

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

In re:

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

Debtor(s).

Chapter 11

Case No. 09-36379-BKC-EPK
Case No. 09-36396-BKC-EPK
(Joint Administrated)

_____/
BARRY E. MUKAMAL, as liquidating trustee
for the Palm Beach Finance Partners Liquidating Trust
and Palm Beach Finance II Liquidating Trust,

Adv. Proc. No. _____

Plaintiff,

vs.

NANCY GARGULA, in her capacity as the
United States Trustee for Region 21;
CLIFFORD J. WHITE III, in his official capacity
as Director of the United States Trustee Program;
and the UNITED STATES TRUSTEE PROGRAM

_____ /

ADVERSARY COMPLAINT

Barry E. Mukamal, as liquidating trustee (“*Trustee*”) for the Palm Beach Finance Partners Liquidating Trust (“*PBF Trust*”) and Palm Beach Finance II Liquidating Trust (“*PBF II Trust*”, and together with the PBF Trust, the “*Trusts*”), files this adversary complaint (“*Complaint*”) against Nancy Gargula, solely in her capacity as the United States Trustee for Region 21; Clifford J. White III, solely in his capacity as Director of the United States Trustee Program; and the United States Trustee Program (together, the “*Defendants*”), seeking (i) a determination that the Trusts’ liability for quarterly fees payable to the United States Trustee Program (“*UST*”) pursuant to 28

U.S.C. § 1930(a)(6) is governed by the schedule in effect prior to the amendment to that statute which became effective January 1, 2018 (“*Amendment*”)¹; (ii) a determination that the Trusts are entitled to a refund of quarterly fee overpayments made during the period from January 1, 2018 through the date of this Complaint (and future overpayments, if any), during which time the Trusts made payments to the UST based on the schedule set forth in the Amendment; and (iii) an order directing a refund of such overpayments. In support, the Trustee alleges as follows:

NATURE OF ACTION

1. This action seeks, pursuant to 11 U.S.C. §§ 105(a) and 1142(b), 28 U.S.C. § 2201, and Fed. R. Bankr. P. 2020 and 3020(d), and other applicable law, a determination from this Court that the Trusts’ liability for quarterly fees payable to the UST pursuant to 28 U.S.C. § 1930(a)(6) is governed by the schedule for quarterly fees payable in chapter 11 cases in effect prior to the Amendment. The PBF Trust paid excess fees under the new schedule during the second and fourth quarters of 2019, and The PBF II Trust paid excessive fees during the first quarter of 2018; the first, second, and fourth quarters of 2019; and the second quarter of 2020. The Trustee’s overpayments to the UST for each of the Trusts should be refunded to the extent not applied by the Trustee to offset fees owed in future quarters. The Trustee anticipates the possibility of future overpayments for both Trusts during the remaining administration of these cases.

2. The Trustee brings this action with knowledge of recent decisional law² considering and deciding the propriety and/or constitutionality for the UST to apply the Amendment—which

¹ See Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (October 26, 2017) (codified at 28 U.S.C. § 1930(a)(6)(B)).

² See, e.g., *In re Mosaic Management Group, Inc.*, No. 16-20833-EPK, 2020 WL 1808605 (Bankr. S.D. Fla. Apr. 9, 2020) (on direct appeal to the Eleventh Circuit Court of Appeals); *In re Life Partners Holdings, Inc.*, 2019 WL 3987707 (Bankr. N.D. Tex. Aug. 22, 2019); *In re Circuit City Stores, Inc.*, 2019 WL 3202203 (Bank. E.D. Va. July 15, 2019); *In re Buffets, LLC*, 597 B.R. 588

increased quarterly fees from a maximum of \$30,000 per debtor to \$250,000 per debtor—to cases pending prior to the statute’s enactment. Nevertheless, the Trustee brings this action with a reasonable basis to believe that the claim is warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law and in full compliance with Rule 9011(b)(1) and (2).

3. Since the first quarter of 2018, the Trustee has paid the UST over \$935,315 in excess fees under the increased quarterly fee schedule enacted by the Amendment. The Trustee, on behalf of the Trusts, is entitled to a refund of such amounts and a declaratory judgment that the Trusts are not subject to the Amendment’s increased quarterly fee schedule going forward.

