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., a Delaware limited partnership, *et al.*,[1]	Case No. 09-36379-BKC-PGH
	Joint Administration Pending
Debtors. _____/	

DECLARATION OF KENNETH A. WELT IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND REQUEST FOR FIRST DAY RELIEF

I, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. My name is Kenneth A. Welt. I am over the age of 18 and am competent to testify. I am the Chief Restructuring Officer ("CRO") of Palm Beach Finance Partners, L.P. ("Fund I") and Palm Beach Finance II, L.P. ("Fund II," with Fund I, the "Funds" or the "Debtors"), which were investments funds managed by Bruce F. Prevost, David W. Harrold, Palm Beach Capital Management, L.P. and Palm Beach Capital Management L.L.C., including their investors, employees, officers or affiliates (collectively, the "General Partners").

2. Individually and/or through my firm, Trustee Services, Inc. ("TSI"), I have been involved in various capacities, including as Chief Restructuring Officer, Receiver or Trustee in several bankruptcy-related matters throughout Florida, including in several chapter 11 bankruptcy cases in this district. For example, I served as the sole officer and director of

[1] The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd, Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

All American Semiconductor, Inc., a public company, for which bankruptcy protection was sought (Case No. 07-12963-BKC-LMI) to, among other actions, facilitate the prosecution of certain claims against third parties. This is similar to the thrust of the Debtors' Chapter 11 cases (the "Chapter 11 Cases") which are being filed in an effort to maximize value for the Debtors' creditors, and to recoup losses suffered by the limited partners, through claims to be brought against third parties.

3. I also served as the Chapter 7 trustee in the bankruptcy case of Hurst Capital Corp. (Case No. 98-25510-BKC-RBR), which position was preceded by my service as Receiver in connection with a prior receivership action filed in the United States District Court for the Southern District of Florida (Case No. 98-8090-CIV-HURLEY/LYNCH). This was a Ponzi Scheme case through which the debtor raised approximately $41 million through a fraudulent securities offering. The focus of my efforts, in both the District Court and Bankruptcy Court, was recovering losses sustained by investors like that suffered here by the limited partners of each of the Debtors. Through my efforts and those of the professionals retained by me approximately $29 million was recovered resulting, ultimately, in an approximate 72 percent distribution to defrauded investors. massive fraud perpetrated by the debtors' principals, and others assisting them.

4. These Chapter 11 Cases have been commenced principally but not exclusively to prosecute litigation and other claims against third parties and to do so in a manner that facilitates the greatest recovery for creditors of these Debtors in the most efficient manner. As a result, the Debtors have filed a limited number of "first day" applications and motions (collectively, the "First Day Motions"). The First Day Motions seek relief, among other things, to: (a) retain general bankruptcy and special litigation counsel to prosecute these

Chapter 11 Cases and investigate and pursue, if appropriate, causes of action against certain third parties for the benefit of the Debtors' creditors, respectively; and (b) establish procedures for the smooth and efficient administration of these cases. The relief requested in these First Day Motions will be critical to the success of the Debtors' efforts to maximize value for the benefit of their creditors.

5. I submit this declaration (the "Declaration") in support of the Debtors' petitions and First Day Motions. In addition to the personal knowledge that I have acquired while working with the Debtors, I am generally familiar with the Debtors' financial and operational affairs. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtors' books and records, relevant documents and other information prepared or collected by the Debtors' employees or advisors, or my opinion based upon my experience with the Debtors' operations and financial condition. In making the statements herein based upon my review of relevant documents and other information prepared or collected by the Debtors' employees or advisors, I have relied upon these employees or advisors to accurately record, prepare and collect any such documentation and other information.

6. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, review of documents, or my personal opinion.

7. I am authorized to submit this Declaration on behalf of the Debtors.

8. Part I of this Declaration describes the business of the Debtors and the developments which led to the Debtors' filing of the voluntary Chapter 11 petitions. Part II

sets forth the relevant facts in support of the First Day Motions filed by the Debtors concurrently herewith. Part III summarizes the Debtors' objectives in these Chapter 11 Cases.

I. BACKGROUND

The Chapter 11 Filings

9. On November 30, 2009 (the "Petition Date"), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors commenced these Chapter 11 Cases to enable them to investigate and pursue, in an orderly fashion, litigation claims against third parties for the benefit of their creditors. The Debtors will pursue their investigations and, if appropriate, pursue litigation claims in an efficient manner in order to maximize the value of the Debtors' assets and recovery available for their stakeholders.

A. Overview of the Debtors and Events Leading Up to Chapter 11 Filings

10. Fund I and Fund II were formed in the State of Delaware on October 25, 2002 and June 22, 2004, respectively, for the purpose of soliciting funds from third parties to then loan monies and/or make investments. Substantial amounts of monies were invested by the Funds, through their General Partners, with Petters Company, Inc. (the "Petters Company"), which is owned and controlled by Thomas Joseph Petters ("Mr. Petters"), a resident of the State of Minnesota.

