

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-JES-NPM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT CO.
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

IN RE: ERNST & YOUNG LLP.

AMENDED¹ FINAL SETTLEMENT APPROVAL AND BAR ORDER

This matter came before the Court on October 25, 2023, for a Final Approval Hearing pursuant to the Motion to Approve Proposed Settlement With Ernst & Young LLP, To Approve the Proposed Notice of Settlement and Bar Order Proceedings, and To Enter the Final Settlement Approval & Bar Order (Doc. # 597) “the Approval Motion,” filed by Daniel S. Newman (the “Receiver”) in his capacities as (a) the court-appointed receiver for the Founding Partners Entities,² and (b) the assignee of claims of certain investors in one or more Founding Partners Entities, which

¹ The Final Settlement Approval and Bar Order (Doc. #610) is amended pursuant to the Court’s Order (Doc. #612).

² The “Founding Partners Entities” are Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P. (formerly known as Founding Partners Multi-Strategy Fund, L.P.), Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (formerly known as Founding Partners Equity Fund, L.P.).

investors are referred to herein as “Assignors,” and the Court’s Preliminary Approval of Settlement and Scheduling Order (Doc. #598). The purpose of the Final Approval Hearing was to hear from counsel and interested parties on whether the Court should approve the terms of a Settlement Agreement, to rule upon any objections, and, if appropriate, to enter a Final Settlement Approval And Bar Order.

The Approval Motion concerns a proposed settlement (the “Settlement”) among and between the Receiver and Ernst & Young LLP. Ernst & Young LLP is the remaining defendant in the case filed by the Receiver in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the “Broward Court”), that is captioned *Newman v. Ernst & Young LLP*, Case No. 10-49061 (the “Broward County Litigation”). Ernst & Young LLP is also the respondent in the following arbitrations: American Arbitration Association, Miami Regional Office (“AAA”), case captioned *Newman v. Ernst & Young LLP*, Case No. 01-18-0003-2029 (the “AAA Arbitration”); and International Institute for Conflict Prevention & Resolution (“CPR”), case captioned *Newman v. Ernst & Young LLP*, Case No. G-21-63-S (the “CPR Arbitration.”) The CPR Arbitration, the AAA Arbitration, and the Broward County Litigation are collectively referred to as the “Litigation”). The Settlement Agreement at issue (the “Agreement”) is attached as Exhibit 1 to the Approval Motion (Doc. #597-1, pp. 1-35). All capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

On August 16, 2023, the Court entered a Preliminary Approval of Settlement and Scheduling Order (Doc. #598) regarding the Settlement between the Receiver and Ernst & Young LLP while reserving final ruling pending a Final Approval Hearing. The appropriate form for Notice of the Final Approval Hearing was set forth therein and objections were to be filed no later than September 18, 2023. On August 16, 2023, the Receiver filed a Notice Concerning Consents to Settlement Agreement With Ernst & Young LLP (Doc. #600) providing executed consents from 165 out of 191 Approved Claims holders expressing approval and advising that no objections had been filed. On October 13, 2023, the Receiver filed a Notice of Compliance and Notice of No

Objections to the Settlement Agreement (Doc. #607) indicating that no objections were filed with the Court or sent to the Receiver's Office. On October 24, 2023, the Receiver filed an Updated Notice Concerning Consents to Settlement Agreement with Ernst & Young LLP (Doc. #608) indicating that the Receiver has received executed Consents from holders of 188 of the 191 Approved Claims, and that there are no objections filed to the Settlement or Settlement Agreement. On October 25, 2023, just after to the Final Approval Hearing, the Court re-checked the Court's docket and found that no objections have been filed with the Court.

Following notice and a hearing, having considered the case filings related to the Settlement, and having heard the arguments and proffers of counsel, the Court hereby **GRANTS** the Approval Motion, as set forth below. As summarized by the Receiver and counsel at the Final Approval Hearing, the record in this case establishes that the litigation being settled is very complex, was being pursued in three different forums, and was very expensive for all parties. The Court finds that the terms of the Agreement are adequate, fair, reasonable and equitable, and are the product of serious, informed, good-faith, and arm's-length negotiations. The Court therefore finds that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of the bar order sought in the Approval Motion—and now provided herein—is both essential to the Settlement between the Receiver and Ernst & Young LLP (the "Parties") and fair and equitable under the circumstances.

Accordingly, it is now

ORDERED:

1. Release of EY Released Parties: Consistent with Paragraphs 58 and 60 of the Agreement, and as of the Settlement Effective Date, the EY Released Parties³ shall be completely

³ "EY Released Parties" means Ernst & Young LLP, Ernst & Young U.S. LLP, Ernst & Young Global Services, Ernst & Young Global Limited, and each and all of the current and former member firms of Ernst & Young Global Limited (including, without limitation, EY Bermuda Ltd. and EY Cayman Ltd.), as well as all of the foregoing's respective present and former partners, limited partners, general partners, parents, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. "EY Released Parties" shall also include the insurers and reinsurers

released, acquitted, and forever discharged by all Bar Order Parties⁴ from the following (“Settled Claims”): any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity, or otherwise, that such Bar Order Party ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with:

- (i) any of the conduct complained of in the SEC Action or the Litigation;
- (ii) any of the Founding Partners Entities;
- (iii) any account or investment of any type with or related to any one or more of the Founding Partners Entities;
- (iv) Ernst & Young LLP’s relationship with, services for, or conduct with respect to any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc., Sun Capital, Inc., and/or any of their personnel (including but not limited to William L. Gunlicks);
- (v) Ernst & Young LLP’s provision of services to or for the benefit of or on behalf of any one or more of the Founding Partners Entities, Sun Capital Healthcare, Inc.,

of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

⁴ “Bar Order Parties” means (a) the Receiver; (b) the Receivership Estate; (c) the Founding Partners Entities; (d) FP Offshore; (e) the Assignors; (f) each Approved Claimant; (g) each Unapproved Claimant; (h) Mayer Brown LLP; (i) the following Founding Partners Capital Management Company (“FPCM”) employees or personnel associated with FPCM and/or the Founding Partners Entities: William L. Gunlicks, Judy Aller, William V. Gunlicks, Philip Fues, Chris Bowers, Robb Baldwin, William Hart, Barry Preston, David Teets, Kermit Claytor, and Stephen Dickson; and (k) the following individuals and trusts associated with Gunlicks: James B. Gunlicks; Nissa Cox; Annalee Good; the William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox; the William L. Gunlicks Irrevocable Trust f/b/o Annalee Good; and the William L. Gunlicks Irrevocable Trust f/b/o of William V. Gunlicks; and (j) any investor in any of the Founding Partners Entities. The inclusion of any particular Person within the definition of “Bar Order Parties” for the purposes of this Agreement does not necessarily mean that such Person has an interest in the Receivership Estate. The inclusion of a Person within the definition of “Bar Order Parties” encompasses all manners in which such Person invested in one or more of the Founding Partners Entities, including but not limited to investments made or held through an Individual Retirement Account (“IRA”) or a trust.

Sun Capital, Inc., and/or any of their personnel (including but not limited to William L. Gunlicks);

- (vi) any investment, loan, transfer, statement, or other decision, conduct, or omission by any of the Founding Partners Entities and/or any of their personnel, including but not limited to Gunlicks;
- (vii) any conduct or omission by Sun Capital, Inc.; Sun Capital Healthcare, Inc.; Promise Healthcare, Inc.; Success Healthcare, Inc.; or any of their respective related or affiliated entities, subsidiary entities, principals, or employees;
- (viii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities pending or commenced in any Forum, regardless of whether such matter or fact was asserted or alleged against Ernst & Young LLP or any other Person; or
- (ix) the subject matter of the Litigation, the SEC Action, or any proceeding concerning Gunlicks or the Founding Partners Entities that is pending or was commenced in any forum on or after March 25, 2009.

