

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 TO APPROVE (1) SETTLEMENT  
WITH THE ASHTON REVOCABLE LIVING TRUST AND  
MARIE ASHTON AND (2) PAYMENT OF CONTINGENCY FEE**

**Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against The Ashton Revocable Living Trust and Marie Ashton (individually or collectively, the "*Transferee*") and payment of counsel's contingency fee. In support of this relief, the Liquidating Trustee states the following:

## I. Factual Background

### A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Debtors*”) operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors’ fund raising and investment activities.

2. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “*PCI*”).

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

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (“*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*Metro Gem*”; and together with Mr. Vennes, the “*Vennes Parties*”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “*Receivership Defendants*”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (“*Minnesota Court*”) entered a temporary restraining order (“*TRO*”).

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

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

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

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

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

#### **B. The Vennes Litigation**

11. The Debtors were introduced to Mr. Petters through the Vennes Parties.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (“*Vennes Action*”). The Vennes Action seeks to avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferee, Adv. Case No. 11-2995-PGH

(“*Adversary Proceeding*”). The Adversary Proceeding sought to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties during the period from approximately February of 2004 through and including approximately September of 2008 (“*Transfers*”).

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

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees asserted that the Transferee received in the aggregate, approximately \$858,020.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. Subsequent to the commencement of the Adversary Proceeding, the Trustees entered into an agreement whereby they have agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (“*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

### **C. The Mediation and the Original Settlement**

17. On August 21, 2012, the Transferee and the Trustees attended mediation in the offices of Justice James H. Gilbert, Esq. in accordance with this Court’s Order Setting Filing and Disclosure Requirements for Pretrial and Trial entered in the Adversary Proceeding [Adv. Case

No. 11-02995, ECF No. 3]. At the mediation, the parties achieved a global resolution and settlement of the Litigation (“**Settlement**”). Pursuant to the Settlement, the Transferee agreed to pay \$225,000 to the Trustees (which amount would be split between the Trustees in accordance with the Allocation Agreement) in resolution of the Trustees’ Claims.

18. On December 3, 2012, this Court entered, in accordance with the Local Rules and this Court’s policies, practices and procedures, an Order dismissing the Adversary Proceeding as settled and retaining jurisdiction for purposes of approving and enforcing the Settlement [Adv. Case No. 11-02995, ECF No. 15] (“**Dismissal Order**”).

19. On November 29, 2012, the PCI Trustee filed with the Minnesota Bankruptcy Court a motion to approve a number of settlements that had been reached in accordance with the Allocation Agreement, including the Settlement with the Transferee (“**MN 9019 Motion**”). On December 20, 2012 the Minnesota Bankruptcy Court entered an order approving the MN 9019 Motion, including the Settlement (“**MN 9019 Order**”).

20. On February 1, 2013, the Liquidating Trustee filed with this Court a motion to approve the Settlement (“**FL 9019 Motion**”). The Transferee objected to the FL 9019 Motion, and the Liquidating Trustee and the Transferee thereafter litigated in this Court whether an enforceable settlement was reached. Following a bench trial, this Court entered Findings of Fact and Conclusions of law on Motion to Approve Settlement [ECF No. 2181] (“**Findings and Conclusions**”). As more fully stated in the Findings and Conclusions, this Court found that (i) the parties entered into an enforceable oral settlement agreement in resolution of the Trustees’ Claims, and (ii) the terms of the oral agreement were memorialized in an unsigned written settlement agreement exchanged between counsel for the Liquidating Trustee and the Transferee in the fall of 2012 (“**Revised Draft Agreement**”).

21. On April 3, 2014, this Court entered an Order approving the FL 9019 Motion [ECF No. 2212] (“**FL 9019 Order**”).

22. The Transferee subsequently appealed the Findings and Conclusions and the FL 9019 Order to the United States District Court for the Southern District of Florida (“**District Court**”). By order dated March 19, 2015, the District Court upheld the Findings and Conclusions and the FL 9019 Order (“**District Court Order**”).

23. On April 17, 2015, the Transferee appealed (“**Appeal**”) the District Court Order to the United States Court of Appeals for the Eleventh Circuit (“**Eleventh Circuit**”).

**D. The Fees Claim and the Renewed Settlement Discussions**

24. Since entry of the Findings and Conclusions and the FL 9019 Order, the Liquidating Trustee has asserted, in addition to the claims raised in the Trustees’ Claims, that (i) the unsigned Revised Draft Agreement obligates the Transferee to reimburse the Liquidating Trustee for all legal fees and costs incurred in enforcing the unsigned Revised Draft Agreement, and (ii) such fees and costs totaled in excess of \$285,000 as of March 31, 2015 (as supplemented or modified with any additional fees and costs incurred by the Trustees after March 31, 2015, and together, the “**Fees Claim**”).