11. Unfortunately, as evidenced by a pending (i) Chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Minnesota filed on October 11, 2008 by the receiver for the Petters Company (Bankruptcy Court Case No. 08-45257), hereinafter referred to as the "Bankruptcy Case,"[2] (ii) civil proceeding filed by the United States of America

[2] Upon information and belief, as part of the Bankruptcy Case or the Civil Case (as defined in ¶11), bank accounts in the names of each of the Debtors at U.S. Bank, N.A. were frozen. The specific bank accounts,

in the United States District Court for the District of Minnesota (District Court Case No. 08-SC-5348 (ADM/JSM)), hereinafter referred to the "Civil Case," and (iii) criminal prosecution filed by the United States of America against Petters Company, Mr. Petters, individually, and several other Defendants (District Court Case No. CR-08-364 (RHK/AJB)), hereinafter referred to as the "Criminal Case," with the Bankruptcy Case and the Civil Case, the "Petters Cases." The context in which the Petters Cases were filed, and are being prosecuted, is that monies solicited and obtained by, among others, the Funds from third parties were invested in (and lost through) what appears to be a massive Ponzi scheme undertaken by Mr. Petters and others working with him (the "Petters Fraud"). The facts set forth below are taken from pleadings in one or more of the Petters Cases, including primarily an Indictment filed by the United States of America in the Criminal Case, and related lawsuits.

(i) The Petters Fraud

12. From at least 1995 and continuing through 2008, in the State and District of Minnesota, and elsewhere, the Petters Company, a Minnesota corporation of which Mr. Petters served as the President and is the sole owner, and Petters Group Worldwide, LLC (the "Petters Group," with the Petters Company, the "Petters Entities")), a Delaware limited liability company of which Mr. Petters is the sole owner, Chairman and CEO, and affiliates and subsidiaries, were used by Mr. Petters to execute an extensive fraud (Ponzi) scheme.[3] Numerous false statements,

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and the approximate amounts in each account as of October 31, 2009, are as follows: (A) Fund I-Account No. 0800 (Last 4 digits)-$6.26 and Account No. 3200 (Last 4 digits)-$131,000.00; and (B) Fund II-Account 2000 (Last 4 digits)-$0.00 and Account No. 3000 (Last 4 digits)-$185,000.00 (the "Frozen Funds"). Counsel has advised that shortly after the filing of these Chapter 11 Cases demand will be made upon Mr. Kelley (as defined in ¶17, below), as Chapter 11 Trustee for the Petters Entities for turnover of the Frozen Funds.

[3] The Petters Group has investments in companies worldwide, which include 100% ownership of Polaroid, among others. The Petters Group obtained funding from investors/lenders and from the Petters Company.

representations and material omissions were made to fraudulently induce third parties (including the Funds) to invest funds to purportedly purchase merchandise that was to be resold to well known retailers like BJ's Wholesale Club and Sam's Club at a profit. In fact, no such purchases or resales were made and the funds invested with the Petters Entities were diverted for other purposes.

13. On many occasions, Mr. Petters and the Petters Entities would direct investors to send fraudulently invested funds to accounts maintained by the purported suppliers of the merchandise, including Enchanted Family Buying Company ("EFBC") and Nationwide International Resources, Inc. ("NIR"). Rather than supplying merchandise, the principals of EFBC and NIR (the "Principals") would wire the investors' funds, less a commission, to accounts controlled by Mr. Petters and the Petters Entities. During the course of the fraud, the Principals funneled tens of billions of dollars through EFBC and NIR bank accounts, to accounts controlled by Mr. Petters and the Petters Entities. The Principals received millions of dollars in commissions for the use of their respective company bank accounts and to disguise the nature, source, ownership and control of the investors' funds.

14. Mr. Petters and the Petters Entities, and others assisting them, created false documentation, including purchase orders, invoices, bills of sale, wire transfer confirmations, shipping documents, and financial statements, in order to trick investors into providing them with billions of dollars in investments. In many instances, the funds provided by the investors were "secured" by promissory notes and security agreements that purported to pledge as collateral either merchandise that Petters Company (or an affiliate) purportedly purchased from EFBC and NIR and/or fictitious accounts receivable. In many instances, Mr. Petters and the Petters Entities provided fictitious wire transfer confirmations from the Petters Company to

EFBC and/or NIR to further the illusions that the Petters Company was also providing funds (beyond those provided by investors) needed to purchase merchandise.

15. The proceeds from the fraud were used to (i) make lulling payments to investors, (ii) make large payments, sometimes exceeding millions of dollars, to individuals who assisted in the scheme, and others associated with Mr. Petters and the Petters Entities, (iii) fund businesses owned or controlled by Mr. Petters and the Petters Entities, and (iv) to fund Mr. Petters extravagant lifestyle. The Funds invested a combined $1.1 billion (approximately) in Petters Capital via the purchase of secured, short-term promissory notes issued by Petters Capital. Upon information and belief the Funds are the second largest creditor in the Bankruptcy Case.

(ii) The Civil, Criminal and Bankruptcy Cases

16. On or about September 24, 2008, the Federal Bureau of Investigation, together with the Internal Revenue Service-Criminal Investigation Division and the United States Postal Inspector, executed a search warrant at the location from where management decisions were made for the Petters Entities (and their affiliates) in Minnetonka, Minnesota and seized records of the Petters Entities, Mr. Petters, and other employees allegedly involved in the Petters Fraud.

17. On or about October 2, 2008, the United States of America filed the Civil and Criminal Cases in the United States District Court for the District of Minnesota (the "District Court"). Through the Civil Case, the District Court appointed Douglas Kelley ("Mr. Kelley") as the receiver for Mr. Petters and all of his wholly-owned entities, including the Petters Entities. Mr. Kelley obtain an order(s) freezing the assets of, among others, Mr. Petters and the Petters Entities. Each of the Civil and Criminal Cases remain pending before the District Court.

