

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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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**LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) SETTLEMENT WITH W. DAVID ROGERS, JR., JENNIFER PEED ROGERS, DUNCAN B. DOWLING III AND SALLY A. LUECK DOWLING 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 with W. David Rogers, Jr., Jennifer Peed Rogers, Duncan B. Dowling III and Sally A. Lueck Dowling (individually or collectively, the "*Transferees*") 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 (the “*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*MGP*”; 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 (the “*Minnesota Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

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 “*Pettters Receivership Order*”).

7. The Pettters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “*Pettters Receiver*”). Thereafter, the Pettters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota (the “*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. 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, appointing the Liquidating Trustee as Liquidating Trustee and appointing Geoffrey Varga as Trust Monitor.

**B. The Vennes Litigation**

11. The Debtors’ entry into the Pettters’ fraud was made through the Vennes Parties. Namely, based on representations made by them, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (the “*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. On or about August 13, 2012, the Liquidating Trustee commenced suit against the Transferees, Adv. Case No. 12-1847-PGH (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid a transfer made to or for the benefit of the Transferees by the Vennes Parties in approximately August of 2006 in the amount of \$3,000,000.00 (the “*Transfer*”).

14. After the commencement of the Adversary Proceeding, the Transferees were informed that the PCI Trustee also intended to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the “*PCI Trustee’s Claims*”); and together with the Adversary Proceeding, the “*Litigation*”).

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the PCI Trustee’s Claims, the Trustees assert that the Transferees received in the aggregate, approximately \$3,000,000.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. The Transferees deny that they have any liability in connection with the claims asserted in the Litigation.

17. The Trustees entered into an agreement whereby they have agreed to mediate jointly with the Transferees 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 (the “*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.]

18. On January 22, 2013, the parties attended mediation with Frances L. Carter, Esq. at the offices of the undersigned. At the mediation, the parties were able to achieve a global resolution as set forth below.

## II. Settlement Terms

19. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:<sup>1</sup>

- a) The Transferees will pay (or cause to be paid) \$62,500.00 (the “*Settlement Payment*”) within six (6) months following approval of the Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court. The Settlement Payment shall be allocated as follows: \$25,000.00 will be paid to the Liquidating Trustee and \$37,500.00 will be paid to the PCI Trustee;
- b) The parties shall exchange mutual, general releases;
- c) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- d) The Transferees shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

20. Pursuant to the Second Amended Joint Plan of Liquidation (the “*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 (the “*Pro Rata Allocation Formula*”).

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<sup>1</sup> A copy of the 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.

### III. Relief Requested

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

22. 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.”

23. 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).

24. 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*

25. 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*

26. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the transfers made to the Transferees by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the Transferees were unjustly enriched by such transfers.

27. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

28. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferees, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims.

*Collectability*

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

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

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

31. 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.

32. 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*

33. The Stipulation provides a meaningful payment of the claims asserted against the Transferees in the Adversary Proceeding. 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***

34. 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**").

35. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$2,500.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

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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 a true and correct copy of the foregoing was served on March 11, 2013, via the Court's Notice of Electronic Filing upon Registered Users set forth on the list attached as Exhibit 3, and by U.S. Mail on those parties set forth on the list attached as Exhibit 4 and Stephen J. Kolski, Jr., Esq., Catlin Saxon Fink & Kolski, LLP, 2600 Douglas Road, Ste. 103, Coral Gables, FL 33134; and Kenneth S. Pollack, Esq., Shendell & Pollock, P.L. 2700 North Military Trail, Ste. 150, Boca Raton, FL, 33431.

s/ Jessica L. Wasserstrom  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
jwasserstrom@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 Barry E. Mukamal,  
Liquidating Trustee*

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("*Stipulation*") is entered into on \_\_\_\_\_, 2013, in Miami-Dade County, by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "*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.* (the "*PCI Trustee*"), and (c) W. David Rogers, Jr., Jennifer Peed Rogers, Duncan B. Dowling III and Sally A Lueck Dowling (individually or collectively, the "*Alleged 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. (the "*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 (the "*Florida Bankruptcy Court*"), Bky. Nos. 09-36379 and 09-36396 respectively (the "*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, 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 (the “*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 (the “*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*”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla.). The Liquidating Trustee asserts claims arising in tort based on certain representations Vennes made to the Palm Beach Funds regarding their advances to Palm Beach Finance Holdings, Inc.

