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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 PASHA ANWAR,

4 Plaintiff,

5 v.

09 CV 118 (VM) (THK)

6 FAIRFIELD GREENWICH LIMITED,

7 Defendants.

8 -----x

New York, N.Y.  
May 1, 2012  
11:00 a.m.

9  
10 Before:

11 HON. THEODORE H. KATZ,

12 Magistrate Judge

13 APPEARANCES

14 WOLF POPPER, LLP  
15 Attorney for Defendant

16 BY: ROBERT FINKLE

17 COVINGTON & BURLING, L.L.P.  
18 Attorneys for Defendant

19 BY: BRUCE A. BAIRD  
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1 (In chambers)

2 THE COURT: This is Judge Katz. Sorry for the delay.  
3 So I have your letters. Let me hear from you first,  
4 Mr. Finkle, on your issue of Mr. Beaus' e-mails.

5 MR. FINKEL: Yes, your Honor. Greg Beaus is a partner  
6 at Fairfield Greenwich from 2002 to 2003. He was a senior  
7 employee prior to that from 2000. Then he received partnership  
8 compensation in the form of a buyout, a percentage of profits  
9 through 2008.

10 Beaus' counsel has agreed to produce those documents  
11 only to 2003. He doesn't deny that the claims from 2003 to  
12 2008 were present in the complaint and they were sustained by  
13 the Court. We're looking for relevant discovery as to Beaus'  
14 state of mind not only with respect to the claims against him  
15 to the period 2008, but also to the extent that it may bear on  
16 the state of mind and the activity of the other defendants.

17 Now, from 2003 Greg Beaus was one of the most senior  
18 people at Fairfield Greenwich and it may well be that in 2004  
19 to 2008 in electronic documents he has information that will  
20 not only be relevant to the claims against him, but also  
21 against the other defendants. Bear in mind he did leave  
22 Greenwich 2003.

23 THE COURT: Are you on a cell phone?

24 MR. FINKEL: I am. I am sorry. I am on a speaker  
25 phone.

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1 THE COURT: We're getting buzzing here.

2 MR. FINKEL: I do have a phone that is on my desk. I  
3 will take it out of the way. I don't know if that is better.  
4 I can pick up the phone if that will be easier.

5 THE COURT: That will be easier because the reporter  
6 is having trouble hearing.

7 Much better.

8 MR. FINKEL: As I was saying valid claims against Greg  
9 Beaus through 2008, and we're looking for the discovery  
10 commensurate with the claims. The law in the Second Circuit is  
11 clear not only are we entitled to the discovery for the  
12 relevant period through 2008. If we have chose to request even  
13 after 2008 for a period of time, we would have some breadth  
14 beyond the claims that we're asserting. In fact, we agreed  
15 with the chief counsel for the defendants, Simpson Thatcher,  
16 that we would take discovery through the middle of discovery  
17 2009 with respect to documents.

18 So I am only ask for those documents that are relevant  
19 to the claims against Beaus and it is entirely consistent with  
20 Rule 26.

21 THE COURT: Well, as I understand it, it is Mr. Beaus'  
22 position that he left Fairfield in 2003. I think there is a  
23 suggestion, although I don't think it has been established even  
24 when he was at Fairfield, he was not the person steering people  
25 to Madoff. But leaving that aside, what I understand has been

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1 produced by both Fairfield is that any communications between  
2 Mr. Beaus and Fairfield regardless of the time period. What  
3 Mr. Beaus is objecting to is having to search through six years  
4 of personal e-mails after he left Fairfield in the hope that  
5 maybe you would find in random remark he made there to some  
6 third party about Madoff.

7 Isn't that a little bit of a fishing expedition?

8 MR. FINKEL: Your Honor, it is not at all. Because  
9 during the period of 2004 to 2008 Greg Beaus received  
10 compensation of approximately \$15 million is attributable to  
11 the Madoff relationship.

12 THE COURT: That was for work he performed while he  
13 was at Fairfield, correct.

14 MR. FINKEL: It was a resolution of his partnership  
15 interests and it did derive from the partnership interests that  
16 he received in 2002, 2003.

