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

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| In re:<br><br>BERNARD L. MADOFF INVESTMENT SECURITIES LLC,<br>Debtor, | Adv. Pro. No. 08-01789 (BRL)<br><br>SIPA LIQUIDATION<br><br>(Substantively Consolidated) |
| IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,<br><br>Plaintiff,<br>v.<br><br>SAUL B. KATZ, et al.,<br><br>Defendants. | Adv. Pro. No. 10-05287 (BRL)<br><br>11 Civ. 03605 (JSR) (HBP) |

**TRUSTEE'S RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1(b)**

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*Attorneys for Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC And Bernard L. Madoff*

Pursuant to Local Civil Rule 56.1(b), Irving H. Picard ("Trustee"), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff ("Madoff"), by and through his undersigned counsel, respectfully submits the following Response to Defendants' Statement of Undisputed Material Facts.[1]

1. Not disputed.

2. Immaterial as this statement is not relevant to any claims or defenses in this matter.

3. Not disputed.

4. Not disputed.

5. Not disputed.

6. Disputed as incomplete and misleading to the extent that it implies that the investment advisory business unit of BLMIS was registered with the Securities Exchange Commission (the "SEC") in 1960.

7. Not disputed.

8. Disputed as unsupported in that this statement is based solely on inadmissible evidence. Further disputed as any purported technological innovations associated with Madoff were in connection with the market making and proprietary trading business and not the investment advisory business, of which Defendants were customers. Counter to typical investment management industry operating procedures of allowing clients to obtain account

[1] Trustee incorporates the Trustee's Statement Of Additional Material Facts That Are Undisputed Or As To Which There Exists Genuine Issues To Be Tried, dated February 9, 2012, ("SMF") by reference as if fully stated herein.

statements, balances and other details through the internet, Defendants were never provided real-time access to any account data or electronic statements. (Declaration of Fernando A. Bohorquez, Jr., dated February 9, 2012 ("Bohorquez Decl."), Ex. 159, ¶ 61.)[2] While BLMIS claimed to use "cutting-edge technology" in its operations, BLMIS sent all monthly statements and trading documentation to investors, including Sterling, in hard copy form, with time delays. (*Id.* at ¶ 63.) Dr. Pomerantz stated that "[t]he delivery of paper statements on a time delay creates an opportunity for fraud as it allows for the backdating of transaction information – exactly what occurred here." (*Id.* at ¶ 65.)

9. Disputed as this statement is based solely on inadmissible evidence. The statement is further disputed with regard to Madoff being a prominent member of the investment community. The evidence demonstrates that Merrill Lynch executive Kevin Dunleavy had not heard of Madoff until he learned of him through Sterling Stamos in 2007 and was surprised to see such outstanding performance from Madoff, a manager he had never heard of. (Ex. 126, Kevin Dunleavy Litigation Deposition Transcript, dated December 28, 2011 ("Dunleavy Tr."), 73:4-8, 74:5-8.) Additionally, Noreen Harrington, a former executive at Goldman Sachs and former Chief Investment Officer at Sterling Stamos, testified that she had heard the name "Madoff" in passing, but knew nothing about him until she came to work for Sterling Stamos in 2002. (Ex. 37, Noreen Harrington Litigation Deposition Transcript, dated January 6, 2012 ("Harrington Tr."), 14:6-10, 64:15-65:1.)

10. Disputed as unsupported by the Declaration of Saul Katz. Further disputed in that the statement relies on inadmissible evidence.

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[2] The exhibits referenced hereinafter as ("Ex.") are attached to the Bohorquez Decl.

11. Immaterial as this statement is not relevant to any claims or defenses in this matter.

12. Not disputed.

13. Disputed as unsupported because this statement is based solely on inadmissible hearsay evidence.

14. Disputed. This statement is vague as to what "administrative matters" means. To the extent that Defendants are referring to Friedman's role *vis a vis* BLMIS, the statement is disputed as misleading and incomplete in that it omits the fact that Arthur Friedman was the liaison with BLMIS and day-to-day administrator of 483 BLMIS accounts opened on behalf of the Sterling Partners, their family members, related trusts, and Sterling-related entities as well as on behalf of their friends, employees, and business acquaintances. The Sterling Partners designated Arthur Friedman as their subagent to manage Defendants' 305 BLMIS investment accounts. (Ex. 18, Fred Wilpon Rule 2004 Examination Transcript, dated July 20, 2010 ("F. Wilpon, R. 2004 Tr."), 105:10-22); Ex. 96, Peter Stamos Litigation Deposition Transcript, dated January 5, 2012 ("P. Stamos Lit. Tr."), 93:1-9.) With the Sterling Partners' expressly delegated authority, Arthur Friedman served as the liaison between all Defendants and BLMIS whereby he coordinated all transactional activity across the Defendants' hundreds of accounts. (*Id.*) On behalf of all Defendants, Arthur Friedman coordinated all BLMIS account openings and closings, transfers, deposits, and withdrawals. (Ex. 2, Arthur Friedman Rule 2004 Examination Transcript, dated June 22-24, and 29, 2010 ("A. Friedman R. 2004 Tr."), 121:16-122:3, 198:19-199:1, 249:4-12, 297:9-18, 297:20-299:19, 319:15-21, 329:3-18, 360:18-361:6; Ex. 34, Saul Katz Rule 2004 Examination Transcript, dated August 4, 2010 ("S. Katz R. 2004 Tr."), 32:1-15, 92:14-21; Ex. 18, Fred Wilpon Rule 2004 Examination Transcript, dated July 20, 2010 ("F.

