

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.

**LIQUIDATING TRUSTEE'S AMENDED MOTION¹ FOR APPROVAL
OF SETTLEMENT WITH MICHELLE BACHMANN,
BACHMANN FOR CONGRESS AND BACHMANN MINNESOTA
VICTORY COMMITTEE AND 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 "*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 Michelle Bachmann, Bachmann for Congress and

¹ On May 18, 2012, the Liquidating Trustee filed with this Court his Motion For Approval of Settlement with Michelle Bachmann, Bachmann for Congress and Bachmann Minnesota Victory Committee and Payment of Contingency Fee [ECF No. 1242] (the "*Original 9019 Motion*"). Shortly after the Original 9019 Motion was filed, the PCI Trustee (as defined herein) asserted claims against the Bachmann Parties (as defined herein) for the return of the transfers covered by the settlement. The parties have since engaged in further discussions and negotiations which have resulted in a modification of the previously agreed to settlement to include a settlement with, and release by, the PCI Trustee, as set forth below.

Bachmann Minnesota Victory Committee (“*Bachmann Parties*”). 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. (“*MGI*”; 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 “*Petters Receivership Order*”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota 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 Petters’ 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. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Bachmann Parties, Adv. Case No. 11-03028 (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made to or for the benefit of the Bachmann Parties by the Vennes Parties and/or Kimberly Vennes during 2004 (the “*Transfers*”).

14. After the commencement of the Adversary Proceeding, the PCI Trustee notified the Bachmann Parties that he intends to pursue the Bachmann Parties for the recovery of the Transfers under 11 U.S.C. § 550 (the “*PCI Trustee’s Claims*”; and together with the Adversary Proceedings, 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 Bachmann Parties received in the aggregate, approximately \$18,400.00 in Transfers from the Vennes Parties and/or Kimberly Vennes that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

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

17. The Trustees have entered into an agreement whereby they have agreed to mediate jointly with the Transferee and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to

the transfers (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.]

II. Settlement Terms

18. The key aspects of the stipulation of settlement between the parties (“*Amended Stipulation*”) are the following:²

- a) The Bachmann Parties will pay (or cause to be paid) \$14,000.00 (the “*Settlement Payment*”) within 20 days from the date the Amended Stipulation is approved by this Court and the Minnesota Bankruptcy Court. Of the total Settlement Payment, \$5,400.00 will be paid to the Liquidating Trustee and \$8,600.00 will be paid to the PCI Trustee. Any portion of the Settlement Payment made prior to the approval of the Amended Stipulation by this Court and the Minnesota Bankruptcy Court will be held by counsel for the Liquidating Trustee or the PCI Trustee, as appropriate. The Settlement Payment represents roughly 76% of the Transfers;
- b) The parties shall exchange mutual, general releases;
- c) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- d) The Bachmann Parties shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

19. 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

² A copy of the Amended Stipulation is attached as Exhibit 1. To the extent the terms of the Amended Stipulation differ with the terms set forth in this Motion, the Amended Stipulation shall control.

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*”).

III. Relief Requested

20. The Liquidating Trustee seeks an Order from this Court (a) approving the Amended Stipulation and (b) approving the Contingency Fee (as defined below).

21. 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.”

22. 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).

23. 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 Amended Stipulation Ought to be Approved*

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

Probability of success in litigation

25. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the Transfers to the Bachmann Parties were fraudulent transfers under federal or state law, or alternatively, that the Bachmann Parties were unjustly enriched by the Transfers.

26. The Liquidating Trustee believes that he will likely succeed in prosecuting one or more of these causes of action.

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

Collectability

28. Collectability is not an issue in dispute between the parties.

Complexity of litigation and attendant expense, inconvenience and delay

29. This is a meaningful consideration that militates in favor of approval of the Amended Stipulation.

30. 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. Considering the amount at stake here, the incurrence of substantial professional fees makes little sense.

31. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against the Bachmann Parties, he would then have to engage in collection efforts. Again, this would result in the estate incurring additional fees and delay.

32. The Amended 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 Settlement Payment represents a roughly 76% recovery of the Transfers and a waiver of any potential or corresponding claim. This result gives certainty to the estates and avoids the risk, expense and delay attendant with litigation. As such, the Amended Stipulation is in the paramount interest of the Debtors' creditors and should be approved.

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 contingency fee of 10% for any affirmative recovery it obtains on behalf of the Liquidating Trust without further order of the Court ("**Contingency Fee**").

