

WINSTON & STRAWN LLP
Robert A. Julian (SBN: 88469)
Kimberly S. Morris (SBN: 249933)
Benjamin J. Kimberley (SBN: 259800)
101 California Street
San Francisco, CA 94111-5894
Telephone: (415) 591-1000
Facsimile: (415) 591-1400



Eric Sagerman (SBN: 155496)
Rolf S. Woolner (SBN 143127)
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

Attorneys for Plaintiff
RONALD GREENSPAN

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re PEOPLE'S CHOICE HOME LOAN, INC.
et al.,¹

Debtors.

Case No.: 2:12-bk-15811-RK
(Transferred from 8:07-bk-10765-RK)
(Jointly Administered with Case Nos. 2:12-bk-16200-RK and 2:12-bk-16201-RK)

Chapter 11

ORDER (1) APPROVING SETTLEMENT AGREEMENT; (2) DISMISSING AND/OR WITHDRAWING CLAIMS WITH PREJUDICE; (3) APPROVING MUTUAL RELEASES; AND (4) GRANTING LIQUIDATING TRUSTEE'S MOTION UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE WITH RESPECT TO SETTLEMENT AGREEMENT (WITH NEIL KORNSWIET, KATHLEEN LIPPS, DAVID CRONENBOLD, ROBERT HARRIS AND VICTOR COLEMAN AS DEFENDANTS, CROSS CLAIMANTS AND BANKRUPTCY CLAIMANTS)

Date: July 24, 2012
Time: 2:30 p.m.
Place: 255 E Temple St., Ctrm. 1675
Los Angeles, CA 90012
Judge: Honorable Robert N. Kwan

¹ The Debtors were People's Choice Home Loan, Inc., a Wyoming corporation, Fed. Tax I.D. No.: 94-3348277; People's Choice Funding, Inc., a Delaware corporation, Fed. T Financial Corporation, a Maryland corporation, Fed. Tax I.D. 1



1 On July 3, 2012, Ronald F. Greenspan, solely in his capacity as the duly authored and
2 acting liquidating trustee (the “Liquidating Trustee”) for each of the Liquidating Trusts of
3 People’s Choice Home Loan, Inc., People’s Choice Funding, Inc., and People’s Choice Financial
4 Corporation (the “PC Trusts”), filed *The Liquidating Trustee’s Motion For Order Approving*
5 *Compromise With Neil Kornswiet, Kathleen Lipps, David Cronenbold, Robert Harris And Victor*
6 *Coleman Pursuant To Federal Rule Of Bankruptcy Procedure 9019* (the “Motion”) [Docket No.
7 2551].

8 Neil Kornswiet, Kathleen Lipps, David Cronenbold, Robert Harris and Victor Coleman
9 (“Defendants”) filed Joinders in the relief requested by the Liquidating Trustee’s Motion [Docket
10 Nos. 2560].

11 The Motion came before the Court for hearing on July 24, 2012. Appearances were as
12 noted in the record of the Court.

13 This Court having reviewed the Motion, the Settlement Agreement and Mutual General
14 Release (the “Settlement Agreement”) attached to the Motion, the other papers filed in
15 connection with the Motion, the other pleadings and papers filed in these chapter 11 cases
16 (including proofs of claim, administrative claims and any and all other Claims filed by
17 defendants in these cases) and in the related adversary proceeding in which the settling
18 defendants are or were parties, Adv. Pro. No. 2:12-ap-01240-RK (transferred from 8:09-ap-
19 01144-RK (the “Adversary Proceeding”)); having been advised of the status of certain
20 arbitrations among the Parties as previously compelled by this Court and the result of the recent
21 mediation of such claims subject to arbitration; having determined that adequate notice has been
22 given under the circumstances; and finding that the settlement approved hereby is in the best
23 interests of the respective PC Trusts and debtors’ estates and creditors thereof, and good cause
24 appearing therefore:

25 IT IS HEREBY ORDERED, FOUND, ADJUDGED and DECREED:

26 As used in this Order, capitalized terms not otherwise defined herein have the meanings
27 set forth in the Settlement Agreement.

