

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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THE LAUTENBERG FOUNDATION,  
JOSHUA S. LAUTENBERG and ELLEN  
LAUTENBERG,

Plaintiffs,

v.

PETER MADOFF,

Defendant.

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**Civil Action No. 09-816 (SRC)**

**ORDER**

**CHESLER, District Judge**

This matter having come before the Court on the motion by Defendant Peter Madoff (“Defendant”) to dismiss the Complaint [docket entry 13]; and Plaintiffs The Lautenberg Foundation, Joshua S. Lautenberg and Ellen Lautenberg having opposed the motion; and the Court having heard oral argument on the motion on August 11, 2009; and the Court having considered the parties’ briefing and arguments; and for the reasons expressed in the Opinion filed herewith,

**IT IS** on this 9<sup>th</sup> day of September, 2009,

**ORDERED** that Defendant’s motion to dismiss [docket entry 13] be and hereby is **GRANTED IN PART** and **DENIED IN PART**; and it is further

**ORDERED** that the claim for violation of Section 10(b) of the Securities Act, pled in

Count One of the Complaint, be and hereby is **DISMISSED WITHOUT PREJUDICE** insofar as it is predicated upon affirmative misrepresentations in violation of Rule 10b-5(b) and insofar as it is predicated upon violations of Rule 10b-5(a) and/or (c); and it is further

**ORDERED** that the claim for negligent misrepresentation, pled in Count Five of the Complaint, be and hereby is **DISMISSED WITHOUT PREJUDICE**; and it is further

**ORDERED** that Defendant's motion to dismiss be and hereby is **DENIED** as to all other claims asserted in the Complaint.

s/Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge