UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:	:	CHAPTER 11
	:	
PALM BEACH FINANCE PARTNERS, LP,	:	CASE NO. 09-36379-BKC-PGH
PALM BEACH FINANCE II, LP,	:	CASE NO. 09-36396-BKC-PGH
	:	(Jointly Administered)
Debtors.	:	

UNITED STATES TRUSTEE'S MOTION TO CONVERT CASES TO CASES UNDER CHAPTER 7 OR, IN THE ALTERNATIVE, MOTION TO APPOINT CHAPTER 11 TRUSTEE AND REQUEST FOR EXPEDITED HEARING

REASON FOR EXPEDITED HEARING PURSUANT TO LOCAL RULE 9075-1

The Debtors filed these proceedings ten (10) days ago. They are currently functioning with no general bankruptcy counsel and a proposed CRO who is a creditor of these estates. Schedules must be filed shortly and a §341 meeting has been scheduled for January 6, 2010. Due to the conflicts between the estates, the proposed CRO and proposed bankruptcy counsel, the U.S. Trustee submits that time is of the essence that a trustee, be it a Chapter 11 or Chapter 7 trustee, be put into place to handle the matters that need to be addressed. Therefore, the U.S. Trustee requests that an evidentiary hearing on the motion be set at the Court's earliest convenience so that the motions can be resolved.

COMES NOW the United States Trustee, in furtherance of the administrative responsibilities imposed pursuant to 28 U.S.C. §586(a), and respectfully moves this Court to enter an order converting the cases to cases under Chapter 7 or, in the alternative, an order directing the appointment of a Chapter 11 Trustee in the above-styled cases. As cause therefore, the United States Trustee shows as follows:

BACKGROUND

1. Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on November 30, 2009. By order entered on December 1, 2009, the cases were jointly administered (DE #19).

2. Pursuant to information disclosed in the "Declaration of Kenneth A. Welt in Support of the Debtors' Chapter 11 Petitions and Request for First Day Relief" and stated by Debtors' proposed counsel, Paul Avron of Berger Singerman, at the hearing held on December 2, 2009, the following

facts have been asserted:

- The Debtors are limited partnerships. The General Partner of each Debtor is Palm Beach Capital Management, LP. The General Partner of Palm Beach Capital Management, LP is Palm Beach Capital Corporation. The principals of Palm Beach Capital Corporation are David Harrold and Bruce Provost.
- The Limited Partners of the Debtors are third party investors, some of which are individuals and others which are business entities.
- The Debtors are currently not operating and have not operated for over twelve (12) months.
- The Debtors were formed for the purpose of soliciting funds from third parties which were then invested through their General Partners, with the Petters Company, Inc. and other investment vehicles.
- Thomas J. Petters owned and controlled the Petters Company, Inc. The Petters Company and several related entities are currently Chapter 11 debtors in the United States Bankruptcy Court for the District of Minnesota (Case No. 08-45257). The Minnesota bankruptcy cases appear to be the result of what appears to be a Ponzi scheme executed by Mr. Petters and others working for him in which third parties were induced to invest funds to purportedly purchase merchandise that would be resold to retailers for a profit. In reality, no such merchandise was purchased and the funds invested were used for other purposes.
- On or about October 2, 2008 the United States of America filed civil and criminal actions against Mr. Petters and his entities in the United States District Court for the District of Minnesota. Through the civil proceeding, Mr. Douglas Kelley was appointed Receiver for Mr. Petters and his entities.

- On October 3, 2008, Mr. Petters was arrested.
- On October 11, 2008, Mr. Kelley as Receiver filed voluntary Chapter 11 petitions for the Petters related entities.
- On December 1, 2008, Mr. Petters and his entities were indicted on criminal charges related to the Ponzi scheme.
- On December 24, 2008, Mr. Kelley was appointed Chapter 11 Trustee in the Petters' Chapter 11 proceedings.
- The Debtors filed proofs of claim in the Petters' Chapter 11 proceedings in the combined approximate amount of $1.1 billion.
- The Debtors are parties to several lawsuits. On November 25, 2008, the Debtors filed a lawsuit against Palm Beach Offshore Ltd., Palm Beach Offshore II, Ltd and Geoffrey Varga ("Offshore Defendants") in the United States District Court of Minnesota seeking a declaratory judgement that the Offshore Defendants are equity holders and not creditors solely of Palm Beach Finance II, LP. On June 30, 2009 several plaintiffs filed a lawsuit against the Debtors and others in the District Court for Dallas County, TX seeking not less than $24 million in damages. On August 14, 2009, the Offshore Defendants filed a lawsuit against the Debtor Palm Beach Finance II, LP and others in the Superior Court for the State of Delaware seeking declaratory judgment that the Notes issued to the Offshore Defendants are debt and not equity and seeking damages in excess of $696,000. All of these lawsuits are currently pending.
- On November 30, 2009, just immediately prior to filing the bankruptcy petitions, the Debtors filed a lawsuit in Miami-Dade County Circuit Court against Kaufman, Rossin & Co., seeking damages for grossly negligent audits

that failed to detect the Petters fraud.

- Effective October 29, 2008 the General Partners and Limited Partners of each Debtor entered into "Amendment Agreements" to the respective Limited Partnership Agreements in which the General Partner of each Debtor delegated to appointees of the Limited Partners all the General Partner's "power and authority to pursue investigations and recovery of losses and assets" from the Petters entities. The "Amendment Agreements" allowed for the certain limited partners to participate in a Steering Committee and gave each Steering Committee the authority to retain legal counsel to investigate and pursue claims related to the Petters fraud.
- In March, 2009, the Steering Committees each employed Berger Singerman to represent their interests.
- On June 5, 2009, the General Partner of each Debtor executed a "Certificate of General Partner Resolutions and Incumbency" in which the General Partner of each Debtor ratified the appointment of the respective Steering Committee and ratified the authority to retain Lewis B. Freeman to serve as CRO for each entity.
- On October 15, 2009, Lewis B. Freeman resigned as CRO of each entity.
- On or about the same date, Lewis B. Freeman filed a voluntary proceeding in Miami-Dade Circuit court to dissolve his firm, Lewis B. Freeman & Partners, Inc. ("LBFP"). As a result of the dissolution proceeding, Kenneth Welt was appointed Receiver of LBFP on October 16, 2009.
- Mr. Welt is currently the Receiver of LBFP.
- Mr. Welt employed Berger Singerman to represent him in his capacity as Receiver of LBFP. To date Berger Singerman still represents Mr. Welt in

that capacity.

- On November 6, 2009, a "Settlement Agreement and Release" was entered into by and between Bruce Provost, David Harrold, Palm Beach Capital Management, LP, Palm Beach Capital Management, LLC, Palm Beach Capital Corporation, the Debtors by and through their Steering Committees and Kenneth Welt as "the CRO's Receiver." The Settlement Agreement and Release will be discussed further below.
- On November 10, 2009, the General Partner of each Debtor executed a certain "Certificate of General Partner Resolutions and Incumbency" in which the General Partner for each Debtor ratified the appointment of the respective Steering Committee and ratified the authority to retain Kenneth Welt to serve as CRO in contemplation of the filing of bankruptcy petitions for each Limited Partnership.
- On November 12, 2009, Mr. Welt, as CRO of the Debtors retained the law firm Berger Singerman for purposes of filing the Chapter 11 petitions and to represent the Debtors as general bankruptcy counsel.
- On November 30, 2009, Kenneth Welt as CRO for each Limited Partnership, filed the voluntary Chapter 11 petitions.
- Besides the request for joint administration, the only pleadings filed to date by the Debtors are applications to employ Berger Singerman as general bankruptcy counsel; Trustee Services, Inc. as interim management of the Debtors; Thomas Alexander and Foster, LLP ("TAF") as special litigation counsel; Gonzalo R. Dorta as special litigation counsel and a motion to pay professional compensation on a monthly basis.

3. Pursuant to the pleadings filed in these cases to date and upon information received by the U.S. Trustee at the Initial Debtor Interview, the following additional facts have been disclosed:

- On our about July, 2009, Berger Singerman received $40,000.00 for services rendered to the Steering Committee, TAF received $60,000.00 for services rendered to the Steering Committee and LBFP received $40,000.00. The source of the funds appears to be the General Partners. It is unclear from the documents how or why these funds were paid except for a reference to the Settlement Agreement and Release which was not signed until almost four months later.
- The Debtors have not opened debtor-in-possession bank accounts because any funds that may belong to these estates have been utilized for retainers to professionals.
- The Debtors never had employees and do not own or lease office space.
- While the Debtors state that most of the funds were invested with the Petters entities, the CRO could not disclose where any of the remaining funds were invested.
- The Debtors had no income in 2008 or 2009.