Wilpon R. 2004 Tr."), 140:4-14; Ex. 96, P. Stamos Lit. Tr. 93:10-23.) Friedman received and reviewed the BLMIS account statements, portfolio management reports, and trade confirmations for Defendants' BLMIS accounts. (Ex. 2, Friedman R. 2004 Tr. 569:9-23; Ex. 44, Cynthia Rongione Litigation Deposition Transcript, dated November 15, 2011 ("C. Rongione, Tr."), 63:14-20.) Friedman calculated Defendants' average monthly and yearly returns with BLMIS. (Ex. 2, Friedman R. 2004 Tr. 607:2-608:17; Ex. 44, C. Rongione Lit. Tr. 63:14-20, 97:4-98:10.) Because BLMIS' purported strategy was to invest in increments, Friedman would track the balances to inform the Sterling Partners and other KW account holders about whether they needed to increase their balances to make the account more efficient, or whether they had excess money that could be withdrawn. (Ex. 2, Friedman Tr. 337:11-25, 338:5-7, 338:14-340:9, 462:22-463:16; Ex. 195; Ex. 6, Mark Peskin Litigation Deposition Transcript, dated December 29, 2011 ("Peskin Lit. Tr."), 51:16-52:13.) Friedman communicated with BLMIS on behalf of all Defendants; in fact, other Defendants, outside of Saul Katz and Fred Wilpon, were prohibited from contacting anyone at BLMIS, including Madoff. (Ex. 44, Rongione Tr. 237:23-238:17; Ex. 2, Friedman R. 2004 Tr. 72:4-22, 199:4-17, 202:4-13, 345:5-20; Ex. 8, Len Labita Litigation Deposition Transcript, dated November 29, 2011 ("Labita Tr."), 77:15-78:16; Ex. 34, S. Katz R. 2004 Tr. 92:14-21; Ex. 96, P. Stamos Lit. Tr. 91:3-11, 91:13-92:21.) Friedman fielded questions from Defendants about BLMIS. (Ex. 6, Peskin Lit. Tr. 146:8-21, Ex. 18, F. Wilpon R. 2004 109:17-110:2.) Friedman transferred money in and out of Defendants' BLMIS accounts, including transfers made with the intent to maximize SIPC "coverage." (Ex. 2, Friedman R. 2004 Tr. 297:9-18, 297:20-299:19.)

15. Disputed as incomplete. By Friedman's own admission, his "checking" of BLMIS transaction prices and attempt to try "to do the strategy [himself]" lasted for a short

period of time in the mid to late 1980s "very early on" in Sterling's relationship with Madoff. (Ex. 2, Friedman Tr. 123:24-124:2, 140:12-141:2, 143:10-23; 402:6-15.) Friedman testified that "it might have been just a matter of months that [he] did that exercise" and he "never repeated that exercise through the years." (Ex. 2, Friedman Tr. 143:10-23, 402:6-15.) This statement is further disputed as it mischaracterizes as a material fact Friedman's opinion as to whether those stocks were within the reported price ranges. (Ex. 159, ¶¶ 73-77.)

16. Disputed as incomplete based upon the Trustee's response to ¶ 15, which is incorporated as though fully set forth herein. This statement is further disputed to the extent it mischaracterizes Friedman's opinion as a material fact that no pattern existed in the transaction prices tracked by Friedman. (*Id.*)

17. Disputed as incomplete and misleading to the extent that the statement fails to note that Mr. Friedman testified that although he tried to replicate the strategy, he could not generate the same level of returns. (Seshens Decl., Ex J; Ex. 2, Friedman Tr. 144:14-145:17.) It is further disputed as incomplete because there was a disparity between his results and Madoff's – that he recalled his results achieved a six percent return while Madoff's achieved closer to a fifteen percent return. (*Id.*) It is further disputed as incomplete because the purported equities and options trading conducted by BLMIS during this time period include transactions at impossible prices. (Ex. 159, ¶¶ 73-78.)

18. Disputed. The statement mischaracterizes the testimony inasmuch as Friedman did not testify that the exercises were a "success." Friedman testified that he was not even sure whether what he even did was "necessarily due diligence." (Ex. 2, Friedman Tr. 123:24-125:1.) Further disputed as incomplete based upon the Trustee's response to ¶¶ 15-17, which is incorporated as though fully set forth herein.

19. Disputed as incomplete. The Sterling Partners knew that Madoff avoided regulatory scrutiny. After Noreen Harrington learned that Madoff liquidated to cash at the end of every quarter, she remembered "specifically asking herself why somebody would...do that" and concluded the following were explanations: "to avoid regulatory authorities," "to fly below the radar" so regulators do not know who you are, and "to stay out of regulatory filings," such as a Form 13D, which is required to be filled out if "you own more than a certain percent of any outstanding company's stock." (Ex. 37, Harrington Lit. Tr. 76:2-76:23; 87:4-6; 87:7-88:15; 205:3-16.) Noreen Harrington communicated to Saul Katz and David Katz that Madoff's behavior of going to cash was a red flag. (Ex. 37, Harrington Tr. 122:4-17; 192:24-193:8.) Saul Katz was "concerned" that Sterling Stamos' registration as an investment advisor "would possibly interfere in his relationship with Mr. Madoff" and that the disclosure requirements "could possibly hurt his relationship with Bernie Madoff," such that "he would no longer be able to continue being an ongoing investor with Mr. Madoff." (Ex. 96, P. Stamos Lit Tr. 65:25-66:7.) Further, Peter Stamos testified: "I do recall general conversations about understanding that that was the nature of Mr. Madoff's investment business, that it was highly confidential, highly private. That it was a private club that you were only invited into, difficult to get access to and the like. So that's why we had to potentially deal with this issue, if Mr. Katz had to disclose a lot of information. If we became registered." (Ex. 96, P. Stamos Lit. Tr. 128:18-129:1.) After Saul Katz raised Madoff's concerns with Sterling Stamos registering, they sought legal counsel to try to ascertain Madoff's concerns and determined what in fact would have to be disclosed in connection with registering as an investment adviser. (Ex. 4 Saul Katz Litigation Deposition Transcript, dated January 13, 2012 ("S. Katz Lit. Tr."), 184:23-185:4; Ex. 115, Peter Stamos

Rule 2004 Examination Transcript, dated August 19, 2010 ("P. Stamos R. 2004 Tr.") 51:5-52:7; 54:25-56:13; 102:22-103:8.)

20. Disputed as unsupported by the evidence cited because the testimony does not support that BLMIS was even investigated by the SEC, let alone "cleared."

21. Disputed as unsupported by the evidence cited because the Sterling Partners lack personal knowledge of what BLMIS required to open every BLMIS customer account.

22. Disputed as unsupported by the evidence cited because Arthur Friedman lacks personal knowledge of the content of the monthly customer statements, quarterly reports and regular trade confirmations of "each BLMIS customer."

23. Disputed in that this statement is unsupported by the evidence cited. The Sterling Partners testified that they had no understanding of how Madoff achieved his returns. David Katz testified that he did not understand Madoff's strategy and that "nobody could tell [him] what [Madoff] does for sure." (Ex. 27, David Katz Rule 2004 Examination Transcript, dated August 31- September 1, 2010 ("D. Katz R. 2004 Tr."), 73:21-74:6, 74:12-16.) Saul Katz acknowledged: "I have said, I don't know how he does it as well as he does it[.]" (Ex. 34, S. Katz R. 2004 104:7-11.) Fred Wilpon admitted that Madoff's consistent and nonvolatile returns would be discussed amongst the Sterling Partners, "in the sense that people would say they didn't understand it." (Ex. 165, Fred Wilpon Litigation Deposition Transcript, dated January 10, 2012 ("F. Wilpon Lit. Tr."), 190:1-12, 190:14-15.)

24. Disputed as incomplete. The Sterling Partners knew that under Madoff's strategy, they should expect losses and would not be immune to market volatility. (Ex. 160; Trustee 357; Declaration of Dana M. Seshens, dated January 26, 2012 ("Seshens Decl."), ¶ 43; Ex. 6 at ¶¶ 135-136 Throughout a period of close to a quarter-century, however, the Sterling Partners never

once suffered an annual loss. (Ex. 23, Trustee 73; Ex. 162, Trustee 34; Ex. 163; Ex. 164; Ex. 34, S. Katz R. 2004 Tr. 113:11-14; Ex. 165, F. Wilpon Lit. Tr. 190:3-8; Ex. 2, Friedman R. 2004 Tr. 125:11-126:33.) Each and every year between 1989 and 2007, the Sterling Partners received consistently positive rates of returns from Madoff, ranging between 10.1 and 23.8 percent. (Ex. 163; Ex. 164.) Friedman testified that over the 20-year span, Madoff probably reported a monthly loss about 10 to 15 times. (Ex. 2, Friedman Tr. 125:11-126:33.) David Katz recalled that Madoff had "one or two negative months . . . ." (Ex. 3, David Katz Litigation Deposition Transcript, dated December 28, 2011 ("D. Katz Lit. Tr."), 347:21-348:9.) Saul Katz could not recall any down years with Madoff. (Ex. 4, S. Katz. Lit. Tr. 91:8-10.) In fact, the Sterling Partners believed that Madoff was unaffected by the market forces. (Ex. 5, Michael Katz Litigation Transcript, dated December 13, 2011 ("M. Katz Tr."), 148:21-24; 149:8-17.) Moreover, the Sterling Partners represented to their lenders in connection with the refinancing of the loan that enabled them to purchase 100% ownership of the Mets that their Madoff investments yielded an "[a]verage annual return in excess of 18% over last 15 years" and "[o]ver last 25 years, Madoff returns have averaged 18% with a standard deviation of 4% - Above statistics predict positive annual returns 99.9% of the time." (Ex. 23, Trustee 73.)

25. Disputed as incomplete. The Madoff investments were [redacted] The Sterling Partners opened and administered 483 BLMIS accounts: approximately 300 for themselves, their families, trusts and entities, and the rest for their closest friends, employees, and business associates. (Def.'s Answer ¶ 4; Ex. 1.) Any spare partner dollar, or any money generated by one of the Sterling's businesses was invested with Madoff. (Ex. 2, Friedman Tr. 44:15-45:15, 107:13-108:15; Ex. 27, D. Katz R. 2004 28:20-23; 29:14-16; 29:24-30:2; 38:25-39:11.) The Sterling Partners held bi-weekly

management meetings, and at every one of these meetings "Madoff" was a topic on the agenda, after the Mets and before Sterling Stamos. (Ex. 40; Ex. 41; Ex. 42; Ex. 43.) Madoff's returns and projected returns were reported at every bi-weekly management meeting. (Ex. 29, Mark Peskin Rule 2004 Examination Transcript, dated July 29-30, 2010 ("Peskin R. 2004 Tr."), 28:4-11, 28:21-29:8, 39:23-40:23; Ex. 18, F. Wilpon R. 2004 Tr. 61:7-20, 108:13-109:7; Ex. 5, M. Katz Tr. 130:14-131:3.) Every month, Sterling prepared a "HELL" sheet updating the balance of each and every BLMIS account and the pro rata share of that balance held by each Defendant. (Ex. 28, Maureen O'Rourke Litigation Deposition Transcript, dated November 18, 2011 ("O'Rourke Tr."), 28:4-29:18; Ex. 2, Friedman Tr. 335:24-337:23, 607:2-24; Ex. 29, Peskin R. 2004 Tr. 164:14-16; Ex. 44, Rongione Tr. 44:9-45:3.) [redacted] Profits from sales of certain real estate assets were invested in BLMIS. (Ex. 5, M. Katz Tr. 98:12-99:20.) The Sterling Partners also used Madoff income to fund capital calls to Sterling American Properties ("SAP"). (Ex. 26 at SE_T356386.) Sterling used the income from their Madoff accounts to fund the true-up/capital calls to Sterling Equities Funding ("SEF.") (Ex. 27, D. Katz R. 2004 101:5-10; Ex. 28, O'Rourke Tr. 61:13-22; 94:24-95:9; 96:8-19; Ex. 29, Peskin R. 2004 68:12-17; Ex. 5, M. Katz Tr. 113:18-114:7; Ex. 26 at SE_T356386; Ex. 30 at SE_T559523-4.) The Sterling Partners relied on Madoff interest income to pay quarterly taxes, living expenses, and loan interest. (Ex. 5, M. Katz Tr. 113:18-114:7; Ex. 24, Trustee 85; Ex. 3, D. Katz Lit. Tr. 117:7-16.)

26. Not disputed that the Mets deposited money into BLMIS accounts in the fall/winter and withdrew it to pay operating expenses in the spring and summer. Disputed as it omits evidence of Sterling's other uses of its BLMIS accounts such as their "double-up" investment accounts. (Ex. 9, Peskin Tr. 48:22-49:8, 49:22-50:12.) The Mets' many Madoff accounts were earmarked to fund the team's working capital as well as provide for special purposes such as deferred compensation and players' disability insurance. (Ex. 8, Labita Tr. 43:20-44:14; Ex. 6, Peskin Lit. Tr. 100:18- 101:15; Ex. 16, Trustee 67.) The Mets put all excess cash in BLMIS. (Ex. 8, Labita Tr. 21:6-13, 199:10-14, 16-17; Ex. 17, Trustee 48.) There were times when the Mets could not make payroll without BLMIS. (Ex. 8, Labita 137:18-21.)

27. Not disputed that Mr. Katz and Mr. Peskin testified that BLMIS could provide liquidity, but disputed to the extent that the statement claims that BLMIS provided liquidity as a brokerage rather than as a Ponzi scheme. Def.'s Answer ¶ 1.

28. Not disputed.

29. Not disputed.

30. Disputed as the record indicates that the Defendants knew of indicia of fraud related to their BLMIS investments, placing their friends and family at risk as evidenced in paragraphs 1 to 447 of the SMF, including, but not limited to, the following:

- In 2001, the Sterling Partners knew that financial professionals were publicly expressing skepticism about Madoff's investment strategy and returns (Ex. 113; Ex. 114.);
- In 2001, the Sterling Partners had conversations with another Madoff investor about procuring insurance for their Madoff accounts that would cover fraud including a Ponzi scheme (Ex. 103; Ex. 104; Ex. 2, Friedman Tr. 419:16-420:8.);

- The Sterling Partners were warned that Madoff could be either a fraud or a fiction (Ex. 37, Harrington Tr. 117:4-25; 125:22-126:6.);
- The Sterling Partners were warned that Madoff could be illegally front-running to supplement his returns (Ex. 37, Harrington Tr. 118:18-119:3; Ex. 5, M. Katz Tr. 287:1-10, 297:15-298:10; Ex. 27, D. Katz R. 2004 Tr. 259:22-260:1; Ex. 2, Friedman Tr. 156:22-157:7.);
- The Sterling Partners were warned that Madoff was unique in the industry because he self-cleared, self-executed and self-custodied his transactions (Ex. 115, P. Stamos R. 2004 Tr. 80:13-81:1, 83:11-14; Ex. 126, Dunleavy Tr. 60:1-24, 61:8-22, 67:9-12, 68:12-16, 97:11-98:14.);
- The Sterling Partners were warned that Madoff investments were rejected by Merrill Lynch's due diligence (Ex. 126, Dunleavy Tr. 60:1-24, 61:8-22, 66:24-67:20, 68:12-16; Ex. 115, P. Stamos R. 2004 Tr. 82:3-13.);
- The Sterling Partners were warned that Madoff lacked transparency, and therefore would not pass Sterling Stamos' due diligence process. (Ex. 37, Harrington Tr. 112:24-115:2, 122:4-17; Ex. 115, P. Stamos R. 2004 Tr. 200:20-202:10, 202:24-203:24; Ex. 2, Friedman Tr. 578:1-14; Ex. 129; Ex. 157, Ex. 157, Martin Sass Litigation Deposition Tr., dated December 27, 2011 ("Sass Tr."), 59:15-64:3.);
- Saul Katz and Fred Wilpon were among those that Peter Stamos instructed to stay away from Madoff. (Ex. 130, B. Stamos Tr. 44:1-5, 65:1-17, 95:21-97:7, and 105:4-23.);

31. Disputed based upon the Trustee's response to ¶ 30, which is incorporated as though fully set forth herein.

32. Disputed in part based upon the Trustee's response to ¶ 14, which is fully incorporated as though fully set forth herein. This statement is further disputed as vague as to the term "helped" and because it mischaracterizes the evidence. The Sterling Partners designated Arthur Friedman as their subagent to manage Defendants' 305 BLMIS investment accounts. (Ex. 18, F. Wilpon, R. 2004 Tr. 105:10-22; Ex. 96, P. Stamos Lit. Tr. 93:1-9.) Arthur Friedman coordinated all 483 BLMIS account openings and closings, transfers, deposits, and withdrawals. (Ex. 2, A. Friedman Tr. 121:16-122:3, 198:19-199:1, 249:4-12, 297:9-18, 297:20-299:19, 319:15-21, 329:3-18, 360:18-361:6; Ex. 34, S. Katz R. 2004 Tr. 32:1-15, 92:14-21; Ex. 18, F. Wilpon R. 2004 Tr. 140:4-14; Ex. 96, P. Stamos Lit. Tr. 93:10-23.) Friedman communicated with BLMIS on behalf of all Defendants; in fact, other Defendants, outside of Saul Katz and Fred Wilpon, were prohibited from contacting anyone at BLMIS, including Madoff. (Ex. 44, Rongione Tr. 237:23-238:17; Ex. 2, Friedman Tr. 72:4-22, 199:4-17, 202:4-13, 345:5-20; Ex. 8, Labita Tr. 77:15-78:16; Ex. 34, S. Katz R. 2004 Tr. 92:14-21; Ex. 96, P. Stamos Lit. Tr. 91:3-11, 91:13-92:21.)

33. Undisputed that the Sterling Partners testified that they were not paid money by their friends and family for administration of their friends' and family's BLMIS accounts.

34. Disputed as incomplete because it mischaracterizes the plan as "self-directed" when Sterling endorsed BLMIS as an investment option. (Ex. 190, Trustee 192; Ex. 185, Joseph Reese Litigation Deposition Transcript Dated December 29, 2011 ("Reese Tr."), 59:13-62:12, 62:17-63:21, 67:14-68:13; Ex. 189, Expert Report of Harrison J. Goldin at 17-23.)

35. Disputed as incomplete. The Sterling Partners used their BLMIS holdings to borrow millions of dollars using their BLMIS accounts as collateral which they then reinvested with Madoff to double their returns. (Ex. 29, Peskin R. 2004 Tr. 48:22-49:13, 49:22-50:12; Ex. 2, Friedman Tr. 475:22-478:5; Ex. 28, O'Rourke Tr. 65:22-66:12.) The Sterling Partners referred to these loans from Bank of America (and its predecessor Fleet) and BLMIS accounts as "double ups" because they allowed the partners to borrow millions of dollars using their BLMIS accounts as collateral which they then reinvested with Madoff to double their returns. (Ex. 29, Peskin R. 2004 Tr. 48:22-49:13, 49:22-50:12; Ex. 2, Friedman Tr. 475:22-478:5; Ex. 28, O'Rourke Tr. 65:22-66:12.) The Sterling Partners collectively decided whether a Defendant would invest money with BLMIS and collectively decided to "double up" a Defendant's BLMIS account. (Ex. 29, Peskin R. 2004 Tr. 51:9-15; Ex. 2, Friedman Tr. 487:7-12; Ex. 18, F. Wilpon, R. 2004 Tr. 32:8-12, 55:13-56:1.) The Sterling Partners used more than 28 BLMIS accounts, established for the benefit of the Sterling Partners, their family members, trusts and related entities, as collateral for loans used for further investments with BLMIS. (Def.'s Answer ¶ 816.)

[redacted]

[redacted]

36. Not disputed.

37. Disputed as incomplete. Fred Wilpon, David Katz, Michael Katz, and Sterling's CFO Mark Peskin all acknowledge that, aside from receiving monthly statements, they had no idea what, if any, diligence their lender, Bank of America, performed on Madoff. (Ex. 165, Wilpon Lit. Tr. 202:12-204:5; Ex. 27, D. Katz R. 2004 Tr. 268:1-8, 21-25; Ex. 5, M. Katz Tr. 82:18-21; Ex. 29, Peskin R. 2004 Tr. 187:1-8, 346:1-6, 351:5-24; Ex. 2, Friedman Tr. 492:6-25.) Bank of America did not attempt to verify the existence of the purported securities held in the Madoff accounts as reflected on the statements it received. (Ex. 167, Steven Kenny Litigation Deposition Transcript, dated December 9, 2011 ("Kenny Tr."), 231:4-18, 241:21-242:9.)

38. Disputed as incomplete. Representatives of Fleet Bank and later Bank of America, Steve Kenny and Elliot Margolis, testified that the banks' only information about Madoff's investment performance came from Sterling itself, which provided summaries of Sterling's historical returns with Madoff, and that the Bank never conducted its own analysis of Madoff's returns. (Ex. 167, Kenny Tr. 169:20-23, 170:13-174:6, 177:25-178:4, 183:1-6.) Bank of America never requested a third-party audit of Madoff. (Ex. 168, Elliot Margolis Rule 2004 Examination Transcript, dated August 12, 2010 ("Margolis Tr."), 56:1-3.) Mark Peskin testified that Bank of America never asked him any questions or requested any documents, other than account statements, about Madoff. (Ex. 29, Peskin R. 2004 Tr. 345:11-14, 393:24-394:13.) Further disputed based upon the Trustee's response to ¶ 37, which is incorporated as though fully set forth herein.

39. Disputed because Saul Katz lacks the personal knowledge to testify as to whether Travelers Insurance Company conducted due diligence of BLMIS in 1990. (Ex. 34, S. Katz R. 2004 Tr., 55:2-10.)

40. Disputed as unsupported by the evidence cited since the memorandum prepared by Berry Gonder of Travelers Insurance Company is not described as or referred to as a "due diligence memorandum." Further disputed as incomplete. Not a single Sterling partner recalls receiving the memorandum or discussing it with other Partners (Ex. 34, S. Katz R. 2004 Tr., 55:2-10; Ex. 18, F. Wilpon R. 2004 Tr., 90:12-14, 94:20-24, 95:17-96:17, 97:11-18, 98:2-13, 16-20; Ex. 2, Friedman Tr., 184:19-187:7, 189:21-190:4), and Sterling's CFO did not even know who Barry Gonder, the Travelers representative, was. (Ex. 29, Peskin R. 2004 Tr., 111:17-20.) Saul Katz admitted that he "certainly didn't depend on Barry Gonder's memo" in evaluating whether to invest with Madoff. (Ex. 34, S. Katz R. 2004 Tr., 56:23-57:6.)

41. Disputed based, in part, upon the Trustee's response to ¶ 40, which is fully incorporated as though fully set forth herein. This statement is further disputed as unsupported by the evidence cited as Mr. Gonder does not report that "he was satisfied with the results of his diligence," but instead that Marvin Tepper is reporting that Madoff confirmed a "satisfactory telephone discussion with Gonder." (Seshens Decl., Ex. R.)

42. Disputed based, in part, upon the Trustee's response to ¶ 40, which is fully incorporated as though fully set forth herein. This statement is further disputed on the grounds that the memorandum includes only a cursory discussion of Madoff's strategy and performance history is and solely based on a half-hour discussion between Madoff and Mr. Gonder. (Seshens Decl., Ex. R.)

43. Disputed as unsupported by the evidence cited and as incomplete. Saul Katz had no recollection of J.P. Morgan's analysis of one of his Madoff accounts. (Ex. 4, S. Katz Lit. Tr. 246:17-247:18, 247:24-248:9, 248:24-249:2.) Further, J.P. Morgan's "analysis" concluded that the "[p]ortfolio is not 'risk free'" and that "volatility changes over time" should be "expected." (Ex. 161, Trustee 357.)

44. Disputed as it mischaracterizes the evidence cited. Saul Katz had no recollection of J.P. Morgan's analysis of one of his Madoff accounts or why it was undertaken. (Ex. 4, S. Katz Lit. Tr. 246:17-247:18, 247:24-248:9, 248:24-249:2.)

45. Disputed as incomplete. J.P. Morgan's so-called analysis concluded that the "[p]ortfolio is not 'risk free'" and that "volatility changes over time" should be "expected" in the single account they reviewed. (Ex. 161, Trustee 357.)

46. Disputed based upon the Trustee's response to ¶ 45, which is incorporated as though fully set forth herein.

47. Disputed based upon the Trustee's response to ¶ 45, which is incorporated as though fully set forth herein.

48. Not disputed.

49. Disputed as incomplete. The letter from Fitch explains that the ratings are "based on documents and information provided to us by the issuer and its experts and agents" and that "Fitch IBCA does not verify the truth or the accuracy of such information." (Exhibit T, Declaration of Dana M. Seshens, dated 1/26/12 at SE_T671161-2.) The 2000 Fitch ratings expressed concerns about Madoff's investment strategy. (*Id.*)

50. Disputed as incomplete. Fitch did not conduct any independent due diligence, but rather issued a rating based entirely on "documents and information provided by" Sterling and

that "Fitch Ratings does not verify the truth or the accuracy of such information." (Exhibit U, Declaration of Dana M. Seshens, dated 1/26/12, at SE_T671170-1). The 2003 Fitch ratings expressed concerns about Madoff's investment strategy. (*Id.*) Moreover, as demonstrated in a November 8, 2002 letter to Derek McGirt of Fitch Ratings, Fitch conducted no independent examination of Madoff, but rather learned about Madoff from Arthur Friedman. (Ex. 171.)

51. Disputed. This statement does not reflect the evidence that the Madoff investments were [redacted] Almost all of the Sterling Partners' assets - real estate, SAP funds, and interests in the New York Mets and SNY – were and are illiquid - meaning that among other things, they could not and cannot provide cash on demand when needed by the many Sterling businesses. (Ex. 6, Peskin Lit. Tr. 86:24- 87:23.) For almost a quarter century, the cash/investment arm of Sterling's business was BLMIS. (Ex. 18, F. Wilpon R. 2004 Tr. 124:9-21; Ex. 29, Peskin R. 2004 Tr. 129:18-130:1; Ex. 27, D. Katz R. 2004 Tr. 28:20-30:2; Ex. 2, Friedman Tr. 44:6-23.) [redacted]

[redacted]

52. Disputed as incomplete. In the early 2000s, David Katz was "screaming" to the rest of the Sterling Partners to diversify their investments away from Madoff because "we don't know what he does." (Ex. 27, D. Katz R. 2004 Tr. 31:10-32:16, 73:21-75:17, 346:23-347:1.)

53. Disputed based upon the Trustee's response to ¶ 52, which is incorporated as though fully set forth herein.

54. Disputed as not supported by the evidence cited and this statement is further disputed as incomplete based upon the Trustee's response to ¶ 52, which is incorporated as though fully set forth herein.

55. Immaterial as this statement is not relevant to any claims or defenses in this matter.

56. Immaterial as this statement is not relevant to any claims or defenses in this matter.

57. Immaterial as this statement is not relevant to any claims or defenses in this matter.

58. Immaterial as the statement is not relevant to any claims or defenses in this matter.

59. Not disputed.

60. Not disputed.

61. Immaterial as this statement is not relevant to any claims or defenses in this matter.

62. Immaterial as this statement is not relevant to any claims or defenses in this matter.

63. Disputed in that this statement is unsupported by the evidence cited.

64. Disputed in that this statement is unsupported by the evidence cited.

65. Not disputed.

66. Disputed in that this statement is unsupported by the evidence cited. Peter Stamos never testified that he told Saul Katz he thought Madoff was "an honest and honorable broker." (Seshens Decl. Ex. W, P. Stamos R. 2004 Tr. 161:18-162:7; 211:3-212:4.)

67. Disputed. Sterling Stamos was invested in Merkin, which the Sterling Partners knew was a feeder fund to Madoff. In 2003, Harrington was directed by Saul Katz and Peter Stamos to meet with Ezra Merkin, an investment manager with whom Sterling Stamos was considering increasing its investments. (Ex. 37, Harrington Tr. 66:4-67:17; Ex. 96, P. Stamos Lit. Tr. 163:6-166:6.) Merkin was known to have a relationship with Madoff, and Merkin's "Ascot" fund returns were considered internally at Sterling Stamos as being "correlated" to Madoff's returns. (Ex. 121; Ex. 96, P. Stamos Lit Tr. 189:4-190:12.) Harrington confirmed that Merkin was a feeder fund into Madoff, and that any investment with Merkin was essentially an investment with Madoff. (Ex. 37, Harrington Tr. 67:18-68:20.) Harrington told Saul Katz, David Katz and Peter Stamos that they could not make the investment with Madoff because Madoff's returns were "too good to be true." (Ex. 37, Harrington Tr. 117:24-118:9.) The Merkin investment was driven by Saul Katz who said that Sterling Stamos' funds were more volatile than Madoff's and thought that an investment in Merkin would help Sterling Stamos have a better return. (Ex. 37, Harrington Tr. 83:4-84:3, 115:3-13.) Sterling Stamos decided to go forward with the Madoff investment through Merkin. (Ex. 37, Harrington Tr. 126:7-16; Ex. 96,

P. Stamos Lit. Tr. 115:9-13, 193:23-194:24.) Peter Stamos knew that Sterling Stamos had investments with Madoff through Merkin's Ascot Fund. (Ex. 37, Harrington Tr. 113:21-114:4; Ex. 121; Ex. 153; Ex. 156.)

68. Disputed based upon the Trustee's response to ¶ 67, which is fully incorporated as though fully set forth herein.

69. Immaterial as the statement is not relevant to any claims or defenses in this matter.

70. Disputed. Peter Stamos did tell the Sterling Partners about Madoff-related concerns. Peter Stamos told Saul Katz that, among other things, because Madoff was an investment advisor who was his own broker-dealer, Madoff had the information necessary to commit illegal front-running and Madoff would have failed the Sterling Stamos due diligence process. (Ex. 115, P. Stamos R. 2004 Tr. 155:14-160:3, 212:5-17.) He also told Saul Katz that because Peter Stamos was a fiduciary, he could not put BLMIS in the Sterling Stamos investment portfolio "for all kinds of reasons." (Ex. 115, P. Stamos R. 2004 Tr. 212:5-17.) Peter Stamos also told an investor that the Katz/Wilpon family continued to invest with Madoff against Sterling Stamos' recommendations. (Ex. 149.) Peter Stamos told Saul Katz that when one functioned as both a broker-dealer and an investment manager, the investment manager could use information from his broker-dealership to provide inappropriate advantages to his investment advisory business. (Ex. 115, P. Stamos R. 2004 Tr. 155:14-160:3.) Peter Stamos told Saul Katz that BLMIS lacked transparency and he was unable to explain Madoff's strategy. (Ex. 115, Stamos R. 2004 Tr. 200:20-202:10; Ex. 2, Friedman Tr. 578:1-14.) Saul Katz and Fred Wilpon were among those that Peter Stamos instructed to stay away from Madoff. (Ex. 130, B. Stamos Tr. 44:1-5, 65:1-17, 95:21-97:7, 105:4-23.)

