liquidating Trustee has considered the substantial anticipated attorneys fees and expert fees, and other costs, to pursue this case through trial.

*Paramount interest of creditors*

55. For all the reasons discussed herein, the Settlement favorably and immediately concludes a complex litigation claim with meaningful litigation risk that despite years of investigation and prosecution nevertheless would remain fairly expensive to prosecute to trial. Thus, approval of the Settlement is in the paramount interest of the Debtors' stakeholders.

***B. The Bar Order Should Be Approved***

56. While the Settlement will bar certain parties from asserting claims against the BMO Parties, to the Liquidating Trustee's knowledge, none of those parties have actually brought a claim against BMO (other than one limited partner that filed and then dismissed a

claim against BMO's predecessor in Texas state court in 2009). Moreover, it appears likely that the applicable limitations periods for any potential new claims by third parties have expired.

57. 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 The 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, 455 (11th Cir. 1996) (internal quotation and citation omitted).

58. 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:

Complex 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 Litigation*, 967 F.2d 489, 493-94 (11<sup>th</sup> Cir. 1992).

59. An essential and necessary part of the Settlement is the Bar Order, and that too should be approved; without such approval, there is no agreement. The Liquidating Trustee's agreement to obtain the Bar Order was negotiated at arms-length and in good faith, as a part of the Parties' associated settlement discussions.

60. 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 at 455 (internal citations omitted).

61. The Liquidating Trustee submits that upon “reasonable determination,” the requested Bar Order is fair and equitable. As set forth in the Stipulation and above, the Bar Order bars interrelated claims that could be asserted against the BMO Parties by both the Liquidating Trustee and shareholders, limited partners, and past or present creditors of the Debtors. The PCI Trustee, who sued BMO after the Liquidating Trustee filed BMO I, is expressly excluded from the Bar Order.

***C. The Contingency Fee Should Be Approved***

62. Pursuant to the Plan, the Court’s Order Approving the Trustee’s Motion to Approve Hybrid Form of Compensation [ECF No. 223], and the Court’s Order Granting Liquidating Trustee’s (i) Motion to Modify Compensation Structure for Meland Russin & Budwick, P.A. (“**MRB**”) as to Two Litigation Matters and (ii) Application to Employ David S. Mandel and Mandel & Mandel LLP (“**M&M**”), Nunc Pro Tunc to February 17, 2014 [ECF No. 2197], MRB is entitled to a fee of 8% and M&M is entitled to a fee of 2% of any affirmative recovery received by the Debtors’ estates in connection with these Adversary Cases (“**Contingency Fee**”).

63. The Liquidating Trustee requests that the Contingency Fee be approved and that he be authorized and directed to pay these amounts to MRB and M&M when the Settlement Payment is made.

**WHEREFORE**, the Liquidating Trustee respectfully requests that this Court enter an Order as set forth in attached Exhibit 2 (1) approving the Settlement, including application of the Pro Rata Allocation Formula, and directing payment of the Contingency Fee; (2) approving the Bar Order; and (3) granting such other relief this Court deems just and proper.

Dated: July 16, 2015.

s/ Zachary N. James  
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*Attorneys for the Liquidating Trustee*



## EXECUTION COPY

AMENDED AND RESTATED  
STIPULATION OF SETTLEMENT

This Amended and Restated Stipulation of Settlement ("**Stipulation**") is entered by and among: (i) Barry E. Mukamal, not in his individual capacity, but solely 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, "**Palm Beach Liquidating Trusts**"); (ii) Geoffrey Varga, not in his individual capacity, but solely in his capacity as monitor for the Palm Beach Finance II Liquidating Trust ("**Varga**"); and (iii) BMO Harris Bank N.A., as successor by merger to M&I Marshall & Ilsley Bank ("**BMO**") (BMO and the Liquidating Trustee are sometimes referred to individually as a "**Party**," or together, as the "**Parties**"). The terms of this Stipulation are as follows:

## DEFINED TERMS

Capitalized terms used in this document are defined terms ("**Defined Terms**") that are defined in the Recitals or Definitions section of this document and at various other points above or elsewhere herein. Such Defined Terms shall apply throughout the Stipulation and schedule(s) and exhibit(s) thereto.

## RECITALS

The following Recitals are material terms of the Stipulation. The Stipulation is made with reference to and in contemplation of the following facts and circumstances:

A. On 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] (“**Confirmed PBLT Plan of Liquidation**”), creating the Palm Beach Liquidating Trusts and appointing the Liquidating Trustee;

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, asserts certain claims (“**PBF Claims**”) against BMO as set forth in Adv. Case Nos. 11-03015-PGH and 14-01660-PGH in the Bankruptcy Court (“**Adversary Cases**”);

D. On October 11, 2008 (“**PCI Petition Date**”), Petters Company, Inc. commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota (“**MN Bankruptcy Court**”), Case No. 08-45257;

E. On October 17, 2008, the Palm Beach Finance Partners, L.P. and Palm Beach Finance Partners II, LP. filed an appearance and request for notice in the PCI Bankruptcy Cases (as defined below);

F. The PCI Trustee (defined below) asserts certain claims (“**PCI Claims**”) against BMO as set forth in Adv. Case No. 12-04288 in the MN Bankruptcy Court (“**MN BMO Adversary Case**”);

G. BMO expressly denies any liability in connection with the PBF Claims, the Adversary Cases, the PCI Claims, and the MN BMO Adversary Case;

H. On March 10-11, 2015, and on various dates thereafter, the Parties met in mediation before C. Edward Dobbs, Esq. to negotiate a resolution of the Adversary Cases (the “**Adversary Cases Mediation**”); and

I. To avoid the continued expense and risk of adverse outcome arising from the litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Adversary Cases, with the agreement and support of Varga, subject to the terms and conditions of this Stipulation and Bankruptcy Court approval (“*Settlement*”).

J. This Stipulation amends, restates, and supersedes in its entirety that certain Stipulation executed and delivered by the Parties and Varga as of May 22, 2015.

#### DEFINITIONS

In addition to the Defined Terms used at various points in the Stipulation, the following Defined Terms apply throughout the Stipulation and the attached schedule(s) and exhibit(s) and shall have the following meanings:

A. The term “*Adversary Case Protective Order*” shall mean that certain Stipulated Protective Order Governing the Production and Exchange of Confidential Material entered in Adv. Case No. 11-03015-PGH on June 11, 2013 [ECF No. 126], as amended by that certain Stipulated Protective Order Governing the Production and Exchange of Confidential Material entered in Adv. Case No. 11-03015-PGH entered on November 27, 2013 [ECF No. 177] and again by that certain Stipulated Protective Order Governing the Production and Exchange of Confidential Material entered in Adv. Case No. 11-03015-PGH on March 5, 2014 [ECF No. 183].

B. The term “*Adversary Claims*” shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, and whether alleged (or could be, or could have been, alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery or law whatsoever, that: (i) were alleged in the Adversary Cases; (ii) relate to or arise from, in any manner whatsoever, the facts, transactions, and/or occurrences alleged in the

Adversary Cases; (iii) could have been brought in the Adversary Cases; or (iv) subsequently are alleged or otherwise brought, whether by the Liquidating Trustee or otherwise, in any adversary proceeding or other action seeking any type of recovery against any of the BMO Parties for the benefit of any creditors of or other parties-in-interest in the Bankruptcy Cases relating in any way to the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases. For avoidance of doubt, the Adversary Claims do not include any Claims against any parties other than the BMO Parties.

C. The term “**BMO Parties**” shall mean: BMO; BMO’s affiliate and subsidiary companies; and, to the extent acting in their capacities related to BMO, their respective present and former officers, directors, employees, agents, attorneys, professionals, successors, predecessors (including, but not limited to, M&I Marshall & Ilsley Bank), subsidiaries and affiliates, and indemnitors and insurers.