and also for fraudulent transfers to recover certain investment transfers Vennes and Metro Gem received from the Palm Beach Funds as investors in the Palm Beach Funds;

G. On or about August 13, 2012, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding asserting several claims against the Alleged Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment (the "*Adversary*"), relating to funds the Transferee received from Frank Vennes or Metro Gem (the "*Transfers*");

H. The Alleged Transferee is additionally aware that the PCI Trustee asserts claims against the Alleged Transferee and intends to pursue the Alleged Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (the "*PCI Trustee's Claims*"). The Adversary and the PCI Trustee's Claims are collectively referred to herein as the "*Trustees' Claims*";

I. The Alleged Transferee expressly denies any liability arising from the Trustees' Claims;

J. Prior to and following commencement of the Adversary, the Parties have engaged in discussions in an attempt to amicably resolve any and all issues, including the Trustees' Claims;

K. To avoid the continued expense of litigating the Trustees' Claims and the related risk of an adverse outcome arising from the Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Trustees' Claims 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. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. **Settlement Payment.** In full and final settlement of the Trustees' Claims, the Alleged Transferee will pay (or cause to be paid) the total sum of \$62,500.00 (the "*Settlement Payment*") within six (6) months following entry of Court orders approving this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court. Of the total Settlement Payment, \$25,000.00 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 Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. Of the total Settlement Payment, \$37,500.00 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 Josiah Lamb, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415.

4. **No entitlement to distribution.** The Alleged 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 was scheduled (i) by the Palm Beach Funds in the Florida Bankruptcy Cases, or (ii) by PCI, PGW or any of the related administratively-consolidated debtors in the Minnesota Bankruptcy Cases, as having a claim or has filed any proof of claim or proof of interest in the Palm Beach Funds bankruptcy cases or the Minnesota Bankruptcy Cases, the Transferee agrees such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

**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.

B. Upon approval of this Stipulation by orders of the Florida Bankruptcy Court and Minnesota 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 Alleged Transferee, as well as his or her heirs, successors, assigns and attorneys, 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 Alleged Transferee, or his or her heirs, successors, assigns and attorneys;

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 Minnesota Bankruptcy Court and payment of the Settlement Payment, the Alleged 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 Adversary.** Upon entry of final, non-appealable orders by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, shall forthwith seek dismissal of the Adversary.

7. **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. The Alleged Transferees represent and warrant that they have no actual knowledge of receiving a transfer of funds from the Vennes Parties other than the funds allegedly transferred to them that are at issue in the Adversary.

8. **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.

9. **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.

10. **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.

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

12. **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.

13. **No Third-Party Beneficiary.** Except as provided herein, 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 heirs, successors, assigns and attorneys.

14. **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, the Liquidating Trustee, on behalf of the Liquidating Trusts



and the Palm Beach Funds, the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, and Transferee shall bear any mediation fees incurred in accordance with the Mediation Procedures Order entered in the Adversary such that each of the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, and Transferee, shall pay one-third of any such mediation fees; 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.

15. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable orders of the Minnesota Bankruptcy Court and 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.

16. **No effect.** If either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do 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, and any Settlement Payment actually paid shall be returned to the Alleged Transferee by the Liquidating Trustee and the PCI Trustee in the amounts stated in Paragraph 3, respectively. Notwithstanding the foregoing, if either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation because any of the Parties has failed to provide the Florida Bankruptcy Court or Minnesota 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.

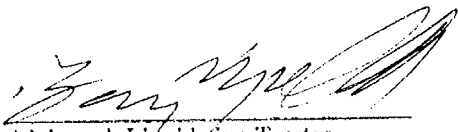
17. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.

18. **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.

19. **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.

