

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 MOTION FOR APPROVAL OF SETTLEMENT
WITH THE WALCHEK PARTIES 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 ("*PBF Liquidating Trust*") and Palm Beach Finance II Liquidating Trust ("*PBF II Liquidating Trust*"; and together with the PBF Liquidating Trust, 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 the W Charitable Foundation, Walchek Family Revocable Trust dated November 19, 1998 ("*Trust*"), Walchek Integrity L.P., Integrity Partners Investment Company, LLC and Scott and Kelli Walchek, both in their individual capacities and as trustees for the Trust (the foregoing parties are collectively referred to as the "*Walchek Parties*") as well as the allocation of the settlement proceeds as between the Liquidating Trusts. In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of the Palm Beach funds*

1. The Liquidating Trusts are the successors in interest to Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance II, L.P. (“*PBF II*”).

2. The Palm Beach funds 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 funds 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 Palm Beach Funds’ 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 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 (“*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 Made to the Walchek Parties

7. W Charitable Foundation and Walchek Integrity L.P. were limited partners in PBF II.

8. W Charitable Foundation received cash transfers in the amount of \$2,246,914 with respect to its limited partner investment in PBF II.

9. Walchek Integrity L.P., or other members of the Walchek Parties, received cash transfers in the amount of \$18,718,672 with respect to its limited partner investment in PBF II.

10. Mr. Walchek held an equity interest in the Palm Beach funds' management entities, Palm Beach Capital Management, LLC and Palm Beach Capital Management, LP (collectively, the "*Management Entities*").

11. With respect to such equity interest, Mr. Walchek, or other members of the Walchek Parties, received \$6,810,588 from the Management Entities four years prior to the Petition date. The monies used to fund such payments were sourced from both of the Palm Beach funds.

12. The Liquidating Trustee commenced litigation to recover all of the above transfers from the Walchek Parties ("*Litigation*"). The Liquidating Trustee brought suit to avoid and recover \$20,965,586 in transfers made on account of limited partnership interests in PBF II ("*LP Claims*") and \$6,810,588 in transfers from the Management Entities ("*Management Claims*").

II. Settlement Terms

13. Because of the significant amount of transfers made to the Walchek Parties and large multi-million unpaid tax liabilities owed by them to federal and state taxing authorities, collectability has been a significant concern for the Liquidating Trustee.

14. After filing the Litigation, the parties mediated with the end result being that the Walchek Parties provided significant financial data for a multi-year period regarding their historical transfers, assets and liabilities.

15. Based on this data, the Liquidating Trustee confirmed that collectability against the Walchek Parties was a significant issue that militated in favor of settlement.

16. After several months of negotiation, the parties have settled the Litigation. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:¹

- a) Upon approval of the Stipulation, Mr. and Mrs. Walchek will pay (or cause to be paid) \$390,000 within three years, or if such payment is not made by then, \$415,000 within four years (“*Settlement Payment*”).
- b) In the event the Walchek Parties fail to pay the settlement amount outlined above, the Liquidating Trustee will be entitled to a judgment against Mr. and Mrs. Walchek in the amount of \$2,000,000 (“*Judgment*”). Initially, the Judgment will be subject to forbearance conditions, however, after December 31, 2017, the Liquidating Trustee may engage in all efforts to collect upon the Judgment.
- c) The parties shall exchange mutual, general releases with specific carveouts; and
- d) The Walchek Parties shall not be entitled to any distribution from the Palm Beach bankruptcy estates.

17. Pursuant to the Second Amended Joint Plan of Liquidation, approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Liquidating Trusts in conjunction with the Stipulation will be allocated as follows: 18% to the PBF Liquidating Trust and 82% to the PBF II Liquidating Trust (“*Pro Rata Allocation Formula*”).

18. Here, the Liquidating Trustee proposes to deviate from the Pro Rata Allocation Formula to take into account that any recovery related to the LP Claims would flow solely to PBF II Liquidating Trust while any recovery related to the Management Claims would be apportioned between the Liquidating Trusts pursuant to the Pro Rata Allocation Formula.

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

19. The Liquidating Trustee proposes that the amount of any recovery to be paid to the Liquidating Trusts be determined by modifying the Pro Allocation Formula as follows (“**Modified Pro Allocation Formula**”):

$$\frac{\text{(Management Claims)}}{\text{(Management Claims + LP Claims)}} \times (\text{Recovery}) \times 18\% = \text{Amount of Recovery to PBF Liquidating Trust}$$

20. By way of example, if the recovery from the Walchek Parties is \$390,000, then the amount of consideration flowing to the PBF Liquidating Trust is \$17,212, with the balance flowing to the PBF II Liquidating Trust.