D. The term “**Claims**” shall mean any obligations, 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, and whether alleged (or could be alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever. Without limiting the generality of the foregoing, when the term “**Claims**” is used with respect to any Claims relating to, or that were asserted or that could be asserted against, any of the BMO Parties, it shall include, without limitation: (i) any and all Claims against any of the BMO Parties in any way related to, or based directly or indirectly upon facts, events,

transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases; (ii) any and all Claims against any of the BMO Parties arising under federal, state, or local statute, law, regulations or common law; and (iii) any and all Claims against any of the BMO Parties in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

E. The term “**Confidential Information**” shall have the meaning assigned to such term in the Adversary Case Protective Order.

F. The term “**Enchanted/Nationwide Adversary**” shall mean the action styled *Barry E. Mukamal, in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust, v. Nationwide International Resource, et al.*, Adv. Case No. 11-02857-PGH, filed in the Bankruptcy Court and in the Bankruptcy Cases.

G. The term “**Enchanted/Nationwide Adversary Judgments**” shall mean the judgments entered in the Enchanted/Nationwide Adversary Judgment against Nationwide International Resources, Inc. [Enchanted/Nationwide Adversary, ECF Nos. 75 and 79], Larry Reynolds, a/k/a Larry Reservitz [Enchanted/Nationwide Adversary, ECF Nos. 68 and 77], and Enchanted Family Buying Company [Enchanted/Nationwide Adversary, ECF Nos. 71 and 73].

H. The term “**JOLs**” shall mean Geoff Varga and Mark Longbottom, solely in their respective capacities as Joint Official Liquidators of Palm Beach Offshore Limited and Palm Beach Offshore II Limited in the liquidation proceedings pending in the Cayman Islands.

I. The term “***Mediation Confidentiality Agreement***” shall mean that certain letter agreement dated March 10, 2015 executed by the participants in the Adversary Cases Mediation.

J. The term “***MN BMO Adversary Claims***” shall mean any and all direct, indirect, and derivative claims, whether known or unknown, and whether alleged as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever, that: (i) were alleged in the MN BMO Adversary Case; (ii) relate to or arise from, in any manner whatsoever, the facts, transactions, and/or occurrences alleged or that could have been alleged in the MN BMO Adversary Case; (iii) could have been alleged or otherwise brought in the MN BMO Adversary Case; or (iv) subsequently are alleged or otherwise brought, whether by the PCI Trustee or otherwise, in the MN BMO Adversary Case or any other adversary proceeding or other action seeking any type of recovery against any of the BMO Parties for the benefit of any creditors of the PCI Bankruptcy Cases (as defined below). The MN BMO Adversary Claims shall not include any Claims against any parties other than the BMO Parties.

K. The term “***MN BMO Adversary Distributed Amount***” shall mean the MN BMO Adversary Resolution Amount (as defined below), less 100% of the PCI estates’ allowed administrative fees and costs directly related to and actually incurred in connection with the investigation, prosecution and resolution by the PCI Trustee of the MN BMO Adversary Claims in connection with the MN BMO Adversary Case or the distribution of recoveries therefrom. The MN BMO Adversary Distributed Amount shall be rounded down to the closest \$100,000 whole-dollar increment.

L. The term “***MN BMO Adversary Net Recovery Amount***” shall mean the amount derived by multiplying (i) the MN BMO Adversary Distributed Amount, by (ii) the PBLT Claims Percentage (as defined below).



M. The term “***MN BMO Adversary Resolution Amount***” shall mean the gross amount of any sums BMO pays to the PCI Trustee in connection with the resolution, whether by settlement, judgment, or otherwise, of the MN BMO Adversary Claims. Consistent with the foregoing, in the event BMO does not pay any amounts to the PCI Trustee (as defined below) in connection with the MN BMO Adversary Claims, then the MN BMO Adversary Resolution Amount (and thus, the PBF Share or the PBOF Share (each, as defined below)) shall be \$0.

N. The term “***Participant***” shall mean the participant disclosed in the Joint Motion for Approval of Omnibus Supplemental Disclosure Filed by Kinetic Partners (Cayman) Ltd. and Levine Kellogg Lehman Schneider + Grossman LLP, as Consultant and Local Counsel, respectively, to Geoffrey Varga, Liquidating Trust Monitor for Palm Beach Finance II, L.P [Bankruptcy Cases, ECF No. 2118], solely in its capacity as a participant in the assets of the Palm Beach Offshore Limited and Palm Beach Offshore II Limited in the liquidation proceedings pending in the Cayman Islands.

O. The term “***PBF Share***” shall mean 100% of the MN BMO Adversary Net Recovery Amount in excess of \$2,000,000. The Parties understand and acknowledge that as of the execution of this Stipulation the PBF Share is entirely contingent and unliquidated.

P. The term “***PBLT Claims***” shall mean the claims asserted by or on behalf of the Palm Beach Liquidating Trusts or their predecessors in interest against the PCI bankruptcy estates in the proofs of claim filed in the PCI Bankruptcy Cases (as defined below) as set forth on Schedule I, which the Liquidating Trustee represents are all of the proofs of claims so filed to date by the Palm Beach Trusts or their predecessors in interest in such bankruptcy cases. The Parties acknowledge that the PCI Trustee (as defined below) has filed *Trustee’s Second Omnibus Objection to Claims of Palm Beach Finance Partners, L.P., Palm Beach Finance II, L.P., Palm*

*Beach Offshore Limited, and Palm Beach Offshore II Limited* [ECF No. 636] in the PCI Bankruptcy Cases (as defined below).

Q. The term “**PBLT Claims Percentage**” shall mean the ratio that the aggregate amount of the PBLT Claims as allowed bears to the total amount of the final allowed unsecured claims in the PCI Bankruptcy Cases (as defined below) that actually do receive any distribution in the PCI Bankruptcy Cases (as defined below).

R. The term “**PBLT Confirmation Order**” shall mean the *Order Confirming Second Amended Joint Chapter 11 Plan of Liquidation* [ECF No. 444] in the Bankruptcy Cases.

S. The term “**PBOF Claims**” shall mean the claims asserted by the JOLs in the proofs of claim filed in the PCI Bankruptcy Cases (as defined below) as set forth on Schedule II, which Varga represents are all of the proofs of claims filed by the JOLs.

T. The term “**PBOF Claims Percentage**” shall mean the ratio that the aggregate amount of the PBOF Claims bears to the total amount of the final allowed unsecured claims in the PCI Bankruptcy Cases (as defined below) that are allowed and actually do receive any direct distribution in the PCI Bankruptcy Cases (as defined below).

U. The term “**PBOF/MN BMO Adversary Net Recovery Amount**” shall be the amount derived by multiplying (i) the MN BMO Adversary Distributed Amount, by (ii) the PBOF Claims Percentage.

V. The term “**PBOF Share**” shall mean 100% of the PBOF/MN BMO Adversary Net Recovery Amount (if any) in excess of an amount equal to \$1,323,150; provided however, that the amounts received by the Palm Beach Liquidating Trusts and the JOLs from the PCI Bankruptcy Cases on account of the PBF Share and the PBOF Share shall not exceed \$2,000,000 in the aggregate. For avoidance of doubt, the PBOF Share shall not include any amounts distributed to



the JOLs from the Palm Beach Liquidating Trusts. The Parties understand and acknowledge that as of the execution of this Stipulation the PBOF Share is entirely contingent and unliquidated.

W. The term “**PB Parties**” shall mean the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Palm Beach Finance Partners, L.P., Palm Beach Finance Partners II, LP., the Debtors and their estates, and their successors and assigns, including without limitation any other estate representative, administrator, creditor, or other party-in-interest, claiming on behalf of or through the Debtors and their estates.

X. The term “**PCI Bankruptcy Cases**” shall mean the substantively consolidated Petters Company, Inc. bankruptcy case(s) pending in the MN **Bankruptcy Court**, Case No. 08-45257 or, to the extent the Order directing such substantive consolidation should be reversed on appeal, the individual cases of such presently-consolidated debtors.

