

been dismissed as a defendant; (ii) plaintiffs' claims for unjust enrichment and negligence have been dismissed; and (iii) plaintiffs have struck any allegations of misrepresentations made in the context of their breach of fiduciary duty claim. (Dkt. No. 936.¹)

2. SCBI admits the allegations of paragraph 2.

3. SCBI admits that the Complaint purports to characterize the allegations in the complaint filed by the Securities and Exchange Commission captioned *SEC v. Madoff*, No. 08-CV-10791 (S.D.N.Y. Dec. 11, 2008), and respectfully refers the Court to the SEC complaint for a complete and accurate description of its contents.

4. SCBI denies the allegations of paragraph 4.

5. SCBI denies the allegations of paragraph 5, except admits that Sentry and Sigma were generally regarded as sought-after funds.

6. SCBI denies the allegations of paragraph 6.

7. SCBI denies the allegations of paragraph 7, except admits: (i) plaintiffs invested approximately \$455,000 in Sentry and Sigma through their accounts at SCBI; and (ii) Sentry and Sigma invested substantially all of their assets in BLMIS.

8. The allegations of paragraph 8 assert legal conclusions to which no response is required. To the extent any response is deemed required, SCBI denies the allegations of paragraph 8.

9. SCBI denies the allegations of paragraph 9.

10. SCBI denies the allegations of paragraph 10.

11. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

¹ All citations to docket entries refer to the master docket, No. 09-118, unless otherwise noted.

Jurisdiction and Venue

12. SCBI admits the allegations of paragraph 12.

13. SCBI admits that plaintiffs also purport to base jurisdiction of this action on 28 U.S.C. §§ 1331, 1337, and 1367.

14. SCBI admits: (i) the amount in controversy in this action exceeds \$75,000; (ii) SCBI is a corporation organized under the laws of the United States; and (iii) plaintiffs are corporations organized under the laws of a foreign state.

15. SCBI denies the allegations of paragraph 15, except admits: (i) plaintiffs purport to base venue for this action on 28 U.S.C. § 1391(a)(2); and (ii) SCBI conducts business within the Southern District of Florida.

16. SCBI denies the allegations of paragraph 16, except admits that it conducts business within the Southern District of Florida.

Parties

17. SCBI admits that: (i) plaintiff Velvor S.A. (“Velvor”) is organized and exists under the laws of Spain; and (ii) plaintiff Velvor held an account at SCBI.

18. SCBI admits that: (i) plaintiff Vilebens, S.L. (“Vilebens”) is organized and exists under the laws of Spain; and (ii) plaintiff Vilebens held an account at SCBI.

19. SCBI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 and therefore denies them.

20. SCBI admits: (i) Standard Chartered PLC is organized under the laws of the United Kingdom, with a place of business at 1 Aldermanbury Square, London, EC2V 7SB, United Kingdom; (ii) Standard Chartered PLC is the ultimate parent corporation of Standard Chartered Bank; and (iii) Standard Chartered Bank is the direct parent corporation of SCBI.

21. SCBI admits: (i) Standard Chartered PLC is the direct parent of Standard Chartered Holdings Limited; (ii) Standard Chartered Holdings Limited is the direct parent of Standard Chartered Bank; and (iii) Standard Chartered Bank is the direct parent of SCBI.

22. SCBI denies the allegations of paragraph 22, except admits: (i) SCBI is authorized to do business in Florida, with a place of business at 1111 Brickell Avenue, Miami, Florida 33131; (ii) American Express Bank International (“AEBI”) was renamed SCBI; and (iii) plaintiffs’ accounts were serviced through the Miami office of SCBI.

23. SCBI denies the allegations of paragraph 23, except admits: (i) AEBI was an Edge Act corporation that offered private banking services to individuals outside of the United States; and (ii) AEBI had its headquarters in Miami.