25. Following the filing of the Appeal, the parties engaged in renewed settlement discussions in an attempt to resolve all of the outstanding issues among them, including the Litigation and the Fees Claim (collectively, the “**Litigation**”). Such discussions have resulted in a consensual resolution of the Litigation pursuant to the terms and conditions as set forth below (“**Stipulation**”).<sup>1</sup>

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

## II. Settlement Terms

26. The key terms of the Stipulation are the following:

- a) In full and final settlement of the Trustees' Claims, \$225,000 ("**Original Settlement Amount**") will be paid to the Trustees within 30 days after execution of the Stipulation (*i.e.*, on or before September 18, 2015) as follows: \$90,000 will be paid to the Liquidating Trustee and \$135,000 will be paid to the PCI Trustee;
- b) In full and final settlement of the Fees Claim, \$100,000 ("**Fees Settlement Amount**," and together with the Original Settlement Amount, the "**Settlement Payment**") will be paid to the Liquidating Trustee within 30 days after execution of the Stipulation (*i.e.*, on or before September 18, 2015);
- c) The parties shall exchange mutual, general releases;
- d) The Transferee shall seek dismissal of the Appeal;<sup>2</sup> and
- e) The Transferee shall not be entitled to any distribution from the Debtors' or PCI bankruptcy estates.

27. Pursuant to the Second Amended Joint Plan of Liquidation ("**Plan**"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust ("**Pro Rata Allocation Formula**").

## III. Relief Requested

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

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<sup>2</sup> The Transferee has already done so. See ECF No. 15, Case No. 15-11680, United States Court of Appeals for the Eleventh Circuit.

29. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that “[o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

30. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *See In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

31. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

#### ***A. The Stipulation Ought to be Approved***

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



*Probability of success in litigation*

33. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the transfers made to the Transferee by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the Transferee was unjustly enriched by such transfers. Moreover, the Liquidating Trustee could assert a claim for the fees and costs incurred by the Liquidating Trustee in enforcing the unsigned Revised Draft Agreement.

34. The Liquidating Trustee believes that he will likely succeed in prosecuting each of these claims. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferee, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims, including the Fees Claim.

*Collectability*

35. Collectability is not a significant consideration with respect to the Litigation.

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

36. This is a significant consideration that militates in favor of approval of the Stipulation.

37. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

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

*Paramount interest of creditors*

39. The Settlement Payment provides a meaningful payment of the claims asserted against the Transferee in the Litigation. The Settlement Payment is a meaningful resolution in light of the complexity of the Litigation, as well as the potential delay and professional costs associated therewith. As such, the Stipulation is in the paramount interest of the Debtors' stakeholders.

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

40. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("***MRB***") is entitled to a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without further order of the Court ("***Contingency Fee***").

41. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$9,000 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Stipulation.

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

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that, on August 27, 2015, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3, via U.S. Mail upon the parties listed on the attached Manual Notice List attached as Composite Exhibit 4, the Court's Matrices in Case No. 09-36379-BKC-PGH and Case No. 09-36396-BKC-PGH attached as Composite Exhibit 5<sup>3</sup>, and those additional addresses set forth on Exhibit 6.

s/ Jessica L. Wasserstrom  
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*Attorneys for Barry E. Mukamal,  
Liquidating Trustee*

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<sup>3</sup> "ADDL" means these additional parties served as a courtesy. *See Exhibit 6.*  
"COR" means that there is a known better address which is set forth on Exhibit 6.  
"DUP" means that the address appears more than once on this exhibit and is only being served one time by mail.  
"INC" means that the Matrix contains an incomplete addresses; hence, no service by mail.  
"NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 3 and is not being additionally served by mail.  
"NNR" means no notice is required. Examples are professionals retained.  
"PBFP" means that entity appears on both matrices and only being served once.

### **STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("***Stipulation***") is entered into on August \_\_\_\_\_, 2015 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee ("***Liquidating Trustee***") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "***Liquidating Trusts***"), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* ("***PCI Trustee***"), and (c) The Ashton Revocable Living Trust and Marie Ashton (individually or collectively, the "***Transferee***") (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein as a "***Party***" or collectively, the "***Parties***"). The terms of this Stipulation are as follows:

### **RECITALS**

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

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

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

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

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

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

F. On November 29, 2011, the Liquidating Trustee commenced litigation against Frank E. Vennes, Jr. (“*Vennes*”) and Metro Gem, Inc. (“*Metro Gem*,” and together with Vennes, the “*Vennes Parties*”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla.);

