

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.

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**PBF I LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL  
OF SETTLEMENT WITH JOSEPH A. UMBACH AND ZCALL, LLC**

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

Barry E. Mukamal, in his capacity as liquidating trustee (the “***PBF I Liquidating Trustee***”) for the Palm Beach Finance Partners Liquidating Trust (the “***PBF I Trust***”)<sup>1</sup>, 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 by the PBF I Trust against Joseph A. Umbach individually (“***Mr. Umbach***”), ZCALL, LLC (“***ZCALL***”), Toledo Fund, LLC (“***Tolledo Fund***”), and SCALL, LLC (“***SCALL***”, and together with Mr. Umbach, “***Umbach***”). In support of this relief, the PBF I Liquidating Trustee states the following:

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<sup>1</sup> Barry E. Mukamal is also the liquidating trustee (the “***PBF II Liquidating Trustee***”) for and the Palm Beach Finance Partners II Liquidating Trust (the “***PBF II Trust***,” and collectively with the PBF I Trust, the “***Liquidating Trusts***”).

## **I. Factual Background**

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

1. The Liquidating Trusts are the successors to Palm Beach Finance Partners, L.P. (“**PBF I**”) and Palm Beach Finance II, L.P. (“**PBF II**”, and collectively with PBF I, the “**Debtors**”). Prepetition, the Debtors operated as hedge funds and were managed and directed through two related entities, Palm Beach Capital Management, L.P. (“**PBCMLP**”) and Palm Beach Capital Management, LLC (“**PBCMLLC**,” and, together with PBCMLP, the “**Management Entities**”). The Management Entities were, in turn, wholly-owned and controlled by David Harrold (“**Harrold**”) and Bruce Prevost (“**Prevost**”).

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

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

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

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

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

***B. Transfers from PBF I to PBF II that Trustee Contends were for the Benefit of Umbach***

7. On September 5, 2007, PBF I wire transferred \$5,787,241.64 to PBF II (the “*September 5<sup>th</sup> Transfer*”). On October 25, 2007, PBF I wire transferred another \$304,447.64 to PBF II (collectively with the September 5<sup>th</sup> Transfer, the “*Transfers*”). PBF I made the Transfers in order to effectuate a requested transfer of an investor position in PBF I to PBF II, *i.e.* PBF I Investor No. 243C. The underlying investment in PBF I with respect to PBF I Investment No. 243C was \$5 million. Therefore, the Transfers totaling \$6,091,669.28 consisted of the \$5 million investment, and \$1,091,669.28 of profits.

8. The PBF I Liquidating Trustee contends that Umbach was the entity for whose benefit the Transfers were made, and as such, the Transfers could be avoided and then recovered from Umbach under 11 U.S.C. §550(a). Therefore, the PBF I Liquidating Trustee believes that he has potential claims against Umbach for the recovery of the Transfers (the “*PBF I Claims*”).

9. Umbach disputes the PBF I Liquidating Trustee’s contention, and argues that not only would the PBF I Liquidating Trustee not be able to avoid the Transfers, he would not be able to recover them from Umbach under 11 U.S.C. §550 because Umbach neither received the

Transfers nor were they made for his benefit. Therefore, Umbach contends that he has no liability at all with respect to the PBF I Claims.

10. In order to try and resolve the issues in connection with the PBF I Claims and Umbach's position, the Parties participated in a mediation on November 7, 2012 (the "*Mediation*"), at which the Parties were able to reach a settlement of the PBF I Claims. In addition, the settlement they reached would also have provided for the release by the PBF II Trust of any claims that it might potentially have against Umbach, and Umbach would have released the PBF II Trust from any claims that they might have against the PBF II Trust.

11. Nevertheless, the agreement reached at the Mediation required the approval of this Court, as well as the approval of Geoffrey Varga, in his capacity as Trust Monitor for the Palm Beach Finance II Liquidating Trust. However, because the PBF II Liquidating Trustee was not able to obtain the requisite approval, subsequent to the Mediation, the Parties, with the assistance of the mediator, conducted further negotiations that resulted in a revised final settlement agreement (the "*Settlement Agreement*"), a copy of which is attached hereto as Exhibit A.<sup>2</sup>

## II. Settlement Terms

12. The key aspects of the Settlement Agreement between the Parties<sup>3</sup> are the following:<sup>4</sup>

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<sup>2</sup> A true and correct copy of the settlement reached at the Mediation is attached to the Settlement Agreement as Exhibit 1.

<sup>3</sup> Although the Settlement Agreement contains recitals by the PBF II Liquidating Trustee, the PBF II Liquidating Trustee and the PBF II Trust are not parties to the Settlement Agreement.

<sup>4</sup> To the extent the terms of the Settlement Agreement differ with the terms set forth in this Motion, the agreement shall control. The PBF I Liquidating Trustee would encourage all

a. Umbach shall pay the total sum of \$185,750.00 (the “*Settlement Amount*”) to the trust account of Quinn Emanuel Urquhart & Sullivan, LLP (the “*Trust Account*”) as of January 14, 2013.<sup>5</sup>

b. Subject to the Court’s approval, the Settlement Amount shall be paid to the PBF I Liquidating Trustee from the Trust Account within three (3) business days of the PBF I Liquidating Trustee notifying Umbach of the Court entering a final and non-appealable Order approving this Settlement as full and complete settlement of the PBF I Claims.

c. Upon the PBF I Liquidating Trustee’s receipt of the Settlement Amount, Umbach, ZCALL, SCALL, and Toledo Fund, LLC waive, release and hold harmless, now and forever, the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate from any and all Claims that Umbach, ZCALL, SCALL, and Toledo Fund may have against the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate, including proofs of claim that they filed in the PBF I bankruptcy case, as well as any claim that they might otherwise have under 11 U.S.C. §502(h); provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of the Settlement Agreement.

d. Upon the PBF I Liquidating Trustee’s receipt of the Settlement Amount, the PBF I Liquidating Trustee waives, releases and holds harmless, now and forever, Umbach and ZCALL, as well as Toledo Fund and SCALL, from any and all Claims that the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate may have against

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creditors and parties in interest to review the Settlement Agreement for all terms of the agreement.

<sup>5</sup> Counsel for Umbach has confirmed that the Settlement Amount has already been paid to the Trust Account.

Umbach, ZCALL, SCALL, or Toledo Fund; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of the Settlement Agreement, nor does it release any claims against any parties not expressly released herein, including but not limited to, any alleged concurrent or consecutive tort feorsors.

### **III. Relief Requested**

13. The PBF I Liquidating Trustee seeks an Order from this Court approving the Settlement.

14. 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.”

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

16. 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 Settlement Ought to be Approved***

17. Based upon the above legal principles, the PBF I 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*

18. The PBF I Liquidating Trustee, on behalf of the PBF I Trust, could assert that the Transfers were constructively fraudulent transfers that can be avoided, and although the Transfers were not made directly to Umbach, they were made for his benefit. The PBF I Liquidating Trustee believes that he could succeed in such an action based upon information and documents contained in the Debtors' records and matters of record in this case.

19. Nonetheless, the PBF I Liquidating Trustee acknowledges that there are risks inherent in all litigation. Specific to the PBF I Claims, Umbach could raise a number of defenses, factually and legally, that potentially could impact and defeat the PBF I Liquidating Trustee's claims. These defenses include that Umbach never received any of the Transfers nor were they made for his benefit, that none of them were the underlying investor in PBF I, and that the Transfers cannot be avoided, let alone recovered, because of 11 U.S.C. §§546(e) and (g).

*Collectability*

20. Based on discussions between the parties, collectability may be an issue as to Umbach.

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

21. This is a meaningful consideration that militates in favor of approval of the Agreement. Although fraudulent transfer claims are typical claims litigated before this Court,

the ones at issue here are somewhat novel as they involve the transfer of funds from one debtor to the other, as well as agreements that ZCALL had with other third party entities that might impact the PBF I Liquidating Trustee's claims against Umbach. They also involve the possible impact of 11 U.S.C. §§546(e) and (g). In addition, the claims would still require extensive fact discovery before a trial could take place. The result of these efforts will be substantial fees of professionals that could diminish the net result of any recovery to creditors in the Debtors' chapter 11 cases.

22. Indeed, considerations in this context could require a deeper analysis than a run of the mill fraudulent transfer. The case would likely require expert witnesses, and the fees and costs associated therewith. Again, this would result in the estate incurring additional fees and delay.