18. On October 3, 2008, Mr. Petters was arrested on charges of mail and wire fraud,

money laundering, and conspiracy. Other executives involved in the Petters Fraud have also been arrested on various charges and have pled guilty to certain crimes.

19. On or about October 11, 2008, in his capacity as Receiver, Mr. Kelley filed Voluntary Petitions for relief under chapter 11 of the Bankruptcy Code for the Petters Entities. By Order dated October 22, 2008, the Bankruptcy Court authorized the joint administration of the Petters Capital chapter 11 case with those of Petters Worldwide, and other related entities.[4] The Funds filed two (2) Proofs of Claim in the Bankruptcy Case in the approximate amount of $1.1 billion. The Bankruptcy Case remains pending before the United States Bankruptcy Court for the District of Minnesota.

20. On December 1, 2008, Mr. Petters and the Petters Entities were indicted by a federal grand jury on charges of: (i) mail fraud, (ii) wire fraud, (iii) conspiracy to committee mail fraud and wire fraud, (iv) money laundering, and (v) conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 371, 1343, 1956 and 1957.

(a) Related lawsuits

21. On October 6, 2008, Apriven Partners, L.P. filed a lawsuit against, among others, Mr. Petters and the Petters Entities in the District Court (Case No. 08-5373 (ADM/JSM) in respect of the Petters Fraud. This case remains pending before the District Court.

22. On October 10, 2008, AI Plus filed a lawsuit against, among others, Mr. Petters and the Petters Entities in the District Court (Case No. 08-5456 (ADM/JSM) in respect of the Petters Fraud. This case remains pending before the District Court.

[4] PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC, MGC Finance, Inc., LLC, PAC Funding, LLC and Palm Beach Finance Holdings, Inc. The Petters Company is a Minnesota corporation, the shares of which are owned and controlled 100% by Mr. Petters. The Petters Company, in turn, is the sole member and owns 100% of the membership interests of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC, MGC Finance, Inc., LLC and PAC Funding, LLC. The Petters Company served as a venture capital arm of the various Petters-controlled entities.

23. On November 25, 2008, the Funds filed a lawsuit against Palm Beach Offshore, Ltd., Palm Beach Offshore II, Ltd. (collectively, the "Offshore Funds") and Geoffrey Varga, with the Offshore Funds, the "Offshore Defendants") (Case No. 08-6138 (ADM/JSM)) in respect of the Petters Fraud in the United States District Court for the District of Minnesota. The Offshore Funds are organized under the laws of the Cayman Islands, with their principal place of business located at George Town, Grand Cayman, Cayman Islands. Upon information and belief, Mr. Varga was appointed by the Grand Court of The Cayman Islands as one of two Joint Liquidators of the Offshore Funds—the other being Neil Morris. Through this case, the Funds seek, among other relief, a declaratory judgment declaring that (a) the Offshore Defendants have no rights or interests relating to Fund I, (b) the Defendants have a disputed debt claim regarding Fund II concerning various promissory notes issued by Fund II to the Offshore Funds, *i.e.*, the promissory notes represent equity not debt (and therefore the Offshore Funds have no right to represent Fund II on the creditors' committee in the Bankruptcy Case). See also ¶26, below. This case remains pending before the District Court.

24. On June 15, 2009, a class action lawsuit was filed by several plaintiffs[5] in the United States District Court for the Southern District of Florida against, among others, Palm Beach Capital Management, LLC ("PBCM LLC"), the Debtors' investment manager, and Bruce F. Prévost and David W. Harrold, PBCM's owners and officers (as well as owners and officers of Palm Beach Capital Management, LP ("PBCM LP"), the Debtors' general partner. (Case No. 09-21622-CIV-MORENO/TORRES). The underlying basis of this lawsuit is the Petters Fraud. The suit seeks damages and punitive damages in amounts to be established at trial. This case remains pending before the District Court.

[5] Tradex Global Master Fund SPC Ltd., The ABL Segregated Portfolio 3, and Tradex Global Master Fund SPC Ltd., The ABL Segregated Portfolio 3, on behalf of themselves and all others similarly situated.

25. On June 30, 2009, a lawsuit was filed by several plaintiffs[6] in the District Court for Dallas County, Texas, 160th Judicial District, against, among others, the Debtors, PBCM LP, PBCM LLC, Mr. Prévost and Mr. Harrold. (Case No. DC-09-08239) The suit seeks damages in an amount not less than $24 million and punitive damages in an amount to be established at trial. This case remains pending before the Texas state court.

26. On August 14, 2009, a lawsuit was filed by Mr. Varga and Neil Morris in their capacity as Joint Official Liquidators of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. in the Superior Court of the State of Delaware in and for New Castle County against Fund II, PBCM LP and Palm Beach Capital Management Corp., PBCM LP's general partner. (Case No. 09C-08-136 JAP). The suit seeks (i) a declaratory judgment that (a) several promissory notes issued to the Offshore Funds are valid and enforceable against the Defendants, (b) all amounts stated in the notes are immediately due and payable, and (c) plaintiffs are entitled to immediate payment of all amounts due and payable under the notes, and (ii) damages in an amount to be established at trial in an amount of not less than $696,487,016.58. This case remains pending before the Delaware state court.

27. On November 30, 2009, the Debtors filed a lawsuit in the Miami-Dade County, Florida Circuit Court against Kaufman, Rossin & Co., P.A., Case No. 09-86048 CA 30. The lawsuit alleges that they Kaufman, Rossin & Co., P.A. performed grossly negligent audits that failed to confirm the Debtors' largest asset and failed to detect a massive fraud resulting in massive losses suffered by the Debtors.