Factual Allegations

24. SCBI denies the allegations of paragraph 24, except admits that plaintiffs opened accounts with AEBI in or around 2006.

25. SCBI denies the allegations of paragraph 25.

26. SCBI denies the allegations of paragraph 26, except admits that Antonio Garcia Adanez was a relationship manager at AEBI.

27. SCBI denies the allegations of paragraph 27, except admits that Sentry had a history of stable and steady returns.

28. SCBI denies the allegations of paragraph 28, except admits that Sentry had consistent returns.

29. SCBI denies the allegations of paragraph 29.

30. SCBI denies the allegations of paragraph 30.

31. SCBI denies the allegations of paragraph 31, except admits that in or around April 2007, plaintiff Velvor authorized a \$100,000 investment in Sentry.

32. SCBI denies the allegations of paragraph 32, except admits that plaintiff Velvor purchased 80.8339 shares of Sentry for approximately \$100,000.

33. SCBI denies the allegations of paragraph 33, except admits that in or around June 2007, plaintiff Velvor authorized a \$70,000 investment in Sentry.

34. SCBI denies the allegations of paragraph 34, except admits that plaintiff Velvor purchased 55.9368 shares of Sentry for approximately \$70,000.

35. SCBI denies the allegations of paragraph 35, except admits that in or around November 2007, plaintiff Velvor authorized a \$50,000 investment in Sentry.

36. SCBI denies the allegations of paragraph 36, except admits that plaintiff Velvor purchased 38.8004 shares of Sentry for approximately \$50,000.

37. SCBI denies the allegations of paragraph 37, except admits that plaintiff Velvor purchased a total of 175.5711 shares of Sentry for approximately \$220,000.

38. SCBI denies the allegations of paragraph 38, except admits that in or around March 2008, plaintiff Vilebens authorized a €150,000 (approximately \$235,000) investment in Sigma.

39. SCBI denies the allegations of paragraph 39, except admits that plaintiff Vilebens purchased 801.8916 shares of Sigma for approximately €150,000.

40. SCBI denies the allegations of paragraph 40, except admits that plaintiffs were charged standard fees.

41. SCBI denies the allegations of paragraph 41, except admits that plaintiffs were charged standard fees.

42. SCBI denies the allegations of paragraph 42, except admits: (i) on or about September 18, 2007, Standard Chartered PLC announced that it had reached an agreement to

acquire American Express Bank Ltd. (“AEBL”) from the American Express Company; and
(ii) Standard Chartered PLC acquired AEBL from the American Express Company in February 2008.

43. SCBI admits: (i) in or around February 2008, Standard Chartered PLC acquired AEBL from the American Express company; (ii) AEBL was renamed Standard Chartered International (USA) Ltd.; and (iii) AEBI was renamed SCBI.

44. SCBI denies the allegations of paragraph 44, except admits that Standard Chartered PLC acquired AEBL, which was the direct corporate parent of AEBI, which in turn serviced plaintiffs’ accounts.

45. SCBI denies the allegations of paragraph 45.

46. SCBI denies the allegations of paragraph 46, except admits that plaintiffs remained invested in Sentry and Sigma after Standard Chartered PLC’s February 2008 acquisition of AEBL.

47. SCBI denies the allegations of paragraph 47.

48. SCBI denies the allegations of paragraph 48.

49. SCBI denies the allegations of paragraph 49, except admits: (i) SCBI conducted due diligence on Sentry and Sigma; and (ii) Sentry and Sigma had consistent returns.

50. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50, and therefore denies them.

51. SCBI denies the allegations of paragraph 51.

52. SCBI denies the allegations of paragraph 52.

53. SCBI denies the allegations of paragraph 53.

54. SCBI denies the allegations of paragraph 54, except admits that plaintiffs invested approximately \$455,000 with Sentry.