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

**STIPULATED AND AGREED TO BY:**

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

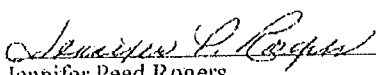
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Douglas A. Kelley, PCI/PGW Trustee

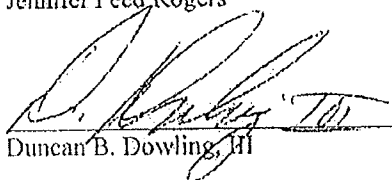
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W. David Rogers, Jr.

Date: 5/1/12

  
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Jennifer Peed Rogers

Date: 3/1/13

  
\_\_\_\_\_  
Duncan B. Dowling, III


Date: 2/28/13

  
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Sally A. Lutz Dowling.

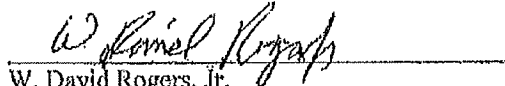
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Barry E. Mukamal, Liquidating Trustee

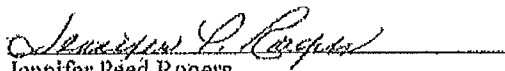
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Douglas A. Kelley, PCI/PGW Trustee

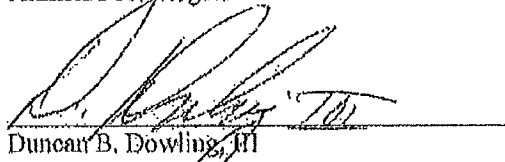
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W. David Rogers, Jr.

Date: 5/1/13

  
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Jennifer Peed Rogers

Date: 3/1/13

  
\_\_\_\_\_  
Duncan B. Dowling, III

Date: 2/28/13

  
\_\_\_\_\_  
Sally A. Luck Dowling

Date: 2/28/13

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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**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO APPROVE  
(1) SETTLEMENT WITH W. DAVID ROGERS, JR., JENNIFER  
PEED ROGERS, DUNCAN B. DOWLING III AND SALLY A. LUECK  
DOWLING 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 W. David Rogers, Jr., Jennifer Peed Rogers, Duncan B. Dowling III and Sally A. Lueck Dowling 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 and

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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.

Request for Entry of Order 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 Stipulation is **APPROVED**.
3. The Transferees shall pay (or cause to be paid)) \$62,500.00 (the “*Settlement Payment*”) within six (6) months following entry of an order approving the Stipulation by the Minnesota Bankruptcy Court. Of the total Settlement Payment, \$25,000.00 will be paid to the Liquidating Trustee and \$37,500.00 will be paid to the PCI Trustee. The Liquidating Trustee’s portion of the Settlement Payment (\$25,000.00) 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.
4. The Liquidating Trustee’s portion of the Settlement Payment (\$25,000.00) 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.
5. MRB’s Contingency Fee in the amount of \$2,500.00 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.

6. 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.

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

###

**Submitted By:**

s/ Jessica L. Wasserstrom  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
jwasserstrom@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 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**