(iii) Amendments to the Funds' Limited Partnership Agreements

28. Effective as of October 29, 2008, PBCM LP and the limited partners under that

[6] SSR Capital Partners, LP. Strategic Stable Return FUND (ID), LP, and Strategic Stable Return Fund II, LP.

certain Agreement of Limited Partnership dated as of June 25, 2004 entered into that certain Amendment Agreement to Amended and Restated Limited Partnership Agreement for Fund I pursuant to which, among other things, PBCM LP delegated to appointees of the limited partners of Fund I (the " Fund I LP Representatives") all of the PBCM LP's power and authority deemed necessary or desirable by the Fund I LP Representatives to pursue investigations and recovery of losses and assets from Mr. Petters, the Petters Company, co-conspirators, aiders and abettors and related companies in connection with the frauds committed against Fund I and its affiliates, including participating in a Steering Committee (the "Fund I Steering Committee") consisting of representatives of each of the private investment funds (including Fund I) managed by the PBCM LP with authority to retain, instruct and communicate on a privileged and confidential basis with legal counsel for the Fund I Steering Committee and Fund I, and to investigate and pursue Fund I claims, prosecute legal actions and settle Fund I claims.

29. Effective as of October 29, 2008, PBCM LP and the limited partners under that certain Agreement of Limited Partnership dated as of June 25, 2004 entered into that certain Amendment Agreement to Agreement of Limited Partnership for Fund II pursuant to which, among other things, PBCM LP delegated to appointees of the limited partners of Fund II (the "Fund II LP Representatives") all of the General Partner's power and authority deemed necessary or desirable by the Fund II LP Representatives to pursue investigations and recovery of losses and assets from Mr. Petters, the Petters Company, co-conspirators, aiders and abettors and related companies in connection with the frauds committed against Fund II and its affiliates, including participating in a Steering Committee (the "Fund II Steering Committee," with the Fund I Steering Committee, the "Steering Committees") consisting of representatives

of each of the private investment funds (including Fund II) managed by the PBCM LP with authority to retain, instruct and communicate on a privileged and confidential basis with legal counsel for the Fund II Steering Committee and Fund II, and to investigate and pursue Fund II claims, prosecute legal actions and settle Fund II claims.

(iv) Pre-petition appointment of Lewis B. Freeman as CRO for the Funds and the subsequent submission of his resignation as CRO

30. On June 5, 2009, on behalf of Fund I, PBCM LP executed that certain *Certificate of General Partner Resolutions and Incumbency* pursuant to which, *inter alia*, PBCM LP ratified (i) the appointment of the Fund I Steering Committee, and (ii) the authority to retain Lewis B. Freeman to serve as CRO for Fund I. However, in conjunction with the filing of a voluntary proceeding in the Miami-Dade County Circuit Court to dissolve his firm, Lewis B. Freeman & Partners, Inc., and my appointment as Receiver in that proceeding (the "State Court Dissolution Proceeding"),[7] Mr. Freeman resigned his position as CRO for Fund I on October 15, 2009.

31. On June 5, 2009, on behalf of Fund II, PBCM LP executed that certain *Certificate of General Partner Resolutions and Incumbency* pursuant to which, *inter alia*, PBCM LP ratified (i) the appointment of the Fund II Steering Committee, and (ii) the authority to retain Mr. Freeman to serve as CRO for Fund II. However, in conjunction with the filing of the State Court Dissolution Proceeding, and my appointment as Receiver in that proceeding, Mr. Freeman resigned his position as CRO for Fund II on October 15, 2009.

(iv) Pre-petition appointment of Kenneth A. Welt as CRO; the CRO's ability to investigate and recover losses suffered by the Funds and to file a Voluntary Petition for relief on behalf of each of the Funds

32. On November 10, 2009, on behalf of Fund I, PBCM LP executed that certain

[7] *In re: The Dissolution of Lewis B. Freeman & Partners, Inc.,* Case No. 09-75907 CA 23.

Certificate of General Partner Resolutions and Incumbency (the "Fund I Certificate") pursuant to which, *inter alia*, PBCM LP ratified (i) the appointment of the Fund I Steering Committee, and (ii) the authority to retain Kenneth A. Welt to serve as CRO for Fund I in anticipation of or in conjunction with any bankruptcy proceeding filed by or on behalf of Fund I; provided, however, that I shall report to the Fund I Steering Committee with respect to material matters concerning Fund I including any bankruptcy proceeding while the Fund I Steering Committee shall maintain the right to terminate me, as CRO, on 15 days notice for any reason. The Fund I Certificate also evidences that the CRO shall have the authority to retain counsel and other professionals of its choosing to pursue and resolve claims that Fund I has or may have with respect to any third parties, including with respect to efforts to investigate and recover losses and assets from Mr. Petters, the Petters Company, co-conspirators, aiders and abettors and related companies in connection with the frauds committed against Fund I and its affiliates. Lastly, the Fund I Certificate evidence that the CRO, if it deems advisable, shall have the right and authority to cause Fund I to file a Voluntary Petition for relief under the Bankruptcy Code.