4. Upon review of Mr. Welt's Declaration and belief, the only assets of these estates appear to be the prosecution of claims against third parties. As indicated by Mr. Avron at the hearing on December 2, 2009, the Debtors have claims in the Petters entities bankruptcy cases but expect to receive a very small recovery if any. Finally, it appears that the only other matter sought to be resolved in these Chapter 11 proceedings is the approval or ratification of the November 6, 2009 Settlement Agreement and Release in which the Debtors' General Partners wish to pay the estate approximately $5 million in return for a complete release of liability for all causes of action. The Settlement Agreement and Release contemplates a "bar order" on all litigation by the Debtors and/or

third parties against the General Partners.

5. The Settlement Agreement and Release contemplates that the $5 million is a combination of $3 million cash and $2 million in securities valued as of September 30, 2008. Of the $3 million cash, all is being used to fund professional and attorneys' fees such as Berger Singerman, TAF, the proposed CRO and Holland & Knight.

6. A further review of the proceedings filed in this proceeding and/or provided to the U.S. Trustee indicate that as part of the Settlement Agreement and Release just prior to the petition, $500,000.00 was wired to TAF. Of the $500,000.00, paid by the General Partners as part of the proposed settlement, $200,000.00 was paid to Berger Singerman as a retainer for these proceedings, $100,000.00 was paid to Trustee Services, Inc. and $200,000.00 was paid to TAF as a retainer as special counsel. The remaining funds to be paid as part of the "Settlement Agreement and Release" are to be held by Holland & Knight and can be used to cover fees expended by Holland & Knight to defend the General Partners. The Holland & Knight fees are not subject to question or challenge by any party. It is highly unlikely that the estate will receive any remaining funds from the $3 million cash portion of the settlement.

7. The estate currently has no funds on hands and has no bank account.

8. At the December 2, 2009 hearings, the U.S. Trustee raised the issue that Mr. Welt as CRO of these Debtors and as Receiver for LBFP could create a conflict of interest due to the fiduciary obligations owed to each entity. Counsel stated to the Court that he believes LBFP received a payment of approximately $40,000 in June, 2009. The source of funds is not disclosed in the invoice. After the hearing, counsel provided the U.S. Trustee with an invoice indicating that LBFP is an unsecured creditor in this proceeding in the approximate amount of $10,536.18.

9. Any plan filed by the Debtors will be a liquidating plan with a Plan Administrator or Liquidating Trustee that would continue to pursue litigation claims.

MOTION TO CONVERT CASES TO CASES UNDER CHAPTER 7

10. Section 1112(b)(1) provides that:

> ...on request of a party in interest, and after notice and hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion ... is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7...if the movant establishes cause.

11. Section 1112(b)(4) provides a list of causes that would meet the requirements of 11 U.S.C. §1112(b)(1). The list is not exclusive. *In re Orbit Petroleum*, 395 B.R. 145 (Bankr. D.N.M. 2008). A case may be dismissed for other causes such as the fact that the petition serves no bankruptcy purpose. *Id., citing In re Ameri-CERT, Inc.,* 360 B.R. 398 (Bankr.D.N.H. 2007). Section 1112(b)(4)(A) indicates that a substantial or continuing loss to or diminution of the estate and a absence of a reasonable likelihood of rehabilitation is cause for conversion of the case to Chapter 7 under 11 U.S.C. §11129b)(1).

12. By their own admission, the Debtors are not operating and have not operated for over a year. At the December 2, 2009 hearings, counsel stated that any plan proposed would be a plan of liquidation based upon potential recovery, if any, from litigation against third parties. Any proposed plan would require the appointment of a Plan Administrator or Liquidating Trustee to oversee such litigation.

13. The General Partner of each Debtor has given away its authority to manage the day to day operations, allowing the Steering Committees in each estate to handle certain functions. The Steering Committees employed the law firm Berger Singerman to represent their interests.

14. On November 10, 2009, the General Partner of each Debtor ratified the Steering Committee's authority to retain Mr. Welt as CRO.