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

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com,sbeiley@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com;skm@segallgordich.com
- Keith T Appleby kappleby@hwhlaw.com, lbecker@hwhlaw.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.com
- Steven M Berman sberman@slk-law.com, bgoodall@slk-law.com
- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com;miaecfbky@gtlaw.com
- Noel R Boeke noel.boeke@hkllaw.com, brooke.tanner@hkllaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net;lartigas@campbelllawfirm.net
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Lisa M. Castellano lcastellano@becker-poliakoff.com, thenry@becker-poliakoff.com;tfritz@becker-poliakoff.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- Franck D Chantayan fchantayan@carltonfields.com, kdemar@carltonfields.com;wpbecf@cfdom.net
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com;efileu1092@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com, jgoodwin@shutts.com
- Robert C Furr bnasralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- John H Genovese jgenovese@gjb-law.com, hburke@gjb-law.com;gjbefc@gjb-law.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com;mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, postiytr@gtlaw.com;postiytr@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, KCavanaugh@foley.com
- Mark D. Hildreth mhildreth@slk-law.com, dcooper@slk-law.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com;kaufmanesq@gmail.com;tpatykula@mkaufmanpa.com;gstolzburg@mkaufmanpa.com
- Stephen J Kolski Jr stevekolski@catlin-saxon.com
- Harris J. Koroglu hkoroglu@shutts.com, jgoodwin@shutts.com
- James A Lodoen jlodoen@lindquist.com
- Joshua A Marcus jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Paul J McMahon pjim@pjmilawmiami.com
- Brian M Mckell brian.mckell@wilsonelser.com, frances.weiss@wilsonelser.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Paul L. Orshan paul@orshanpa.com, maria@orshanpa.com;estone@orshanpa.com
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- John E Page jpage@sfl-pa.com, scusack@sfl-pa.com;lrosetto@sfl-pa.com
- Chad S Paiva chad.paiva@gmlaw.com, katrina.bankert@gmlaw.com
- Kristopher E Pearson kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;larrazola@stearnsweaver.com;sanderson@stearnsweaver.com;cgraver@stearnsweaver.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Cristopher S Rapp csrapp@jones-foster.com
- Patricia A Redmond predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;sanderson@stearnsweaver.com;nlevine@akingump.com
- Jason S Rigoli jrigoli@furrcohen.com, ndixon@furrcohen.com
- James N Robinson jrobinson@whitecase.com, jjordan@whitecase.com
- Kenneth B Robinson krobinson.ecf@rprslaw.com
- Joseph Rodowicz bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- Robin J. Rubens rjr@lkllaw.com, cag@lkllaw.com
- Franklin H Sato fsato@wickersmith.com, alazaro@wickersmith.com
- Bradley M Saxton bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;breece@whww.com
- Michael L Schuster mschuster@gjb-law.com, gjbecf@gjb-law.com
- Michael D. Seese mseese@seeselaw.com, sseward@seeselaw.com
- Steven E Seward sseward@seeselaw.com
- Bradley S Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;vchapkin@sfl-pa.com;lrosetto@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com
- Paul Steven Singerman singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com
- James S Telepman jst@fcohenlaw.com
- Charles W Throckmorton cvt@kttl.com, lf@kttl.com;ycc@kttl.com
- Trustee Services Inc 2 court@trusteeservices.biz, sandirose.magder@gmail.com
- Skipper J Vine jonathan.vine@csklegal.com
- Jessica L Wasserstrom jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com

EXHIBIT 3



Palm Beach Diversified Income, LLP  
by and through David Harrold, its officer  
963 Evergreen Drive  
Delray Beach, FL 33483

West Capital Management  
1818 Market St, #3323  
Philadelphia, PA 19103

Albert Liguori  
16590 Crownsbury Way, #201  
Ft. Myers, FL 33908

Amy Davenport  
PO Box 3511  
Midland, TX 79702

Robert Davenport  
3 Greenwich Dr  
Midland, TX 79705

Robert Davenport, Jr.  
104 S. Pecos Street  
Midland, TX 79701

ARIS Capital Management  
645 Fifth Avenue, Suite 903  
New York, NY 10022

ARIS Multi-Strategy Fund, LP  
Aris Capital Management  
645 Fifth Avenue, Suite 903  
New York, NY 10022

Armadillo Fund  
40 Random Farms Cir  
Chappaqua, NY 10514

BTA Oil Producers  
104 S Pecos St  
Midland, TX 79701

Lynda Beal  
104 S Pecos St  
Midland, TX 79701

Nancy Beal  
104 S Pecos St  
Midland, TX 79701

Spencer Beal  
104 S Pecos St  
Midland, TX 79701

Barry Beal  
104 S Pecos St  
Midland, TX 79701

Keleen Beal  
104 S Pecos St  
Midland, TX 79701

Kelly Beal  
104 S Pecos St  
Midland, TX 79701

BayRoc Associates  
c/o JamiScott  
15 W 53rd St. #24-B  
New York, NY 10019

JamiScott LLC  
15 W 53rd St #24-B  
New York, NY 10019

Leslie Schneider  
c/o JamiScott  
15 W 53rd St., #24-B  
New York, NY 10019

Scott Schneider  
c/o JamiScott  
15 W 53rd St, #24-B  
New York, NY 10019

Leonard & Lillian Schneider  
c/o JamiScott LLC  
15 West 53rd St #24-B  
New York NY 10019