55. SCBI denies the allegations of paragraph 55.

56. SCBI denies the allegations of paragraph 56, except admits: (i) plaintiffs purport to describe events occurring in December 2008; (ii) Madoff was arrested on criminal charges of securities fraud; and (iii) investments in Sentry substantially declined in value as a result of the fraud perpetrated by Madoff and BLMIS.

AS AND FOR A FIRST CLAIM
(Breach of Fiduciary Duty Against All Defendants)

57. SCBI repeats and realleges its responses to paragraphs 1 through 56 as if fully set forth herein, except to the extent that the allegations in these paragraphs allege misrepresentations made in breach of an alleged fiduciary duty, to which no response is required because plaintiffs have stipulated to strike those allegations (Dkt. No. 936).

58. SCBI denies the allegations of paragraph 58.

59. The allegations of paragraph 59 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 59.

60. The allegations of paragraph 60 contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 60.

61. The allegations of paragraph 61, including paragraphs 61(a)-(h), contain legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 61, including paragraphs 61(a)-(h).

62. SCBI denies the allegations of paragraph 62.

63. SCBI denies the allegations of paragraph 63.

64. SCBI denies the allegations of paragraph 64, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

AS AND FOR A SECOND CLAIM
(Negligence Against All Defendants)

65. SCBI repeats and realleges its responses to paragraphs 1 through 64 as if fully set forth herein.

66. The allegations of paragraph 66 contain a legal conclusion and relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 66.

67. The allegations of paragraph 67 contain a legal conclusion and relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 67.

68. The allegations of paragraph 68, including paragraphs 68(a)-(i), contain a legal conclusion and relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 68, including paragraphs 68(a)-(i).

69. The allegations of paragraph 69 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies that skepticism about BLMIS was widespread among those who looked closely at its operations, and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 69, and therefore denies them. SCBI respectfully refers the Court to the unidentified article in PENSION & INVESTMENTS referenced by plaintiffs in paragraph 69 of the Complaint for a complete and accurate description of its contents.

70. The allegations of paragraph 70 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 70, except admits that materials, including the May 2001 MAR/HEDGE and BARRON's articles referenced in paragraph 70 of the Complaint, were publicly available, and respectfully refers the Court to those documents for a complete and accurate description of their contents.

71. The allegations of paragraph 71 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 71 and avers that certain of its affiliates offered Sentry and/or Fairfield Sigma, among other investments, to customers.

72. The allegations of paragraph 72 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 72.

73. The allegations of paragraph 73 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 73.

74. The allegations of paragraph 74 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 74.

75. The allegations of paragraph 75 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 75.

76. The allegations of paragraph 76 relate to plaintiffs' claim for negligence, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 76.

AS AND FOR A THIRD CLAIM
(Negligent Misrepresentation Against All Defendants)

77. SCBI repeats and realleges its responses to paragraphs 1 through 76 as if fully set forth herein.

78. The allegations of paragraph 78 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 78.

79. SCBI denies the allegations of paragraph 79.

80. SCBI denies the allegations of paragraph 80.

81. SCBI denies the allegations of paragraph 81.

82. SCBI denies the allegations of paragraph 82.

83. SCBI denies the allegations of paragraph 83.

84. SCBI denies the allegations of paragraph 84.

85. SCBI denies the allegations of paragraph 85, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

AS AND FOR A FOURTH CLAIM
(Common Law Fraud Against All Defendants)

86. SCBI repeats and realleges its responses to paragraphs 1 through 85 as if fully set forth herein.

87. SCBI denies the allegations of paragraph 87.

88. SCBI denies the allegations of paragraph 88.

89. SCBI denies the allegations of paragraph 89.

90. SCBI denies the allegations of paragraph 90, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

AS AND FOR A FIFTH CLAIM
(Gross Negligence Against the Standard Chartered Defendants)

91. SCBI repeats and realleges its responses to paragraphs 1 through 90 as if fully set forth herein.

92. The allegations of paragraph 92 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 92.

93. The allegations of paragraph 93 contain a legal conclusion to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 93.

