

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

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

CASE NO. 09-36379-BKC-PGH  
CHAPTER 11

Debtors.

\_\_\_\_\_  
BARRY E. MUKAMAL, IN HIS  
CAPACITY AS LIQUIDATING TRUSTEE  
OF THE PALM BEACH FINANCE  
PARTNERS LIQUIDATING TRUST AND  
PALM BEACH FINANCE II  
LIQUIDATING TRUST;

ADV. CASE NO.

Plaintiff,

v.

THOMAS JOSEPH PETTERS AND  
ROBERT DEAN WHITE;

Defendants.  
\_\_\_\_\_

**COMPLAINT FOR TORT DAMAGES**

Barry E. Mukamal, in his capacity as liquidating trustee (“*Plaintiff*”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “*Palm Beach Liquidating Trusts*”), sues Thomas Joseph Petters (“*Petters*”) and Robert Dean White (“*White*”; and together with Petters, the “*Defendants*”), and alleges as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance II, L.P. (“*PBF II*”) (PBF I and PBF II are referred to each as a “*Palm Beach Fund*” or collectively, the

“*Palm Beach Funds*”) were Delaware limited partnerships whose principal place of business was located in Palm Beach County, Florida. PBF I was formed in 2002 while PBF II was formed in 2004.

2. The Palm Beach Funds were formed to make the investments described below. To facilitate and effectuate these investing activities, the Palm Beach Funds created an affiliate entity, Palm Beach Holdings LLC (“*Holdings*”).

3. On November 30, 2009 (“*Petition Date*”), the Palm Beach Funds filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code for the Palm Beach Funds. Orders for relief were entered and Plaintiff was subsequently appointed Chapter 11 trustee for the Palm Beach Funds.

4. Thereafter, pursuant to a confirmed joint plan of liquidation, Plaintiff was appointed Liquidating Trustee for the Palm Beach Liquidating Trusts.

5. Pursuant to the confirmed joint plan of liquidation, all claims and causes of action held by the Palm Beach Funds are reserved, preserved and retained by the Palm Beach Liquidating Trusts.

6. Petters is, upon information and belief, a resident of the state of Minnesota. Currently, Petters is an inmate at the United States Penitentiary, Leavenworth.

7. White is, upon information and belief, a resident of the state of Minnesota. Currently, White is an inmate at the Federal Prison Camp (FPC) in Yankton.

8. Both Defendants served as officers of Petters Company, Inc. (“*PCI*”).

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H) and (O).

10. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

## II. Allegations

### A. *The Petters Investment*

11. Beginning in approximately 1995, Petters began raising money by offering and selling promissory notes to members of the public.

12. Petters offered and sold the notes to various feeder fund investors, which in turn, typically raised their capital from private investors.

13. In offering and selling the notes, Petters represented to investors that the proceeds from the sale of the notes would be used to finance so-called “purchase order financing” transactions.

14. Petters claimed he would arrange for the sale and delivery of overstock consumer electronics from manufacturers or suppliers to certain “big box” retailers such as Costco, Sam’s Club and B.J.’s Wholesale Club. The financing provided by the investors would allow Petters to pay his suppliers while he waited for payment from his retailer customers.

15. The main Petters entity which arranged these purchase and financing transactions was PCI. Single purpose entities (“*SPE*”) affiliated with PCI were formed by Petters or his associates to handle loans for particular investors that financed the transactions.

16. In documenting these transactions, the Defendants and other persons provided a series of documents to the investors including executed note documents, purported purchase orders from a retailer, purported bills of sale from the vendors, collateral and credit insurance and documents assigning a security interest in the underlying merchandise to the financing investor (collectively, the “*Loan Documents*”).

17. The main suppliers that were allegedly selling the merchandise that formed the basis of the purchase order financing transactions were Nationwide International Resources, Inc.

and Enchanted Family Buying Company (each a “*Petters Supplier*,” or collectively, the “*Petters Suppliers*”).

18. Since at least 1995, Frank Vennes (“*Vennes*”) was a business associate of Petters and raised monies from third parties to invest in PCI purchase financing transactions.

19. In early 2002, Prevost and Harrold were introduced to Vennes through Prevost's religious endeavors.

20. Following their introduction to Vennes, and based on the representations made by Petters, Harrold and Prevost formed PBF I and thereafter, PBF II, to invest in the Petters purchase financing transactions.

21. PBF I raised monies to lend to Petters by selling limited partnership stakes to third parties. PBF II, aside from selling limited partnership stakes, also borrowed hundreds of millions of dollars from two offshore lenders. Nearly all of these monies were then used by the Palm Beach Funds to invest in Petters purchase financing transactions.

22. From the period of November 2002 through September 2008, the Defendants made numerous and continuous representations to the Palm Beach Funds or their agents that (a) the PCI purchase financing transactions were legitimate business transactions between the Petters Suppliers and retail customers; (b) the funds sourced from the Palm Beach Funds and other investors were being used to purchase merchandise from the Petters Suppliers; (c) the Loan Documents memorializing these financing transactions were authentic and memorialized legitimate business activities; and (d) PCI's operations were profitable and consisted of legitimate business activities.