33. On November 10, 2009, on behalf of Fund II, PBCM LP executed that certain *Certificate of General Partner Resolutions and Incumbency* (the "Fund II Certificate," with the (the Fund I Certificate, the "Certificates") pursuant to which, *inter alia*, PBCM LP ratified (i) the appointment of the Fund II Steering Committee, and (ii) the authority to retain myself to serve as CRO for Fund II in anticipation of or in conjunction with any bankruptcy proceeding filed by or on behalf of Fund II; provided, however, that I shall report to the Fund II Steering Committee with respect to material matters concerning Fund II including any bankruptcy proceeding while the Fund II Steering Committee shall maintain the right to terminate me, as CRO, on 15 days notice for any reason. The Certificate also evidences that the CRO shall have

the authority to retain counsel and other professionals of its choosing to pursue and resolve claims that Fund II has or may have with respect to any third parties, including with respect to efforts to investigate and recover losses and assets from Mr. Petters, the Petters Company, co-conspirators, aiders and abettors and related companies in connection with the frauds committed against Fund II and its affiliates. Lastly, the Certificate evidence that the CRO, if it deems advisable, shall have the right and authority to cause Fund II to file a Voluntary Petition for relief under the Bankruptcy Code.

(v) Pre-bankruptcy settlement between the Funds and General Partners

34. On or about November 13, 2009, the General Partners, PBCM LP, PBCP LLC and Palm Beach Capital Corporation, on the one hand, and the Funds, through the Steering Committees including their respective investors or limited partners, and myself as CRO, entered into that certain *Settlement Agreement and Release* (the "Settlement Agreement") pursuant to which, *inter alia*, the General Partners agreed to (i) provide consideration in the form of cash and securities to the Funds,[8] (ii) assign all of their right, title and interest in and to any claims they have or may have against any third party or entity in any way relating to the Petters Fraud, and (iii) provide cooperation with the Funds, their affiliates and counsel in any litigation brought by the Funds arising from or relating in any way to the Petters Fraud. In

[8] Specifically, the Cash Consideration (as defined in the Settlement Agreement) consists of $3 Million in cash and $2 Million in securities (valued in that amount as of September 30, 2008). In respect of the cash component, (i) $150,000 and $734,501.77 has been credited against expenses associated with the settlement and defense costs (for which the General Partners claim a right of indemnification against the Funds), (ii) $1,625,489.23 shall be transferred to an escrow account over which the General Partners' counsel, Holland & Knight LLP ("HK"), shall serve as escrow agent (the "Escrowed Funds"), (iii) within ten (10) business days after entry of a bar order generally described above, (a) HK shall disburse $500,000.00 for the Funds' benefit (the "Initial Consideration"), and (b) the General Partners shall transfer to the Funds all right, title and interest to the securities listed on Exhibit "A" to the Settlement Agreement. As alluded to above, included within this transfer of cash and securities includes an assignment of the right of the General Partners and/or the holder(s) of the securities to assert any and all causes of action arising out of the ownership of the securities, including but not limited to tort and contract actions against accountants, professionals, advisors, managers, general partners (excluding the General Partners), limited partners or any person, all to the Funds' benefit.

return, the Funds and the General Partners shall execute mutual releases, and the Funds shall seek entry of a litigation bar order by a bankruptcy court against, among other things, any claims arising from the General Partners' management of the Funds. If a Bar Order is not entered, or is not materially consistent with that contemplated by the Settlement Agreement, the General Partners may void the Settlement Agreement in which case, among other things, (i) the parties will be returned to their respective positions that existed immediately preceding the effective date of the Settlement Agreement (except that certain assignments of property and claims, including the Initial Consideration, shall remain with the Funds), (ii) the Funds shall have no right to the remaining portion of the Escrowed Funds; *provided*, *however*, that if the Fund disagree that a bar order is not materially consistent with that contemplated by the Settlement Agreement, was not entered, the Funds shall notify the General Partners of their disagreement and Judge Gerald T. Wetherington, as the sole arbitrator, shall hear the dispute within thirty (30) days or as soon thereafter as practicable, and his decision will be final and non-appealable and enforceable in any court of competent jurisdiction, which I understand to include this Court. I understand that proposed general bankruptcy counsel for the Debtors, Berger Singerman, intends on the Debtors' behalf to file an Adversary Proceeding seeking (i) approval of the Settlement Agreement, and (ii) entry of a bar order along the lines described above.

(vi) CRO appointment; Chapter 11 bankruptcy filings

35. On November 30, 2009, after consideration of the foregoing, and after conferring with counsel previously retained by the Funds, including the law firms of Thomas Alexander and Forrester and Berger Singerman, I caused each of the Funds to file Voluntary Petitions for Relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court for the Southern

District of Florida, West Palm Beach Division.

B. Current Capital Structure

36. On a combined basis, the Debtors have liquidated, unsecured debt in the approximate amount of $1,000,000.00. Also, the following Promissory Notes were issued by Fund II to Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.:

(a) Promissory Note dated March 1, 2007 in the amount of $268,254,270.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(b) Promissory Note dated February 1, 2007 in the amount of $93,000,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(c) Promissory Note dated September 1, 2006 in the amount of $32,450,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(d) Promissory Note dated January 3, 2006 in the amount of $34,000,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(e) Promissory Note dated September 30, 2005 in the amount of $11,500,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(f) Promissory Note dated February 1, 2008 in the amount of $28,366,030.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore, Ltd.

(g) Promissory Note dated December 3, 2007 in the amount of $18,000,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore II, Ltd.

