

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

MAJESTIC CAPITAL, LTD. *et al.*,

Debtors.

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Chapter 11

Case No. 11-36225 (CGM)

ORDER APPROVING STIPULATION OF SETTLEMENT

Upon the *Assented-to Motion of the Liquidating Trustee for Entry of An Order Approving Stipulation of Settlement* (the “*Motion*”)¹ in the above-captioned chapter 11 cases for entry of an order, pursuant to Rule 9019 of the Bankruptcy Rules, approving the Stipulation; and it appearing that the relief requested in the Motion is fair and equitable, and that the relief requested is in the best interests of the Liquidating Trusts, their Beneficiaries and other parties in interest, including the holders of the Majestic Capital Notes; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Sections X.D., X.E. and X.J. of the Plan; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; [and any objections to the Motion having been withdrawn or overruled on the merits]; and all Parties having acted in good faith, within their respective discretion, and within the bounds of reasonableness in determining that the Stipulation is in their own best interests, or in the best interests of their respective beneficiaries; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

1. The Motion is granted to the extent set forth herein.
2. Pursuant to Bankruptcy Rule 9019, the Stipulation is approved.
3. The Liquidating Trustee is authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate on behalf of the Liquidating Trusts to implement and effectuate the Stipulation contemplated by this Order.
4. Notwithstanding anything to the contrary in the Stipulation, and for the avoidance of doubt, nothing in the Stipulation shall be construed as preventing the Liquidating Trustee from reserving any amounts that he deems are reasonably necessary and appropriate for the Liquidating Trustee to carry out his fiduciary duties under the Liquidating Trust Agreements, the Plan and the Confirmation Order, including such amounts as he may deem to be reasonably necessary for the prosecution of the California D&O Litigation and the administration of the Liquidating Trusts and their assets.
5. Neither the Liquidating Trustee nor any of the other Parties shall have or incur any liability to the Liquidating Trusts, any Holder of a Claim or an Interest, or to any other party-in-interest, or any of their respective parents, affiliates, subsidiaries, successors or assigns, for any act or omission occurring in connection with, relating to or arising out of the Allocation Dispute, the Post-Petition Interest Dispute, the negotiation of, filing of, or entry into the Stipulation, the negotiation and filing of the 9019 Motion, or the distribution of any Liquidating Trust Assets under the Stipulation, except for their gross negligence or willful misconduct. No Liquidating Trust, no Holder of a Claim or Interest, and no other party-in-interest, and none of their respective parents, affiliates, subsidiaries, successors or assigns, shall have any right of action against the Liquidating Trustee or any of the other Parties for any act or omission occurring in connection with, relating to or arising out of the Allocation Dispute, the Post-

Petition Interest Dispute, the negotiation of, filing of, or entry into the Stipulation, the negotiation and filing of the 9019 Motion, or the distribution of any Liquidating Trust Assets under the Stipulation, except for their gross negligence or willful misconduct.

6. The Net Settlement Proceeds, together with the interest earned thereon during the period in which the Net Settlement Proceeds were held in the Registry (the “**Interest**” and, together with the Net Settlement Proceeds, the “**Total Funds**”), shall be disbursed as follows:

- (a) The Clerk of the Court shall deduct from the Total Funds a fee (the “**Fee**”) for the handling of the Net Settlement Proceeds, as authorized by the Judicial Conference of the United States and as set by the Director of the Administrative Office of the Courts, and in accordance with the June 2015 Order, equal to ten percent (10%) of the Interest.
- (b) The amount of the Total Funds remaining after deducting the Fee shall be paid as follows:
 - (i) a check made payable to the “Majestic Capital Liquidating Trust” in the amount equal to the sum of (A) three million fifty-five thousand dollars (\$3,055,000) plus (B) thirty-eight percent (38.0%) of the amount equal to ninety percent (90%) of the Interest;
 - (ii) a check made payable to the “Majestic USA Liquidating Trust” in the amount equal to the sum of (A) two million nine hundred sixty thousand dollars (\$2,960,000) plus (B) thirty-six and eight-tenths percent (36.8%) of the amount equal to ninety percent (90%) of the Interest;
 - (iii) a check made payable to the “CRM Liquidating Trust” in the amount equal to the sum of (A) one million six hundred thirty-seven thousand three hundred seventy-four dollars (\$1,637,374) plus (B) twenty and four-tenths percent (20.4%) of the amount equal to ninety percent (90%) of the Interest;