28 1. This Court has jurisdiction to enter this Order.

1 2. The timing, form, scope and nature of notice of the hearing on this Motion and the
2 Settlement Agreement are proper and all parties in interest have either consented to entry of this
3 Order or, having received adequate notice, including but not limited to notice under Rules 2002,
4 9006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure and all local rules of the
5 Bankruptcy Court, are hereby deemed to consent to entry of and to have waived any objection by
6 failing to object to entry of this Order. Any and all reservations of rights, objections and other
7 oppositions in any form to the Motion, Settlement Agreement and entry of this Order are hereby
8 overruled with prejudice and dismissed.

9 3. The Court finds that the parties negotiated and entered into the Settlement
10 Agreement in good faith on a reasonable basis (under all the Bankruptcy Code and any and all
11 other applicable rules, laws and regulations, including Rule 9019 of the Federal Rules of
12 Bankruptcy Procedure and California Civil Procedure Code § 877 *et seq.* and other similar laws
13 of other jurisdictions if applicable), following arm's length negotiations, and that the settlement
14 is fair and reasonable to the parties, and in the best interests of the bankruptcy estates, the PC
15 Trusts and their beneficiaries. In light of the record disclosed by the Motion and by the Court's
16 review of the files in these bankruptcy cases and the Adversary Proceeding, the Court finds that
17 the settlement is fair and equitable and in the interests of the Debtors' creditors, given, among
18 other things, the uncertainty and delay of continued litigation, the complexity of the Claims
19 involved, the substantial expense of prosecuting such Claims, and the effect of additional defense
20 costs in reducing available insurance coverage for the Claims asserted in the Arbitration and
21 related Adversary Proceeding. Accordingly, the Motion is GRANTED in its entirety.

22 4. The Settlement Agreement, including all documents, exhibits and other papers
23 attached thereto, is approved in all respects. Each and every term of the Settlement Agreement,
24 including but not limited to the mutual releases, dismissals, covenants not to sue, and conditions
25 to effectiveness, is approved whether or not set forth or specifically discussed herein. The
26 Settlement Agreement is incorporated into this Order in its entirety as though set forth in full
27 herein.
28

1 5. The Liquidating Trustee on behalf of the PC Trusts and the Defendants are
2 authorized and directed to enter into, and to perform all obligations contemplated by, the
3 Settlement Agreement subject to the terms and conditions set forth therein and to take all other
4 actions reasonably necessary to carry out the terms of the Settlement Agreement.

5 6. The performance of all obligations under the Settlement Agreement, including
6 payment of the Settlement Payment to the Liquidating Trustee on behalf of the PC Trusts by the
7 Debtors' directors and officers liability insurers, does not violate the automatic stay of section
8 362(a) of the Bankruptcy Code.

9 7. Within five (5) days of the Trustee's receipt of the Settlement Payment provided
10 for in the Settlement Agreement, the Trustee will file a stipulation of dismissal with prejudice of
11 the Adversary Proceeding (to be signed by all remaining Parties) and the Parties shall file
12 dismissals with prejudice of all Claims pending in the Arbitration before the American
13 Arbitration Association and the Defendants shall file dismissals with prejudice of all Claims on
14 file or pending before this Court, including, but not limited to those in favor of or filed by Mr.
15 Kornswiet in the amounts of \$10,000 (priority claim), \$120,307.69 (general unsecured claim),
16 Claims No. 109 (PCFI), 116 (PCFC), and 437 (PCHLI) for \$10,000 (priority claim) and
17 \$11,401,935.75 (general unsecured claim) and Claim No. 20003 (PCHLI) for \$2,106,110.70
18 (administrative expense claim).

19 8. Once the dismissals identified in Paragraph 7 have been filed, none of the
20 Defendants, and no one claiming through them, shall receive a distribution directly or indirectly
21 from the PC Trusts, all of their Claims having been disallowed in full on a final basis, withdrawn
22 and discharged in these Bankruptcy Cases and the Arbitration.

23 9. The Releases identified in Section 4 of the Settlement Agreement and in
24 paragraphs 11 and 12 below, shall become effective upon the Trustee's receipt of the Settlement
25 Payment.

26 10. If this order does not become a Final Order (as defined in the Settlement
27 Agreement) or if the Settlement Agreement has been materially breached under Section 3.9 of
28 that Agreement by reason of late payment of the Settlement Payment to the Trustee, then the

1 Settlement Agreement shall be void and of no force or effect and the Parties shall return to
2 litigation.

3 11. Upon receipt of the Settlement Payment by the Trustee, the Trustee on behalf of
4 himself, the PC Trusts, the People's Choice Companies, and each of their respective
5 predecessors, successors, and assigns, and any Person who claims any right, title or interest
6 through each of the Trustee, the PC Trusts, or the People's Choice Companies including the
7 Post-Effective Date Committee of the PC Trusts and each of their respective members acting in
8 their capacity as members of the Post-Effective Date Committee, shall be deemed to have, and
9 by operation of this Order shall have, fully, finally, and forever released, resolved, settled,
10 relinquished, and forever discharged all Claims against Neil Kornswiet, Kathleen Lipps, David
11 Cronenbold, Robert Harris, Victor Coleman, the Defendant Related Parties, and, subject to the
12 limitations set forth in the Settlement Agreement, all other former directors, officers, or
13 employees of the People's Choice Companies, of any and all Claims from the beginning of time
14 through the date hereof arising out of or related in any way to (i) the People's Choice
15 Companies; (ii) the facts, transactions and/or occurrences giving rise to any Claim that was
16 asserted in the Civil Action or the Arbitration, or which could have been asserted therein; (iii) the
17 Bankruptcy Cases; and/or (iv) Defendants' employment, or service as an officer or director, with
18 all or any of the People's Choice Companies, and shall have covenanted not to sue Neil
19 Kornswiet, Kathleen Lipps, David Cronenbold, Robert Harris, Victor Coleman, or the Defendant
20 Related Parties with respect to all such Claims, and shall be permanently barred and enjoined
21 from instituting, commencing, prosecuting or asserting any such Claim against Neil Kornswiet,
22 Kathleen Lipps, David Cronenbold, Robert Harris, Victor Coleman, the Defendant Related
23 Parties, and, subject to the limitations set forth in the Settlement Agreement, all other former
24 directors, officers, or employees of the People's Choice Companies.

25 12. Upon receipt of the Settlement Payment by the Trustee, Neil Kornswiet, Kathleen
26 Lipps, David Cronenbold, Robert Harris, Victor Coleman, and any other Person claiming (now
27 or in the future) through or on behalf of them, shall be deemed to have, and by operation of this
28 Order shall have, fully, finally, and forever released, resolved, settled, relinquished, and forever

1 discharged all Claims against the People's Choice Companies, the PC Trusts, the Liquidating
2 Trustee and the Trustee Related Parties of any and all Claims from the beginning of time through
3 the date hereof arising out of or related in any way to (i) the People's Choice Companies; (ii) the
4 facts, transactions and/or occurrences giving rise to any Claim that was asserted in the Civil
5 Action or the Arbitration, or which could have been asserted therein; (iii) the Bankruptcy Cases;
6 and/or (iv) Defendants' employment, or service as an officer or director, with all or any of the
7 People's Choice Companies, and shall have covenanted not to sue the People's Choice
8 Companies, the PC Trusts, the Trustee and the Trustee Related Parties with respect to all such
9 Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting
10 or asserting any such Claim against the People's Choice Companies, the PC Trusts, the Trustee
11 and the Trustee Related Parties. Notwithstanding the foregoing, nothing in the Settlement
12 Agreement shall reduce or eliminate any rights or benefits provided to Ms. Lipps under the 2007
13 Lipps Settlement Agreement, nor shall the 2007 Lipps Settlement Agreement constitute the basis
14 for a claim or proof of claim by Ms. Lipps or anyone claiming through her against the People's
15 Choice Companies or PC Trusts in the Bankruptcy Cases.

16 13. Upon receipt of the Settlement Payment by the Trustee, all obligations of Neil
17 Kornswiet, Kathleen Lipps, David Cronenbold, Robert Harris, Victor Coleman, and the
18 Defendant Related Parties to the Liquidating Trustee and PC Trusts and the People's Choice
19 Companies arising out of or related in any way to (i) the People's Choice Companies; (ii) the
20 facts, transactions and/or occurrences giving rise to any claim that was asserted in the Adversary
21 Proceeding or the Arbitration, or which could have been asserted therein; and/or (iii) Defendants'
22 employment, or service as a director, with all or any of the People's Choice Companies, shall be
23 fully, finally, and forever discharged.

24 14. All Persons shall be permanently barred, enjoined, and restrained from instituting,
25 commencing, prosecuting, pursuing, litigating or asserting in any manner (regardless of whether
26 such Persons purport to act individually, representatively, or in any other capacity and regardless
27 of whether such Persons purport to allege direct claims, claims for contribution, indemnification,
28 or reimbursement, or any other claims) any claim for indemnity or contribution or otherwise,

1 however denominated, against the Defendants or the Defendant Related Parties (or any other
2 claim against the foregoing where the alleged injury to such Person is such Person's actual or
3 threatened liability to the Liquidating Trustee or debtors, the cost of defending against claims
4 asserted by such Person, or the settlement of such claims) arising out of or related to the claims,
5 acts, facts, transactions, occurrences, statements, omissions or allegations that were or could
6 have been alleged by the Liquidating Trustee on behalf of the PC Trusts or the Defendants in the
7 Adversary Proceeding, Arbitration or Bankruptcy Cases generally, whether arising under state,
8 federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, and whether
9 asserted in the Bankruptcy Court, in any federal or state court, or in any other court, arbitration
10 proceeding, administrative agency, or other forum in the United States or elsewhere, and all such
11 claims shall be deemed extinguished, discharged, satisfied, and unenforceable. Any person so
12 enjoined, barred, or restrained shall be entitled to appropriate judgment reduction.

13 15. The covenants not to sue set forth in the Settlement Agreement, the protections
14 afforded the parties to the Settlement Agreement under California Code of Civil Procedure § 877
15 *et seq.* and other similar laws of other jurisdictions, and the waiver of Section 1542 of the
16 California Civil Code are fully applicable to protect the Parties to the Settlement Agreement and
17 are incorporated herein by reference and deemed to be set forth herein in full.

18 16. The time to appeal from this Order shall commence upon its entry upon the
19 Court's docket.

20 17. The failure to reference or discuss any particular provision of the Settlement
21 Agreement in this Order shall have no effect on this Court's approval and authorization of, or the
22 validity, binding effect, and enforceability as every other provision of the Settlement Agreement,
23 whether or not mentioned in this Order.

24 18. These findings of fact and conclusions of law constitute the Court's findings of
25 fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

26 19. Any portion of this Order that may be construed to be findings of fact and
27 conclusions of law shall be deemed findings of fact and conclusions of law and shall have the
28 same effect as findings of fact and conclusions of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20. Without further order of the Court, the Parties may agree in writing signed by all of the Parties to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

21. The terms of this Order may not be modified, reserved, or otherwise changed without the consent of the Parties to the Settlement Agreement, and this Order shall remain fully effective notwithstanding the entry of a final decree closing the Bankruptcy Cases or an order of the Court dismissing the Bankruptcy Cases.

###

DATED: July 25, 2012


United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Winston & Strawn LLP, 101 California Street, 39th Floor, San Francisco, CA 94111

A true and correct copy of the foregoing document entitled (*specify*): **ORDER (1) APPROVING SETTLEMENT AGREEMENT; (2) DISMISSING AND/OR WITHDRAWING CLAIMS WITH PREJUDICE; (3) APPROVING MUTUAL RELEASES; AND (4) GRANTING LIQUIDATING TRUSTEE'S MOTION UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE WITH RESPECT TO SETTLEMENT AGREEMENT (WITH NEIL KORNSWIET, KATHLEEN LIPPS, DAVID CRONENBOLD, ROBERT HARRIS AND VICTOR COLEMAN AS DEFENDANTS, CROSS CLAIMANTS AND BANKRUPTCY CLAIMANTS)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) July 24, 2012, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express Mail