“Settled Claims” also specifically includes, without limitation, all claims (or facts relating thereto) against any EY Released Party that each Bar Order Party does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected his, her, or its decisions with respect to the Agreement and the Settlement. “Settled Claims” also includes contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts. Each Bar Order Party releases and relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute.⁵

2. Release of Receiver Released Parties: Pursuant to the provisions of Paragraphs 59 and 61 of the Agreement, and as of the Settlement Effective Date, the Receiver Released

⁵ California Code § 1542 provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Parties⁶ shall be completely released, acquitted, and forever discharged by Ernst & Young LLP from all Settled Claims.

3. Bars, Restraints, and Injunctions: The Court hereby permanently bars, restrains, and enjoins all Bar Order Parties (and all Persons acting in concert with such Bar Order Party or claiming by, through, or under such Bar Order Party), all and individually, from directly, indirectly, or through a third party, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against any EY Released Party, (i) the Litigation (except as is necessary to bring the Litigation to final conclusion with respect to Ernst & Young LLP pursuant to the terms of the Agreement) or (ii) any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Founding Partners Entities or Gunlicks; this case or its subject matter; the Litigation or its subject matter; or any Settled Claim.

The foregoing specifically includes (but is not limited to) any claim against any EY Released Party, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Bar Order Party or the claim asserted by such Bar Order Party arises out of, relates to, or is based in whole or in part upon (a) such Bar Order Party's actual or alleged liability to the Receiver, the Receivership Estate, or the Founding Partners Entities, or (b) money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to the

⁶ "Receiver Released Parties" means the Receiver, the Founding Partners Entities, and the Assignors. "Receiver Released Parties" also includes each of the foregoing persons' respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. "Receiver Released Parties" shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such entities with respect to the Settled Claims.

Receiver, the Receivership Estate, or the Founding Partners Entities, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. There is no indication of collusion, bad faith, or wrongful conduct between the Parties in connection with reaching agreement on the Settlement and the Settlement Amount, and the Court affirmatively finds that there has been none. As such, the Court expressly finds that the Agreement was entered into in good faith.

4. Exclusion: The foregoing releases, bars, injunctions, and restraints do not (i) release the rights and obligations of the Receiver and Ernst & Young LLP under the Settlement, the Agreement, or this Final Settlement Approval & Bar Order; (ii) bar the Receiver or Ernst & Young LLP from enforcing, effectuating, or suing for alleged breaches of the Settlement or the Agreement; or (iii) bar any Person released under the Agreement, the release agreements attached as Exhibit G to the Agreement, or this Final Settlement Approval & Bar Order from enforcing, effectuating, or suing to enforce such release. Nothing in Part II.C of this Final Settlement Approval & Bar Order is intended to bar claims against Persons other than the EY Released Parties, or to create rights in such other Persons against any Bar Order Parties.

Notwithstanding anything herein or in the Agreement to the contrary, this Final Settlement Approval & Bar Order shall not apply to any federal, state, or local governmental agency, including but not limited to the Securities and Exchange Commission.

5. Other Matters Relating to the Approved Settlement:

A. No Responsibility or Liability for the EY Released Parties for Certain Matters: The EY Released Parties have no responsibility, obligation, or liability whatsoever for the following:

- (i) Any attorneys' fees, costs, or expenses that may be owed to or approved for payment to the Receiver's counsel;
- (ii) the content of the Notice, the distribution of the Notice, or the Notice process;
- (iii) the creation, terms, interpretation, or implementation of any Distribution Plan(s);
- (iv) the administration of the Settlement;

- (v) the management, investment, or distribution of the Settlement Amount (or any portion thereof) or any other funds paid or received in connection with the Settlement, once the Settlement Amount (or any portion thereof) is paid to the Receiver pursuant to Section IV of the Agreement;
- (vi) the payment or withholding of Taxes that may be due or owing by the Receiver or the Receivership Estate once the Receiver receives the Settlement Amount or any portion thereof, or due and owing by any recipient of funds from the Settlement Amount;
- (vii) the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid to or received by Approved Claimants in connection with the Settlement, the Agreement, or any Distribution Plan(s); or
- (viii) any losses, attorneys' fees, expenses, vendor payment, expert payments, or other costs incurred by the Receiver or any other Person (other than Ernst & Young LLP) in connection with any of the foregoing matters.