23. The Settlement Agreement addresses these concerns. The parties avoid litigating fact specific claims, complex legal issues that this Court has not yet decided, with the attendant expense and delay of litigation being nullified.

*Paramount interest of creditors*

24. The Settlement Agreement provides for a substantial monetary payment to the PBF I Liquidating Trustee, through the Settlement Agreement, along with Umbach waiving any §502(h) claim and the release and waiver of any and all claims that Umbach, ZCALL, SCALL, and Toledo Fund have against PBF I and the PBF I Trust, including those set forth in proofs of claim that they have filed. This result gives certainty and value to the PBF I estate and avoids the risk, expense and delay attendant with litigation.

25. As such, the Settlement Agreement is in the paramount interest of creditors and should be approved.



WHEREFORE, the PBF I Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit B) (1) approving the Settlement Agreement; and (2) granting such other relief this Court deems just and proper.

Dated: March 1, 2013

Respectfully submitted,

RASCO KLOCK PEREZ & NIETO, P.A.<sup>6</sup>  
Special Counsel for Liquidating Trustee  
283 Catalonia Avenue, Second Floor  
Coral Gables, Florida 33134  
Telephone: (305) 476-7100

By: /s/ John D. Eaton  
John D. Eaton  
Florida Bar No. 861367  
[jeaton@rascoklock.com](mailto:jeaton@rascoklock.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on March 1, 2013, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on attached Exhibit C; and via U.S. Mail to the parties listed on the matrix set forth in attached Exhibit D.

By: /s/ John D. Eaton  
John D. Eaton

4830-1118-6705, v. 1

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<sup>6</sup> Effective February 1, 2013, the name of Special Counsel's firm was changed from Rasco Klock Reininger Perez Esquenazi Vigil & Nieto to Rasco Klock Perez & Nieto, P.L.

## **EXHIBIT A**

### SETTLEMENT AGREEMENT

This Settlement Agreement ("*Agreement*") is entered into as of the 14<sup>th</sup> day of January 2013 by and among (a) Barry E. Mukamal, as liquidating trustee ("*PBF I Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust (collectively, the "*PBF I Trust*"), and (b) ZCALL, LLC ("*ZCALL*"), SCALL, LLC ("*SCALL*"), Toledo Fund, LLC ("*Toledo Fund*"), and Joseph A. Umbach ("*Mr. Umbach*") (ZCALL, SCALL, Toledo Fund, and Mr. Umbach together shall referred to herein as "*Umbach*," and along with the PBF I Liquidating Trustee, shall be referred to as the "*Parties*").

The terms of this Agreement are as follows:

#### RECITALS

A. On or about 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 or about October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the PBF I Trust and the Palm Beach Finance II Liquidating Trust (the "*PBF II Trust*") and appointing the PBF I Liquidating Trustee as liquidating trustee of the PBF I Trust, and appointing Barry Mukamal the as Liquidating Trustee (the "*PBF II Liquidating Trustee*") of the PBF II Trust.

C. The PBF I Liquidating Trustee, on behalf of the PBF I Trust, asserts certain claims against Umbach and ZCALL (the "*PBF I Claims*"); Umbach and ZCALL expressly deny those claims.

D. The PBF I Claims include those relating to certain transfers that were made by PBF I, and which the PBF I Liquidating Trustee contends were constructively fraudulent.

E. The PBF I Liquidating Trustee (and his legal counsel) and Umbach and their legal counsel, have shared information and engaged in settlement negotiations and discussions, including during a mediation that took place on November 7, 2012 (the "*Mediation*"). During the course of these discussions and the Mediation, the Parties have analyzed the PBF I Claims and potential defenses thereto.

F. In addition, the PBF I Liquidating Trustee, Umbach and ZCALL entered into tolling agreements and extensions thereof (the "*Tolling Agreement*"), setting forth a time period during which they can consider and explore the possibility of resolving the PBF I Claims, and any defenses and counterclaims thereto (the "*Tolling Period*").

G. To avoid the continued expense and risk of an outcome arising from the PBF I Claims, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the PBF I Claims subject to the terms and conditions of this Agreement and Bankruptcy Court approval.

H. Umbach represents that Toledo Fund and SCALL were each single purpose vehicles dealing with accreting strike-price call options, and Toledo Fund and SCALL are receiving the releases set forth herein based on that representation.