**Hon. Robert Kwan -
United States Bankruptcy Court
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012**

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 24, 2012

Heidi Hammon

/s/ Heidi Hammon

Date

Printed Name

Signature

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER (1) APPROVING SETTLEMENT AGREEMENT; (2) DISMISSING AND/OR WITHDRAWING CLAIMS WITH PREJUDICE; (3) APPROVING MUTUAL RELEASES; AND (4) GRANTING LIQUIDATING TRUSTEE'S MOTION UNDER RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE WITH RESPECT TO SETTLEMENT AGREEMENT (WITH NEIL KORNSWIET, KATHLEEN LIPPS, DAVID CRONENBOLD, ROBERT HARRIS AND VICTOR COLEMAN AS DEFENDANTS, CROSS CLAIMANTS AND BANKRUPTCY CLAIMANTS)** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. **SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)** - Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) July 25, 2012, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- ron.greenspan@fticonsulting.com
- bkimberley@winston.com
- rwoolner@winston.com;
- Nancy.goldenberg@usdoj.gov

Service information continued on attached page

2. **SERVED BY THE COURT VIA UNITED STATES MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Service information continued on attached page

3. **TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

Service information continued on attached page

ADDITIONAL SERVICE INFORMATION:

III. SERVED BY THE LODGING PARTY VIA U.S. MAIL:

Liquidating Trustee

Ronald Greenspan, Liquidating Trustee
Tamara McGrath
FTI Consulting, Inc.
633 West 5th Street, Suite 1600
Los Angeles, CA 90071-2027

U.S. Trustee

Nancy S. Goldenberg, Esq.
United States Trustee
411 West Fourth Street, Suite 9041
Santa Ana, CA 92701-4593

POST-EFFECTIVE DATE COMMITTEE

Attorneys for Fidelity (f/k/a LSI)

Donald A. Workman, Esq.
Baker Hostetler
1050 Connecticut Ave., NW, Ste. 1100
Washington, DC 20036-5304

Michael A. Criscito/Megan Kane
DLJ Mortgage Capital, Inc.
11 Madison Avenue
New York, NY 10010

Attys. for DLJ

Samuel Newman/Sarah Powers
Gibson, Dunn and Crutcher LLP
333 S. Grand Ave., Ste. 4600
Los Angeles, CA 90071-3197

Dennis Hastings/Carla Hastings
iDirect Marketing, Inc.
6789 Quail Hill Parkway, Suite 550
Irvine, CA 92603

Neil Luria/George Koutsonicolis
Residential Funding Corporation
c/o Navigant Capital Advisors, LLC
15900 South Park Blvd.
Shaker Heights, OH 44120

Attys. for Residential Funding

David J. McCarty/Theodore Cohen
Sheppard, Mullin, Richter & Hampton LLP
333 S. Hope St., 48th Flr.
Los Angeles, CA 90071

OTHER NOTICE:

Attorneys for Kathleen Lipps

Russell F. Sauer Jr., Esq.

Charles W. Cox, Esq.

Anita P. Wu, Esq.

Latham & Watkins LLP

355 South Grand Avenue

Los Angeles, CA 90071-1560

(WITH E-MAIL COURTESY COPY)

Attorneys for Neil B. Kornswiet

Mark Holscher, Esq.

Michael Baumann, Esq.

David I. Horowitz, Esq.

Jay L. Bhimani, Esq.

Kirkland & Ellis LLP

333 S. Hope Street

Los Angeles, CA 90071

(WITH E-MAIL COURTESY COPY)

Attorneys for Robert L. Harris, David F. Cronenbold, and Victor Coleman

Richard B. Specter, Esq.

Laura E. Mascheroni, Esq.

Corbett, Steelman & Specter

18200 Von Karman Ave., #900

Irvine, CA 92612-1023

(Courtesy Copy only)

(WITH E-MAIL COURTESY COPY)