Y. The term “**PCI Trustee**” shall mean Douglas A. Kelley, in his capacity as the Court-appointed Chapter 11 trustee of Petters Company, Inc., the debtors in the PCI Bankruptcy Cases and their estates, and their successors and assigns, including, without limitation, any other estate representative, administrator, creditor, committee or other party-in-interest, claiming on behalf of or through the debtors and their estates or authorized to pursue any litigation on behalf of such bankruptcy estates pursuant to any confirmed Chapter 11 plan or other court order.

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

1. The Parties acknowledge and agree that the Recitals and Definitions stated above are incorporated herein.
2. 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/his part.

3. 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.

4. In full and final settlement of the PBF Claims, BMO shall pay (or cause to be paid) sixteen million dollars (\$16,000,000) ("***Settlement Payment***") by no later than the Settlement Payment Date (as that term is defined below), via wire transfer pursuant to written instructions to be provided by the Liquidating Trustee to BMO.

5. The Settlement Payment Date shall be the 10th business day from the later of the following events: (i) the date on which the Bankruptcy Court's order approving this Stipulation becomes a final non-appealable order; (ii) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to the Bankruptcy Court's order approving this Stipulation, unless such appeals have been determined by a court of appropriate jurisdiction to have been rendered moot; and (iii) the receipt by BMO from the Liquidating Trustee of: (x) the wire transfer instructions referenced in Paragraph 4 above; and (y) a fully completed and executed, current W-9 form to allow BMO to process the Settlement Payment.

6. The Liquidating Trustee shall file a stipulation of dismissal with prejudice of the Adversary Cases within five (5) business days following the receipt in cleared funds of the Settlement Payment.

7. Upon approval of this Stipulation by final Order of the Bankruptcy Court, after appropriate notice and opportunity for a hearing and payment of the Settlement Payment, the PB Parties shall be deemed to fully waive, release, hold harmless, and discharge, now and forever, the

BMO Parties from any and all Claims that the PB Parties now have, have ever had, or may hereafter have, against the BMO Parties, at any time up to and including the date of execution of this Stipulation, including but not limited to any Claims against the BMO Parties in any way arising under or otherwise relating to the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases (the “**BMO Released Claims**”); provided that nothing in this Paragraph 7 shall be deemed to release the PB Parties’ right to distributions on account of the PBLT Claims in the PCI Bankruptcy Cases, including with respect to the MN BMO Adversary Case. For avoidance of doubt, and without limiting the generality of the foregoing, any ability of the JOLs or the Participant, or their successors and assigns, to assert any Claims against the BMO Parties relating to the Debtors and their estates shall be expressly within the scope of the Bar Order (as defined below) and expressly within the scope of the BMO Released Claims. However, nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. Moreover, the scope of this release shall not impact, impair or alter in any manner (i) any claims whatsoever that the PB Parties, the JOLs, or the Participant may have against any parties other than the BMO Parties, including but not limited to any alleged consecutive or concurrent tortfeasors; or (ii) the PBLT Claims. Nothing herein shall be construed as a waiver or impairment of (i) any claims held by the PCI Trustee against the BMO Parties; or (ii) the PBLT Claims.

8. The Liquidating Trustee covenants and agrees not to assign, sell, or otherwise transfer the Enchanted/Nationwide Adversary Judgments without first obtaining from the transferee an acknowledgement that such transferee takes such Judgments subject to (and thus is bound by) the release of the BMO Parties set forth in this agreement (including pursuant to the

provisions of Paragraph 7), such acknowledgment to be in a form acceptable to BMO in its sole and absolute discretion. Any transfer or purported transfer of such Judgments that is not in compliance with the provisions of the preceding sentence shall be void *ab initio*. The Liquidating Trustee shall provide BMO with at least five (5) business days' written notice of any proposed transfer and form of acknowledgment (which written notice shall include the form of the proposed acknowledgment). Without limiting the generality of the provisions of Paragraph 7, any ability of any PB Party (or transferee) to pursue any BMO Party with respect to the Enchanted/Nationwide Adversary Judgments as a subsequent transferee or otherwise are expressly within the scope of the BMO Released Claims as well as expressly within the scope of the Bar Order (as defined below).

9. Upon approval of this Stipulation by final Order of the Bankruptcy Court, after appropriate notice and opportunity for a hearing and payment of the Settlement Payment, the BMO Parties shall be deemed to fully waive, release, hold harmless, and discharge, now and forever, the PB Parties, JOLs, Varga and the Participant ("***PB Released Parties***"), and each of their respective agents, attorneys, employees and professionals (to the extent acting in their capacities related to the PB Parties) from any and all Claims or Adversary Claims which the BMO Parties now have, have ever had, or may hereafter have, against the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, solely relating to the subject matter of (i) the Adversary Cases (including by virtue of the Liquidating Trustee's having brought or prosecuted the Adversary Cases), (ii) the PCI Bankruptcy Cases or (iii) otherwise related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company. However, nothing herein shall be deemed to release, waive or otherwise limit (1) any rights or obligations arising out of this Stipulation, (2) the Adversary Case Protective Order, (3) the Mediation Confidentiality Agreement or (4) any Claims of the BMO Parties against the Palm Beach Liquidating Trusts that are unrelated

to the subject matter of the Adversary Cases, the PCI Bankruptcy Cases or Tom Petters and his related companies. Moreover, the scope of this release shall not impact, impair or alter in any manner any claims whatsoever that the BMO Parties may have against any parties other than the PB Parties, the JOLs, Varga or the Participant. Nothing herein shall be construed as a waiver of any interest in the PBF Share.

10. The Parties acknowledge that an integral component of the settlement of the PBF Claims is: (i) the interest of BMO in distributions received on account of the PBLT Claims in the PCI Bankruptcy Cases in an amount equal to the PBF Share, which BMO acknowledges is currently contingent and unliquidated; and (ii) the duties and obligations of the Liquidating Trustee with respect to the PBF Share and its related components, all as set forth pursuant to the provisions of this Paragraph 10.

A. Timing of Turnover Payments. In the event the PBF Share becomes no longer contingent and is liquidated, which shall occur upon (x) the resolution of the MN BMO Adversary Case and (y) the PCI Trustee's receipt from BMO of the MN BMO Adversary Resolution Amount (if any), then the Liquidating Trustee shall pay an amount equal to the PBF Share to BMO within thirty (30) calendar days following the occurrence of both of the following two events: (i) the PCI Trustee's next distribution ("***Next Distribution***") to the Liquidating Trustee following resolution of the MN BMO Adversary Case; and (ii) receipt by the PCI Trustee from BMO of the MN BMO Adversary Resolution Amount; provided, however, that should the Next Distribution not be in cash in an amount sufficient to pay an amount equal to the PBF Share in full, the Liquidating Trustee shall pay to BMO: (x) the full amount of the Next Distribution; and (y) 100% of any and all distributions from the PCI Trustee after the Next Distribution until an amount equal to the PBF Share is paid in full in cash.



B. Contingent, Unliquidated Interest of BMO in PBF Share. BMO shall have an interest in receiving payment in the amount of the PBF Share. However, BMO shall otherwise have no rights, standing or interest whatsoever in connection with the PBLT Claims, including, without limitation, to participate in any way in the resolution of the PBLT Claims. The Liquidating Trustee will not share any of his work product or privileged communications related to the PBLT Claims or any aspect of the PCI Bankruptcy Cases, including but not limited to his role as a member on the Official Committee of Unsecured Creditors of Petters Company, Inc., et al. (“*PCI Committee*”). The Liquidating Trustee will not consult with BMO in any respect in connection with any aspect of the PBLT Claims or the administration of any aspect of the (i) PCI Bankruptcy Cases or (ii) any bankruptcy or receivership cases or litigations related in any way to the PCI Bankruptcy Cases. BMO shall have no standing or right to participate in any way in connection with the Liquidating Trustee’s role in connection with his membership on the PCI Committee. BMO may not file any pleadings in the MN Bankruptcy Court making reference to the PBF Share absent the Liquidating Trustee’s prior written consent, which consent may be withheld at the sole and absolute discretion of Liquidating Trustee, and BMO shall have no standing or right to appear in any capacity in the PCI Bankruptcy Cases in connection with its contingent, unliquidated interest in the PBF Share or in connection with any other terms and conditions of this Stipulation. As detailed in Paragraph 26 below, with respect to any disputes between the PB Parties and the BMO Parties, the Bankruptcy Court shall retain sole and exclusive jurisdiction to enforce the terms of this Stipulation, including all matters related to the PBF Share.

C. Present State of PBLT Claims. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, hereby represents and warrants to BMO that: (i) the Palm Beach Liquidating Trusts are the holders of the PBLT Claims, with title

thereto free and clear of any encumbrance (except as may be set forth in the Confirmed PBLT Plan of Liquidation, the PBLT Confirmation Order and the Liquidating Trust Agreement for the Palm Beach Finance Partners Liquidating Trust); (ii) the proofs of claim relating to the PBLT Claims remain of record and have not otherwise been assigned; and (iii) the Liquidating Trustee has not entered into any agreement to reduce, subordinate, or impair the right to, any distributions on account of the PBLT Claims in the PCI Bankruptcy Cases.

D. Grant to BMO of Interest in Distributions Relating to PBF Share. Notwithstanding anything to the contrary set forth in this Stipulation, but subject to the restrictions on BMO's right to participate in the PCI Bankruptcy Cases set forth above, the Parties intend that, upon the Liquidating Trustee's or the Palm Beach Liquidating Trusts' receipt of distributions on account of the PBLT Claims and the PBF Share no longer being contingent and unliquidated, BMO shall have an absolute ownership interest in distributions on account of the PBLT Claims in an amount equal to the PBF Share. Accordingly, and without limiting the generality of the foregoing: (a) BMO shall be deemed the beneficial owner of the Palm Beach Liquidating Trusts' right to distributions on account of the PBLT Claims in the PCI Bankruptcy Cases to the extent of the PBF Share, which BMO acknowledges is contingent and unliquidated as of the date of this Stipulation; (b) regardless of the manner in which BMO's interest in such distributions is characterized, the Liquidating Trustee's turnover obligations with respect to the PBF Share, upon the Liquidating Trustee's or the Palm Beach Liquidating Trusts' receipt of distributions on account of the PBLT Claims and the PBF Share no longer being contingent and unliquidated, shall be absolute and fully enforceable; and (c) BMO's interest in the PBF Share will be fully satisfied upon its payment in full in cash.

E. Future Treatment of PBLT Claims. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, hereby covenants that he shall not

compromise, settle or waive any portion of the PBLT Claims in any manner that subordinates, reduces or disadvantages (whether in priority, rights to distributions, timing of payment or otherwise) the Liquidating Trustee's rights to distributions from the PCI Bankruptcy Cases on account of the MN BMO Adversary Resolution Amount in a manner disproportionate to the Liquidating Trustee's rights to distributions on account of the remainder of the assets of the PCI Bankruptcy Cases. In the event that the Liquidating Trustee seeks to compromise, settle or agree to waive any portion of the PBLT Claims, the Liquidating Trustee further covenants and agrees that, notwithstanding anything to the contrary in the Confirmed PBLT Plan of Liquidation, the PBLT Confirmation Order, the Liquidating Trust Agreement for the Palm Beach Finance Partners Liquidating Trust or otherwise, he shall seek approval thereof in the Bankruptcy Court (it being understood that, in the case of a proposed compromise, settlement, or waiver pursuant to a plan of reorganization or a plan of liquidation, he shall file a motion in the Bankruptcy Court seeking approval prior to any hearing on the plan, including prior to any hearing on the approval of the accompanying disclosure statement for any such plan) and shall serve a copy of motion seeking approval and the notice of any hearing for approval on the BMO Parties (by email and overnight mail at their addresses listed in Paragraph 27) at least 14 days in advance of any such hearing. Without limiting the generality of the foregoing and for the avoidance of doubt, no hearing shall proceed (and any such hearing or related approval shall be void *ab initio*) if the BMO Parties are not timely served in accordance with this subparagraph E.

F. Liquidating Trustee Covenants Regarding MN BMO Adversary Case. The Liquidating Trustee agrees not to waive any potential conflict of interest to permit the PCI Trustee to retain any of the Liquidating Trustee's professionals in connection with the MN BMO Adversary Case. The Parties hereby acknowledge that each of the Adversary Case Protective



Order and the Mediation Confidentiality Agreement shall continue in effect in accordance with its terms notwithstanding the effectiveness of this Stipulation except, in the case of the Adversary Case Protective Order, solely as expressly set forth in the two immediately succeeding sentences of this subparagraph F. However, nothing shall prevent the Liquidating Trustee from utilizing any documents produced by BMO in any adversary cases currently pending in the Bankruptcy Court or in any contested proceeding or adversary proceeding in the PCI Bankruptcy Cases to which the Liquidating Trustee is a party, in each case in a manner not inconsistent with the Adversary Case Protective Order. To the extent the Adversary Case Protective Order limits the use of documents designated as confidential solely for purposes of either or both of the Adversary Cases, the Parties agree and stipulate that the provisions of the preceding sentence supersede any such limitation. Notwithstanding any other provisions of this Stipulation to the contrary, the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, further covenants and agrees that he shall not object to any settlement BMO reaches with the PCI Trustee.

G. Confirmation of Capacity. Without limiting the effect of the defined term “Liquidating Trustee” as used throughout this Stipulation, but for avoidance of doubt only, BMO acknowledges that the representations and warranties and the covenants set forth and undertaken by the Liquidating Trustee pursuant to the provisions of this Paragraph 10 are made and undertaken by the Liquidating Trustee not in his personal capacity, but solely in his capacity as liquidating trustee under the Confirmed PBLT Plan of Liquidation.

11. The JOLs shall pay an amount equal to the PBOF Share to BMO within thirty (30) calendar days following the occurrence of both of the following two events: (i) the PCI Trustee’s next distribution (“*JOLs Next Distribution*”) to the JOLs on account of the PBOF Claims (in the

event such claims are allowed and receive any distribution separate and apart from any distribution to be made on account of the PBLT Claims) following resolution of the MN BMO Adversary Case; and (ii) receipt by the PCI Trustee from BMO of the MN BMO Adversary Resolution Amount; provided, however, that should the JOLs Next Distribution not be in cash in an amount sufficient to pay an amount equal to the PBOF Share in full, the JOLs shall pay to BMO: (x) the full amount of the JOLs Next Distribution; and (y) 100% of any and all distributions from the PCI Trustee on account of the PBOF Claims after the JOLs Next Distribution until an amount equal to the PBOF Share is paid in full in cash. Nothing contained in this Stipulation shall constitute any representation or warranty by JOLs as to the allowability of the PBOF Claims or any covenant on the part of JOLs regarding the allowance or the non-withdrawal of such claims. By signature below, Varga represents and warrants that in his capacity as plan monitor, he has authority to sign on behalf of the JOLs with respect to this Paragraph 11. For the avoidance of doubt, no payments shall be due from the JOLs to BMO on account of cash paid from Palm Beach Finance II Liquidating Trust or the estate of PBF II to the JOLs.

12. Without limiting the generality of the provisions of Paragraph 7 hereof, the Liquidating Trustee, with the cooperation of BMO, shall obtain the entry of a final, non-appealable order ("**Bar Order**") by the Bankruptcy Court substantially in the form of Exhibit 1. 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.