(h) Promissory Note dated September 17, 2007 in the amount of $91,250,000.00 by Palm Beach Finance II, L.P. in favor of Palm Beach Offshore II, Ltd.[9]

II. FIRST-DAY MOTIONS

37. Shortly after the filing of these Chapter 11 Cases, the Debtors filed a limited

[9] The Funds and the Offshore Defendants disagree whether these Promissory Notes reflect "debt" or "equity." *Compare* ¶¶ 23 and 26, above.

number of First Day Motions. The Debtors request that the Court conduct a hearing as soon as possible after the commencement of the Debtors' bankruptcy cases (the "First Day Hearing"), during which the Court will hear arguments of counsel with respect to the First Day Motions.

38. I have reviewed each of the First Day Motions, including the exhibits thereto, and I believe that the relief sought in each of the First Day Motions is narrowly tailored to meet the goals described above and, ultimately, will be critical to the Debtors' ability to maximize value of their assets for their creditors and shareholders.

A. Debtors' *Ex Parte* Motion for Joint Administration (the "Joint Administration Motion")[10]

39. The Debtors believe that it would be more efficient for the administration of these cases if joint administration were authorized. The Debtors anticipate that a significant portion of the activity during these cases and most hearings will be substantially identical for both Debtors resulting in duplicative pleadings repeatedly being filed should joint administration be denied. Consequently, joint administration would reduce costs and facilitate the economical, efficient and convenient administration of the Debtors' estates.

40. The Debtors submit that the rights of the creditors of each of the Debtors will not be adversely affected by joint administration of these cases. The Debtors filed the Joint Administration Motion on an *ex parte* basis as contemplated by Local Rule 1015-1(B). The Debtors submit that the entry of an Order approving joint administration of the Debtors' Chapter 11 Cases will be in their best interests and those of their creditors.

B. Debtors' Application for Entry of Interim and Final Order Approving the Employment of Trustee Services, Inc. as Interim Management for the Debtors *Nunc Pro Tunc* to the Petition Date

[10] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the motions to which such terms relate.

41. Prior to the Petition Date, the Debtors retained Trustee Services, Inc. ("TSI") to provide interim management services, including providing my services as Chief Restructuring Officer. I have been serving as the Debtors' CRO pursuant to that certain letter agreement dated as of November 9, 2009 (the "Letter Agreement"). I understood, however, that based upon the entry of an October 16, 2009 Order appointing me as Receiver in the State Court Dissolution Proceeding,[11] I succeeded to LBFP as Chief Restructuring Officer for each of Fund I and Fund II. As such, since October 16, 2009, the date of the Receiver Order, I have been learning about the business of Fund I and Fund II and the Petters Fraud, generally. However, in conjunction with the execution of the Letter Agreement, I was advised by counsel that I did not become Chief Restructuring Officer of Fund I and Fund II by virtue of the Receivership Order because only individuals, not corporate entities, can serve as corporate officers.

42. The Letter Agreement is the basis for the proposed retention of TSI by the Debtors in connection with their Chapter 11 Cases. It provides that the CRO's duties include, among other things, managing the Debtors' bankruptcy case, negotiating and otherwise communicating with creditors, managing the professionals who are assisting the Debtors in their Chapter 11 bankruptcy cases, including the investigation and possible prosecution of claims against third parties related to the Petters Fraud, serving as representative for the Debtors in communications with federal and state regulatory agencies, supervising the preparation of periodic reporting required by the Bankruptcy Court and the Office of the United States Trustee, managing the claims reconciliation process and rendering such other services as may be deemed necessary as part of the bankruptcy cases. I will report directly to the Steering Committees and be subject to their oversight, and their ability to terminate myself on 15 days notice for any reason.

[11] *Agreed Order Appointing Receiver* dated October 16, 2009 (the "Receiver Order").

43. TSI's requested compensation for professional services rendered to the Debtors will be based upon a rate of $250.00 per hour for the services of the CRO and $75.00 per hour for the services of including temporary employees supporting me in my capacity as CRO.

44. Because TSI is not being employed as a professional under section 327 of the Bankruptcy Code, but instead being retained pursuant to section 363 of the Bankruptcy Code it will not be submitting quarterly fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. However, TSI will submit monthly reports of compensation paid. Parties-in-interest shall have the right to object to fees paid when monthly reports of compensation are filed with the Court.

45. I believe that the financial terms of the engagement as reflected in the Letter Agreement, which the Debtors seek to have approved and applied to their Chapter 11 cases, are fair and reasonable and consistent with (or more favorable than) the fees that would be charged by similar interim management service firms with respect to similarly sized Chapter 11 cases. I further believe that it is in the best interests of the Debtors and their creditors that TSI be retained to continue providing interim management services throughout these Chapter 11 cases, especially where TSI and I have invested significant time becoming familiar with the facts and legal proceedings leading up to the filing of these Chapter 11 Cases and those services will be critical in facilitating a maximization of value to the Debtors' creditors via prosecution of suits against third parties, *i.e.*, U.S. Bank, N.A., and Kaufman, Rossin & Co., P.A., in connection with the massive losses in an amount in excess of $1 Billion suffered by the Funds as a result of the Petters Fraud, losses which I have been advised would not have occurred, or would have been greatly mitigated but for the failures and omissions of the above-referenced third parties, among

others. As noted in ¶27, above, a lawsuit has now been brought by the Debtors against Kaufman, Rossin & Co., P.A.

46 The Debtors need to communicate with interim management which has the authority to make decisions concerning the investigation and decision as to whether and against which defendant litigation claims be asserted, and to serve as the decision-maker in respect of the Petters Cases pending in the Bankruptcy and District Courts in Minnesota, and the other pending lawsuits, particularly those in Texas, ¶25, above, and Delaware, ¶26, above. Only if the Court grants interim approval of the employment of TSI as interim management can the estates effectively manage their affairs during the period before a final hearing can be conducted. Accordingly, it is my belief that the Debtors will suffer immediate and irreparable injury if interim approval of the employment of TSI is not granted.