35. As such, the Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$540.00 – 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 requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Amended Stipulation; (2) approving payment of the Contingency Fee and (3) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 20, 2013, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3; and via U.S. Mail to the parties listed on the matrix attached as Exhibit 4, and Michelle Bachmann, 103 Cannon HOB, Washington, DC 20515, Bachmann for Congress, Cannon HOB, Washington, DC 20515, and Bachmann Minnesota Victory Committee, 228 S. Washington St, Ste 115, Alexandria, VA 22314.

s/ Jonathan S. Feldman
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“*Stipulation*”) is entered into on May __, 2013 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “*Liquidating Trusts*”), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* (the “*PCI Trustee*”), and (c) Michelle Bachmann, Bachmann for Congress and Bachmann Minnesota Victory Committee (collectively, the “*Bachmann Parties*”) (the Liquidating Trustee, PCI Trustee, and the Bachmann Parties 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 (“*Florida Bankruptcy Court*”);

B. On October 21, 2010, the Florida 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;

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 November 29, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, also commenced an Adversary Proceeding against the Bachmann Parties for the recovery of fraudulent transfers and unjust enrichment [ECF No. 1, Adv. Case No. 11-3029-PGH] (the “*Adversary*”) relating to funds received by the Bachmann Parties from Frank Vennes, his wife Kimberly Vennes or one of their related entities (the “*Transfers*”);

H. Following commencement of the Adversary, the PCI Trustee notified the Bachmann Parties that he intends to pursue the Bachmann Parties 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 Bachmann Parties expressly deny the claims that the Trustees assert in the Trustees’ Claims;

J. Prior to and following commencement of the Adversary and the communication of the PCI Trustee’s Claims, the Parties have engaged in discussions in an attempt to 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, WHEREFORE, 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 Adversary, the Bachmann Parties shall pay (or cause to be paid) \$14,000.00 (the “**Settlement Payment**”) within 20 days from the date this Stipulation is approved by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court. Of the total Settlement Payment, \$5,600.00 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, \$8,400.00 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. The Liquidating Trustee and the PCI Trustee will hold their respective portions of the Settlement Payment pending approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court.

4. **No entitlement to distribution.** The Bachmann Parties agree that that they 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 Bachmann Parties were 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 Bachmann Parties agree 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*” shall mean any obligations, claims, causes of action, 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, those claims that the Liquidating Trustee asserts in the Adversary.

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 Transferee from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may have against the Transferee; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

C. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the

Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Dismissal of 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, agrees to 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. Such individuals further represent and warrant on behalf of the Transferee that the Transferee received \$18,400.00 from Vennes, Kimberly Vennes or one of their related entities, including Metro Gem.

8. **Representations of the Liquidating Trustee and the PCI Trustee.** The Liquidating Trustee and the PCI Trustee signing below each represents and warrants that (i) 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, and (ii) such Trustees are the sole owners of the Trustees' Claims being settled herein and are not aware of any other or further claims to the monies which are the subject of the Trustees' Claims.

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.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

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 each Party shall bear any mediation fees incurred in accordance with the Mediation Procedures Order entered in the Adversary; provided that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

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 the Settlement Payment shall be returned to the 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:

_____ Date: _____
Barry E. Mukamal, Liquidating Trustee

_____ Date: _____
Douglas A. Kelley, PCI/PGW Trustee

_____ Date: _____
Michelle Bachmann

_____ Date: _____
Bachmann for Congress

_____ Date: _____
Bachmann Minnesota Victory Committee

UNITED STATES BANKRUPTCY COURT
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In re:

CHAPTER 11

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

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

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S AMENDED MOTION
FOR APPROVAL OF SETTLEMENT WITH MICHELLE BACHMANN,
BACHMANN FOR CONGRESS AND BACHMANN MINNESOTA
VICTORY COMMITTEE AND PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Amended Motion for Approval of Settlement with Michelle Bachmann, Bachmann For Congress and Bachmann Minnesota Victory Committee ("*Bachmann Parties*") and Payment of Contingency Fee [ECF No. ____] (the "*Motion*").¹ The Court, having reviewed the Motion and noting that a Certificate

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

of No Response and 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 Bachmann Parties shall pay (or cause to be paid)) \$14,000.00 (the “*Settlement Payment*”) within 20 days from the date of the entry of an Order by the Minnesota Bankruptcy Court approving the Stipulation. Of the total Settlement Payment, \$5,400.00 will be paid to the Liquidating Trustee and \$8,600.00 will be paid to the PCI Trustee. The Liquidating Trustee’s portion of the Settlement Payment (\$5,400.00) 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 Jonathan S. Feldman, 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 (\$5,400.00) 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. The Liquidating Trustee's portion of the Settlement Payment (\$5,400.00) will be held in the trust account of counsel for the Liquidating Trustee pending approval of the Stipulation by the Minnesota Bankruptcy Court.

6. MRB's Contingency Fee in the amount of \$540.00 is approved. The Liquidating Trustee is authorized and directed 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.

7. To the extent that the Bachmann Parties have any scheduled claim or proof of interest or have filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claims or interests are deemed disallowed in their entirety.

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

###

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Jonathan S. Feldman, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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