71. Disputed based upon the Trustee's response to ¶¶ 67 and 70 which are fully incorporated as though fully set forth herein.

72. Disputed as unsupported by the evidence cited. Disputed as to substance, because, among other things, the Sterling Partners inquired into fraud insurance to cover their BLMIS investments and in fact, created their own hedge fund to reduce their exposure to Madoff. (Ex. 103; Ex. 2, Friedman Tr. 419:16-420:8, 423:22-424:9, 425:10-16; Ex. 104; Ex. 27, D. Katz R. 2004 Tr. 31:10-32:16, 73:21-75:17, 346:23-347:1.)

73. Not disputed.

74. Disputed as this statement is a legal conclusion improperly asserted as a statement of fact. Disputed as to substance because as of the date of the SIPA filing, the Sterling Defendants had collectively received transfers from BLMIS of approximately $295 million more than the funds they deposited.

75. Disputed based upon the Trustee's response to ¶ 30, which is fully incorporated as though fully set forth herein.

76. Not disputed.

77. Disputed as incomplete and misleading in that internal correspondence at Charles Klein's company, American Securities, which procured the policy, was primarily focused on coverage for its Madoff investment. (Ex. 108; Ex. 109 at PJASAG0000010; Ex. 110; Ex. 111.) Other correspondence at American Securities reflects discussions that the insurance "covers theft" in the event "Madoff runs off with our money" and provided "primarily protection against a 'ponzi' scheme or some situation where [American Securities] went to redeem the principal and it wasn't 'there.'" (Ex. 107; Ex. 108.) Further, when American Securities' policy was in danger of not getting renewed, an internal email regarding "Third Party Fidelity Bond – Madoff

Investment" was circulated by an employee of American Securities, explaining that the lead insurer "expressed discomfort with writing such an unusual policy where they are basically insuring the honesty of an unknown entity that has not even completed an application." (Ex. 111.)

78. Disputed based upon the Trustee's response to ¶ 77, which is fully incorporated as though fully set forth herein. Further disputed as misleading because the Sterling Partners considered this insurance policy "Madoff Insurance." (Ex. 103; Ex. 104; Ex. 2, Friedman Tr. 423:22-424:9, 425:10-16.)

79. Not disputed.

80. Disputed as incomplete in that Charles Klein of American Securities testified that he "absolutely" did not point the Sterling Partners in the direction of Frank Crystal and that if they found their way to Frank Crystal, it was either on their own or through somebody else. (Ex. 112, Klein Tr. 202:10-203:5.)

81. Disputed. Sterling Partner David Katz testified that the reason Sterling did not obtain fraud insurance for its BLMIS investments was because it was "silly" for the Sterling Partners to purchase fraud insurance because "couldn't get anywhere near the amount we needed to cover it." (Ex. 27, D. Katz R. 2004 Tr. 276:17-278:12.)

82. Disputed based upon the Trustee's response to ¶ 77, which is fully incorporated as though fully set forth herein.

83. Not disputed that Charles Klein so testified.

84. Not disputed.

85. Not disputed that Arthur Friedman so testified.

86. Disputed based upon the Trustee's response to ¶ 52, which is incorporated as though fully set forth herein.

87. Disputed because the Sterling Partners were concerned about how Sterling Stamos' registration as an investment advisor with the SEC would affect their relationship with Madoff and indeed restructured Sterling Stamos in response to these concerns. Peter Stamos testified: "The issue that we were confronting was once we got beyond the privacy of the Katz/Wilpon families – which was relatively easy to do, because it turns out that registering doesn't really change much in terms of the form ADV disclosures [--] The other issue that needed to be addressed was would the amount of disclosure that the Wilpons and Katzes have be such that their relationship with Bernie Madoff would be hampered in any way." (Ex. 96, P. Stamos Lit. Tr. 64:9-20.) Peter Stamos also testified that Madoff informed Saul Katz of his concern that Sterling Stamos' registration could require the Sterling Partners to disclose their business relationship with him, including all of their BLMIS investments, and Saul Katz reported Madoff's concerns to Peter Stamos. (Ex. 115, P. Stamos R. 2004 Tr. 50:17-20, 51:5-12, 51:17-21, 127:6-12.) Peter Stamos also testified that Saul Katz was "concerned" that Sterling Stamos' registration "would possibly interfere in his relationship with Mr. Madoff." (Ex. 96, P. Stamos Lit. Tr. 65:25-66:7.) Peter Stamos testified that Saul Katz was specifically "concerned" that the disclosure requirements "could possibly hurt his relationship with Bernie Madoff, he would no longer be able to continue being an ongoing investor with Mr. Madoff." (*Id.*) On July 14, 2004, Michael Katz wrote a memo to David Katz regarding "Registered Investment Advisors" stating: "If the SEC is able to pass these regulations, how will it affect us as it relates to[o]ur relationship with Bernie Madoff." (Ex. 190, Trustee 92.) (Ex. 97.) Peter Stamos also testified: "I do recall general conversations about understanding that that was the nature of Mr. Madoff's investment

business, that it was highly confidential, highly private. That it was a private club that you were only invited into, difficult to get access to and the like. So that's why we had to potentially deal with this issue, if Mr. Katz had to disclose a lot of information. If we became registered." (Ex. 96, P. Stamos Lit. Tr. 128:18-129:1.) The Sterling Partners hired legal counsel to advise them of how Sterling Stamos' registering could impact their relationship with Madoff. (Ex. 4, S. Katz Lit. Tr. 184:23-185:4; Ex. 96, P. Stamos Lit Tr. 54:22-55:25, 102:22-103:8.) After Saul Katz raised Madoff's concerns with Sterling Stamos registering, Sterling Stamos sought legal counsel to try to ascertain Madoff's concerns and determined what in fact would have to be disclosed in connection with registering as an investment advisor. (Ex. 115, P. Stamos R. 2004 Tr. 51:5-52:7; 55:16-56:13.) In order to fully alleviate Saul Katz's concern about Sterling Stamos' registration interfering with his relationship with Madoff, Sterling Stamos determined that it had to "create a formal separation" between Sterling Stamos and Sterling Equities. (Ex. 115, P. Stamos R. 2004 Tr. 56:14-21.)