G. On or about November 27, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding asserting several claims against the Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust

enrichment (“*Adversary*”), relating to funds the Transferee received from the Vennes Parties (“*Transfers*”);

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

I. The Liquidating Trustee and the PCI Trustee (collectively, the “*Trustees*”) asserted in the Trustees’ Claims that the Transferee received \$858,020.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of victims of the Petters’ fraud;

J. The Transferee and the Trustees mediated on August 21, 2012. Thereafter, based upon no objection from Transferee counsel, the purported settlement reached between the parties at such mediation was approved by the Minnesota Bankruptcy Court;

K. The Liquidating Trustee and the Transferee thereafter litigated in the Florida Bankruptcy Court whether an enforceable settlement was reached. Following a bench trial, the Florida Bankruptcy Court - at ECF 2181 in Case No. 09-36379-PGH - entered Findings of Fact and Conclusions of law on Motion to Approve Settlement (ECF No. 1704) (“*Bankruptcy Court Order*”). As more fully stated in the Bankruptcy Court Order, the Bankruptcy Court held in part that (i) the parties entered into an enforceable oral settlement agreement in resolution of the Trustees’ Claims, and (ii) the terms of the oral agreement were memorialized in an unsigned written settlement agreement exchanged between counsel for the Liquidating Trustee and the Transferee in fall of 2012 (“*Revised Draft Agreement*”);

L. The Bankruptcy Court Order was upheld by the United States District Court for the Southern District of Florida (“*District Court*”) and is currently on appeal (“*Appeal*”) to the United States Court of Appeals for the Eleventh Circuit (“*Eleventh Circuit*”). As more fully stated in the District Court’s Order, , the District Court found, inter alia, that the standard for judicial estoppel had been met where in November 2012, Transferee’s counsel never objected to the representation in a conference with the Bankruptcy Court that the case was settled, never filed for relief from the Order that stated the case was settled, failed to move to re-open the proceeding after it was dismissed as settled, failed to file an objection to the Minnesota 9019 Motion, failed to object at the 9019 Motion and hearing, and failed to move to reconsider the 9019 Order.

M. The Liquidating Trustee has asserted that (i) the unsigned Revised Draft Agreement obligates the Transferee to reimburse the Liquidating Trustee for all legal fees and costs incurred in enforcing the unsigned Revised Draft Agreement, and (ii) such fees and costs totaled in excess of \$285,000 as of March 31, 2015 (as supplemented or modified with any additional fees and costs incurred by the Trustees after March 31, 2015, and together, the “*Fees Claim*”);

N. The Transferee expressly denies any liability arising from the Trustees’ Claims and the Fees Claim;

O. The Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees’ Claims and the Fees Claim;

P. The Liquidating Trustee has asserted that, absent a consensual resolution on the terms and conditions set forth herein, the Liquidating Trustee will seek recovery from the Transferee of the full amount of the Fees Claim (as continuing and accruing);

Q. To finally resolve this matter, as well as avoid the continued expense of litigating the Trustees' Claims and the Fees Claim and otherwise associated fees and expenses, the Parties have agreed to resolve the Trustees' Claims and the Fees Claim pursuant to the terms and conditions of this Stipulation.

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

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

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. Upon (i) approval of the Stipulation by the Florida Bankruptcy Court, and (ii) payment of the Settlement Amount (as such term is defined below), all prior agreements and understandings between the Parties concerning the subject matter hereof, including the Revised Draft Agreement, are superseded by the terms of this Stipulation.

3. **Settlement Payment.** In full and final settlement of the Trustees Claims, the Transferee will pay (or cause to be paid) \$325,000 ("**Settlement Payment**") to the Trustees as follows:

- a) In full and final settlement of the Trustees' Claims, \$225,000 ("**Original Settlement Amount**") will be paid to the Trustees within 30 days after execution of this Stipulation as follows: \$90,000 will be paid to the Liquidating Trustee and \$135,000 will be paid to the PCI Trustee;



- b) In full and final settlement of the Fees Claim, \$100,000 (“*Fees Settlement Amount*,” and together with the Original Settlement Amount, the “*Settlement Payment*”) will be paid to the Liquidating Trustee within 30 days after execution of this Stipulation.

The Liquidating Trustee’s total portion of the Settlement Payment (\$190,000) will be paid to the Liquidating Trustee via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. The PCI Trustee’s total portion of the Settlement Payment (\$135,000) will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) check made payable to “Douglas A. Kelley, Trustee” and delivered to Douglas A. Kelley, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. Any portion of the Settlement Payment made prior to the approval of this Stipulation by the Florida Bankruptcy Court shall be placed into the trust account for counsel for the Liquidating Trustee or the PCI Trustee, as appropriate, pending Order of the Court.