JURISDICTION AND VENUE

4. This adversary proceeding arises in and relates to the above-captioned chapter 11 bankruptcy case and is commenced pursuant to F.R.B.P. 7001 and 7002.

5. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157 and §§1334(b) and (e); 11 U.S.C. §§ 105(a) and 1142(b); and F.R.B.P. 2020 and 3020(d).

6. Further, this Court’s Order Confirming Second Amended Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., and Geoffrey Varga as Joint Official Liquidator of Palm Beach Offshore, LTD, and Palm Beach Offshore II, LTD (“*Confirmation Order*”) states that “the Court shall retain jurisdiction as provided in Article 12 of the Plan over the Chapter 11 Cases after the Effective Date to the fullest extent legally permissible.” [ECF No. 444 at p. 25].

(Bankr. W.D. Tex. 2019); *In re Clinton Nurseries, Inc.*, 2019 WL 4072654 (Bankr. D. Conn. Aug. 28, 2019).

7. Pursuant to 11 U.S.C. § 106, Defendants' sovereign immunity has been abrogated with respect to the claims asserted herein, and this Court has jurisdiction to "hear and determine any issue arising with respect to" these claims.

8. Venue in this Court is proper pursuant to 28 U.S.C. § 1409.

THE PARTIES

9. The Trustee is duly appointed to direct and oversee the Trusts' operations and activities, including whether to pursue this claim.

10. Defendant Nancy Gargula is the United States Trustee for Region 21, a regional division of the UST, and is responsible for overseeing the operations of the UST in Region 21, which includes the Southern District of Florida.

11. Defendant Clifford J. White III is the Director of the UST and, *inter alia*, oversees the Executive Office for United States Trustees.

12. Defendant UST is a component of the United States Department of Justice, an agency of the Executive Branch of the United States Government and is responsible for overseeing the administration of bankruptcy cases pursuant to 28 U.S.C. § 586.

RELEVANT BACKGROUND

A. Chapter 11 Plan and Confirmation.

13. On November 30, 2009, Palm Beach Finance Partners, L.P and Palm Beach Finance II, L.P. (together, the "*Debtors*") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. By order dated December 1, 2009, the cases were jointly administered under Palm Beach Finance Partners, LP, Case No. 09-36379-BKC-PGH.

14. On January 29, 2010, the United States Trustee appointed Barry E. Mukamal to serve as the Chapter 11 Trustee for the jointly administered bankruptcy estates.

15. The Debtors' chapter 11 plan ("*PBF Plan*") was confirmed on October 21, 2010 through the Confirmation Order, which created the Trusts, contributed the Debtors' assets to the Trusts on the Effective Date, and appointed the Trustee as the liquidating trustee. The PBF Plan's "Effective Date" was November 1, 2010.

16. The Confirmation Order provides that "The Liquidating Trustee of the respective Liquidating Trust shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the Liquidating Trust for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), until the earlier of the closing of the Bankruptcy Cases by the issuance of a Final Decree by the Court, or upon the entry of an order by the Court dismissing the Bankruptcy Cases or converting the Bankruptcy Cases to another chapter under the Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee[.]"

17. The PBF Plan similarly requires the Trustee to "pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the Liquidating Trust for post-confirmation periods[.]"

B. Increase in U.S. Trustee Quarterly Fee Schedule.

18. The UST is a division of the U.S. Department of Justice responsible for overseeing the administration of bankruptcy cases in 88 of the 94 judicial districts of the United States. In the six judicial districts located in Alabama and North Carolina, bankruptcy cases are overseen by the Bankruptcy Administrator Program, which is part of the judicial branch and is overseen by the Administrative Office of the United States Courts ("*BA Districts*"). The Administrative Office of the United States Courts is supervised by the Judicial Conference of the United States.