I. After conducting a dutiful and thorough investigation of the facts and circumstances, at this time, the PBF II Liquidating Trustee is aware of no claim or cause of action that PBF II has against Umbach. The PBF II Liquidating Trustee is aware of no transfers of property by PBF II to BNP or Ozcar (or either of its affiliates) related to Umbach.

J. The PBF II Liquidating Trustee has no present intention to (a) assign any purported claims or causes of action owned by PBF II against Umbach to any party, or (b) agree that any such claims may be pursued derivatively.

K. The PBF II Liquidating Trustee has not entered into, nor is he aware of PBF II having entered into, any agreement that tolls any applicable statute of limitations as between PBF II or the PBF II Trust and Scotia Bank (or its affiliates).

L. Any agreement that PBF II or the PBF II Liquidating Trustee has entered into with HSBC (or its affiliates) to toll any applicable statute of limitations as between PBF II or the PBF II Trust and HSBC has expired and the PBF II Liquidating Trustee does not believe that the tolling agreement has any lasting or remaining effect on any statute of limitations calculation.

M. The Parties agree that the mediated settlement agreement reached at the Mediation is not privileged, and as reflected below, is attached as an exhibit to this Agreement.

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

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

2. This Agreement 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 Agreement.

3. "Claims" shall mean all actual and potential claims, cross-claims, counter-claims, third party claims, demands, damages, interest, actions, liabilities, debts, liens, charges, obligations, causes of action, penalties, sanctions and rights (including but not limited to the right



to (i) indemnification; (ii) attorney's fees; (iii) costs; (iv) expenses; (v) expert fees; and (vi) injunctive relief).

4. In full and final settlement of the PBF I Claims, and upon approval of this Agreement by final order of the Bankruptcy Court in the Bankruptcy Cases:

a. Umbach shall pay the total sum of \$185,750.00 (the "*Settlement Amount*") to the trust account of Quinn Emanuel Urquhart & Sullivan, LLP (the "*Trust Account*") as of the date hereof.<sup>1</sup>

b. Subject to the Bankruptcy Court's approval, the Settlement Amount shall be paid to the PBF I Liquidating Trustee from the Trust Account within three (3) business days of the PBF I Liquidating Trustee notifying Umbach of the Bankruptcy Court entering a final and non-appealable Order approving this Settlement as full and complete settlement of the PBF I Claims.

c. Upon the PBF I Liquidating Trustee's receipt of the Settlement Amount, Mr. Umbach, ZCALL, SCALL, and Toledo Fund waive, release and hold harmless, now and forever, the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate from any and all Claims that Umbach, ZCALL, SCALL, and Toledo Fund may have against the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate, including proofs of claim that they filed in the PBF I bankruptcy case, as well as any claim that they might otherwise have under 11 U.S.C. §502(h); provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Agreement.

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<sup>1</sup> At the Mediation, the Parties had reached an agreement that provided for mutual releases between the PBF II Liquidating Trustee and Umbach, SCALL, ZCALL and Toledo Fund, which agreement as to any claims of the PBF II Trust was subject to the approval of both the Bankruptcy Court and the PBF II Trust Monitor. Because the PBF II Liquidating Trustee was not able to obtain the requisite approval, the instant revised Settlement was reached that resolves only the Claims of the PBF I Trust, albeit at a reduced amount from that negotiated at the Mediation. A copy of the settlement agreement reached and signed at the Mediation is attached hereto as Exhibit 1.

d. Upon the PBF I Liquidating Trustee's receipt of the Settlement Amount, the PBF I Liquidating Trustee waives, releases and holds harmless, now and forever, Umbach and ZCALL, as well as Toledo Fund and SCALL, from any and all Claims that the PBF I Liquidating Trustee, the PBF I Trust, PBF I and its estate may have against Umbach, ZCALL, SCALL, or Toledo Fund; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Agreement, nor does it release any claims against any parties not expressly released herein, including but not limited to, any alleged concurrent or consecutive tortfeasors.

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

6. The PBF I Liquidating Trustee shall promptly file and serve the necessary motion(s) in the Bankruptcy Cases seeking an order approving this Settlement Agreement.

