

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 IN RE HERALD, PRIMEO AND THEMA : Master File No. 09 Civ. 289
 FUNDS SECURITIES LITIGATION : (RMB) (HBP)
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**ATTORNEY DECLARATION OF PRICE O. GIELEN IN SUPPORT OF
SONJA KOHN'S REPLY IN FURTHER SUPPORT OF THE MOTION TO DISMISS**

I, Price O. Gielen, under penalty of perjury, declare as follows:

1. I am counsel to Sonja Kohn ("Kohn") in the above captioned-action. I am familiar with all facts and circumstances set forth in this declaration. I respectfully submit this Declaration as a supplement to the Joint Reply in support of Kohn's Motion to Dismiss.

2. Plaintiffs acknowledge that Kohn is a foreign citizen. (TC ¶ 21; HC ¶ 25).

3. Kohn does not consent to jurisdiction in the United States and was not served in the United States.

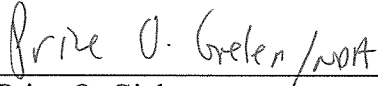
4. Plaintiffs' allegations that Sonja Kohn transacted business and resided in New York until **2006** (TC ¶ 21; HC ¶ 25), do not support a finding of general jurisdiction for the reasons stated in the Memorandum of Law in Support of Defendants' Joint Motion to Dismiss and in Opposition to Plaintiffs' Motion for Leave to Amend Complaints and Defendants' Joint Reply (collectively, the "Joint Mem."). See *Darby v. Compagnie Nat. Air France*, 735 F. Supp. 555, 560 (S.D.N.Y. 1990) (for purposes of "general" jurisdiction, the "jurisdictional inquiry covers the activities of the party at the time of service of the summons and the complaint, not the time the alleged cause of action accrues."); *Duravest, Inc. v. Viscardi, A.G.*, 581 F. Supp. 2d 638 (S.D.N.Y. 2008) (jurisdiction determined at time of service).

5. Similarly, the allegations relating to sporadic visits with Madoff in New York (HC ¶ 330; PC ¶ 19), do not establish specific jurisdiction. Plaintiffs' claims do not arise from the alleged New York meetings and communications with Madoff. Nearly all activities relevant to Plaintiffs' claims occurred overseas.¹ The alleged meetings with Madoff were not "of substantive importance" or "essential to the ongoing relationship of the parties" so as to have jurisdictional significance. *Howard v. City Real Estate Corp.*, 84 CIV. 5626-CSH, 1985 WL 438, at *2 (S.D.N.Y. Mar. 15, 1985).

6. For all of the above reasons and those set forth in the Joint Reply Brief and supporting declarations, the Court should dismiss with prejudice the claims against Sonja Kohn.

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

Executed on October 28, 2011, in Baltimore, Maryland.



Price O. Gielen

¹Strangely, in support of their jurisdictional argument, Plaintiffs' Opposition primarily relies on allegations asserted, for the first time, in their proposed Amended Complaint. Regardless, those allegations are insufficient to establish a "continuous and systematic course of doing business" in New York as required by CPLR 301. See *Landoil Res. Corp. v. Alexander & Alexander Servs., Inc.*, 918 F.2d 1039, 1045-1046 (2d Cir. 1990).