17 THE COURT: Have you received the e-mails from  
18 Fairfield yet?

19 MR. FINKEL: We have received the documents relating  
20 to Beaus from Fairfield.

21 THE COURT: Were there extensive communications  
22 between him and Fairfield post 2003?

23 MR. FINKEL: No, there aren't. I would say that Bruce  
24 Baird correctly represented that there weren't any or there  
25 were very few.

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1           THE COURT: So what is it you are hoping to find in  
2 his personal e-mails?

3           MR. FINKEL: It may well be that he continued to  
4 communicate with his clients who are investors in Fairfield  
5 Greenwich on the subject matter that is in dispute, which is  
6 the Madoff relationship. It is not a burdensome request. I  
7 don't believe that Bruce Baird has argued that it would be  
8 burdensome to search thee-mails with key terms.

9           THE COURT: I thought that is his primarily argument.

10          MR. BAIRD: Yes, it is our argument. Among other  
11 things, it would be burdensome, your Honor.

12          THE COURT: Let me ask you something --

13          MR. BAIRD: It is a pain in the neck. And the longer  
14 the time period, the more of a pain the neck because e-mail  
15 accounts are in different places where they are stored.

16          THE COURT: Let me ask you something: Did Mr. Baird  
17 have clients at Fairfield that he referred to Madoff?

18          MR. BAIRD: You mean Mr. Beaus?

19          THE COURT: I am sorry. Mr. Beaus.

20          MR. BAIRD: Yes -- no. That wasn't his job. I don't  
21 believe there is an instance of that. His whole job was to  
22 find a non-Madoff -- to create a non-Madoff aspect of the  
23 business. What his job was to go out to other money managers  
24 and try to persuade customers of Fairfield that they should  
25 invest with these other money managers. That is the thing he

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1 built. That is why he asked -- he was going to build that and  
2 he might leave and he would like a payout based on what he  
3 built because he would be walking away from this thing that he  
4 built.

5 MR. FINKEL: That is a disputed fact, your Honor. If  
6 you look at the severance agreement that Beaus put into the  
7 record in Exhibit A, it lists what he did while he was at  
8 Fairfield Greenwich. It is on page 12 of Exhibit A. Two of  
9 the things that are listed in the four points are that he was  
10 involved in constructing and managing a multi manager fund, the  
11 Fairfield Investment Fund comprising of managers with whom the  
12 firm did business. One of those four managers in the Fairfield  
13 Fund was Madoff. We have documents that show in 2002, 2003  
14 Greg Beaus had very substantial meetings with clients of  
15 Fairfield Greenwich with regard to Madoff trying to convince  
16 them to invest in what is really a fund of funds, the Fairfield  
17 Investment Fund with respect to Madoff.

18 THE COURT: Okay.

19 MR. FINKEL: The severance agreement that quotes  
20 Mr. Beaus supported the marketing, including the drafting of  
21 shareholder correspondence of the firm's senior manager in  
22 multi manager funds through his extensive client base  
23 throughout the world.

24 MR. BAIRD: We don't dispute that he can look at any  
25 of the documents from 2000 to 2003 to try to make his point.

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1           THE COURT: Well, leaving aside that dispute, which  
2 really isn't determinative, the question is what about his  
3 communications after he left Fairfield is going to shed any  
4 light on this?

5           MR. FINKEL: Well, we don't know. We haven't taken  
6 Greg Beaus' deposition. We haven't taken some of the senior  
7 people from 2002 to 2003 on the issue of why he left. We only  
8 want to take the deposition once. But it certainly bears some  
9 logic, and since Madoff was the dominate relationship that  
10 Fairfield Greenwich had in 2002, 2003, that Greg Beaus may have  
11 had communications from 2004 to 2008 on the subject matter of  
12 Madoff.

13           This is a case where not only did the seven class  
14 representative plaintiffs do electronic discovery, but 20 other  
15 named plaintiffs did electronic discovery and we were required  
16 to search multiple different e-mail boxes to obtain what was  
17 marginally relative information. Look, as far as I understand,  
18 Mr. Beaus had one or two e-mail addresses from 2004 to 2008. I  
19 know from my personal experiences with my own e-mails that it  
20 is a relatively easy process to review the e-mails for keyword  
21 searches. I do it all the time when I am looking for  
22 documentation.