15. Mr. Welt, as CRO, then employed Berger Singerman as counsel for the Debtors.

16. Debtors have asked the Court to approve the employment of a CRO, who would handle the day to day business of their non-operating entities. There are no financial and operational

strategies to be implemented other than to liquidate and monetize assets, mostly consisting of litigation. The Debtors have no bank accounts, or funds, all having been paid to proposed counsel and the CRO as retainers.

17. The proposed CRO was employed only two weeks prior to the filing of the petitions. Clearly in that short of a time frame, the proposed CRO has had little time to understand the many intricacies in these estates and has no institutional knowledge. When asked about other investments made by the Debtors pre-petition, the CRO could not answer. Based upon the CRO's very short tenure and lack of knowledge of the underlying facts of these cases, there is no real intrinsic value in keeping a CRO in place. Such administration can be better handled by a Chapter 7 trustee, who is an independent fiduciary subject to the oversight of the Court.

18. Furthermore, the proposed CRO the Debtors seek to employ has a conflict of interest that cannot be waived. Debtors acknowledge that LBFP is a creditor of the estates, in the approximate amount of $10,500.00. In June, 2009, the Debtors or their General Partners paid LBFP $40,000.00 against which LBFP charged time. Mr. Welt is the State Court appointed Receiver of LBFP and therefore has a fiduciary duty to maximize the returns to the creditors of LBFP. As CRO of these estates, Mr. Welt has an obligation to review claims and determine whether the creditors have valid claims, disputing those that appear questionable. The "Declaration of Kenneth Welt in Support of the Debtors' Application for Order Authorizing Retention of Trustee Services, Inc. Nunc Pro Tunc to the Petition Date" (DE #8) states in paragraph 3 that Trustee Services, Inc. does not hold or is not involved in any engagements adverse to the Debtors and is a disinterested person as defined under 11 U.S.C. §101(14). The clearly is not a correct statement. Mr. Welt is not disinterested and cannot serve in the position as a CRO, as he would hold fiduciary duties in two entities that may assert claims against one another.

19. The source of funds used to pay LBFP in June, 2009 has not been disclosed, leading to further questions that remain unanswered.

20. As indicated, the General Partners of the Debtors have relinquished their management duties to the Limited Partners through the Steering Committees. The Steering Committees, through Berger Singerman as counsel, entered into a Settlement Agreement and Release in which the General Partners, Mr. Prevost and Mr. Harrold will receive complete releases in return for the payment of $3 million cash and $2 million in securities[1] or less than 1/2 of 1% of the $1.1 Billion loss. Of the $3 million cash, none appears to be paid to the estate, all having been used to pay attorneys. Mr. Welt signed the "Settlement Agreement and Release" as the CRO's Receiver. However, LBFP was never the CRO in this proceeding because the CRO was Mr. Freeman. As such, Mr. Welt clearly had no authority to enter into this agreement. Therefore, it appears that the agreement was negotiated by and between the Steering Committees, represented by Berger Singerman and the General Partners. Berger Singerman now has sought Court approval to be employed as general bankruptcy counsel for the Debtors. Whether this proposed agreement is in the best interest of creditors has not been reviewed by the management because no management existed. No CRO was employed to handle the day to day operations of the Debtors.

21. The failure to have appropriate management to handle the daily matters is further proof to establish that the Debtors have no ability to rehabilitate and therefore the cases should be converted to Chapter 7.

22. The only motion before the Court that is not asking for approval to employ professionals is the Debtors' motion to permit monthly payment of professional fees (DE #9). While the professionals have some funds being held as retainer, the funds were obtained as a result of the Settlement Agreement and Release not yet approved by the Court. The continuation of Chapter 11 professionals when these estates have no funds on hand, only results in the diminution of the estates.

23. The Debtors, having no operations, no business to reorganize, with a CRO who is not

[1]To date the compilation of the securities has not been disclosed or explained.

disinterested and who has no institutional knowledge, have no legitimate purpose to remain in Chapter 11. The Debtors acknowledge that they do not intend to rehabilitate. A Chapter 7 trustee can investigate any potential litigation, employ counsel to initiate or defend such litigation, independently review any proposed settlements with the General Partners of the Debtors and administer the estate more efficiently and cost effective. As such, cause exists to convert these cases to Chapter 7 pursuant to 11 U.S.C. §1112(b)(1).