Beacon Partners, Ltd  
3030 McKinney Ave, #305  
Dallas, TX 75204

Blackpool Partners, LP  
701 Harger Rd, #190  
Oak Brook, IL 60523

Blackpool Absolute Return Fund, LLC  
c/o John E. Page, Esquire  
Shraiberg Ferrara & Landau, PA  
2385 NW Executive Ctr Dr #300  
Boca Raton, FL 33431

Centermark Asset Management  
21320 Baltic Dr  
Cornelius, NC 28031

Claude Lestage  
4893 N Kay  
Palm Beach Gardens, FL 33418

Attn: Andrew N. Friedman, Esq.  
Cohen Milstein Sellers & Toll, PLLC  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

MIO Partners Inc  
c/o Robin E. Keller, Esq.  
Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

McKinsey Master Retirement Trust  
c/o Robin Keller, Esq.  
Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

Special Situations Investment Fund, L.P. c/o  
Robin Keller, Esq.  
Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

Deer Island, LP  
4 Nason Hill Lane  
Sherborn, MA 01770

Dennis Dobrinich  
3860 Dogwood Ave  
Palm Beach Gardens, FL 33410

Douglas A. Kelley, Chapter 11 Trustee  
Attn: James A. Rubenstein, Esq.  
4800 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

Douglas A. Kelley, Chapter 11 Trustee  
Attn: Terrence J. Fleming, Esq.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Father's Heart Family Foundation Inc.  
8292 Nashua Dr  
Palm Beach Garden, FL 33418

Frank Carruth  
5407 S Flagler Dr  
West Palm Beach, FL 33405

Freestone Entities  
c/o Mr. Justin Young  
1918 Eighth Avenue, Suite 3400  
Seattle, WA 98101

Fulbright & Jaworski  
2100 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2112

Geoffrey Varga and Neil Morris  
Joint Liquidators of Palm Beach Offshore/  
c/o Mark W. Eckard, Esq.  
1201 N. Market Street, Suite 1500  
Wilmington, DE 19801

Edward J. Estrada, Esquire  
Christopher A. Lynch, Esquire  
Reed Smith LLP  
599 Lexington Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022

George & Nancy Slain  
59-1089 Maluhi Pl  
Kamuela, HI 96743

Golden Gate VP Absolute Return Fund, LP  
c/o Michael J. Cordone, Esq.  
Stradley Ronon Stevens & Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103

Golden Sun Multi-Manager Fund, LP  
Golden Sun Capital Management  
Attn: Solomon Halpern  
885 Arapahoe Avenue  
Boulder, CO 80302

Guy M. Hohmann, Esq. and  
Messrs. Taube, Weiss and Taylor  
Hohmann, Taube & Summers, L.L.P.  
100 Congress Ave, 18th Floor  
Austin, TX 78701

Harvest Investments LP  
Red Bird Farm  
4 Nason Hill Rd  
Sherborn, MA 01770

Attn: Mitchell Herr  
Holland & Knight, LLP  
701 Brickell Ave, Suite 3000  
Miami, FL 33131

Integrity Partners Investment Company, LLC  
by and through Kevin Clark,  
its Registered Agent  
50 Oak Court, Suite 110  
Danville, CA 94526

James Corydon  
6650 N Tower Circle Dr  
Lincolnwood, IL 60712

Janette Bancroft  
9052 SW 103 Ave  
Ocala, FL 34481

Janet Bonebrake  
7169 150th Ct N  
Palm Beach Gardens, FL 33418

John Daniel  
225 Wellington Ln  
Cape Girardeau, MO 63701

Judith Goldsmith  
3 Water Ln  
Manhasset, NY 11030

K&K Capital Management, Inc.  
3545 Lake St, #201  
Wilmette, IL 60091

Kaufman Rossin & Co.  
2699 S Bayshore Dr  
Miami, FL 33133

Kenneth A. Ralston  
c/o John E. Page, Esquire  
Shraiberg Ferrara & Landau, PA  
2385 NW Executive Ctr Dr #300  
Boca Raton, FL 33431