- (iv) a check made payable to the “CRM CA Liquidating Trust” in the amount equal to the sum of (A) ninety thousand dollars (\$90,000) plus (B) one and one-tenth percent (1.1%) of the amount equal to ninety percent (90%) of the Interest; and
 - (v) a check made payable to the “Eimar Liquidating Trust” in the amount equal to the sum of (A) two hundred ninety-five thousand dollars (\$295,000) plus (B) three and seven-tenths percent (3.7%) of the amount equal to ninety percent (90%) of the Interest.
- (c) All of the foregoing checks shall be delivered to the Liquidating Trustee, c/o Newleaf Corporation, 2400 Herodian Way, Suite 135, North Wing, Smyrna, Georgia 30080. Within five (5) days of the date on which the foregoing checks clear after having been deposited, the Liquidating Trustee shall make distributions to the Liquidating Trusts’ Beneficiaries in accordance with the Plan and, to the extent applicable, the Stipulation.
- (d) Within ten (10) days of the date on which BNYM receives payment from the Liquidating Trustee, it shall deduct any fees and expenses authorized under the Indenture and the Plan, including its reasonable attorneys’ fees and expenses, and shall distribute the net balance in accordance with the terms of the Indenture and the Plan.

7. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: February 24, 2016
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge

EXHIBIT 1

Stipulation

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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In re)	Chapter 11
)	
MAJESTIC CAPITAL, LTD. <i>et al.</i> ,)	Case No. 11-36225 (CGM)
)	
Debtors.)	
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STIPULATION OF SETTLEMENT

This *Stipulation of Settlement* (the “**Stipulation**”) is entered into by and among (i) Lloyd T. Whitaker (the “**Liquidating Trustee**”), acting for and on behalf of the Majestic Capital Liquidating Trust,¹ the Majestic USA Liquidating Trust, the CRM Liquidating Trust, the CRM CA Liquidating Trust, the Eimar Liquidating Trust and the Embarcadero Liquidating Trust (each a “**Liquidating Trust**” and collectively, the “**Liquidating Trusts**”); (iii) Alesco Preferred Funding XI, Ltd., Alesco Preferred Funding XII, Ltd., and Alesco Preferred Funding XIII, Ltd. (collectively, “**Alesco**”), as holders of more than 50% in principal amount of the Majestic Capital Notes (as defined below); (iii) The Bank of New York Mellon Trust Company, N.A. (“**BNYM**”), in its capacity as Indenture Trustee under the Indenture dated as of November 14, 2006 (as amended and supplemented, from time to time, the “**Indenture**”) with Majestic USA Capital Inc. (formerly known as CRM Holdings, Inc.) as Issuer, and Majestic Capital, Ltd. (formerly known as CRM Holdings, Ltd.) as Guarantor, pursuant to which the 8.65% Junior Subordinated Debt Securities due December 15, 2036 (the “**Majestic Capital Notes**”) were issued; (iv) Wilmington Trust Company (“**Wilmington**”), in its capacity as Indenture Trustee under the Indenture dated

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *First Amended Joint Plan of Liquidation of Majestic Capital, Ltd., Majestic USA Capital, Inc., Compensation Risk Managers, LLC, Compensation Risk Managers of California, LLC, Eimar, LLC and Embarcadero Insurance Holdings, Inc.* [ECF No. 276] (the “**Plan**”).

as of May 22, 2003 with Embarcadero Insurance Holdings, Inc. (“**Embarcadero**”) as Issuer, pursuant to which the Embarcadero Floating Rate Senior Securities due 2033 were issued (the “**Embarcadero Notes**”); (v) the New York State Workers’ Compensation Board (the “**WCB**”); and (vi) Oakwood Partners, L.L.C. (“**Oakwood**” and together with the Liquidating Trustee, BNYM, Alesco and Wilmington, the “**Parties**”).

RECITALS

A. On April 29, 2011 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), thereby commencing the above-captioned chapter 11 cases.