No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Agreement, or this Final Settlement Approval And Bar Order, unless such appeal, challenge, decision, or other matter means any of the Conditions has failed to come to pass such that the Settlement Effective Date has not arisen pursuant to Paragraph 23 of the Agreement.

B. No Admission of Fault: Nothing in this Final Settlement Approval And Bar Order or the Agreement (including its exhibits), and no aspect of the Settlement or negotiation or mediation thereof, is or shall be construed to be a finding, admission, or concession of (a) any violation of any statute or law; (b) any fault, liability, or wrongdoing; or (c) any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the Litigation, or any other proceeding.

C. Continuing Jurisdiction: Without in any way affecting the finality of this Final Settlement Approval And Bar Order, the Court retains continuing and exclusive jurisdiction for purposes of (i) the Approval Motion, the Preliminary Approval And Scheduling Order, the Notice, and Distribution Plan(s), and this Final Settlement Approval And Bar Order (including, without limitation, the injunctions, bar orders, and releases herein); (ii) entering orders concerning the

administration or implementation of the Settlement, the Agreement, and the Distribution Plan(s); (iii) the continuation of this proceeding and the Receivership; and (iv) the activities and conduct of the Receiver. This provision is intended to be consistent with the agreement between the Receiver and Ernst & Young LLP, reflected in Section 72 of the Agreement.

D. Finality: This Final Settlement Approval And Bar Order (i) includes a permanent injunction appealable under 28.U.S.C. § 1292(a)(1); and (ii) resolves all claims that are pending in this proceeding with respect to an asset of the Receivership Estate—namely, the Receiver’s claims against Ernst & Young LLP. Upon entry of this Final Settlement Approval And Bar Order, there is no further action required by this Court to resolve the Receiver’s claims against Ernst & Young LLP. The Court also expressly finds and determines, pursuant to Rule 58, that there is no just reason for any delay in entering this final judgment. To the contrary, any delay in this Final Settlement Approval & Bar Order reaching finality would defeat the purpose of the Settlement (and impede the progress of this Receivership proceeding) because the Settlement is expressly conditioned on this Final Settlement Approval And Bar Order becoming Final as defined in the Agreement. Deferring finality of this Final Settlement Approval And Bar Order until the Receivership proceeding is fully and finally concluded as to all matters and all issues would delay the effectiveness of the Settlement and thereby delay the payment of the Settlement Amount into the Receivership Estate. For all these reasons, the Court intends this Final Settlement Approval And Bar Order to become final upon the expiration of any right to appeal, despite the continued pendency of this proceeding, including the Receivership. During the Final Approval Hearing, the parties had indicated to the Court that they did not need the Final Settlement Approval and Bar Order to be filed as a separate document pursuant to Rule 58. Subsequent to the entry of the Final Settlement Approval and Bar Order (Doc. #610), on October 26, 2023, the Receiver and EY indicated that they had reevaluated that issue and requested that the partial final judgment as to the Settlement be filed as a separate document pursuant to Rule 58. Pursuant to Fed. R. Civ. P. 58(b)(2), the Clerk of the Court shall enter a partial final judgment incorporating and referencing

this Amended Final Settlement Approval and Bar Order Regarding Receiver's Litigation With Ernst & Young LLP. The case otherwise remains open.

E. Service of Final Settlement Approval And Bar Order: Counsel for the Receiver shall serve this Final Settlement Approval And Bar Order via email, first-class mail, or international delivery service, on any Person who filed an objection to approval of the Settlement, the Agreement, or this Final Settlement Approval And Bar Order.

DONE AND ORDERED in Fort Myers, Florida, on this 30th day of October 2023.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies furnished:
All Counsel of Record