### ***B. The Petters Ponzi Scheme***

23. The Petters purchase financing transactions were in actuality, a *Ponzi* scheme (the “*Petters Ponzi Scheme*”).

24. Notwithstanding the representations made by the Defendants and others, there was never any (i) merchandise or (ii) contracts to purchase or sell such merchandise with a particular big box retailer. Instead, the Defendants and others operated a multi-billion dollar *Ponzi* scheme.

25. The Petters Suppliers never engaged in any sale of merchandise in connection with the purchase financing transactions. In virtually every instance, if not every instance, that monies were sent to the Petters Suppliers by the Palm Beach Funds and other investors to finance the purchase of merchandise, the Petters Suppliers deducted a small commission for their benefit and then remitted the remaining funds to PCI. Thereafter, such funds were used, *inter alia*, to repay earlier investors and fund the lavish lifestyle of the Defendants and others.

***C. The Collapse of the Petters Ponzi Scheme***

26. In September 2008, agents for the Federal Bureau of Investigation raided PCI’s offices.

27. On September 30, 2008, the United States of America filed a felony information against White in which he was charged with mail fraud and money laundering in connection with the Petters Ponzi Scheme.

28. Thereafter, Petters was arrested by federal agents on October 3, 2008 and then indicted on charges of mail and wire fraud, conspiracy to commit mail and wire fraud, conspiracy to commit money laundering and money laundering, all in connection with the PCI purchase financing transactions.

29. On October 8, 2008, White pled guilty to one count of mail fraud and one count of money laundering in connection with the Peters Ponzi Scheme. As set forth in his plea agreement, White admitted to preparing and providing false Loan Document to be distributed to PCI investors, including the Palm Beach Funds, as a means to continue the Petters Ponzi Scheme.

30. On December 2, 2009, a jury in the United States District Court for the District of Minnesota found Petters guilty of all counts charged. On April 8, 2010, United States District Court Judge Richard H. Kyle sentenced Petters to 50 years of imprisonment for his crimes.

31. On September 15, 2012, United States District Court Judge Richard H. Kyle sentenced White to 5 years of imprisonment for his crimes.

**Count 1 – Aiding and Abetting Fraud**  
**(Defendants)**

32. The Plaintiff reasserts the allegations set forth in paragraphs 1 through 31 as if fully set forth herein.

33. PCI defrauded the Palm Beach Funds by (a) falsely representing that it was engaging in legitimate purchase financing transactions and (b) representing that the funds' monies would be used to acquire overstock goods from retailers that would then be sold to retailers.

34. The Defendants had actual knowledge that PCI was defrauding the Palm Beach Funds.

35. The Defendants provided substantial assistance to PCI by falsely representing that (a) the PCI purchase financing transactions were legitimate business transactions between the Petters Suppliers and retail customers; (b) the funds sourced from the Palm Beach Funds and

other investors were being used to purchase merchandise from the Petters Suppliers; (c) the Loan Documents memorializing these financing transactions were authentic and memorialized legitimate business activities; and (d) PCI's operations were profitable and the result of legitimate business activities.

36. Petters further provided substantial assistance to PCI's fraud by executing or authorizing the use of his signature on fake Loan Documents that were provided to the Palm Beach Funds.

37. White further provided substantial assistance to PCI's fraud by creating and providing fake Loan Documents to the Palm Beach Funds.

38. The Defendants' conduct was purposeful and willful.

### **Count 2 – Civil Conspiracy**

39. The Plaintiff reasserts the allegations set forth in paragraphs 1 through 31 as if fully set forth herein.

40. The Defendants, along with PCI and other persons and entities, engaged in and perpetrated the Petters Ponzi Scheme.

41. As a part of that fraud, the Defendants conspired to cause false and otherwise fraudulent information to be distributed to, among others, the Palm Beach Funds. Additionally, the Defendants made false representations to the Palm Beach Funds regarding acts they and others were going to take regarding the non-existent purchase financing transactions that were supposedly being entered into by PCI and its affiliates.

42. The Defendants had an explicit, or in the alternative, tacit, meeting of the minds to engage in these fraudulent acts to continue the Petters Ponzi Scheme.

43. The Defendants had a common understanding to commit this wrong.

44. The Defendants committed conspiratorial acts in furtherance and pursuance of the Petters Ponzi Sceme which caused the Palm Beach Funds damages.

45. As a result, the Defendants are responsible for all damages incurred by the Palm Beach Funds by virtue of the Petters Ponzi Scheme.

46. The Defendants's conduct was purposeful and willful.

### **III. Prayer for Relief**

**WHEREFORE**, the Plaintiff respectfully requests that this Court:

- (a) With respect to all Counts, (i) enter judgment in favor of the Plaintiff, on behalf of the Palm Beach Liquidating Trusts, and against the Defendants; and (ii) award the Plaintiff compensatory damages in an amount to be determined at trial and punitive damages in an amount to be determined at trial appropriate to the severity of the Defendants' conduct and their financial capacity to pay;
- (b) Award prejudgment interest to the extent allowed under applicable law or statute;
- (c) Award Plaintiff's reasonable attorney's fees and costs to the extent allowed under applicable law or statute; and
- (d) Grant such further relief this Court deems just and proper.

s/ Michael S. Budwick  
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