13. Each of the Parties acknowledges that he or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

14. Following the execution of this Stipulation by all Parties, the Liquidating Trustee shall file, each in form reasonably acceptable to the Parties (i) an agreed motion (“**Abatement Motion**”) to abate the Adversary Cases (including a request for an *in camera* hearing to explain the basis thereof) and (ii) an agreed motion (“**Seal Motion**”) with the Bankruptcy Court to file under seal a copy of this Stipulation with a statement that pursuant to this Paragraph 14 the Liquidating Trustee will file a Rule 9019 motion (“**9019 Motion**”) on or about 60 days later. Each of the Seal Motion and Abatement Motion shall be consistent with the confidentiality requirements set forth in this Paragraph 14 and Paragraph 15. The Seal Motion shall be filed under seal pursuant to Rule 5003-1(D)(1)(a) of the Local Rules of the Bankruptcy Court, shall be served only on Varga (who shall be entitled to provide a copy to the Participant, provided the Participant has first executed a confidentiality agreement relating thereto in substantially the same form as the Mediation Confidentiality Agreement) and the Office of the United States Trustee, and shall contain a request that it be sealed for a period of sixty (60) days following its filing. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee will file the Rule 9019 Motion in the public docket on or about the sixtieth day following the filing of the Seal Motion and follow the applicable local rules to provide the required notice to other parties of record in the Bankruptcy Cases prior to the hearing on the 9019 Motion. In the event the Bankruptcy Court denies the Seal Motion or sets the Seal Motion for hearing prior to the first regular business day after the sixtieth (60th) day following the filing of the Seal Motion, the Parties shall request an *in camera* hearing with the Bankruptcy Court to discuss maintaining the confidentiality of this Stipulation for a period of sixty (60) days from the filing of the Seal Motion, and the Parties shall use their good faith efforts during such a hearing to maintain the confidentiality of this Stipulation for a period of sixty (60) days. In all cases, the Parties shall use their good faith efforts to maintain a sixty

(60)-day period of confidentiality with respect to this Stipulation, to the extent allowable by the Bankruptcy Court. In the event the Bankruptcy Court denies the Parties' efforts to maintain the confidentiality of this Stipulation for a period of sixty (60) days from the filing of the Seal Motion, this Stipulation, and all conditions and provisions herein, shall remain effective and binding on the Parties and all of the Parties' successors or assigns. Notwithstanding the foregoing, BMO at its discretion may request the filing of the 9019 Motion, at which point the Liquidating Trustee shall file the 9019 Motion within five (5) business days, and may in his discretion move to withdraw the Seal Motion.

15. Each of the Parties hereto, for themselves and their respective agents, representatives, attorneys, accountants, successors and assigns, agrees that they shall not disclose, publish, reveal, communicate or discuss in any manner whatsoever, whether orally or in writing, the terms and/or conditions of this Agreement to any person or entity, it being the intention of the Parties to keep confidential and out of the public domain the existence, and all of the terms and conditions of, this Agreement, except as otherwise provided in Paragraph 14 or by order of the Bankruptcy Court, or until the 9019 Motion is filed in the public docket. In the event that the Liquidating Trustee receives an inquiry relating to the status of the Adversary Cases, the Parties agree that the Liquidating Trustee may only respond that the Parties have tentatively settled, are in the process of seeking court approval of the tentative settlement and that the terms of such settlement are subject in all respects to a confidentiality agreement.

16. Any statement by the Parties for publication directed to any media outlet(s) regarding this Stipulation and resolution of the Adversary Cases may only address: (i) the filing and prosecution of the Adversary Cases; (ii) the nature and types of claims asserted; and (iii) any

information contained in the Rule 9019 Motion. Otherwise, the Parties will not make a public comment directed to any specific news media outlet.

17. By executing this Stipulation, Varga explicitly expresses his consent to the Liquidating Trustee for the Palm Beach Finance II Liquidating Trust's entry into this Stipulation.

18. To the extent that there is a dispute between the Liquidating Trustee and BMO with respect to any action taken under this Stipulation, the Parties may not commence any judicial action that alleges that either Party has breached any provision of this Stipulation (collectively "***Future Claims***"), until and unless the allegedly aggrieved Party ("***Allegedly Aggrieved Party***") has first notified the other Party who purportedly breached this Stipulation ("***Allegedly Breaching Party***") in writing (with such notice given in compliance with the requirements of Paragraph 27) of such alleged breach or claim and afforded the Allegedly Breaching Party a reasonable period after the giving of such notice to take corrective action. More specifically, the Allegedly Aggrieved Party agrees to give written notice to the Allegedly Breaching Party's representatives listed in Paragraph 27 of any Future Claims. Within five (5) business days following receipt of the Allegedly Aggrieved Party's written notice, the Allegedly Breaching Party's representative shall respond in writing. After the Allegedly Breaching Party's representative responds in writing, the Parties shall confer, either in person or via telephone, in an attempt to resolve the dispute in good faith within fourteen (14) days ("***Meet and Confer Period***"). If the Parties are unable to resolve the dispute and the Allegedly Breaching Party fails to take the corrective action requested by the Allegedly Aggrieved Party during the Meet and Confer Period, the Parties agree to contact C. Edward Dobbs, or another mediator mutually agreed upon by the Parties (the "***Mediator***"), and ask him to mediate the Parties' dispute prior to bringing any judicial action. Should those mediation efforts with the Mediator fail, the Allegedly Aggrieved Party may proceed to judicial action



following the Mediator's declaration that mediation efforts have failed. Nothing in this Paragraph 18 serves to, in any way, limit, impair or diminish the scope of the releases given by the Parties in Paragraphs 7 and 9 above. Moreover, nothing in this Paragraph 18 serves to, in any way, limit, impair, or diminish the ability of any Allegedly Aggrieved Party to take any other action, including in any bankruptcy case, adversary proceeding, or other proceeding, against any person or entity other than the Allegedly Breaching Party, whether or not the attempted dispute resolution procedure described above in this Paragraph 18 has run its prescribed course, should such Allegedly Aggrieved Party reasonably conclude that taking any such action is a necessary or prudent course in order to protect its rights.

19. Each Party shall bear its own attorneys' fees and costs in connection with the Adversary Cases, the negotiation and drafting of this Stipulation, and the submission of such Stipulation, motions and orders as may be necessary to obtain Court approval of this Stipulation; provided however, 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 out-of-pocket costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

20. 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.

21. 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. Upon its becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns, as

well as on any and all other persons or entities claiming (whether expressly or otherwise) or purporting to claim by, on behalf of, or through, any Party.

22. 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.

23. 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.

24. 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 e-mail shall be effective as delivery of a manually executed counterpart of this Stipulation.

25. 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.

26. The Bankruptcy Court for the Southern District of Florida, shall retain exclusive jurisdiction to enforce the terms of this Stipulation with respect to any disputes among the PB

Parties and the BMO Parties. The Parties shall not file any court papers to effectuate this Stipulation in any court other than the Bankruptcy Court. Notwithstanding the preceding two sentences or any other provision of this Stipulation to the contrary, neither BMO nor any of the BMO Parties shall be barred from asserting, but instead, each shall be entitled in all respects to assert, this Stipulation (as approved by the final Order) as a *res judicata* or claim preclusion (or similar) bar in any litigation brought against BMO or any of the BMO Parties asserting or otherwise seeking recovery on any of the Claims, including, without limitation, any of the Adversary Claims, released pursuant to the provisions of this Stipulation.

27. All notices and other communications in connection with this Stipulation shall be in writing and shall be deemed given (and shall be deemed to have been duly given upon receipt) if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt required) or delivered by an express courier (with confirmation) to the Parties at the following addresses:

(a) If to the Liquidating Trustee:

Kapila Mukamal, LLP  
SunTrust International Center  
1 Southeast 3<sup>rd</sup> Avenue, Suite 2150  
Miami, FL 33131  
Attention: Barry E. Mukamal, Liquidating Trustee  
Tel: (786) 517-5771  
Fax: (786) 517-5772

With a copy to:



Meland Russin & Budwick, P.A.  
3200 Southeast Financial Center  
200 South Biscayne Blvd.  
Miami, FL 33131  
Attention: Michael S. Budwick, Esq.  
Tel: (305) 358-6363  
Fax: (305) 358-1221

and

Mandel & Mandel, LLP  
169 East Flagler Street, Suite 1200  
Miami, FL 33131  
Attention: Nina Stillman Mandel, Esq.  
Tel: (305) 374-7771  
Fax: (305) 374-7776

(b) If to BMO:

BMO Harris Bank, N.A.  
111 West Monroe Street, 19E  
Chicago, IL 60603  
Attention: Jeff Ellis,  
Executive Vice President,  
U.S. General Counsel  
Charlene M. Yaneza  
Associate General Counsel & Vice President  
Tel: (312) 461-5386  
email: charlene.yaneza@bmo.com

With a copy to:

Kozyak Tropin & Throckmorton  
2525 Ponce de Leon Blvd., 9<sup>th</sup> Fl.  
Miami, FL 33134  
Attention: Charles W. Throckmorton, Esq.  
Coral Lopez-Castro, Esq.  
Tel: (305) 372-1800  
Fax: (305) 372-3508

and

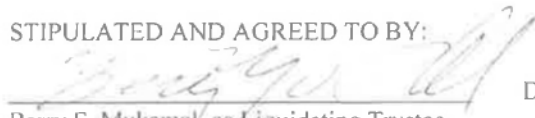
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606-4637  
Attention: Lucia Nale, Esq.

Debra Bogo-Ernst, Esq.  
Tel: (312) 782-0600  
(312) 701-7711

28. The individuals signing below represent and warrant (in the case of the Liquidating Trustee, subject to the approval of this Stipulation by the Bankruptcy Court) that they have the authority to execute this Stipulation on behalf of the person(s) / entity identified and as set forth herein.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

STIPULATED AND AGREED TO BY:

  
Barry E. Mukamal, as Liquidating Trustee  
for the Palm Beach Liquidating Trusts

Dated as of May 26, 2015

\_\_\_\_\_  
BMO Harris Bank N.A., as successor by merger  
to M&I Marshall & Isley Bank  
by: Mark Furlong, President and Chief  
Executive Officer

Dated as of May 26, 2015

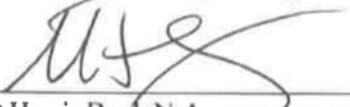
\_\_\_\_\_  
Geoffrey Varga, as monitor for the  
Palm Beach Finance II Liquidating Trust

Dated as of May 26, 2015

STIPULATED AND AGREED TO BY:

\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee  
for the Palm Beach Liquidating Trusts

Dated as of May 26, 2015

  
\_\_\_\_\_  
BMO Harris Bank N.A., as successor by merger  
to M&I Marshall & Ilsley Bank  
by: Mark Furlong, President and Chief  
Executive Officer

Dated as of May 26, 2015

\_\_\_\_\_  
Geoffrey Varga, as monitor for the  
Palm Beach Finance II Liquidating Trust

Dated as of May 26, 2015


**STIPULATED AND AGREED TO BY:**

\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee  
for the Palm Beach Liquidating Trusts

Dated as of May 26, 2015

\_\_\_\_\_  
BMO Harris Bank N.A., as successor by merger  
to M&I Marshall & Ilsley Bank  
by: Mark Furlong, President and Chief  
Executive Officer

Dated as of May 26, 2015

  
\_\_\_\_\_  
Geoffrey Varga, as monitor for the  
Palm Beach Finance II Liquidating Trust

Dated as of May 26, 2015

SCHEDULE ILIST OF PBLT PROOFS OF CLAIM  
FILED IN PCI BANKRUPTCY CASES

<b>Claims of Palm Beach Finance Partners, L.P.</b>	<b>Case No.</b>	<b>POC</b>	<b>Amount*</b>
Petters Company, Inc.	08-45257 (GFK)	35-2	\$ 211,938,476.67
Petters Group Worldwide, LLC	08-45258 (GFK)	35-2	\$ 211,938,476.67
PC Funding, LLC	08-45326 (GFK)	14-2	\$ 211,938,476.67
Thousand Lakes, LLC	08-45327 (GFK)	14-2	\$ 211,938,476.67
SPF Funding, LLC	08-45328 (GFK)	34-1	\$ 211,938,476.67
PL Ltd., Inc.	08-45329 (GFK)	16-2	\$ 211,938,476.67
Edge One LLC	08-45330 (GFK)	17-2	\$ 211,938,476.67
MGC Finance, Inc.	08-45331 (GFK)	16-2	\$ 211,938,476.67
PAC Funding, LLC	08-45371 (GFK)	18-2	\$ 211,938,476.67
Palm Beach Finance Holdings, Inc.	08-45392 (GFK)	16-2	\$ 211,938,476.67

<b>Claims of Palm Beach Finance II, L.P.</b>	<b>Case No.</b>	<b>POC</b>	<b>Amount*</b>
Petters Company, Inc.	08-45257 (GFK)	36-2	\$ 876,373,877.08
Petters Group Worldwide, LLC	08-45258 (GFK)	36-2	\$ 876,373,877.08
PC Funding, LLC	08-45326 (GFK)	15-2	\$ 876,373,877.08
Thousand Lakes, LLC	08-45327 (GFK)	15-2	\$ 876,373,877.08
SPF Funding, LLC	08-45328 (GFK)	17-2	\$ 876,373,877.08
PL Ltd., Inc.	08-45329 (GFK)	17-2	\$ 876,373,877.08
Edge One LLC	08-45330 (GFK)	36-1	\$ 876,373,877.08
MGC Finance, Inc.	08-45331 (GFK)	17-2	\$ 876,373,877.08
PAC Funding, LLC	08-45371 (GFK)	19-2	\$ 876,373,877.08
Palm Beach Finance Holdings, Inc.	08-45392 (GFK)	17-2	\$ 876,373,877.08

\*plus interest, attorney's fees and all other amounts due and owing under applicable law. See Attachment to each proof of claim.

SCHEDULE IILIST OF PBOF PROOFS OF CLAIM  
FILED IN PCI BANKRUPTCY CASES

<b>Claims of PBOF asserted by JOLs</b>	<b>Case No.</b>	<b>POC</b>	<b>Amount*</b>
Petters Company, Inc.	08-45257 (GFK)	103	> \$720,000,000
Petters Group Worldwide, LLC	08-45258 (GFK)	64	> \$720,000,000
PC Funding, LLC	08-45326 (GFK)	29	> \$720,000,000
Thousand Lakes, LLC	08-45327 (GFK)	32	> \$720,000,000
SPF Funding, LLC	08-45328 (GFK)	29	> \$720,000,000
PL Ltd., Inc.	08-45329 (GFK)	30	> \$720,000,000
Edge One LLC	08-45330 (GFK)	32	> \$720,000,000
MGC Finance, Inc.	08-45331 (GFK)	30	> \$720,000,000
PAC Funding, LLC	08-45371 (GFK)	32	> \$720,000,000
Palm Beach Finance Holdings, Inc.	08-45392 (GFK)	30	> \$720,000,000

\*See Attachment to each proof of claim



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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 BMO HARRIS BANK, N.A.**

**THIS CAUSE** came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with BMO Harris, N.A., as Successor by Merger to M&I Marshall & Ilsley Bank ("Motion")* [ECF No. \_\_\_\_].<sup>1</sup> The Court heard argument of counsel, finds that the appropriate parties have been properly noticed, and for the reasons stated on the record, which are incorporated here by reference, it is:

**ORDERED** as follows:

1. The Motion is **GRANTED**.
2. 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).
3. 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

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<sup>1</sup>All capitalized terms not defined herein shall have the meaning ascribed to such term in the Stipulation of Settlement attached to the Motion ("*Stipulation*").

Order.