4. **No entitlement to distribution.** The Transferee agrees that he, she, or it will not be entitled to any monetary distribution whatsoever, directly or indirectly, from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates. To the extent that the Transferee (1) was scheduled as having a claim in the Florida Bankruptcy Cases or in the Minnesota Bankruptcy Cases; or (2) has filed any proof of claim or interest in the Florida Bankruptcy Cases or in the Minnesota Bankruptcy Cases, the Transferee agrees such claims or interests are deemed withdrawn, stricken or otherwise disallowed, in their entirety.

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

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

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

C. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court and payment of the Settlement Payment, the Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this

provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Dismissal of Appeal.** Upon entry of a final, non-appealable order of the Florida Bankruptcy Court, the Transferee agrees to seek dismissal of the Appeal with prejudice.

7. **Cooperation.** Upon reasonable notice (and without the need for the Transferee to issue a formal subpoena) the Liquidating Trustee or his counsel shall be available for deposition in Miami, Florida in connection with the Transferee's pending lawsuit against Fowler White Boggs, P.A., Case No. 14-cv-03177, United States District Court for the District of Minnesota; *provided, however*, that the Liquidating Trustee shall be entitled to reimbursement of his fees and costs associated therewith.

8. **Representations of the Transferee.** The individuals executing this Stipulation on behalf of the Transferee represent and warrant that he or she has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms. Such individuals further represent and warrant on behalf of the Transferee that the Transferee received \$858,020 in total net profits from Vennes and/or one of his related entities, including Metro Gem.

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

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

11. **Amendments, Waiver.** This Stipulation may not be terminated, amended, or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

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

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

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

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

16. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by a final, non-appealable order of the Florida Bankruptcy Court and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

17. **No effect.** If the Florida Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Florida Bankruptcy Court does not approve this Stipulation because any of the Parties has failed to provide the Florida 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.

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

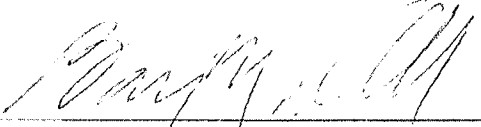
19. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

20. **Construction.** This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed

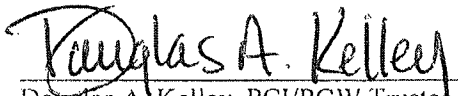
and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

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

**STIPULATED AND AGREED TO BY:**

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

Date: 8/20/15

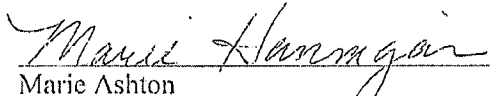
  
\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

Date: 8/24/15

  
\_\_\_\_\_  
The Ashton Revocable Living Trust

Date: 8/19/2015

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

  
\_\_\_\_\_  
Marie Ashton

Date: 8/19/2015

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

In re:

CHAPTER 11

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

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

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO  
APPROVE (1) SETTLEMENT WITH THE ASHTON REVOCABLE LIVING TRUST  
AND MARIE ASHTON AND (2) PAYMENT OF CONTINGENCY FEE [ECF NO. \_\_\_\_]**

**THIS CAUSE** came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with The Ashton Revocable Living Trust and Marie Ashton and (2) Payment of Contingency Fee [ECF No. \_\_\_\_] (the "***Motion***").<sup>1</sup> The Court, having reviewed the Motion and noting that a Certificate of No Response or Settlement and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply

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

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

**ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The Stipulation is **APPROVED**
3. On or before September 18, 2015, Transferee shall pay (or cause to be paid) \$325,000.00 (the “**Settlement Payment**”) as follows:
  - a) \$190,000.00 will be paid to the Liquidating Trustee; and
  - b) \$135,000.00 will be paid to the PCI Trustee.
4. The Liquidating Trustee’s portion of the Settlement Payment (\$190,000.00) may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.
5. The Liquidating Trustee’s portion of the Settlement Payment will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “**Pro Rata Allocation Formula**”), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
6. The Liquidating Trustee’s portion of the Settlement Payment (\$190,000.00) will be held in the trust account of counsel for the Liquidating Trustee pending approval of the Stipulation by this Court.



7. MRB's Contingency Fee in the amount of \$9,000.00 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

8. To the extent that the Transferee has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

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

###

**Submitted By:**

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Attorneys for the Liquidating Trustee

**Copies Furnished To:**

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

## Mailing Information for Case 09-36379-PGH

### Electronic Mail Notice List

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**Manual Notice List for both cases: 09-36379 and 09-36396 - Updated August 26, 2015**

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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Label Matrix for local noticing  
113C-9  
Case 09-36379-PGH  
Southern District of Florida  
West Palm Beach  
Fri Jul 31 11:32:38 EDT 2015

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