C. Debtors' Application for Approval, on an Interim and Final Basis, of Employment of Berger Singerman, P.A. as Counsel for Debtors in Possession *Nunc Pro Tunc* to Petition Date

47. The Debtors seek authority to retain, on an interim and final basis, the law firm of Berger Singerman, P.A. ("BSPA") as general bankruptcy counsel *nunc pro tunc* to the Petition Date. The Debtors understand that Paul Steven Singerman and BSPA have extensive experience representing Chapter 11 debtors in this district (and others across the country) and that they are well-qualified to serve as general bankruptcy counsel to the Debtors. The Debtors believe it is in their best interests, and those of their creditors, that Mr. Singerman and BSPA be retained to serve as Debtors' general bankruptcy counsel in their Chapter 11 Cases.

48. To the best of the Debtors' knowledge, except as disclosed in the *Declaration of Paul A. Avron , on Behalf of Berger Singerman, P.A. as Proposed Counsel for Debtors-In-Possession,* affirmed by Mr. Avron and filed by BSPA which accompanies the Application to

retain it, neither Mr. Avron nor BSPA has any connection with the Debtors' creditors or other parties in interest or their respective attorneys.

49. Counsel has informed me that entities such as limited partnerships may not appear in a Florida or federal court *pro se*, and that only a licensed attorney may appear on their behalf. Because there is relief that must be sought from the Court immediately, the Debtors will suffer immediate and irreparable harm if they are unable to obtain the services of counsel before a final hearing on the application for approval of counsel's employment can be convened. For example, the Debtors require representation in connection with the First Day Motions (and also in respect of the Petters Cases, all of which remain pending before the Bankruptcy and District Courts in Minnesota, as well as the pending lawsuits in Texas and Delaware). Without representation, the Debtors will be unable to prosecute their First Day Motions. It is, therefore, my belief that only with the granting of interim approval of counsel's employment will such immediate and irreparable injury be avoided. In that regard, counsel advises that this relief has been granted in other Chapter 11 cases in this District. *See*, *e.g.*, *In re Gemini Cargo Logistics, Inc., et al.,* Chapter 11 Case No. 08-18173-BKC-PGH (Bankr. S.D. Fla. June 20, 2008); *In re First NLC Financial Services, LLC, et al.,* Chapter 11 Case No. 08-10632-BKC-PGH (Bankr. S.D. Fla. Feb. 13, 2008); *In re Tousa, Inc., et al.,* Chapter 11 Case No. 08-10928-BKC-JKO (Bankr. S.D. Fla. Jan. 31, 2008).

D. Debtors' Application for Approval, on an Interim and Final Basis, of Employment of Thomas, Alexander and Forrester, LLP, as Special Litigation Counsel for Debtors in Possession *Nunc Pro Tunc* to Petition Date

50. The Debtors seek authority to retain, on an interim and final basis, the law firm of Thomas, Alexander and Forrester, LLP ("TAF") as special litigation counsel *nunc pro tunc* to the Petition Date. The Debtors understand that Steven W. Thomas and TAF have extensive experience and knowledge with respect to the matters upon which they are to be engaged, and

that they are well-qualified to serve as special litigation counsel to the Debtors. The Debtors believe that it is in their best interests, and those of their creditors, that Mr. Thomas and TAF be retained to serve as Debtors' special litigation counsel in their Chapter 11 Cases to pursue actions against third parties as briefly described in ¶45, above.

51. To the best of the Debtors' knowledge, except as disclosed in the *Declaration of Steven W. Thomas, on Behalf of Thomas, Alexander and Forrester, LLP as Proposed Special Litigation Counsel for Debtors-In-Possession,* affirmed by Mr. Thomas and filed by TAF which accompanies the Application to retain it, neither Mr. Thomas nor TAF hold any interest adverse to the Debtors or their estates which respect to the matters for such TAF is to be employed.

52. Counsel has informed me that entities such as limited partnerships may not appear in a Florida or federal court *pro se*, and that only a licensed attorney may appear on their behalf. Because the Debtors anticipate that TAF will continue their investigation into claims arising from and related to the Petters Fraud, as they have been doing prior to the Petition Date, and continue representation of the Funds in the proceedings before the Bankruptcy and District Courts in Minnesota, the Debtors will suffer immediate and irreparable harm if they are unable to obtain the services of special litigation counsel before a final hearing on the application for approval of special litigation counsel's employment can be convened. It is, therefore, my belief that only with the granting of interim approval of special litigation counsel's employment will such immediate and irreparable injury be avoided.

E. Debtors' Application for Approval, on an Interim and Final Basis, of Employment of Gonzalo R. Dorta, P.A., as Special Litigation Counsel for Debtors in Possession *Nunc Pro Tunc* to Petition Date

53. The Debtors seek authority to retain, on an interim and final basis, the law firm of Gonzalo R. Dorta, P.A. ("GRD") as special litigation counsel *nunc pro tunc* to the Petition Date. The Debtors understand that Gonzalo R. Dorta and GRD have extensive experience and knowledge with respect to the matters upon which they are to be engaged, and that they are well-qualified to serve as special litigation counsel to the Debtors. The Debtors believe that it is in their best interests, and those of their creditors, that Mr. Dorta and GRD be retained to serve as Debtors' special litigation counsel in their Chapter 11 Cases to pursue actions against third parties as briefly described in ¶45, above.