B. On April 27, 2012, the Bankruptcy Court entered the *Order Confirming First Amended Joint Plan of Liquidation* [Docket No. 346] (the “**Confirmation Order**”), which, among other things, confirmed the Plan pursuant to Bankruptcy Code section 1129.

C. The Plan became effective on May 18, 2012 (the “**Effective Date**”).

D. Pursuant to the Plan and the Confirmation Order, the Liquidating Trusts were created as of the Effective Date and Lloyd T. Whitaker was appointed as the Liquidating Trustee of the Liquidating Trusts.

E. On June 29, 2015 the Bankruptcy Court entered the *Order Approving Stipulation of Settlement* [Docket No. 1050] (the “**June 2015 Order**”) approving the *Stipulation of Settlement* (the “**D&O Stipulation**”) between the Liquidating Trustee and Daniel G. Hickey, Jr., Daniel G. Hickey, Sr., James J. Scardino, Chester J. Walczyk, Joseph F. Taylor, Martin D.

Rakoff, Keith S. Hynes, Charles I. Johnston, Salvatore A. Patafio, David M. Birsner, Philip J. Magnarella and Louis Rosner (collectively, the “**Directors and Officers**”).

F. Pursuant to the D&O Stipulation, the Directors and Officers caused the Insurers (as defined in the D&O Stipulation) to pay the Liquidating Trustee \$11,200,000, of which \$8,037,374.72 (the “**Net Settlement Proceeds**”) remained after payment of the attorneys’ fees and expenses for the Liquidating Trustee.

G. Pursuant to the June 2015 Order, (i) the Net Settlement Proceeds were deposited into an interest-bearing account maintained in the Registry of the Bankruptcy Court pending a determination of the proper allocation methodology by which the Net Settlement Proceeds would be distributed among the six Liquidating Trusts and (ii) all parties-in-interest were directed to file pleadings addressing the issue of how the Net Settlement Proceeds (and interest accruing thereon) should be allocated among the Liquidating Trusts.

H. In pleadings filed with the Bankruptcy Court, the Parties advocated for varying allocation methodologies by which the Net Settlement Proceeds should be distributed among the Liquidating Trusts (the “**Allocation Dispute**”) and the Bankruptcy Court was scheduled to hear argument on the Allocation Dispute at a hearing set for November 19, 2015.

I. Wilmington, on behalf of Riva Ridge Capital Management (“**Riva Ridge**”) as sole holder of the Embarcadero Notes, contends that post-petition interest (in, at least, the contract rate) must be paid on the Embarcadero Debenture Claim, and the Liquidating Trustee disputes Wilmington’s entitlement to any post-petition interest (the “**Post-Petition Interest Dispute**”).

J. Wilmington is prepared to file a motion with the Bankruptcy Court seeking a determination that post-petition interest (in, at least, the contract rate) must be paid on the

Embarcadero Debenture Claim. The Liquidating Trustee, as well as BNYM, Alesco, the WCB and Oakwood, are prepared to file objections to any such motion.

K. The Liquidating Trustee is the plaintiff in a litigation currently pending in the United States District Court for the Northern District of California, captioned as *Whitaker v. Hickey, Jr. et al.*, Case No. 15-03904 (WHA) (the “**California D&O Litigation**”), pursuant to which the Liquidating Trustee is pursuing certain claims and causes of action against certain of the Directors and Officers.

L. The Parties have engaged in good-faith, arms’ length negotiations in an effort to resolve the Allocation Dispute and the Post-Petition Interest Dispute, so as to avoid the delay, costs and risks associated with litigating the same.

M. During the settlement negotiations, all of the Parties received and evaluated information and reviewed applicable law concerning the various allocation methodologies, and all of the Parties have determined, in the exercise of their respective discretion, that entry into this Stipulation is reasonable so as to avoid the delay, costs and risks associated with litigating the same.

N. It is within the Trustee’s powers under the Indenture and applicable law to enter into the Stipulation.

O. The Parties have agreed to resolve the Allocation Dispute and Post-Petition Interest Dispute.

STIPULATION AND AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties stipulate and agree as follows:

1. The recitals set forth above and the principal terms of the settlement that were read into the record at the November 19, 2015 hearing are incorporated as part of this Stipulation.

2. As full and final resolution of the Allocation Dispute, the Net Settlement Proceeds, together with the interest earned thereon during the period in which the Net Settlement Proceeds were held in the Registry (the “**Interest**” and, together with the Net Settlement Proceeds, the “**Total Funds**”), shall be disbursed as follows:

- a. The Clerk of the Court shall deduct from the Total Funds a fee (the “**Fee**”) for the handling of the Net Settlement Proceeds, as authorized by the Judicial Conference of the United States and as set by the Director of the Administrative Office of the Courts, and in accordance with the June 2015 Order, equal to ten percent (10%) of the Interest.
- b. The amount of the Total Funds remaining after deducting the Fee shall be paid as follows:
 - i. a check made payable to the “Majestic Capital Liquidating Trust” in the amount equal to the sum of (A) three million fifty-five thousand dollars (\$3,055,000) plus (B) thirty-eight percent (38.0%) of the amount equal to ninety percent (90%) of the Interest;
 - ii. a check made payable to the “Majestic USA Liquidating Trust” in the amount equal to the sum of (A) two million nine hundred sixty thousand dollars (\$2,960,000) plus (B) thirty-six and eight-tenths percent (36.8%) of the amount equal to ninety percent (90%) of the Interest;
 - iii. a check made payable to the “CRM Liquidating Trust” in the amount equal to the sum of (A) one million six hundred thirty-seven thousand three hundred seventy-four dollars (\$1,637,374) plus (B) twenty and four-tenths percent (20.4%) of the amount equal to ninety percent (90%) of the Interest;

- iv. a check made payable to the “CRM CA Liquidating Trust” in the amount equal to the sum of (A) ninety thousand dollars (\$90,000) plus (B) one and one-tenth percent (1.1%) of the amount equal to ninety percent (90%) of the Interest; and
 - v. a check made payable to the “Eimar Liquidating Trust” in the amount equal to the sum of (A) two hundred ninety-five thousand dollars (\$295,000) plus (B) three and seven-tenths percent (3.7%) of the amount equal to ninety percent (90%) of the Interest.
- c. All of the foregoing checks shall be delivered to the Liquidating Trustee, c/o Newleaf Corporation, 2400 Herodian Way, Suite 135, North Wing, Smyrna, Georgia 30080. Within five (5) days of the date on which the foregoing checks clear after having been deposited, the Liquidating Trustee shall make distributions to the Liquidating Trusts’ Beneficiaries in accordance with the Plan and, to the extent applicable, the Stipulation.
- d. Within ten (10) days of the date on which BNYM receives payment from the Liquidating Trustee, it shall deduct any fees and expenses authorized under the Indenture and the Plan, including its reasonable attorneys’ fees and expenses, and shall distribute the net balance in accordance with the terms of the Indenture and the Plan.

3. As full and final resolution of the Post-Petition Interest Dispute, Wilmington shall receive, for the benefit of Riva Ridge as the sole holder of the Embarcadero Notes, as follows:

(a) \$150,000.00 from the Embarcadero Liquidating Trust within two (2) business days of entry of an order of the Bankruptcy Court approving this Stipulation; (b) the first \$125,000.00 of any net proceeds (that is, proceeds remaining after payment of the Liquidating Trustee’s attorneys’ fees and expenses) recovered by, or on behalf of, the Liquidating Trustee and/or the Liquidating

Trusts on account of, or in connection with, the California D&O Litigation (all such net proceeds, the “**California D&O Litigation Proceeds**”); and (c) the first \$125,000.00 of any California D&O Litigation Proceeds which would be allocated to, or is otherwise received by, the WCB; it being understood and agreed by all Parties hereto that WCB is entitled to receive 37.5% of any and all California D&O Litigation Proceeds recovered by the Majestic USA Liquidating Trust, but that the WCB has no duty to pay any part of said \$125,000.00 to Wilmington to the extent that it has not received same; and it being further understood and agreed by all Parties hereto that to the extent that (x) the Majestic USA Liquidating Trust receives, but does not provide the WCB with 37.5% of any and all California D&O Litigation proceeds, or (y) the WCB receives any part of said \$125,000.00, but does not pay said part that it has received to Wilmington, either such failure shall be deemed a breach of this Stipulation the remedy of which will be specific performance (without the requirement for the filing of any formal proceedings or otherwise).

4. The resolutions of the Allocation Dispute and the Post-Petition Interest Dispute in accordance with the foregoing are intended to result in BNYM receiving at least \$4,200,000.00 on account of the Junior Subordinated Debentures Claim from the funds available and to be available from the Majestic Capital Liquidating Trust, the Majestic USA Liquidating Trust and up to \$25,500.00 in recoveries from the distribution of Total Funds payable to the WCB; provided, however, that (i) notwithstanding anything to the contrary herein, and for the avoidance of doubt, nothing in this Stipulation shall be construed as preventing the Liquidating Trustee from reserving any amounts that he deems are reasonably necessary and appropriate for the Liquidating Trustee to carry out his fiduciary duties under the Liquidating Trust Agreements, the Plan and the Confirmation Order, including such amounts as he may deem to be reasonably

necessary for the prosecution of the California D&O Litigation and the administration of the Liquidating Trusts and their assets, (ii) the form of order approving this Stipulation will authorize the Liquidating Trustee to reserve any such amounts, and (iii) the actual amount that BNYM receives on account of the Junior Subordinated Debentures Claim, and the actual amount that any Holder of an Allowed Claim receives on account of such Allowed Claim, can neither be determined at this time nor guaranteed.

5. The motion seeking approval of this Stipulation (the “**9019 Motion**”) and the form of order approving the 9019 Motion shall each be in form and substance reasonably satisfactory to each of the Parties.

6. This Stipulation shall not be binding upon the Parties, and shall not be effective, unless and until the Bankruptcy Court enters a final, non-appealable order approving this Stipulation.

7. This Stipulation may not be changed, amended, modified, or altered except by written agreement signed by each of the Parties or their counsel and approved by the Bankruptcy Court, or as otherwise ordered by the Bankruptcy Court.

8. Each of the Parties acknowledges that he or it has had the opportunity to be represented by counsel in the negotiation and execution of this Stipulation. Accordingly, the rule of construction of interpreting contract language against the drafting party is waived by each of the Parties.

9. This Stipulation shall be binding upon and inure to the benefit of the Parties’ respective officers, directors, shareholders, attorneys, agents, representatives, successors, heirs and assigns. Except as is otherwise set forth herein, no rights are intended to be created hereunder for the benefit of any third party, creditor or direct, indirect or incidental beneficiary.

10. The Parties will request that the Court include in any order approving this Stipulation language providing that (i) neither the Liquidating Trustee nor any of the other Parties shall have or incur any liability to the Liquidating Trusts, any Holder of a Claim or an Interest, or to any other party-in-interest, or any of their respective parents, affiliates, subsidiaries, successors or assigns, for any act or omission occurring in connection with, relating to or arising out of the Allocation Dispute, the Post-Petition Interest Dispute, the negotiation of, filing of, or entry into this Stipulation, the negotiation and filing of the 9019 Motion, or the distribution of any Liquidating Trust Assets under this Stipulation, except for their gross negligence or willful misconduct, and (ii) no Liquidating Trust, no Holder of a Claim or Interest, and no other party-in-interest, and none of their respective parents, affiliates, subsidiaries, successors or assigns, shall have any right of action against the Liquidating Trustee or any of the other Parties for any act or omission occurring in connection with, relating to or arising out of the Allocation Dispute, the Post-Petition Interest Dispute, the negotiation of, filing of, or entry into this Stipulation, the negotiation and filing of the 9019 Motion, or the distribution of any Liquidating Trust Assets under this Stipulation, except for their gross negligence or willful misconduct.

11. This Stipulation shall be governed by the laws of the State of New York applicable to agreements entered into within such state, excluding the choice of law rules thereof, and by the Bankruptcy Code.

12. The signatories to this Stipulation affirm that they are authorized to execute this Stipulation and to bind the Party or Parties whom or that they represent.

13. The Bankruptcy Court shall retain jurisdiction for the purpose of interpreting, implementing or enforcing this Stipulation and its terms and conditions.

IN WITNESS WHEREOF, this Stipulation is made as of the 23d day of December,
2015.

JAGER SMITH P.C.

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