III. Relief Requested

21. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) approving 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. *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 Trust, asserts in the Litigation that the transfers made to the Walchek Parties were fraudulent transfers under federal and state law.

27. The Liquidating Trustee believes that he will likely succeed in prosecuting the Litigation.

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

Collectability

29. Collectability is a substantial consideration.

30. The financial data provided by the Walchek Parties establishes that the primary assets held by them are limited relative to the amount of the Liquidating Trustee's claims in the Litigation and that such assets are difficult to value and illiquid in nature and potentially subject to multi-million taxing authority liens at the federal and state level that may be senior in priority to any judgment obtained by the Liquidating Trustee.

31. As such, assuming the Liquidating Trustee was successful in obtaining a judgment against any of the Walchek Parties, collection efforts would be hampered and ultimately could yield a *de minimis* recovery.

Complexity of litigation and attendant expense, inconvenience and delay

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

33. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still potentially require retention of experts and 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 these bankruptcy cases.

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

Paramount interest of creditors

35. The Settlement Payment represents a reduced yet meaningful recovery of the transfers made to the Walchek Parties. Although this recovery deviates from the proportion of recovery that the Liquidating Trustee has achieved in other similarly situated litigations, this deviation is appropriate in light of the Walchek Parties' significant collectability issues. Moreover, the Stipulation gives certainty to the estate and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of creditors and should be approved.

B. The Contingency Fee Ought to be Approved

36. 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 Trusts without further order of the Court ("**Contingency Fee**").

37. As such, MRB requests that the Contingency Fee be paid from the Settlement Payment when paid, without further Order from this Court, or in the event that the Settlement Payment is not made, from any recoveries achieved by MRB in collecting upon the Judgment.

WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Stipulation; (2) approving the modification allocation of any recovery from the Walchek Parties between the Liquidating Trusts; (3) approving payment of the Contingency Fee and (4) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 3, 2014, 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 Carl D. Ciochon, Esq., Wendel, Rosen, Black & Dean LLP, 1111 Broadway, 24th Floor, Oakland, CA 94607.

s/ Jonathan S. Feldman
Jonathan S. Feldman, Esquire
Florida Bar No. 12682
jfeldman@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 as of December 17, 2013 by and among (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*"); and (b) W Charitable Foundation, Walcheck Family Revocable Trust dated November 19, 1998 ("*Trust*"), Walcheck Integrity L.P., Integrity Partners Investment Company, LLC and Scott and Kelli Walcheck, both in their individual capacities and as trustees for the Trust (the foregoing parties are collectively referred to as the "*Walcheck Parties*"; and the Liquidating Trustee and the Walcheck Parties are at times individually referred to 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. (collectively, 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 ("*Bankruptcy Court*");
- B. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation, creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;
- C. The Liquidating Trustee, on behalf of the Liquidating Trust, filed lawsuits against the Walcheck Parties in the Bankruptcy Court seeking to avoid and recover transfers allegedly made to or for their benefit by the Palm Beach Funds or affiliated entities: 11-2862-BKC-PGH; 11-2880-BKC-PGH; 11-2864-BKC-PGH and 11-3038-BKC-PGH (collectively, the "*Litigation*");

D. The Walchek Parties, and each of them, expressly deny the claims that are asserted against them in the Litigation;

E. The Parties have engaged in discussions in an attempt to resolve any and all issues, including the claims asserted in the Litigation;

F. To avoid the continued expense and risk of adverse outcome arising from the Litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Litigation 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, and nothing in this Stipulation shall constitute an admission of any facts supporting such liability.

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. **Effective Date.** For purposes of this Stipulation, the term "*Effective Date*" shall mean December 31, 2013.

4. **Financial Statements.** Prior to the Effective Date, the Walchek Parties shall provide to the Liquidating Trustee under penalty of perjury an updated balance sheet as of December 1, 2013.

5. **Consideration.**

A. **Stipulation to Entry of Judgment.** Scott and Kelli Walchek shall, contemporaneously with the execution of this Agreement, execute a Stipulation for Entry of Judgment in the form attached hereto as Exhibit 1 ("**Judgment**"). As set forth below, the Liquidating Trustee shall only be permitted to enter or enforce the Judgment upon the occurrence of one or more of the conditions specified below, and then only on the terms and conditions set forth herein.