94. SCBI denies the allegations of paragraph 94, including paragraphs 94(a)-(d).

95. SCBI denies the allegations of paragraph 95.

96. SCBI denies the allegations of paragraph 96, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

AS AND FOR A SIXTH CLAIM
(Unjust Enrichment and Constructive Trust Against All Defendants)

97. SCBI repeats and realleges its responses to paragraphs 1 through 97 as if fully set forth herein.

98. The allegations of paragraph 98 relate to plaintiffs' claim for unjust enrichment and constructive trust, which has been dismissed (Dkt. No. 936); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 98.

99. The allegations of paragraph 99 relate to plaintiffs' claim for unjust enrichment and constructive trust, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 99.

100. The allegations of paragraph 100 relate to plaintiffs' claim for unjust enrichment and constructive trust, which has been dismissed; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 100.

Denial of Prayer for Relief

SCBI denies that plaintiffs are entitled to any of the relief prayed for on pages 22 and 23 of the Complaint.

Jury Trial Demand

Plaintiffs' demand for a trial by jury is subject to their account agreement(s) with SCBI.

II. DEFENSES

First Defense

Plaintiffs fail to state a claim upon which relief can be granted.

Second Defense

Any damages allegedly suffered by plaintiffs were caused by the intervening act(s) or omission(s) of persons or entities other than SCBI, and said act(s) or omission(s) superseded any act or omission by SCBI for which it might be considered liable.

Third Defense

Plaintiffs' claims are barred, in whole or in part, because SCBI's alleged conduct was not the cause of plaintiffs' injuries.

Fourth Defense

The claims asserted in the Complaint are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and other equitable defenses that may appear upon further discovery and investigation.

Fifth Defense

SCBI has not engaged in any conduct that would entitle plaintiffs to an award of punitive damages.

Sixth Defense

Plaintiffs' claims are barred, in whole or in part, because plaintiffs knowingly and voluntarily assumed the risks inherent in the investments at issue.

Seventh Defense

Plaintiffs were contributorily and/or comparatively negligent.

Eighth Defense

Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.

Ninth Defense

Plaintiffs' claims are barred, in whole or in part, because they are preempted by the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1).

Tenth Defense

Plaintiffs did not justifiably or reasonably rely on any alleged representations, acts or omissions by SCBI.

Eleventh Defense

Plaintiffs' claims are barred, in whole or in part, because SCBI, or any person or entity acting or purporting to act on SCBI's behalf, acted in good faith and with due care and diligence.

Twelfth Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of their account agreement(s) with SCBI.

Thirteenth Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of disclosures in the subscription agreement(s) and the private placement memoranda applicable to plaintiffs' purchases of shares in Sentry.

Fourteenth Defense

SCBI was entitled to and did, reasonably and in good faith, rely on the acts and representations of other third parties with respect to the transactions and events that are the subject of plaintiffs' claims.

Fifteenth Defense

Any damages recoverable by plaintiffs from SCBI are limited to the percentage of fault attributable to SCBI, and thus would not include the percentage of fault attributable to at-fault third parties, including but not limited to the defendants named in the Second Consolidated Amended Complaint in *Anwar v. Fairfield Greenwich Limited*, No. 09-CV-0118.

Sixteenth Defense

Any recovery by plaintiffs against SCBI is to be offset, in whole or in part, by any and all other recoveries (including, where applicable, redemptions) by plaintiffs with respect to their investments in Sentry.

Seventeenth Defense

SCBI is entitled to recover indemnity and/or contribution from others for any liability they incur to plaintiffs.

Eighteenth Defense

Any recovery by plaintiffs against SCBI is to be offset by any and all debts, liabilities or obligations owed by plaintiffs to SCBI.

WHEREFORE, SCBI respectfully demands judgment dismissing this action with prejudice together with its costs and disbursements.

Respectfully submitted,

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October 12, 2012