LAB Investments Fund, LP  
1875 S Grant St, #600  
San Mateo, CA 94402

Laulima Partners, LP  
c/o Smithfield Trust Co.  
Attn: Robert Kopf Jr.  
20 Stanwix St, #650  
Pittsburgh, PA 15222

M. Lee Toothman  
216 Barbados Dr  
Jupiter, FL 33458

MB Investments, LLC  
180 N Wacker Drive, Lower 1  
Chicago, IL 60606

Marder Investment Advisors Corp.  
8033 Sunset Blvd, #830  
Los Angeles, CA 90046

Mark Prevost  
2372 Hidden Ridge Ln  
Jasper, AL 35504

Martin Casdagli  
554 E Coronado Rd  
Santa Fe, NM 87505

Maxine Adler  
c/o US Trust/Bank of America  
and Patricia  
150 E. Palmetto Park Road, Suite 200  
Boca Raton, FL 33432

Nancy Dobrinich  
3860 Dogwood Ave  
Palm Beach Gardens, FL 33410

Nancy Hollingsworth  
7107 Arrowood Rd  
Bethesda, MD 20187

NetWide Capital LLC  
P.O. Box 957  
Boulder, CO 80306

Palm Beach Finance Holdings, Inc.  
c/o Lindquist & Vennum, PLLP  
80 South Eighth Street, Ste 4200  
Minneapolis, MN 55402

Pemco Partners, LP  
8 Lyman St, #204  
Westborough, MA 01581

Petters Company, Inc.  
c/o Lindquist & Vennum, PLLP  
80 South Eighth Street, Ste 4200  
Minneapolis, MN 55402

Quantum Family Office Group, LLC  
1500 San Remo Avenue, Suite 210  
Coral Gables, FL 33146

Raymond Feldman  
4644 Balboa Ave  
Encino, CA 91316

Raymond G. Feldman Family Ventures, LP  
c/o John E. Page, Esquire  
Shraiberg Ferrara & Landau, PA  
2385 NW Executive Ctr Dr #300  
Boca Raton, FL 33431

Randall Linkous  
1174 SW 27 Ave  
Boynton Beach, FL 33426

Ron Priestley  
5565 N Espina Rd  
Tucson, AZ 85718

Ronald R. Peterson  
Jenner & Block LLP  
353 North Clark St.  
Chicago, IL 60654

Ronald R. Peterson  
c/o Lazar P. Raynal, Esquire  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606-5096

SALI Fund Services, LLC  
6836 Austin Center Street, Suite 320  
Austin, TX 78731

SSR Capital Partners, LP  
4514 Cole Ave, #1000  
Dallas, TX 75205

Sage Capital Resources  
3006 Julia St W, Unit A  
Tampa, FL 33629

Sandra Linkous  
1174 SW 27 Ave  
Boynton Beach, FL 33426

Second City Alternatives  
801 Park Ave  
Wilmette, IL 60091

Select Access Management  
15 Valley Dr  
Greenwich, CT 06831

Sims Moss Kline & Davis, LLP  
Three Ravinia Drive  
Suite 1700  
Atlanta, GA 30346

Spring Investor Services Inc.  
Red Bird Farm  
4 Nason Hill Lane  
Sherborn, MA 01770

Sterling Management Inc.  
160 White Oaks Ln  
Vadnais Heights, MN 55127

Steven Bakaysa  
2251 Wigwam Pkwy, Apt. 1026  
Henderson, NV 89074

Strategic Stable Return Fund (ID), LP  
4514 Cole Ave, #1000  
Dallas, TX 75205

Strategic Stable Return Fund II, LP  
4514 Cole Ave, #1000  
Dallas, TX 75205

Table Mountain Capital, LLC  
850 Quince Ave  
Boulder, CO 80304

Ted Goldsmith  
3 Water Ln  
Manhasset, NY 11030

Tradex Global Advisors  
35 Mason St, 4th Fl  
Greenwich, CT 06830

Tradex Global Master Fund  
c/o Andrew N. Friedman, Esquire  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005

Umbach Financial Group, LLC  
525 South Flagler Drive, #100  
West Palm Beach, FL 33401