4. 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 that this Order is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495 96 (11th Cir. 1992); *In re 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). This Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

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

A. The term “**Adversary Cases**” shall mean Adv. Case Nos. 11-03015-PGH and 14-01660-PGH in the Bankruptcy Court.

B. The term “**Adversary Claims**” shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, and whether alleged (or could be, or could have been, alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery or law whatsoever, that: (i) were alleged in the Adversary Cases; (ii) relate to or arise from, in any manner whatsoever, the facts, transactions, and/or occurrences alleged in the Adversary Cases; (iii) could have been brought in the Adversary Cases; or (iv) subsequently are alleged or otherwise brought, whether by the Liquidating Trustee or otherwise, in any adversary proceeding or other action seeking any type of recovery against any of the BMO Parties for the benefit of any creditors of or other parties-in-interest in the Bankruptcy Cases relating in any way to the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide

Adversary Judgments or the PCI Bankruptcy Cases. For avoidance of doubt, the Adversary Claims do not include any Claims against any parties other than the BMO Parties.

C. The term “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of Florida.

D. The term “**Barred Claims**” shall mean any and all direct, indirect and/or derivative Claims (as defined below), whether known or unknown, and whether arising under federal, state, or local statute, law, regulations or common law by any and all Releasers (as defined below) against the BMO Parties that: (i) constitute Adversary Claims, (ii) were threatened by the Liquidating Trustee, (iii) are in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Claims, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, or the Enchanted/Nationwide Adversary; and (iv) any and all Claims in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

E. The term “**BMO Parties**” shall mean: BMO; BMO’s affiliate and subsidiary companies; and, to the extent acting in their capacities related to BMO, their respective present and former officers, directors, employees, agents, attorneys, professionals, successors, predecessors (including, but not limited to, M&I Marshall & Ilsley Bank), subsidiaries and affiliates, and indemnitors and insurers.

F. The term “**BMO Released Claims**” shall have the same meaning assigned to such term in Paragraph 7 of the Stipulation.

G. The term “**Claims**” shall mean any obligations, causes of action, demands of any type that a person or entity 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, and whether alleged (or could be alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever. Without limiting the generality of the foregoing, when the term “**Claims**” is used with respect to any Claims relating to, or that were asserted or that could be asserted against, any of the BMO Parties, it shall include, without limitation: (i) any and all Claims against any of the BMO Parties in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases; (ii) any and all Claims against any of the BMO Parties arising under federal, state, or local statute, law, regulations or common law; and (iii) any and all Claims against any of the BMO Parties in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

H. The term “**Enchanted/Nationwide Adversary**” shall mean the action styled *Barry E. Mukamal, in his capacity as Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust, v. Nationwide International Resource, et al.*, Adv. Case No. 11-02857-PGH, filed in the Bankruptcy Court and in the Bankruptcy Cases.

I. The term “**MN Bankruptcy Court**” shall mean the United States Bankruptcy Court for the District of Minnesota

J. The term “**MN BMO Adversary Case**” shall mean Adv. Case No. 12-04288 in the MN Bankruptcy Court.

K. The term “**Participant**” shall mean the participant disclosed in the Joint Motion for Approval of Omnibus Supplemental Disclosure Filed by Kinetic Partners (Cayman) Ltd. and Levine Kellogg Lehman Schneider + Grossman LLP, as Consultant and Local Counsel, respectively, to Geoffrey Varga, Liquidating Trust Monitor for Palm Beach Finance II, L.P [Bankruptcy Cases, ECF No. 2118], solely in its capacity as a participant in the assets of the Palm Beach Offshore Limited and Palm Beach Offshore II Limited in the liquidation proceedings pending in the Cayman Islands.

L. The term “**PB Parties**” shall mean the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Palm Beach Finance Partners, L.P., Palm Beach Finance Partners II, LP., the Debtors and their estates, and their successors and assigns, including without limitation any other estate representative, administrator, creditor, or other party-in-interest, claiming on behalf of or through the Debtors and their estates.

M. The term “**PBLT Claims**” shall mean the claims asserted by or on behalf of the Palm Beach Liquidating Trusts or their predecessors in interest against the PCI bankruptcy estates in the proofs of claim filed in the PCI Bankruptcy Cases (as defined below) as set forth on Schedule I to the Stipulation, which the Liquidating Trustee represents are all of the proofs of claims so filed by the Palm Beach Trusts or their predecessors in interest in such bankruptcy cases as of the date of execution of the Stipulation. The Parties acknowledge that the PCI Trustee (as defined below) has filed

*Trustee's Second Omnibus Objection to Claims of Palm Beach Finance Partners, L.P., Palm Beach Finance II, L.P., Palm Beach Offshore Limited, and Palm Beach Offshore II Limited* [ECF No. 636] in the PCI Bankruptcy Cases (as defined below).

N. The term “**PBF Claims**” shall mean the claims asserted by the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, against BMO in the Adversary Cases.

O. The term “**PCI Bankruptcy Cases**” shall mean the substantively consolidated Petters Company, Inc. bankruptcy case(s) pending in the MN Bankruptcy Court, Case No. 08-45257 or, to the extent the Order directing such substantive consolidation should be reversed on appeal, the individual cases of such presently-consolidated debtors.

P. The term “**PCI Trustee**” shall mean Douglas A. Kelley, in his capacity as the Court-appointed Chapter 11 trustee of Petters Company, Inc., the debtors in the PCI Bankruptcy Cases and their estates, and their successors and assigns, including, without limitation, any other estate representative, administrator, creditor, committee or other party-in-interest, claiming on behalf of or through the debtors and their estates or authorized to pursue any litigation on behalf of such bankruptcy estates pursuant to any confirmed Chapter 11 plan or other court order.

Q. The term “**Releasors**” shall mean all shareholders, limited partners, and past or present creditors of the Debtors, including Varga (as defined below) and the Participant, other than the PCI Trustee. The PCI Trustee is explicitly not included within this definition.



R. The term “*Varga*” shall mean Geoffrey Varga, not in his individual capacity, but solely in his capacity as monitor for the Palm Beach Finance II Liquidating Trust.

6. Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the BMO Parties, any and all Barred Claims; provided, however, that (a) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Stipulation or this Order; and (b) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against any party other than the BMO Parties, and (c) this Bar Order does not release or enjoin any of the Releasors from commencing, prosecuting, or asserting any Claims against the BMO Parties other than Barred Claims.

7. Insofar as the PB Parties, Varga, the Participant, and the BMO Parties are concerned, any conflict between the provisions this Order and those of the Stipulation (including, without limitation, as to the scope of the BMO Released Claims) shall be governed by the provisions of the Stipulation.

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

###

Submitted by:

Michael S. Budwick  
Fla. Bar No. 938777  
[mbudwick@melandrussin.com](mailto:mbudwick@melandrussin.com)  
MELAND RUSSIN & BUDWICK, P.A.  
3200 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131



Telephone: (305) 358-6363  
Telefax: (305) 358-1221  
Attorneys for the Liquidating Trustee

Copies to:  
Michael S. Budwick, Esq.  
(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

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.,  
  
Debtors.

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

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION (1) TO APPROVE  
SETTLEMENT WITH BMO HARRIS BANK N.A.; (2) FOR ENTRY OF A BAR  
ORDER; AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

**THIS MATTER** came before the Court on \_\_\_\_\_, 2015 at \_\_\_\_:\_\_\_\_.m.  
upon the *Liquidating Trustee's Motion (1) to Approve Settlement with BMO Harris Bank N.A.;*  
*(2) For Entry of a Bar Order; and (3) To Approve Payment of Contingency Fee ("Motion")*  
[ECF No. \_\_\_\_].<sup>1</sup> The Court has reviewed the Motion, considered the arguments of counsel and is  
otherwise duly advised in the premises.

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms  
in the Motion and the Stipulation attached as Exhibit 1 to the Motion.