19. In the judicial districts operated by the UST (including the Southern District of Florida) (“*UST Districts*”), chapter 11 debtors are required to pay quarterly fees to the UST in accordance with 28 U.S.C. § 1930, which provides that, among other fees, a “quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first.” 28 U.S.C. § 1930(a)(6)(A). The quarterly fees are based on the total quarterly “disbursements” made by the applicable debtor in each quarter. As of the Effective Date, the maximum quarterly fee was capped at \$30,000 per quarter for disbursements of \$30 million or more. *See* 28 U.S.C. § 1930(a)(6) (2010).

20. In October 2017, Congress passed the Amendment, which amended 28 U.S.C. § 1930(a)(6) to increase the quarterly fees payable to the UST in chapter 11 cases. The Amendment increased the maximum fee by over 800%, requiring debtors to pay the lesser of 1% of disbursements or \$250,000, whenever the debtor’s disbursements for the quarter exceed \$1 million and the United States Trustee System Fund balance at the beginning of the then-current fiscal year was less than \$200 million. *See* Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (October 26, 2017).

21. The Amendment, however, imposed the quarterly fee increase only in UST Districts. The fees did not initially apply in the BA Districts (i.e., Alabama and North Carolina). In those districts, 28 U.S.C. § 1930(a)(7) provides that “the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection.”

22. Effective January 1, 2018, the UST began assessing the increased quarterly fees on all cases pending in UST Districts, regardless of whether the cases were commenced before or after the Amendment.

23. In September 2018, the Judicial Conference of the United States decided to impose the quarterly fee increase in BA Districts.

24. The Judicial Conference, however, applied those fees only to cases filed on or after October 1, 2018.

25. Consequently, for cases filed in UST Districts prior to October 1, 2018, the UST assesses quarterly fees under the new schedule provided by the Amendment, which caps fees at \$250,000 per debtor. Meanwhile, for cases filed in BA Districts prior to October 1, 2018, quarterly fees are assessed under the prior schedule, which caps fees at \$30,000 per debtor when disbursements exceed \$30 million—a rate of less than 0.1%.

C. Application of the Revised Fee Schedule to This Case.

26. From 2010 to 2017, the Trustee paid quarterly fees on disbursements based on the version of 28 U.S.C. § 1930(a) in effect when the Plan was confirmed.

27. However, the UST website reflects that the fee schedule stated in the Amendment was applied in the quarter commencing January 1, 2018 and will continue through September 30, 2020. *See* The United States Department of Justice U.S. Trustee Program, Chapter 11 Quarterly Fee Schedule, <https://www.justice.gov/ust/chapter-11-quarterly-fees> (last visited June 7, 2020).

28. As directed by the UST, the Trustee began making payments under the fee schedule provided for in the Amendment beginning with the payment in the first quarter of 2018.

29. The UST's directive that the Trustee pay fees according to the Amendment's increased fee schedule resulted in a substantial increase in the quarterly fees payable by the Trustee compared to the quarterly fee schedule that was previously in effect.

30. Because of the Amendment, the Trustee paid the UST \$146,607 more for the PBF Trust resulting from payments made under the new fee schedule during the second and fourth quarters of 2019 ("***PBF Trust Excess Fee***").

31. The Trustee paid the UST \$788,708 more for the PBF II Trust resulting from payments made under the new fee schedule during the first quarter of 2018; the first, second, and fourth quarters of 2019; and the second quarter of 2020 ("***PBF II Trust Excess Fee***," and together with the PBF Trust Excess Fee, the "***Excess Fees***"). The Excess Fees are identified below:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**PBF LIQUIDATING TRUST
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA (WEST PALM BEACH)
BANKRUPTCY DIVISION**

Retroactive Increased Trustee Fee Calculation

	Disbursements Per Period	Fees New Schedule	Fees Old Schedule	Fee Increase
<u>PBFP</u>				
Q1 2018	\$ 235,805	\$ 1,950	\$ 1,950	\$ -
Q2 2018	110,346	975	975	-
Q3 2018	148,681	975	975	-
Q4 2018	111,480	975	975	-
Q1 2019	49,382	650	650	-
Q2 2019	12,026,603	120,266	13,000	107,266
Q3 2019	(327,410)	325	325	-
Q4 2019	4,974,142	49,741	10,400	39,341
Q1 2020	(82,754)	325	325	-
Q2 2020	545,232	4,875	4,875	-
		Total increase in UST fees- PBFP		\$ 146,607
<u>PBFII</u>				
Q1 2018	25,886,476	250,000	20,000	230,000
Q2 2018	721,210	4,875	4,875	-
Q3 2018	698,618	4,875	4,875	-
Q4 2018	354,620	4,875	4,875	-
Q1 2019	51,493,208	250,000	30,000	220,000
Q2 2019	15,774,384	157,744	20,000	137,744
Q3 2019	252,331	1,950	1,950	-
Q4 2019	20,238,432	202,384	20,000	182,384
Q1 2020	327,836	4,875	4,875	-
Q2 2020	2,833,008	28,330	9,750	18,580
		Total increase in UST fees - PBFII		\$ 788,708

D. The UST Incorrectly Applied The Amendment To The Trusts.

32. When Congress enacted the Amendment, it did not expressly state or indicate a clear congressional intent that the Amendment be applied retroactively to pending cases.

33. Thus, the Amendment does not apply to cases pending before the enactment of the Amendment such as the Trusts' chapter 11 cases, rendering the UST's application of the Amendment to this case is impermissible.

E. If the Amendment Does Apply to the Trusts, It Would Violate the U.S. Constitution.

34. If, as the UST asserts, the Amendment's fee increase applies to the Trusts, it would violate several provisions of the U.S. Constitution, including Article I § 8, the Due Process Clause, and the Takings Clause.

35. Article I § 8 of the Constitution provides that Congress has the power to establish "uniform laws on the subject of Bankruptcies throughout the United States," U.S. Const. art. I, § 8, cl. 4 ("*Bankruptcy Clause*"), and that "all Duties, Imposts and Excises shall be uniform throughout the United States," U.S. Const., art. I, § 8, cl. 1.

36. Section 1930 of Title 28 of the U.S. Code constitutes a law on the subject of bankruptcies within the meaning of the Bankruptcy Clause.

37. Whether viewed as a fee or a tax, 28 U.S.C. § 1930 is unconstitutional because it imposes non-uniform charges depending upon whether a similarly-situated chapter 11 case was commenced in a UST District or a BA District.

38. If the Amendment is applied retroactively to this case, the Trusts will be required to pay higher fees than if it they were in a BA District.

39. Additionally, 2% of the fee under the Amendment is paid to the United States Treasury, without restrictions.

40. Thus, under the Amendment, debtors in larger chapter 11 cases are required to pay a portion of their fee towards the United States Treasury whereas all other debtors only pay fees to the UST towards the administration of bankruptcy cases.³

41. Therefore, the Amendment exceeds Congress' power under Article I § 8 of the U.S. Constitution.

42. The Due Process Clause of the U.S. Constitution provides that "No person shall be deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

43. Applying the quarterly fee increase retroactively does not provide the Debtors (and the Trusts) any notice prior to the filing of their chapter 11 cases (almost 11 years ago) or the confirmation of the Plan (over 10 years ago), let alone notice sufficient for the purposes of the Due Process Clause. While prospective debtors with knowledge of the quarterly fee increase may select pre-packaged plans, substantively consolidate, or even choose to restructure debts outside the chapter 11 bankruptcy process to minimize or avoid fees, the Debtors and the Trusts had no such opportunity.

44. Retroactive application of the quarterly fee increase to the Trusts under the Amendment violates the Due Process Clause of the U.S. Constitution. The Debtors did not have sufficient notice of the quarterly fee increase prior to the filing of the chapter 11 cases or confirmation of the Plan in order to consider alternatives that could have reduced the impact of the fee increase.

45. The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const., amend. V. Under the Takings Clause, charges for the use of government services are constitutionally permissible only if they are: (1) not

³ The Amendment requires that debtors who make disbursements equaling or exceeding \$1 million pay fees that are the lesser of 1 percent of such disbursement or \$250,000.

discriminatory; (2) based on a fair approximation of use; and (3) not excessive in relation to the cost of the benefit conferred.

46. The Amendment (i) is discriminatory in its application across chapter 11 cases because it imposes differing fees on similarly situated debtors depending on where their cases were filed, (ii) is not based on a fair approximation of use but instead on the amount of a debtor's "disbursements" post-confirmation, and (iii) is excessive in relation to the benefit conferred in the post-confirmation process.

47. Retroactive application of the Amendment's increase in the quarterly fees to the Trusts is an illegal exaction that violates the Takings Clause of the Fifth Amendment.

F. Because the Amendment is Unconstitutional, the Trustee is Entitled to a Refund of All Quarterly Fee Overpayments

48. To date, the Trustee has paid in the aggregate \$935,315 in Excess Fees to the UST pursuant to the quarterly fee increase provided for in the Amendment.

49. Fees paid pursuant to 28 U.S.C. § 1930(a)(6) are deposited in the United States Trustee System Fund, which is administered by the UST.

50. In appropriating funds for the UST, Congress made the amounts in the United States Trustee System Fund available for the payment of refunds to depositors like the Trusts.

51. Upon information and belief, there are sufficient funds in the United States Trustee System Fund to provide the Trusts with a refund of all Excess Fees.

52. Because this Amendment has been unconstitutionally applied to the Trusts, the Trustee is entitled to a refund of past overpayments and is entitled to make future payments from Excess Fees already paid.

COUNT I

Declaratory Judgment that the Amendment Does Not Apply to the Trusts Pursuant to 28 U.S.C. § 2201; 11 U.S.C. §§ 105, 1142; Fed. R. Bankr. P. 2020, 3020, U.S. Const. art. I, § 8, cls. 1, 4; U.S. Const. amend. V.

53. The Trustee incorporates paragraphs 1 - 52 as if realleged herein.

54. There is an actual and existing controversy between the parties as to whether the Amendment applies to the Trusts' chapter 11 case.

55. 28 U.S.C. § 2201 provides this Court with power to "declare the rights and other legal relations of any interested party" in cases of actual controversy within its jurisdiction.

56. Because Congress did not explicitly state that the quarterly fee increase imposed by the Amendment should apply retroactively, it does not apply to the Trusts' chapter 11 cases which were pending at the time of its enactment.

57. Moreover, if applied to the Trusts, the Amendment would violate several provisions of the U.S. Constitution, including Article I § 8, the Due Process Clause, and the Takings Clause.

58. Therefore, the Amendment cannot be constitutionally applied to the Trusts' chapter 11 cases.

59. The Plan and Confirmation Order require and permit the Trustee to pay only those fees payable pursuant to 28 U.S.C. § 1930.

60. Because the Amendment does not apply to the Trusts, and could not be constitutionally applied to the Trusts, the Trusts are not required by law, the Plan, or the Confirmation Order to pay quarterly fees to the UST pursuant to the Amendment.

61. Therefore, the Trustee is entitled to entry of a declaratory judgment that: (i) the Trusts are not subject to the Amendment; and (ii) the Trustee shall pay the quarterly fees under the pre-Amendment quarterly fee schedule for the remaining duration of the Trusts' chapter 11 cases.

COUNT II

**Declaratory Judgment that The Trusts are Entitled to Recovery of Excess Fees
Pursuant to 28 U.S.C. § 2201; 11 U.S.C. §§ 105, 1142; Fed. R. Bankr. P. 2020, 3020**

62. The Trustee incorporates paragraphs 1 - 52 as if realleged herein.

63. There is an actual and existing controversy between the parties as to whether the Trusts are entitled to recovery of Excess Fees.

64. 28 U.S.C. § 2201 empowers this Court to “declare the rights and other legal relations of any interested party” in cases of actual controversy within its jurisdiction.

65. Pursuant to 11 U.S.C. § 1142(b), this Court may “direct the debtor and any other necessary party to . . . perform any other act . . . that is necessary for the consummation of the [P]lan.”

66. Pursuant to 11 U.S.C. § 105(a) this Court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code.

67. Pursuant to Count I, the Trusts are not required to pay quarterly fees according to the increased schedule in the Amendment.

68. Between Q1 2018 and Q2 2020, the Trusts paid Excess Fees in the aggregate amount of \$935,315 in accordance with the demands made by the UST.

69. The Plan and Confirmation Order require and permit the Trustee to pay only those fees payable pursuant to 28 U.S.C. § 1930.

70. The Excess Fees therefore exceed the amount of quarterly fees that the Trusts were required to pay and that the UST was lawfully permitted to demand.

71. Because the Excess Fees exceed the amounts required to be paid by the Trustee under the Plan and Confirmation Order, the UST received greater fees than it was lawfully entitled

to receive under the Plan and Confirmation Order and is holding funds that lawfully belong to the Trustee for distribution to Plan beneficiaries.

72. Recovering these Excess Fees is necessary for the consummation of the Plan because the Plan requires the Trustee to distribute available cash to Plan beneficiaries in accordance with the Plan.

73. Therefore, the Trustee is entitled to a declaratory judgment that (i) the Trustee is entitled to a refund of Excess Fees, and (ii) the Trustee may apply the balance of any unrefunded Excess Fees to quarterly fees due in future quarters until the Trustee has had its Excess Fees fully refunded.

COUNT III
Injunction Directing the UST to Refund Excess Fees
Pursuant to 11 U.S.C. §§ 105, 1142; Fed. R. Bankr. P. 2020, 3020

74. The Trustee incorporates paragraphs 1 - 52 as if realleged herein.

75. There is an actual and existing controversy between the parties as to whether the Trusts are entitled to recovery of Excess Fees.

76. Pursuant to 11 U.S.C. § 1142(b), this Court may “direct the debtor and any other necessary party to . . . perform any other act . . . that is necessary for the consummation of the [P]lan.”

77. Pursuant to 11 U.S.C. § 105(a), this Court may to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code.

78. Pursuant to Counts I and II, the Amendment does not apply to the Trusts and the Trustee is entitled to a refund of Excess Fees paid to the UST.

79. Between Q1 2018 and Q2 2020, the Trusts paid Excess Fees in the aggregate amount of \$935,315, in accordance with the demands made by the UST.

80. The Plan and Confirmation Order require and permit the Trustee to pay only those fees payable pursuant to 28 U.S.C. § 1930.

81. Therefore, the Excess Fees exceed the amount of quarterly fees that the Trusts were required to pay and that the UST was lawfully permitted to demand.

82. Because the Excess Fees exceed the amounts required to be paid by the Trustee under the Plan and Confirmation Order, the UST received greater fees than it was lawfully entitled to receive under the Plan and Confirmation Order and is holding funds that lawfully belong to the Trustee for distribution to Plan beneficiaries.

83. Recovering these Excess Fees is necessary for the consummation of the Plan because the Plan requires the Trustee to distribute available cash to Plan beneficiaries in accordance with the Plan.

84. Pursuant to Sections 105(a) and 1142(b) of the Bankruptcy Code, and Rules 2020 and 3020 of the Federal Rules of Bankruptcy Procedure, the Trustee is entitled to an injunction and order directing Defendants to refund the \$935,315 in Excess Fees, reduced by any amount the Trustee has applied to pay UST fees incurred prior to receiving a refund.

PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully requests that this Court enter judgment against the Defendants and in favor of the Trusts as follows:

- a. As to Count I, a declaration establishing that (i) the Trusts are not subject to the Amendment; and (ii) the Trustee shall pay the quarterly fees under the pre-Amendment quarterly fee schedule for the remaining duration of the Trusts' chapter 11 cases;
- b. As to Count II, a declaration that (i) the Trustee is entitled to a refund of Excess Fees, and (ii) the Trustee is entitled to apply the balance of any unrefunded Excess Fees to make any

payments due for any quarterly fees until the Trustee has had its Excess Fees fully refunded;

- c. As to Count III, an injunction and order directing Defendants to refund the \$935,315 in Excess Fees, reduced by any amount the Trustee has applied to pay UST fees incurred prior to receiving a refund; and such other and further relief as the Court deems equitable and proper.

Dated: August 7, 2020.

s/ Michael S. Budwick
Michael S. Budwick, Esq.
Florida Bar No. 938777
mbudwick@melandrussin.com
Solomon B. Genet, Esq.
Florida Bar No. 617911
sgenet@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for Plaintiff