B. **Tiered Settlement.** The Walchek Parties may satisfy their obligations under this Agreement, including full satisfaction of the Judgment, by paying Liquidating Trustee the sum of \$390,000 on or before December 31, 2016 (the "**Three Year Payment**"). In the event the Walcheks do not timely make the Three Year Payment, the Walcheks may satisfy their obligations under this Agreement, including full satisfaction of the Judgment, by paying Liquidating Trustee the sum of \$415,000 on or before December 31, 2017 (the "**Four Year Payment**"). In the event the Walchek Parties do not timely make either the Three Year Payment or the Four Year Payment, the Walchek Parties shall be liable for the full face amount of the Judgment. Payments shall 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.

C. **Entry of Judgment.** The Liquidating Trustee may file a motion with the Bankruptcy Court on an *ex parte* basis for entry of the Judgment, and the Walchek Parties consent to the jurisdiction of the Bankruptcy Court to enter the Judgment against them, upon the occurrence of either of the following two conditions:

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- (a) If the Walchek Parties fail to timely make the Three Year Payment; or
- (b) If, prior to December 31, 2016, the Liquidating Trustee determines in good faith that any Material Claim asserted against the Walchek Parties, or any one of them, may have a materially negative impact on the priority or collectability of the Judgment.

The motion shall be supported by the Liquidating Trustee's sworn affidavit attesting based on the Liquidating Trustee's personal knowledge that one or both of the foregoing conditions has occurred, and that the Liquidating Trustee is therefore entitled to entry of the Judgment. The Liquidating Trustee shall provide the Walchek Parties no less than ten days written notice of the motion. The Walchek Parties acknowledge and agree that the sole basis for contesting or opposing any such motion brought by the Liquidating Trustee pursuant to subparagraph (a), above, shall be production of a wire transfer confirmation or cancelled check showing that full payment was timely made.

D. **Notice of Claims.** The Walchek Parties shall notify the Liquidating Trustee in writing of any Material Claim asserted against them (or any one of them) within 14 calendar days of becoming aware of such claim so that the Liquidating Trustee may determine whether to exercise his rights under this Stipulation. For purposes of this Stipulation, "**Material Claim**" shall mean any claim against, or obligation owing by, the Walchek Parties (or any one of them) that (i) exceeds \$100,000, and (ii) either was not disclosed to the Liquidating Trustee by the Walchek Parties prior to the Effective Date or of which the Walchek Parties were not aware prior to the Effective Date. In no event shall the term "Material Claim" include any current mortgage obligation owed by any of the Walchek Parties or any current tax obligation owed by any of the Walchek Parties to federal or state taxing authorities. Subject to the liabilities set forth on their balance sheet

provided in accordance with Paragraph 4 of this Stipulation, the Walchek Parties represent and warrant that as of the date of execution of this Stipulation, they are aware of no actual or potential Material Claim against them that has not been disclosed by them to the Liquidating Trustee in writing.

E. **Interest and Costs.** The Judgment shall not accrue interest prior to December 31, 2017, nor shall the Liquidating Trustee be authorized or permitted to recover any costs of enforcing or collecting the Judgment that were incurred prior to December 31, 2017. After December 1, 2017, the Judgment shall accrue interest at the federal rate for judgments then in effect. Pursuant to Section 57.115 of the Florida Statutes, the Liquidating Trustee may seek an award of costs and attorneys fees incurred in connection with execution on the Judgment after December 31, 2017.

6. **Limited Forbearance.** The Parties agree that in the event the Judgment is entered by the Bankruptcy Court prior to December 31, 2017, the Liquidating Trustee shall forbear from all efforts to enforce or collect the Judgment until December 31, 2017, except that the Liquidating Trustee may take actions reasonably necessary to preserve the priority of the Judgment (e.g., recordation of the Judgment) as to any personal or real property held directly or indirectly by the Walchek Parties. Under no circumstances may the Liquidating Trustee take any action to execute upon any personal or real property belonging to the Walchek Parties prior to December 31, 2017. The Parties agree that, if the Walchek Parties have not satisfied the Judgment in accordance with the terms of this Stipulation by December 31, 2017, the Liquidating Trustee may take any and all actions, at law or in equity, to execute upon and collect the Judgment.

7. **No entitlement to distribution.** The Walchek Parties agree they shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts or the Palm Beach

Funds. To the extent the Walchek Parties have scheduled or filed any proof of claim or proof of interest in the Palm Beach Funds' bankruptcy cases, each such claim or interest shall be deemed disallowed in its entirety and be stricken. Nothing in this Paragraph 7 shall effect the Walchek Parties right to receive distributions in other bankruptcy cases.

8. 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.

B. Upon approval of this Stipulation by final order of the Bankruptcy Court, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives and releases, now and forever, the Walchek Parties, their officers, directors, partners, managers, members, agents, attorneys, employees, children, beneficiaries, and heirs (collectively, the "*Walchek Released Parties*"), from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against them; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising in this Stipulation, including the Judgment or any rights the Liquidating Trustee may have in connection with his executing upon the Judgment; and provided further that the scope of the release in this paragraph shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any other parties, including, but not limited to, Claims against any alleged concurrent or

consecutive tortfeasors, if any; and provided further that this release shall not extend to any Claims arising from or relating to any act, conduct, or transaction occurring after the Effective Date, including any transfers to or from any of the Walchek Released Parties that occurred after the Effective Date which may be avoided or recovered pursuant to applicable state or federal law.

C. Upon approval of this Stipulation by final order of the Bankruptcy Court and satisfaction of the Judgment, the Walchek Parties waive and release, now and forever, the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds from any and all Claims that the Walchek Parties may have against the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

9. **Authorization to bind.** The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

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

11. **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 Bankruptcy Court; *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 reasonable attorneys' fees and costs, including, but not limited to, those incurred at all trial and appellate levels.

12. **No waiver of modification.** This Stipulation 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.

13. **Binding.** This Stipulation shall be binding upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the Bankruptcy Court. Upon entry of a final non-appealable Order approving this Stipulation, this Stipulation shall be binding on all of the Parties' successors or assigns.

14. **No effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their reasonable efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

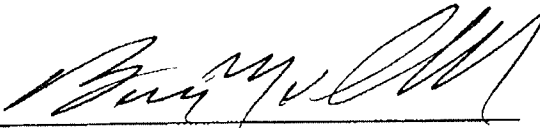
15. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law, including bankruptcy law, to the extent the same has preempted the laws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

16. **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.

17. **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.

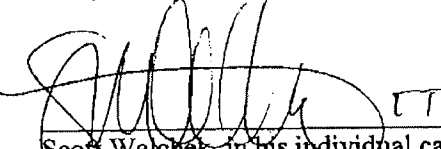
18. **Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation.

STIPULATED AND AGREED TO BY:



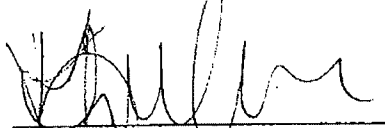
Barry E. Mukamal, Liquidating Trustee

Date: 12/30/13



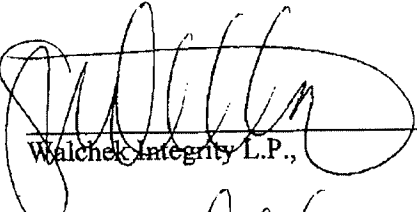
Scott Walchek, in his individual capacity
and as trustee for the Walcheck Family
Revocable Trust dated November 19, 1998

Date: 12/17/13



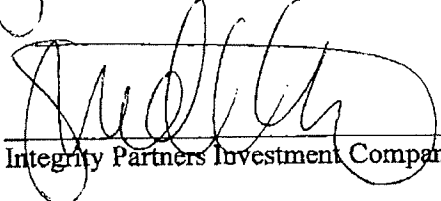
Kelli Walchek, in her individual capacity
and as trustee for the Walcheck Family
Revocable Trust dated November 19, 1998

Date: 12/17/13



Walchek Integrity L.P.,

Date: 12/17/13



Integrity Partners Investment Company, LLC

Date: 12/17/13

Exhibit 1

STIPULATION FOR ENTRY OF JUDGMENT

IT IS HEREBY STIPULATED by and between Barry E. Mukamal, in his capacity as Liquidating Trustee ("*Liquidating Trustee*"), on the one hand, and Scott and Kelli Walchek ("*Walcheks*"), on the other, as follows:

1. On or about December ~~30~~ 2013, the Liquidating Trustee and the Walcheks entered into a Stipulation of Settlement ("*Stipulation of Settlement*") pursuant to which the Walcheks execute this Stipulation for Entry of Judgment and the form of Judgment attached hereto as Exhibit A (the "*Judgment*").¹

2. Pursuant to the Stipulation of Settlement, the Liquidating Trustee may apply to the Bankruptcy Court for entry of the Judgment upon the occurrence of specified conditions.

3. Pursuant to the Stipulation of Settlement, the Liquidating Trustee shall be entitled to entry of the Judgment upon the submission of the Liquidating Trustee's sworn affidavit, attesting based on the Liquidating Trustee's personal knowledge, that one or more of the foregoing conditions has occurred and that the Liquidating Trustee is therefore entitled to entry of the Judgment:

a. That the Walchek Parties did not make the Three Year Payment on or before December 31, 2016; or

b. That the Liquidating Trustee has determined in good faith in accordance with Paragraph 5 of the Stipulation of Settlement that a Material Claim has been asserted against the Walchek Parties (or any one of them) which may have a materially negative impact on the priority or collectability of the Judgment.