VAS Partners, LLC  
Attn: Vincent P Allegra  
4401 W Roosevelt Rd  
Hillside, IL 60162

Vincent Allegra  
449 S Evergreen St  
Bensenville, IL 60106

Wilbur Hobgood  
2189 Radnor Ct  
North Palm Beach, FL 33408

Gonzalo R Dorta  
334 Minorca Ave  
Miami, FL 33134

Steven W Thomas  
14 27 Ave  
Venice, CA 90291

Joel Barnett  
Barnett Capital Ltd.  
450 Skokie Blvd., # 604  
Northbrook, IL 60062

Ocean Gate Capital Management, LP  
5 Sewall Street  
Marblehead, MA 01945

Santa Barbara Investment Capital  
2220 Santiago Rd  
Santa Barbara, CA 93103

Investment Law Group of Gillett,  
Mottorn & Walker, LLP  
1230 Peachtree Street, N.E., Suite 2445  
Atlanta, Georgia 30309  
Attn: Bob Mottorn / Sky Bell

Pete L DeMahy, Esquire  
DeMahy Labrador et al.  
150 Alhambra Circle  
Coral Gables, FL 33134

Debevoise & Plimpton LLP  
Attn: Edwin G. Schallert, Esquire  
919 Third Avenue  
New York, NY 10022

Bruce Prevost  
8292 Nashua Dr  
Palm Beach Gardens, FL 33418

David Harrold  
963 Evergreen Dr  
Delray Beach, FL 33483

Lewis B. Freeman & Partners, Inc.  
c/o Kenneth A. Welt, Receiver  
1776 North Pine Island Road, Suite 102  
Plantation, FL 33322

Lionheart Insurance Fund Series Interests of  
the SALI Multi-Fund Series Fund, LP  
6836 Austin Center Blvd. Ste 320  
Austin, TX 78731

U.S. Bank National Association  
c/o Richard G. Wilson, Esquire  
Maslon Edeman Borman & Brand, LLP  
90 S. 7<sup>th</sup> Street, Suite 3300  
Minneapolis, MN 55402-4140

Sarah Stroebel, Snr Corp Counsel  
U.S. Bank National Association  
800 Nicollet Mall  
Minneapolis, MN 55402-4140

Genesis Capital LLC  
Attention: Mike Dubinsky  
7191 Wagner Way NW, Suite 302  
Gig Harbor, WA 98335

Robin J. Rubens, Esquire  
Levine Kellogg Lehman, et al.,  
201 South Biscayne Blvd.  
22<sup>nd</sup> Floor, Miami Center  
Miami, FL 33131

Prateek Mehrotra, CFA, CAIA  
Sunnicht & Associates  
W6240 Communication Ct, #1  
Appleton, WI 54914-8549

Ron Robertson, President  
Strategic Capital Group  
7191 Wagner Way NW, Suite 302  
Gig Harbor, WA 98335

Globefin US Advisors, LLC  
Attn: Andrew Hoffman  
980 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor  
New York, NY 10018

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

John Docherty  
United States Attorney's Office  
316 North Robert Street, Suite 404  
Saint Paul, MN 55101

Andrew P. O'Brien, Esquire  
U.S. Securities and Exchange Commission  
Chicago Regional Office  
175 West Jackson Blvd., Suite 900  
Chicago, IL 60604

Sean O'D. Bosack  
780 N. Water Street  
Milwaukee, WI 53202

John L. Kirtley  
780 N Water Street  
Milwaukee, WI 53202

Matia L. Kreiter  
780 N Water Street  
Milwaukee, WI 53202

Daniel N. Rosen, Esquire  
Parker Rose, LLC  
300 First Avenue North, Suite 200  
Minneapolis, MN 55401

Kenneth A. Welt  
8255 West Sunrise Blvd., # 177  
Plantation, FL 33322

Palm Beach Offshore Ltd.  
Anchorage Centre, 2nd Floor  
PO Box 32021 SMB  
Grand Cayman, Cayman Islands

Palm Beach Offshore II, Ltd.  
Admiral Financial Center, 5th Floor  
90 Fort Street, PO Box 32021  
Grand Cayman KY-1208  
Cayman Islands