7. Unless further extended by the Parties, the Tolling Period under the Tolling Agreement with respect to the PBF I Claims is extended by agreement of the PBF I Trustee, Mr. Umbach, and ZCALL through and until 30 (thirty) calendar days following the earlier of (i) a ruling by the Bankruptcy Court in these Bankruptcy Cases on a motion seeking approval of this Agreement, or (ii) 120 days from the date hereof.

8. Each Party shall bear its own attorneys' fees and costs in connection with the PBF I Claims, the negotiation and drafting of this Agreement and the submission of such Agreement, motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; provided however, that in the event of any litigation between the Parties under this Agreement or

arising as a result of a default under this Agreement,<sup>2</sup> the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

9. This Agreement 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.

10. This Agreement shall be effective upon execution by all of the Parties hereto, subject to the approval of this Agreement by final order of the Bankruptcy Court. Upon it becoming effective, this Agreement shall be binding on all of the Parties' successors or assigns.

11. This Agreement 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.

12. This Agreement 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 Agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or PDF (or substantively similar mechanism) shall be effective as delivery of a manually executed counterpart of this Settlement Agreement.

13. This Agreement shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Agreement, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Agreement as a whole is purportedly prepared or requested by such Party.

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<sup>2</sup> It is understood by the Parties that any misrepresentations in the Recitals in this Agreement would constitute a default hereunder.



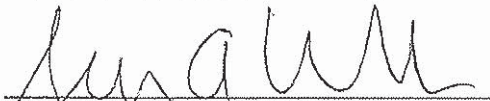
14. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Agreement.

15. The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of the persons / entities identified and as set forth herein.

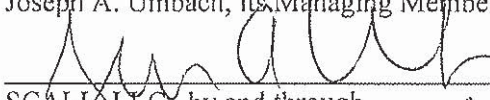
**STIPULATED AND AGREED TO BY:**

\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee  
for PBF I Trust and PBF II Trust

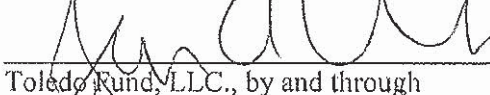
Date: January \_\_, 2013

  
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ZCALL, LLC., by and through  
Joseph A. Umbach, its Managing Member

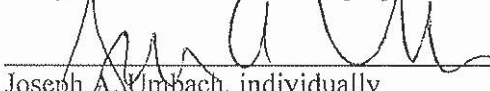
Date: January 14, 2013

  
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SCALL, LLC., by and through  
Joseph A. Umbach, its Managing Member

Date: January 14, 2013

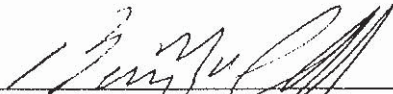
  
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Toledo Fund, LLC., by and through  
Joseph A. Umbach, its Managing Member

Date: January 14, 2013

  
\_\_\_\_\_  
Joseph A. Umbach, individually

Date: January 14, 2013

STIPULATED AND AGREED TO BY:

  
\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee  
for PBF I Trust and PBF II Trust

Feb 25, 2013  
Date: ~~January~~ \_\_, 2013

\_\_\_\_\_  
ZCALL, LLC., by and through  
Joseph A. Umbach, its Managing Member

Date: January \_\_, 2013

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SCALL, LLC., by and through  
Joseph A. Umbach, its Managing Member

Date: January \_\_, 2013

\_\_\_\_\_  
Toledo Fund, LLC., by and through  
Joseph A. Umbach, its Managing Member

Date: January \_\_, 2013

\_\_\_\_\_  
Joseph A. Umbach, individually

Date: January \_\_, 2013

## EXHIBIT 1

# Binding Mediated Settlement Agreement

In The Matter of:

Palm Beach Finance Partners, UMBACH/ZCALL

On Nov. 7, 2012 with the assistance of the undersigned mediator, we agreed to a settlement of our dispute, and wish to here memorialize our understanding, as follows:

1. We have been represented by the undersigned attorneys, and understand that the mediator has had no duty to protect our interests or to provide us with information about our legal rights. We understand that signing this agreement could adversely affect our legal rights, and that we should consult and have consulted with our counsel before signing this agreement relative to any uncertainty about our rights.

