

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE HERALD, PRIMEO, AND THEMA FUNDS SECURITIES LITIGATION) ECF Case)) Case No. 09 Civ. 0289 (RMB))) Class Action
This Document Relates to:))) NEVILLE SEYMOUR DAVIS,)) Plaintiff,) Case No. 09 Civ. 2558 (RMB))) vs.) Class Action)) ALBERTO BENBASSAT <i>et al.</i> ,)) Defendants.)

**Declaration of Francis A. Bottini, Jr.
In Support of Neville Seymour Davis’s Motion
For Preliminary Approval of Partial Settlement**

Pursuant to 28 U.S.C. § 1746, I, Francis A. Bottini, Jr., state as follows:

1. I am an attorney admitted *pro hac vice* to appear in this Court and a partner at Chapin Fitzgerald Sullivan & Bottini LLP, Lead Counsel for Neville Seymour Davis in this action. I submit this declaration in support of Mr. Davis’s motion for preliminary approval of partial settlement. I have personal knowledge of the facts stated below. If called upon to do so, I could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated August 18, 2010 from the directors of Defendant Thema International Fund plc (collectively referred to, together with its sub-fund, as “Thema”), stating that Thema (a) lacked sufficient funds to pursue litigation; and (b) intended to convene a shareholders meeting to address placing Thema into insolvent liquidation.

3. At the June 8, 2011 status conference before the Court, Thema's counsel raised the issues (a) regarding Mr. Davis being a beneficial owner rather than a registered owner of Thema shares; and (b) surrounding the supposed transfer of Thema shares by the alleged registered owner, Rubicon International, Ltd. ("Rubicon"). After the status conference, I sent a facsimile and an e-mail to the president of Rubicon, John O'Kelly-Lynch, requesting that Rubicon produce all documents evidencing the trading in its holdings of Thema shares.

4. By e-mail dated June 14, 2011, Mr. O'Kelly-Lynch responded to me, alleging that (a) Rubicon transferred its Thema shares to Energy Claims Limited ("ECL"); (b) ECL holds in trust certain Thema shares for Mr. Davis's benefit; and (c) Rubicon assigned its litigation rights regarding Thema shares to ECL. Attached hereto as Exhibit 2 is a true and correct copy of Mr. O'Kelly-Lynch's e-mail to me. Mr. O'Kelly-Lynch never responded to my request on Mr. Davis's behalf for copies of all documents evidencing the trading in Thema shares by Rubicon and has failed to produce any such documents.

5. As Thema indicated in its objections to Mr. Davis's motion for preliminary approval, Thema rejected Rubicon's attempt to transfer Thema shares to ECL. Further, as indicated in his declaration filed with his motion, Mr. Davis, as the beneficial owner of Thema shares held by Rubicon, has never consented to any transfer of Thema shares or assignment of any litigation rights.

6. In connection with my representation of Mr. Davis, I have reviewed numerous documents relating to two actions: (a) *Thema International Fund plc v. HSBC Institutional Trust Services (Ireland) Limited*, No. 2008/10983P, pending before the High Court in Dublin, Ireland (the "Irish Action"); and (b) *Picard v. HSBC Bank plc*, No. 09-1364 (BRL), pending before the

United States Bankruptcy Court for the Southern District of New York (the “*Picard-HSBC Action*”).

7. According to an Amended Defence dated July 28, 2009 in the Irish Action, HSBC Institutional Trust Services (Ireland) Limited states that Thema was responsible for appointing Bernard L. Madoff Investment Securities LLC (“BMIS”) as Thema’s sub-custodian.

8. According to an Amended Complaint dated December 5, 2010 in the *Picard-HSBC Action*, Irving H. Picard, the trustee for BMIS’s liquidation, alleges that Thema received avoidable transfers from BMIS in the amount of approximately \$692 million. Of this amount, approximately \$355.5 million was withdrawn from BLMIS by Thema within 90 days before BMIS’s bankruptcy.

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

Executed on July 11, 2011 at San Diego, California.

s/ Francis A. Bottini, Jr.
Francis A. Bottini, Jr.