24. Once the Court determines that cause for conversion exists under 11 U.S.C. §1112(b)(1), the Court must grant the conversion unless the court finds unusual circumstances exist that establish the conversion is not in the best interest of the creditors and the estate. 11 U.S. C. §1112(b)(2). Section 1112(b)(2) establishes two grounds that the Debtors must prove in order for denial of conversion. Simply stated, the Debtors must show (1) that there is a reasonable likelihood that a plan will be confirmed within a reasonable time and (2) there is reasonable justification or excuse for a debtor's act or omission and that the act or omission will be cured within a reasonable time. 11 U.S.C. §1112(b)(2). *In re Orbit Petroleum*, at 148.

25. The Debtors cannot establish the existence of unusual circumstances and the cases must be converted. The case has been filed for only a period of eleven (11) days and simply stated, the Debtors cannot make a showing that a plan will be confirmed within a reasonable time. As the cases stand today, Debtors have no business to reorganize, no real management, and no disinterested counsel with the ability to prepare and file a plan of reorganization.

26. Based upon the status of the cases and upon the Debtors' own admissions, the Debtors have no intention of reorganizing and are incurring administrative expenses for which no funds exist to pay. Debtors cannot establish the unusual circumstances exist to deny conversion of these proceedings to Chapter 7 and therefore the U.S. Trustee submits that cause exists for the conversion of these cases to Chapter 7.

IN THE ALTERNATIVE, THE U.S. TRUSTEE MOVES FOR THE APPOINTMENT A OF A CHAPTER 11 TRUSTEE

27. Section 1104(a) states that the Court shall order the appointment of a trustee, at any time after the commencement of the case but prior to confirmation of a plan, on request of a party in interest or the UST, and after notice and a hearing. Section 1104 provides, in part, as follows:

> At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of a trustee –
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
>
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
>
> (3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.
> . . .

11 U.S.C. § 1104

The appointment of a trustee is in the best interests of the estate and creditors.

28. Section 1104(a)(2) of the Bankruptcy Code provides for the appointment of a chapter 11 trustee if it is in the interests of creditors, any equity security holders and other interests of the estate.... Courts have construed Section 1104(a)(2) to provide for a "flexible standard." *See, e.g., In re Sharon Steel Corp*., 871 F.2d at 1226; *see also In re Ionosphere Clubs, Inc.*, 113 B.R. 164 (Bankr. S.D.N.Y. 1990). Section 1104(a)(2) emphasizes the court's discretion, allowing it to appoint a trustee when to do so would serve the parties' and the estates' interest." *Id*.

29. It is axiomatic that a debtor in possession is a fiduciary. As a fiduciary, the debtor in possession does not act in its own interest but, like a trustee, must act in the best interest of the creditors of the estate. *Commodity Futures Trading Comm. V. Weintraub*, 47 U.S. 343, 354-55 (1985). In determining if a debtor in possession is complying with its fiduciary duties, courts should be cognizant of the fact that "section 1104 represents a protection that the court should not lightly disregard or encumber with overly protective attitudes toward debtors-in-possession." *In re V. Savino Oil & Heating Co., Inc*., 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989).

30. The *Marvel* court applied this flexible standard and affirmed the district court's appointment of a trustee in a case where the "level of acrimony found to exist certainly [made] the appointment of a trustee in the best interest of the parties and the estate." *Marvel Entertainment Corp*., 140 F.3d at 474. The court concluded that the parties' sharp divisions on many issues supported the district court's exercise of discretion in appointing a trustee. *Id*. At 474-476.

31. Other courts have considered the following factors in determining whether the appointment of a trustee is in the best interest of the parties under Section 1104(a)(2): (1) the trustworthiness of the debtor; (2) the debtor's past and present performance and prospects for the debtor's rehabilitation; (3) the confidence or lack thereof of the business community and of creditors in present management; and (4) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment. *See In re Cajun Electric Power Co-Op, Inc*., 1991 B.R. 659 661-62 (M.D.La, 1995) *aff'd* 74 F3d 599 (5th Cir.), *cert. denied*, 117 S.Ct, 51 (1996); *Accord in re Ionosphere Clubs, Inc*., 113 B.R. at 168.

32. Here, an analysis of the relevant facts clearly demonstrates that the appointment of a chapter 11 trustee is in the best interest of the parties and creditors of the Debtors' estates. The Debtors ceased operating in 2008, the result of investing all of their funds in the Petters Ponzi scheme. The Debtors' General Partners have relinquished the daily business management to the Steering Committees, made up of Limited Partners. The Steering Committees have retained a CRO

who is not disinterested, due to the fact he is a creditor of the estates and may have competing fiduciary duties. There is no chance of rehabilitation. The proposed CRO approved a Settlement Agreement and Release allowing for a complete release of all claims against the General Partners and others at a time when he had no authority to enter into such an agreement. The Settlement Agreement and Release does not result in any funds being paid to the estate. The creditors will not receive anything in return for this Settlement and Release Agreement and must therefore rely on potential litigation. Without a disinterested fiduciary reviewing matters, there is no confidence in the Debtors. Finally, the cost of appointing a chapter 11 trustee in this case, where funds are scarce and the need for transparency great, is insignificant and the benefits of a chapter 11 trustee clearly outweigh the costs. *See In re Marvel Entertainment Group, Inc. 140 F.3d 463, 475 (3d Cir. 1998).* The only conclusion that can be reached in this case is that the appointment of a chapter 11 trustee is in the best interests of creditors.

33. Alternatively, the U.S. Trustee submits that pursuant to 11 U.S.C. §1104(a)(3), if the Court determines that the U.S. Trustee has established that grounds exist to convert the cases to Chapter 7 pursuant to 11 U.S.C. §1112 but feels that the Debtors have proved unusual circumstances to prevent the conversion as defined in 11 U.S.C. §1112(b)(2), the Court should appoint a Chapter 11 trustee. Due to the fact the cases have no operations and their only assets appear to be litigation recoveries; due to the fact that a significant goal of the bankruptcy is to have the Court ratify the Settlement Agreement and Release, and due to the fact that the CRO and Berger Singerman have disinterestedness issues, the U.S. Trustee submits that an independent fiduciary is required to take a fresh look at the future of these cases and to determine whether it is appropriate and in the best interest of the creditors and parties in interest that the Settlement Agreement and Release be supported by the estates and/or whether these proceedings derive benefit for remaining in Chapter 11.

CAUSE EXISTS FOR SHORTENING THE TIME FOR HEARING ON THE MOTION

34. The Debtors filed these proceedings ten (10) days ago. They are currently functioning with no general bankruptcy counsel and a proposed CRO who is a creditor of these estates. Schedules must be filed shortly and a §341 meeting has been scheduled for January 6, 2010. Due to the conflicts between the estates, the proposed CRO and proposed bankruptcy counsel, the U.S. Trustee submits that time is of the essence that a trustee, be it a Chapter 11 or Chapter 7 trustee, be put into place to handle the matters that need to be addressed. Therefore, the U.S. Trustee requests that an evidentiary hearing on the motion be set at the Court's earliest convenience so that the motions can be resolved.

WHEREFORE, the United States Trustee respectfully requests this Court conduct and emergency hearing on this matter, enter an Order converting the cases to Chapter 7 or, directing the appointment of a Chapter 11 Trustee and granting any other or further relief the Court deems just and appropriate.

DONALD F. WALTON
United States Trustee

/s/
HEIDI A. FEINMAN
Trial Attorney
Florida Bar No. 0879460

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **UNITED STATES TRUSTEE'S MOTION TO CONVERT CASES TO CASES UNDER CHAPTER 7 OR, IN THE ALTERNATIVE, MOTION TO APPOINT CHAPTER 11 TRUSTEE AND REQUEST FOR EXPEDITED HEARING** was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

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I further hereby certify that a true copy of the attached was sent via U.S. mail, properly addressed and with correct postage to the following:

Edward Estrada, Esq.
599 Lexington Avenue
22nd Floor
New York, NY 10022

SEE EXHIBITS "A" AND "B" ATTACHED HERETO

I hereby certify that I am admitted to the Bar of the State of Florida and the I am excepted from additional qualifications to practice in this Court pursuant to Local Rule 9011-4 pertaining to attorneys representing the United States government.

DONE this the 10TH day of December, 2009.

/s/
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