23           THE COURT: So, Mr. Baird, how difficult would it be  
24 for him to just to do a search that involves the word "Madoff"  
25 or "Fairfield"?

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1           MR. BAIRD: It is difficult, your Honor. It is not  
2 just one computer. He has changed jobs. He has changed  
3 computers. Every time I start an electronic discovery  
4 procedure in a case, I shake my head at the variety of  
5 different things that go wrong and the variety of places where  
6 past e-mails may end up. So it costs money. It will be a pain  
7 in the neck and he is paying his own fees and I guess that is  
8 the motive, your Honor.

9           In terms of what Mr. Finkle is saying, he is using the  
10 words as a fishing expedition. He is talking about how he  
11 could conceivably find something. He doesn't have a claim that  
12 relates to that. His claim relates only to unjust enrichment.  
13 There is no claim of wrongdoing. It is a claim that rises and  
14 falls on what Mr. Beaus did or didn't do between 2002 and 2003.  
15 It is one of those rare situations in the way there is no other  
16 defendant in this case situated like Mr. Beaus is leaving in  
17 2003. It is that rare case where you really can say there is a  
18 firm cutoff in terms because of the claim that is made, because  
19 of the underlying facts that when he left you actually can say  
20 discovery after 2003 is not going to make his claim or break  
21 his claim. He has to find something between 2002, 2003.

22           MR. FINDEL: If I may, Judge, I don't think that would  
23 be the case if Greg Beaus only received compensation in 2002,  
24 2003. Here he received a percentage of the partnership profits  
25 for five additional years. So I contest Bruce Baird's



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1 proposition that Greg Beaus' state of mind only in 2002, 2003  
2 is relevant. Clearly if information came to his attention with  
3 regard to Madoff or Fairfield from 2004 to 2008, that would  
4 bear on the issue of unjust enrichment.

5 THE COURT: There are no communications that turned up  
6 between him and Fairfield during this period that have any  
7 bearing on these issues. So why would a passing comment he  
8 made to a third-party bear on that claim?

9 MR. FINKEL: Well, it would go to -- depending on the  
10 comment, it would go to the merits of the claim against  
11 Bruce --

12 THE COURT: But doesn't that turn --

13 MR. FINKEL: Whether or not --

14 THE COURT: Wait a minute.

15 MR. FINKEL: -- whether or not Greg Beaus was entitled  
16 to receive the compensation from 2004 to 2008 and as well as  
17 potentially claims against third parties depending on what he  
18 said.

19 This is not a fishing expedition because in those five  
20 years Greg Beaus received \$15 million as a percentage of the  
21 profits of Fairfield Greenwich. I assume that he was known  
22 within the community for having a relationship with Fairfield  
23 and Madoff. It is entirely reasonable to assume that he did  
24 have communications over that five-year period on the subject  
25 matter of Fairfield and Madoff. Without the discovery, I

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1 cannot say for a fact that he had those communications, but it  
2 certainly is reasonable that he would have had those  
3 communications and in the absence of any representation from  
4 Bruce Baird unconditionally that he didn't have those  
5 communications, I have to believe that it is extremely likely  
6 that he did.

7 THE COURT: What would that show about whether he was  
8 unjustly enriched for what he did while he was at Fairfield in  
9 2002 or 2003?

10 MR. FINKEL: The claim extends not only to 2002, 2003  
11 but also to 2008.

12 THE COURT: Yes, but he is being compensated for work  
13 he did back then. So where does the unjust enrichment come in  
14 based on what he is thinking in 2006?

15 MR. FINKEL: He is being compensated as a buyout of  
16 his partnership interest.

17 THE COURT: Right.

18 MR. FINKEL: As a percentage of the profits at  
19 Fairfield Greenwich. He is being compensated for work that is  
20 being done by Fairfield Greenwich in 2004 to 2008. It goes to  
21 first in all likelihood to what he knew in 2002, 2003. He had  
22 the documents postdated that period and it also goes to what he  
23 knows when he was receiving \$15 million in additional  
24 distributions from profits that were being earned by Fairfield  
25 Greenwich. It goes to the state of mind and the equities of

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1 the situation of whether he should be entitled to keep that \$15  
2 million.