Scotia Capital  
The Bank of Nova Scotia  
Global Alternative Asset Group  
40 King Street W, 68<sup>th</sup> Fl  
Toronto Ontario M5W 2X6

Citico Global Securities Services  
2600 Airport Business Park  
Kinsale Road  
Co.Cork  
Ireland

Lane E. Roesch  
White & Case, LLP  
200 S. Biscayne Blvd., Suite 4900  
Miami, FL 33131

Monica Hanlet  
PO Box 321255  
Palm Coast, FL 32135-1255

Michael R. Band, Esquire  
Band Law Firm  
169 East Flagler Street, Suite 1200  
Miami, FL 33131

Andy Hall  
Soffer Charbonnet LLP  
7300 France Avenue South, Suite 210  
Minneapolis, MN 55435

Frank Vennes  
2440 N. Courtenay Pkwy.  
Merritt Island, FL 32953

Frank Vennes  
3152 S.W. Porpoise Circle  
Stuart, FL 34997

Deutsche Bank (Cayman) Ltd  
c/o Deutsche International Trust Corporation  
Mauritius Limited  
Level 5 Altima Building,  
56 Ebene Cybercity  
Mauritius

HSBC SECURITIES (USA) INC  
452 Fifth Avenue - T3  
New York, NY 10018

Carlton Beal Family Trust  
104 S Pecos Street  
Midland, TX 79701

Beal Family trust FBO Kelly Beal  
104 S Pecos Street  
Midland, TX 79701

The Beal Trust U/A  
104 S Pecos Street  
Midland, TX 79701

Beal GST Exemption Trust  
104 S Pecos Street  
Midland, TX 79701

Carlton Beal Family Trust  
104 S Pecos Street  
Midland, TX 79701

Thomas J. Ginley Life Ins. Trust  
Dated 1-22-97  
6650 N Tower Circle Drive  
Lincolnwood, IL 60712

Zcall, LLC  
c/o Edward Toptani, Esq.  
127 East 59<sup>th</sup> Street  
New York, NY 10022

Scall, LLC  
c/o Edward Toptani, Esq.  
127 East 59<sup>th</sup> Street  
New York, NY 10022

U.S. Trust and Patricia Scwab  
Successor Trustees, TUA Maxine B Adler  
POB 842056  
Dallas, TX 75284

James L. Volling, Esquire  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

Dana L. Choi, Esquire  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3000  
Miami, FL 33131

Palm Beach Links Capital, LP  
12200 N Stemmos Fwy, Suite 316  
Dallas, TX 75234

Scott M. Grossman  
Greenberg Traurig, P.A.  
401 East Las Olas Blvd., Suite 2000  
Fort Lauderdale, FL 33301

Hillcrest Properties  
c/o Stephen Willia  
59 Damonte Ranch Pkwy, #B-360  
Reno, NV 89521

David S. Foster, Esq.  
Latham & Watkins LLP  
233 South Wacker Drive  
Chicago, IL 60606

John Bergman,  
c/o Erika L. Morabito, Esq.  
FOLEY & LARDNER LLP  
3000 K Street, N.W., Suite 600  
Washington, D.C. 20007

Cathy Ta, Esq.  
Best Best & Krieger  
3750 University Avenue  
Riverside, CA 92502-10208

James F. Bendernagel, Jr., Esq.  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, DC 20005

Bradley M. Saxton, Esq.  
Ryan E. Davis, Esq.  
Winderweedle Haines et al.  
390 N. Orange Avenue, Ste. 1500  
Orlando, Florida 32802

Zimmer Lucas Capital LLC  
7 West 54<sup>th</sup> Street  
New York, NY 10019

James A. Lodoen, Esq.  
Lindquist & Vennum PLLP  
4200 IDS Center  
80 S. 8<sup>th</sup> Street  
Minneapolis, MN 55402

Agile Sky Alliance Fund, LP  
Paul J McMahon, Esq.  
Paul Joseph McMahon, P.A.  
The Wiseheart Building  
2840 SW 3 Ave  
Miami, FL 33129