2. We intend that this agreement once signed is binding and enforceable upon us. While we understand that formal documents, stipulations and/or releases may be prepared to facilitate or finalize our agreements contained here, we do not intend the enforcement of our settlement to be dependent upon any such documentation. We will use our best efforts to concur as any formal documentation. And while we need not agree to the binding arbitration provision of this sentence, upon the advise of counsel, we voluntarily and knowingly agree that should any dispute develop in any documentation of our settlement set out below, the mediator will act as a binding arbitrator to decide such dispute(s) and the terms of any necessary documentation, which decision will be based on the mediator's determination of what is consistent with the intent and spirit of our negotiations, or his determination of what is fair and equitable under the circumstances. We agree to be bound by any such arbitration which will be enforceable as provided by the Minnesota Arbitration Act and by law.

3. The following are the essential terms of our settlement:

- a) UMBACH SHALL pay at closing \$ 228,250.<sup>00</sup>;
- b) At closing parties to exchange full mutual releases; UMBACH/ZCALL to waive 502(h) claim
- c) Subject to bankruptcy et approval of which Trustee will
- d) closing to take place 3 business days following the entry of a final & non-appealable order approving settlement; at which time the money to be paid by UMBACH will be paid from
- (over) the trust account as per (e);
- e) Umbach shall pay to his counsel's trust account the \$228,250.<sup>00</sup> no later than Nov. 13, 2012;



(f) Umbach/ZCALL has the option, to exercise no later than November 13, 2012, to pay \$250,000<sup>00</sup> instead of <sup>the</sup> \$228,250, and not waive the 502(h) claim as provided in (b) above, in which case Umbach/ZCALL's claim of \$250,000 against PB1 shall be allowed, (less expenses)

4. Billing terms for Mediation: Billed equally among counsel unless otherwise here stated.

15% to TRUSTEE COUNSEL  
Dated: 11/7/2012 25% to UMBACH COUNSEL

The Parties

Individuals  
+ ZCALL  
+ S call  
Trustee PB1 & PB2

Rick Solum

Rick Solum, Mediator

Counsel

Counsel for Liquidating Trustee  
Counsel for Umbach & Affiliates

- ~~UMBACH: SCALL to get fully complete releases~~
- UMBACH represents that Toledo LLC & SCALL LLC were each ~~separate~~ single purpose vehicles dealing with accounting strike-price call options, and Toledo & SCALL are being released based on this representation.

## **EXHIBIT B**

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

Debtors.

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**ORDER GRANTING PBF I LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL  
OF SETTLEMENT WITH JOSEPH A. UMBACH AND ZCALL, LLC**

**THIS CAUSE** came before the Court upon the *PBF I Liquidating Trustee's Motion for Approval of Settlement with Joseph A. Umbach and ZCALL, Inc.* (the "**Motion**") (D.E. \_\_\_\_ ) that was filed by Barry E. Mukamal, in his capacity as liquidating trustee (the "**PBF I Liquidating Trustee**") for the Palm Beach Finance Partners Liquidating Trust (the "**PBF I Trust**").<sup>1</sup> The

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<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.



Court, having reviewed the Motion and noting that a *Certificate of No Response and Request for Entry of Order* (D.E. \_\_\_\_ ) has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

**ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. Umbach shall pay (or cause to be paid) the total sum of \$185,750.00 (the “*Settlement Payment*”) within three (3) business days of the PBF I Liquidating Trustee notifying Umbach that this Order is final and non-appealable. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the PBF I Liquidating Trustee or his counsel, or (ii) check made payable to “Barry E. Mukamal, PBF I Liquidating Trustee” and delivered to John D. Eaton, Esq., Rasco Klock *et al.*, 283 Catalonia Avenue, 2<sup>nd</sup> Floor, Coral Gables, Florida 33134.
4. To the extent that Umbach has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest with respect to PBF I or the PBF I estate in PBF I’s chapter 11 case, such claim or interest as to PBF I and the PBF I estate is deemed disallowed in its entirety.

***Remainder of Page Intentionally Left Blank***

5. The Court retains jurisdiction to enforce the terms of the Settlement.

###

**Submitted By:**

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Special Counsel for the PBF I Liquidating Trustee

**Copies Furnished To:**

John D. Eaton, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

## **EXHIBIT C**

## Mailing Information for Case 09-36379-PGH

### Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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