54. To the best of the Debtors' knowledge, except as disclosed in the *Declaration of Gonzalo R. Dorta, on Behalf of Gonzalo R. Dorta, P.A. as Proposed Special Litigation Counsel for Debtors-In-Possession,* affirmed by Mr. Dorta and filed by GRD which accompanies the Application to retain it, neither Mr. Dorta nor GRD hold any interest adverse to the Debtors or their estates which respect to the matters for such GRD is to be employed.

55. Counsel has informed me that entities such as limited partnerships may not appear in a Florida or federal court *pro se*, and that only a licensed attorney may appear on their behalf. Because the Debtors anticipate that GRD will continue their investigation into claims arising from and related to the Petters Fraud, in conjunction with TAF, as they have been doing prior to the Petition Date, the Debtors will suffer immediate and irreparable harm if they are unable to obtain the services of special litigation counsel before a final hearing on the application for approval of special litigation counsel's employment can be convened. It is, therefore, my belief that only with the granting of interim approval of special litigation counsel's employment will such immediate and irreparable injury be avoided.

F. Debtors' Motion for Order Establishing Procedures for Monthly and Interim Compensation and Reimbursement of Expenses for Professionals (the "Interim Compensation Procedures Motion")

56. The Debtors request that the Court enter an order establishing a procedure for compensating and reimbursing estate retained professionals on a monthly basis, comparable to those established in other Chapter 11 cases in this and other districts. In this way, the Court and parties-in-interest can more effectively monitor the fees incurred, and the Debtors will be able to spread out their payments of professional fees, rather than suffer larger depletions to their cash flows on an irregular basis.

57. In connection with these Chapter 11 Cases, the Debtors have filed applications to retain BSPA as their general bankruptcy counsel, TAF and GRD as their special litigation counsel, and TSI as interim management. Because of the possibility that the Debtors will seek to employ additional professionals, the process of such professional fee applications may well be burdensome on the Debtors, these professionals and the Court. Thus, implementation of compensation procedures will provide a streamlined and otherwise efficient method for compensating professionals and, as stated, such procedures will allow the Court and parties interest to monitor fees sought by and paid to such professionals.

58. In summary, the requested monthly compensation procedure would require all professionals retained with Court approval to present to (i) the Debtors; (ii) counsel for the Debtors; (iii) counsel for the Official Committee of Unsecured Creditors, if one is established; and (iv) the United States trustee, a detailed statement of services rendered and expenses incurred for the prior month. If no timely objection is filed, the Debtors would promptly pay 80% of the amount of fees incurred for the month, with a 20% holdback, and 100% of out-of-pocket expenses for the month. These payments would be subject to the Court's subsequent

approval as part of the normal interim fee application process (approximately every 120 days). Counsel has explained that the holdback would not apply to TSI which is being retained pursuant to section 363 of the Bankruptcy Code.

59. The Debtors have been advised by counsel that the form of relief sought in the Interim Compensation Procedures Motion has been granted in several Chapter 11 cases in this district, *see*, *e.g.*, *In re Gemini Cargo Logistics, Inc., et al.,* Chapter 11 Case No. 08-18173-BKC-AJC (Bankr. S.D. Fla. June 20, 2008); *In re First NLC Financial Services, LLC, et al.,* Chapter 11 Case No. 08-10632-BKC-PGH (Bankr. S.D. Fla. Feb. 13, 2008); *In re Tousa, Inc., et al.,* Chapter 11 Case No. 08-10928-BKC-JKO (Bankr. S.D. Fla. Jan. 31, 2008); *In re Levitt and Sons, LLC et al.,* Chapter 11 Case No. 07-19845-BKC-RBR (Bankr. S.D. Fla. Nov. 14, 2007); and *In re Gemini Cargo Logistics, Inc.*, *et al,* Chapter 11 Case No. 06-10870-BKC-AJC (Bankr. S.D. Fla. Mar. 20, 2006), and is specifically authorized by Local Rule 2016-1(B)(3)(b). The Debtors submit that the entry of an Order approving these procedures will be in the Debtors' best interests and those of their creditors.

III. DEBTORS' OBJECTIVES IN THESE CASES

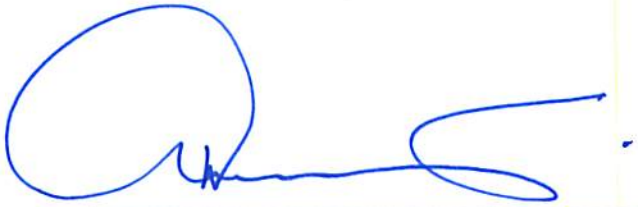
60. The primary purpose of the filing of these Chapter 11 Cases is to maximize the value of the Debtors' assets for their creditors whose funds were fraudulently obtained through the Petters Fraud via the prosecution of claims against third parties through TAF and GRD acting as special litigation counsel. Through the First Day Motions described above and other motions, applications and Adversary Proceedings the Debtors may file after the Petition Date, the Debtors hope to facilitate their efforts to pay their creditors in full and recover losses incurred by their limited partners as a result of the Petters Fraud. For all of these reasons, I

respectfully request that this Court grant the relief requested in each of the First Day Motions filed concurrently herewith.

28 U.S.C. § 1746 DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed this 30th day of November 2009 in Hollywood, Florida.



Kenneth A. Welt, Chief Restructuring Officer of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P.