In its Motion, the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against the BMO Parties (as defined below) 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 Settlement is **APPROVED**. The Stipulation is approved in its entirety and is fully binding and enforceable pursuant to its terms.
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. BMO shall pay (or cause to be paid) to the Palm Beach Liquidating Trusts sixteen million dollars (\$16,000,000) (“**Settlement Payment**”), by no later than the Settlement Payment Date, which, as defined in the Stipulation, is the 10th business day from the later of the following events: (i) the date on which this Order becomes a final non-appealable order; (ii) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to this Order, unless such appeals have been determined by a court of appropriate jurisdiction to have been rendered moot; and (iii) the receipt by BMO from the Liquidating Trustee of: (x) wire transfer instructions; and (y) a fully completed and executed, current W-9 form to allow BMO to process the Settlement Payment.
5. The Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. Liquidating Trust and 82% to Palm Beach Finance II, L.P. Liquidating Trust (the “**Pro Rata Allocation Formula**”), and the Settlement Payment shall be made in the amounts in accordance with this allocation.

6. The Contingency Fee in the total amount of \$1,600,000 is approved. Meland Russin & Budwick, P.A. shall be entitled to \$1,280,000 of the Contingency Fee, and Mandel & Mandel LLP shall be entitled to \$320,000. 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. 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.

8. 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 that this Order is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495 96 (11th Cir. 1992); *In re 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). This Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

9. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in Paragraph 10 below:

A. The term “**Adversary Cases**” shall mean Adv. Case Nos. 11-03015-PGH and 14-01660-PGH in the Bankruptcy Court (as defined below).

B. The term “**Adversary Claims**” shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, and whether alleged (or could be, or could have been, alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery or law whatsoever, that: (i) were alleged in the Adversary Cases; (ii) relate to or arise from, in any manner whatsoever, the facts, transactions, and/or occurrences

alleged in the Adversary Cases; (iii) could have been brought in the Adversary Cases; or (iv) subsequently are alleged or otherwise brought, whether by the Liquidating Trustee or otherwise, in any adversary proceeding or other action seeking any type of recovery against any of the BMO Parties for the benefit of any creditors of or other parties-in-interest in the Bankruptcy Cases relating in any way to the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases. For avoidance of doubt, the Adversary Claims do not include any Claims against any parties other than the BMO Parties.

C. The term “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of Florida.

D. The term “**Barred Claims**” shall mean any and all direct, indirect and/or derivative Claims (as defined below), whether known or unknown, and whether arising under federal, state, or local statute, law, regulations or common law by any and all Releasors (as defined below) against the BMO Parties that: (i) constitute Adversary Claims, (ii) were threatened by the Liquidating Trustee, (iii) are in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Claims, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, or the Enchanted/Nationwide Adversary; and (iv) any and all Claims in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

E. The term “**BMO Parties**” shall mean: BMO; BMO’s affiliate and subsidiary companies; and, to the extent acting in their capacities related to BMO, their respective present and former officers, directors, employees, agents, attorneys, professionals, successors,

predecessors (including, but not limited to, M&I Marshall & Ilsley Bank), subsidiaries and affiliates, and indemnitors and insurers.

F. The term “***BMO Released Claims***” shall have the same meaning assigned to such term in Paragraph 7 of the Stipulation.

G. The term “***Claims***” shall mean any obligations, causes of action, demands of any type that a person or entity 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, and whether alleged (or could be alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever. Without limiting the generality of the foregoing, when the term “***Claims***” is used with respect to any Claims relating to, or that were asserted or that could be asserted against, any of the BMO Parties, it shall include, without limitation: (i) any and all Claims against any of the BMO Parties in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases; (ii) any and all Claims against any of the BMO Parties arising under federal, state, or local statute, law, regulations or common law; and (iii) any and all Claims against any of the BMO Parties in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

H. The term “***Enchanted/Nationwide Adversary***” shall mean the action styled *Barry E. Mukamal, in his capacity as Liquidating Trustee for the Palm Beach Finance Partners*



*Liquidating Trust and the Palm Beach Finance II Liquidating Trust, v. Nationwide International Resource, et al.*, Adv. Case No. 11-02857-PGH, filed in the Bankruptcy Court and in the Bankruptcy Cases.

I. The term “***MN Bankruptcy Court***” shall mean the United States Bankruptcy Court for the District of Minnesota

J. The term “***MN BMO Adversary Case***” shall mean Adv. Case No. 12-04288 in the MN Bankruptcy Court.

K. The term “***Participant***” shall mean the participant disclosed in the Joint Motion for Approval of Omnibus Supplemental Disclosure Filed by Kinetic Partners (Cayman) Ltd. and Levine Kellogg Lehman Schneider + Grossman LLP, as Consultant and Local Counsel, respectively, to Geoffrey Varga, Liquidating Trust Monitor for Palm Beach Finance II, L.P [Bankruptcy Cases, ECF No. 2118], solely in its capacity as a participant in the assets of the Palm Beach Offshore Limited and Palm Beach Offshore II Limited in the liquidation proceedings pending in the Cayman Islands.

L. The term “***PB Parties***” shall mean the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Palm Beach Finance Partners, L.P., Palm Beach Finance Partners II, LP., the Debtors and their estates, and their successors and assigns, including without limitation any other estate representative, administrator, creditor, or other party-in-interest, claiming on behalf of or through the Debtors and their estates.

M. The term “***PBLT Claims***” shall mean the claims asserted by or on behalf of the Palm Beach Liquidating Trusts or their predecessors in interest against the PCI bankruptcy estates in the proofs of claim filed in the PCI Bankruptcy Cases (as defined below) as set forth on Schedule I to the Stipulation, which the Liquidating Trustee represents are all of the proofs of

claims so filed by the Palm Beach Trusts or their predecessors in interest in such bankruptcy cases as of the date of execution of the Stipulation. The Parties acknowledge that the PCI Trustee (as defined below) has filed *Trustee's Second Omnibus Objection to Claims of Palm Beach Finance Partners, L.P., Palm Beach Finance II, L.P., Palm Beach Offshore Limited, and Palm Beach Offshore II Limited* [ECF No. 636] in the PCI Bankruptcy Cases (as defined below).

N. The term “**PBF Claims**” shall mean the claims asserted by the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, against BMO in the Adversary Cases.

O. The term “**PCI Bankruptcy Cases**” shall mean the substantively consolidated Petters Company, Inc. bankruptcy case(s) pending in the MN Bankruptcy Court, Case No. 08-45257 or, to the extent the Order directing such substantive consolidation should be reversed on appeal, the individual cases of such presently-consolidated debtors.

P. The term “**PCI Trustee**” shall mean Douglas A. Kelley, in his capacity as the Court-appointed Chapter 11 trustee of Petters Company, Inc., the debtors in the PCI Bankruptcy Cases and their estates, and their successors and assigns, including, without limitation, any other estate representative, administrator, creditor, committee or other party-in-interest, claiming on behalf of or through the debtors and their estates or authorized to pursue any litigation on behalf of such bankruptcy estates pursuant to any confirmed Chapter 11 plan or other court order.

Q. The term “**Releasors**” shall mean all shareholders, limited partners, and past or present creditors of the Debtors, including Varga (as defined below) and the Participant, other than the PCI Trustee. The PCI Trustee is explicitly not included within this definition.

R. The term “**Varga**” shall mean Geoffrey Varga, not in his individual capacity, but solely in his capacity as monitor for the Palm Beach Finance II Liquidating Trust.

10. Releasors are permanently barred and enjoined from commencing, prosecuting, or

asserting either directly or in any other capacity, against the BMO Parties, any and all Barred Claims; provided, however, that (a) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Stipulation or this Order; and (b) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against any party other than the BMO Parties, and (c) this Bar Order does not release or enjoin any of the Releasors from commencing, prosecuting, or asserting any Claims against the BMO Parties other than Barred Claims.

11. Insofar as the PB Parties, Varga, the Participant, and the BMO Parties are concerned, any conflict between the provisions this Order and those of the Stipulation (including, without limitation, as to the scope of the BMO Released Claims) shall be governed by the provisions of the Stipulation.

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

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Submitted By:

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Attorneys for the Liquidating Trustee

Copies to:

Zachary N. James, Esq.

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