4. The Liquidating Trustee shall give the Walcheks no less than ten calendar days written notice of any motion or application seeking entry of the Judgment. The sole grounds for

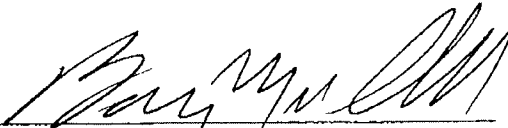
¹ Capitalized terms not defined in this Stipulation of Judgment shall have the meaning ascribed to such term as set forth in the Stipulation of Settlement.

contesting or opposing any motion brought under Paragraph 3(a), above, shall be production of a wire transfer confirmation or cancelled check showing that full payment was timely made.

5. The Walcheks hereby consent to entry of the Judgment upon the Liquidating Trustee's full compliance with the terms of this Stipulation.

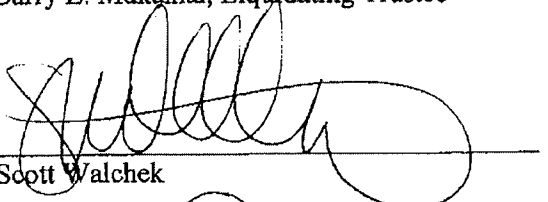
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STIPULATED AND AGREED TO BY:



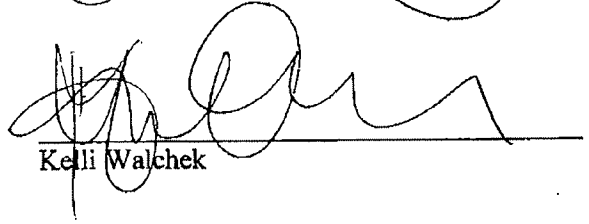
Barry E. Mukamal, Liquidating Trustee

Date: 12/30/13



Scott Walchek

Date: 12/17/13



Kelli Walchek

Date: 12/17/13

Exhibit A

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

In re:

Palm Beach Finance Partners, L.P. and
Palm Beach Finance II, L.P.,
Debtors.

Case No. 09-36379-BKC-PGH

FINAL JUDGMENT AGAINST SCOTT AND KELLI WALCHEK

THIS CAUSE having come before the Court on an *ex parte* basis upon Plaintiff's *Ex Parte Motion for Final Judgment Against Scott and Kelli Walchek* [ECF No. ___] ("**Motion**"), filed by Barry E. Mukamal, in his capacity as Liquidating Trustee. For the reasons set forth in the Motion, which are incorporated here by reference, it is--

ORDERED as follows:

1. Final Judgment is entered in favor of the Liquidating Trustee and against Scott and Kelli Walchek, jointly and severally, for the total sum of \$2,000,000, for which let execution issue forthwith.
2. Regardless of the date of entry of this Judgment, post-judgment interest shall accrue at the lawful rate after December 31, 2017, only.
3. Regardless of the date of entry of this Judgment, the Liquidating Trustee shall not be entitled to recover any costs or attorney's fees incurred prior to January 1, 2018 in connection with the enforcement or collection of this Judgment.
4. Subject to the terms of the Stipulation of Settlement approved by the Court, the Court reserves jurisdiction to enter any further orders or take any other actions that may be

necessary in connection with this matter, including but not limited to, the issuance of writs of execution.

5. The last known addresses of Scott and Kelli Walchek is as follows: 605 Birchwood Ct., Danville, California 94506.

6. The Plaintiff's address is: Barry E. Mukamal c/o Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

###

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.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
FOR APPROVAL OF SETTLEMENT WITH THE WALCHEK PARTIES
AND PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with the Walchek Parties and Payment of Contingency Fee [ECF No. ____] (the "**Motion**").¹ The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and

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

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. Scott and Kelli Walchek shall pay, or cause to be paid, the Settlement Payment in accordance with the terms and deadlines set forth in the Stipulation.
4. The Settlement Payment or any recoveries from collecting upon the Judgment will be allocated and apportioned between the Liquidating Trusts pursuant to the Modified Pro Allocation Formula.
5. MRB's Contingency Fee 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 Modified Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment or from any recoveries obtained in collecting upon the Judgment.
6. The Court retains jurisdiction to enforce the terms of the Settlement.

###

Submitted By:

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Attorneys for the Liquidating Trustee

Copies Furnished To:

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

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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