3 MR. BAIRD: I didn't understand that, your Honor. It  
4 seemed to me that Judge Marrero held clearly that for an unjust  
5 enrichment claim to be made out that Mr. Finkle has to prove  
6 that in the course of steering plaintiff's investments into  
7 Madoff, they should have been on notice of Madoff's scheme. So  
8 2000 to 2003 is what he has got to prove. There is no way  
9 around that under Judge Marrero's decision.

10 MR. FINKEL: I don't believe that that is the holding  
11 of Judge Marrero. I believe the holding is that if Fairfield  
12 Greenwich unlawfully made these monies that the fee-only  
13 defendants should be required to return those monies even if  
14 they independently didn't have that knowledge. That is the  
15 whole concept of the fee-only defendants where we don't plead  
16 scienter because they only take as good as Fairfield Greenwich  
17 could take. Therefore, if they receive the money through  
18 Fairfield Greenwich, which acted with a culpable state of mind,  
19 the fee-only defendants as partners or former partners  
20 continuing to get a partnership distribution should recount  
21 that money to the investors who contributed to Fairfield  
22 Greenwich.

23 THE COURT: Well, that makes his scienter even less  
24 relevant because you are saying it is simply a question of  
25 whether he benefited from the activities of Fairfield

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1 Greenwich.

2 MR. FINKEL: To that extent that it is correct; but  
3 according to Bruce Baird's theory, it would bear on the merits.  
4 Bruce Baird suggested there is no element of culpability in  
5 what Judge Marrero wrote in the opinion. And it also would  
6 bear on the state of mind that the other defendants, depending  
7 on what Greg Beaus may have written to third parties or  
8 internally with respect to Madoff or Fairfield.

9 THE COURT: Mr. Baird, do you know how many different  
10 computers he has used in the six years since he left?

11 MR. BAIRD: I don't, your Honor. We haven't gotten  
12 into it. He hasn't wanted to pay for it.

13 THE COURT: So you would be asking him to search all  
14 of his e-mails, whether they are personal or business e-mails?

15 MR. BAIRD: Well, I guess --

16 THE COURT: I am asking Mr. Finkle that question.

17 MR. FINKEL: My understanding is that Greg Beaus had  
18 two e-mails. He probably had one relating to his business and  
19 Bruce Baird told me he had a personal e-mail address. So I  
20 don't know how many computers he used, but my understanding is  
21 that he had a relatively limited number of e-mail addresses.

22 MR. BAIRD: On the argument that Mr. Finkle is making,  
23 you could justify taking discovery of a wide variety of people  
24 in the New York area to see whether they made a random comment  
25 about Fairfield that may be relevant to their state of mind.

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1 You could justify taking e-mail discovery of every friend of  
2 every defendant, every wife and girlfriend, every boyfriend,  
3 every child. There is no end to where the theory that  
4 Mr. Finkle's articulating would reach.

5 THE COURT: I am tending to agree with Mr. Baird here.  
6 It just seems to me that what you are asking him to do, and I  
7 don't know what would be involved, but I don't think it is just  
8 a minor burden to figure out whether you have look to get  
9 through six years' of e-mails and various hard drives and  
10 e-mail accounts to determine whether there was some passing  
11 remark about Madoff just seems clearly outweighs the benefit.  
12 I think it is essentially you are hoping to find some comment  
13 that he made that might shed some light on what he knew in 2002  
14 or 2003. It is really a very remote connection. Particularly  
15 when Fairfield itself has been willing to produce  
16 communications between Fairfield and Mr. Beaus and nothing has  
17 turned up during that period.

18 So essentially you are just looking for something he  
19 might have said to some third party. I don't think it  
20 justifies the burden. So I am going to agree here with  
21 Mr. Baird and not require that search.

22 Were there any other issues in your letters?

23 MR. BAIRD: No, your Honor.

24 MR. FINKEL: That is the only one, your Honor.

25 THE COURT: Take care folks.

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