

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION**

MICHAEL E. MOECKER, as Receiver for
BOTFLY, LLC, DAVID R. LEWALSKI,
and JON J. HAMMILL,

Plaintiff,

Case No.: 51-2011-CA-006077/WS

v.

Division: G

GREGORY BAKER,

Defendant.

_____ /

SETTLEMENT AGREEMENT

COMES NOW, the Plaintiff, Michael E. Moecker, Receiver for Botfly, LLC; David R. Lewalski, and Jon J. Hammill, by and through his undersigned counsel, and the Defendant, Gregory Baker (the “**Defendant**”) and hereby freely and voluntarily enter into this Settlement Agreement (the “**Agreement**”) and agree to settle this case as follows:

RECITALS

WHEREAS, the Receiver filed a complaint against Defendant demanding the immediate return the money that he/she/it received from Botfly, LLC (“**Botfly**”) that was in excess of the amount that Defendant paid to Botfly.

WHEREAS, Defendant admits liability and agrees that he/she/it received \$8,580.00 in excess of the amount that he/she/it paid to Botfly.

WHEREAS, Defendant agrees that \$8,580.00 (the “**Amount Due**”) is currently due and owing without deduction, defense or set off.

WHEREAS, Defendant have requested that the Receiver accept a reduced payment in the amount of \$7,722.00 (the “**Settlement Amount**”) in full satisfaction of all the Receiver’s claims against Defendant which the Receiver is agreeable to do upon the terms and conditions contained herein.

WHEREAS the parties acknowledge that this Agreement is entered into subject to court approval pursuant to the Case Management Order entered in the case styled *Office of the Attorney General, Department of Legal Affairs, State of Florida vs. Botfly, LLC, David R.*

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Defendant hereby agrees as follows:

1. **Acknowledgments.** Defendant hereby acknowledges and agrees that: (a) each Recital set forth hereinabove is complete and accurate in all respects and not subject to dispute; (b) the Recitals set forth hereinabove are intended to be part of the terms of this Agreement; (c) Defendant has no grounds for disputing the validity, existence, and/or enforceability of the Amount Due as defined in the Recitals; and (d) Defendant affirms his/her/its obligation to pay the Amount Due to the Receiver.

2. **Settlement Payment.** Payments due under this section shall be made in the form of a certified check or money order payable to "BUSH ROSS, P.A. TRUST ACCOUNT" and be delivered to Joseline J. Hardrick, Esquire, BUSH ROSS, P.A., P.O. Box 3913, Tampa, Florida 33601-3913. Defendant shall pay to Receiver on or before February 15, 2012 the sum of \$7,722.00 (the "**Settlement Payment**").

3. **Forbearance; Preservation of Rights and Remedies.** Commencing upon execution of this Agreement and continuing through the earlier to occur of: (a) a Default (as defined below); (b) payment of the full amount of the Settlement Amount, Receiver shall refrain from prosecuting this lawsuit against Defendant to recover the Amount Due. Except as expressly provided herein, neither the execution, delivery, and effectiveness of this Agreement, nor the forbearance of Receiver set forth in the preceding sentence, shall in any manner operate as a waiver of any right or remedy of Receiver under the Order Appointing Receiver or subsequently granted by the Court. Defendant acknowledges and agrees that Receiver is allowed to accept payments during the Forbearance Period or otherwise without prejudice to any rights or remedies including prosecution of this legal action to recover the Amount Due. Receiver hereby expressly reserves all rights, powers and remedies specifically given to it thereunder, now or hereafter existing at law or in equity or by statute.

4. **Default.** The occurrence of any of the following shall constitute a "**Default**:"
- (a) Defendant's failure to make the Settlement Payment, Initial Forbearance Payment, an Installment Payment or any of them when due, including but not limited to the return of a check or money order from the issuing financial institution for insufficient funds;

¹ Paragraph ten of the Case Management Order states in pertinent part that "[a] Settlement Agreement will only be enforceable upon approval of the Court. Settlement funds shall be held in trust until the Court enters an order approving the Settlement Agreement at issue. Upon approval of the Settlement Agreement by the Court, settlement funds shall be transferred to the Receivership's Estate, and the Receiver shall file a motion to voluntarily dismiss the Supplemental Proceeding with prejudice."

- (b) The occurrence of any of the following events: (i) any bankruptcy petition be filed by or against Defendant; (ii) Defendant becomes insolvent or makes an assignment for the benefit of any creditor or creditors, and/or (iii) a receiver or trustee be appointed for any of the assets of Defendant; and/or
- (c) The breach of any representation, warranty, covenant, condition or other term of this Agreement.

In the event of a Default, Receiver shall be entitled to immediately submit an *ex parte* motion for final judgment for money damages to recover the Amount Due, less any payments made, without further hearings or motions on the matter. Receiver is not obligated to provide Defendant with notice of an event of Default.

5. **Representations and Warranties.** The Parties represent and warrant to each other that: (a) they have the legal capacity and authority to enter into this Agreement; (b) each has freely, voluntarily, and without duress or coercion of any kind whatsoever, entered into this Agreement under the advice of counsel or with the opportunity to seek the advice of counsel; and (c) this Agreement constitutes the voluntary, legal, valid and binding obligation of said party. Defendant hereby represents and warrants that: (a) prior to the execution of this Agreement, he/she/it/each was fully apprised of sufficient relative data, in order to intelligently exercise a judgment in deciding whether or not to execute this instrument and in deciding on the contents of the same; (b) the decision to execute this Agreement was not predicated on or influenced by any declarations or representations made by Receiver; and (c) this Agreement in all respects has been voluntarily and knowingly executed by Defendant with the express intention of effecting the legal consequences thereof.

6. **Release.** Immediately upon the execution of this Agreement, except as to the rights, liabilities and obligations arising out of this Agreement, Defendant hereby fully and forever compromises, settles, releases, acquits, and discharges the receivership estate, Receiver, Moecker & Associates, and their predecessors, successors, subsidiaries, assigns, affiliates, insurers and any and all present and former employees, attorneys, agents, officers, directors or persons, corporations, representatives and other entities connected therewith (the "Releasees"), from any and all past, present or future claims, causes of action, suits, demands, losses, liabilities, costs or obligations of any nature whatsoever, whether based on tort, contract, or other theories of recovery, between Defendant and the Releasees, whether now known, unknown, asserted, unasserted, foreseen, unforeseen, contingent, actual, liquidated or unliquidated. The provisions of this section shall survive even in the event of a Default.

7. **Choice of Law.** This Agreement shall be governed by the laws of the State of Florida.

8. **Entire Understanding.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements, and understandings, oral or written, with respect to the subject matter hereof. Each party declares and represents that no promise, inducement or agreement not herein expressed has been made to the other party and that this Agreement contains the entire terms of the settlement between the Parties, each party has had the opportunity to consult with an attorney of their

choice and, further, each party has read the terms of this Agreement, understands them, and accepts them of such party's own free will.

9. **Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any of the Parties. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of this Agreement as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, legal representatives, successors and assigns and all of those holding title under either of them and the pronouns used herein shall include, where appropriate, either gender and both singular and plural.

11. **Attorneys' Fees and Costs.** Defendant agrees to bear his/her/its own attorneys fees and costs in this action herein. In the event that legal or other action is required to enforce a Party's rights under this Agreement, the non-prevailing party agrees to reimburse the prevailing party upon demand for its reasonable attorneys' fees and other related costs and expenses incurred in connection with the enforcement thereof.

12. **Modification.** This Agreement may not be amended, altered, modified or otherwise changed except in a writing signed by all Parties.

13. **No Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

14. **Execution in Counterparts.** This Agreement may be executed in several counterparts and through the exchange of facsimile or PDF signature papers and, as executed, shall constitute one Agreement.

15. **Signature of Corporate Defendants.** The individual signing this Agreement on behalf of each of the corporate Defendants represents and warrants that he or she is a duly elected, qualified and acting officer of that entity, that he or she is authorized to execute and deliver this Agreement on each entities behalf, and that all necessary corporate approvals have been obtained.

16. **Tolling of Statutes of Limitation.** Defendant acknowledges and agrees that any and all applicable statutes of limitation shall be tolled during the Forbearance Period and for a period of two (2) years from the date hereof ("**Tolling Period**") and that Defendant shall not raise the running of any applicable statutes of limitation as a defense in any legal action related to the Amount Due, if an action is commenced during the Tolling Period.

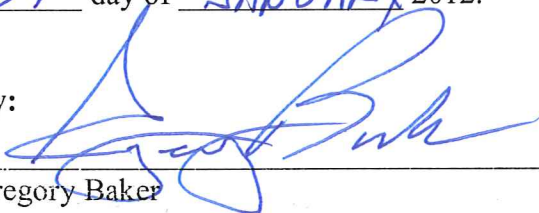
17. **Dismissal of Action.** Upon full and complete payment of the Amount Due or Settlement Amount according to the terms of this Settlement Agreement and the entry of the Order Approving the Settlement Agreement with Defendant in the Main Case pursuant to the

aforementioned Case Management Order, the Receiver will file a motion to voluntarily dismiss this action with prejudice.

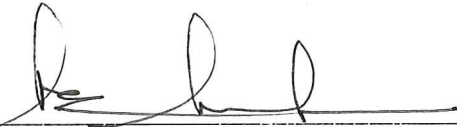
18. **Jurisdiction.** The parties further stipulate and agree that this Court shall retain jurisdiction of the parties in this cause of action to enforce the Agreement, should the need arise.

31 IN WITNESS WHEREOF, the parties have executed this Agreement effective this day of JANUARY 2012.


By:



Gregory Baker
Defendant
3623 Springville Dr.
Valrico, FL 33596



Michael E. Moecker
Plaintiff, Receiver for Botfly L.L.C., David R.
Lewalski, Jon J. Hammill



Joseline J. Hardrick, Esquire
Florida Bar No. 71936
BUSH ROSS, P.A.
P.O. Box 3913
Tampa, FL 33601-3913
Telephone: (813) 224-9255
Facsimile: (813) 223-9620
Counsel for the *Receiver*