88. Disputed. Defendants cannot claim that this is an undisputed fact when they have refused to produce several documents relating to the registration of Sterling Stamos on the basis of alleged attorney-client privilege. Further disputed as misleading based upon the Trustee's response to ¶ 87, which is incorporated as though fully set forth herein.

89. Disputed as incomplete. Saul Katz was actively involved in the investment decisions and management of Sterling Stamos. (Ex. 115, P. Stamos R. 2004 Tr. 62:9-20; Ex. 116, K. Okimoto Tr. 206:11-207:2; Ex. 117, Trustee 308.) David Katz was actively involved in the investment decisions and management of Sterling Stamos, and acted as one of Sterling Stamos' fund managers. (Ex. 96, P. Stamos Lit. Tr. 161:16-20; Ex. 117, Trustee 308.) Saul Katz and Fred Wilpon solicited friends and families to be investors in the Sterling Stamos funds, and

introduced potential investment managers to Sterling Stamos. (Ex. 96, P. Stamos Lit. Tr. 29:9-15, 30:16-22, 31:23-25, 33:6-24; Ex. 116, K. Okimoto Tr. 54:15-21, 60:13-61:2.) Sterling Stamos marketed the Sterling Partners as sophisticated hedge fund investors with proprietary sourcing and due diligence capabilities. (Ex. 117, Trustee 308.)

90. Disputed as incomplete and misleading as it implies that the Sterling Partners did not have suspicions about the consistent returns. The Sterling Partners discussed that even during periods of market dislocation, they were "fascinated that he was not killed in those markets . . . of turmoil." (Ex. 5, M. Katz. Lit. Tr., 146:19-147:1.) Yet they never looked into how Madoff was unaffected by market conditions. (*Id.* at 148:11-20.) Michael Katz agreed that Madoff's returns were unaffected by market turbulence. (*Id.* at 148:21-24.) He could not explain how this was true, given that Madoff was investing in the market. (*Id.* at 149:8-17.) David Katz testified that he did not understand Madoff's strategy and that "nobody could tell [him] what [Madoff] does for sure." (Ex. 27, D. Katz R. 2004 Tr. 73:21-74:6, 74:12-16.) Saul Katz acknowledged: "I have said, I don't know how he does it as well as he does it[.]" (Ex. 34, S. Katz R. 2004 104:7-11.) Fred Wilpon admitted that Madoff's consistent and nonvolatile returns would be discussed amongst the Sterling Partners, "in the sense that people would say they didn't understand it." (Ex. 165, F. Wilpon Lit. Tr. 190:1-12, 190:14-15.) The memorandum prepared by Travelers Insurance Company in 1990 also explained that Madoff's returns should be impacted by market volatility. (Ex. 160.)

91. Disputed based upon the Trustee's response to ¶ 90, which is incorporated as though fully set forth herein. Further disputed because it mischaracterizes the evidence. All Sterling Partners were well-aware of Madoff's rule of thumb that his performance was usually two to two-and-a-half times ten-year treasury; however, none of the Sterling Partners had any

understanding as to why. Michael Katz had "no idea" (Ex. 5, M. Katz. Lit. Tr., 139:21-140:1) and acknowledged that every one of the Sterling Partners expressed that they did not understand this correlation (Ex. 5, M. Katz Lit. Tr., 142:18-25); Arthur Friedman conceded: "it's as much a mystery to me today as it was at the time." (Ex. 2, Friedman Tr., 192:19-25; *see also* 597:4-11); Fred Wilpon similarly had no explanation for this correlation (Ex. 18, F. Wilpon R. 2004 Tr., 240:20-241:1.)

92. Not disputed that Peter Stamos so testified, but disputed as misleading since Noreen Harrington specifically told Saul Katz and David Katz that Madoff's returns were too consistently positive. (Ex. 37, Harrington Tr. 96:13-98, 116:7-19, 117:24-118:9.) Harrington also told Saul Katz and David Katz that she could not understand Madoff's consistently positive returns, that the returns were not correlated to the market or the strategy, and that she "didn't think the numbers looked real." (Ex. 37, Harrington Tr. 93:9-94:21, 97:1-99:21, 116:15-19, 123:3-124:25.)

93. Not disputed.

94. Disputed. The evidence suggests that the Sterling Partners did have concerns that they did not really know what Madoff did. Fred Wilpon admitted that Madoff's consistent and nonvolatile returns would be discussed amongst the Sterling Partners, "in the sense that people would say they didn't understand it." (Ex. 18, F. Wilpon R. 2004 Tr. 190:1-12; 190:14-15.) David Katz concluded and expressed to Saul Katz: "since we don't know what [Madoff] does, that it's time to diversify." (Ex 27, D. Katz R. 2004 Tr. 74:17-75:17.)

95. Disputed. Defendants knew that Sterling Stamos was invested in Merkin's Ascot Fund, which they knew was a feeder fund to Madoff, as based upon the Trustee's response to ¶ 67, which is fully incorporated as though fully set forth herein.

96. Disputed based in part upon the Trustee's response to ¶ 30, which is incorporated as though fully set forth herein. Further disputed because Saul Katz "categorically" dismissed warnings concerning Madoff. (Ex. 115, P. Stamos R. 2004 Tr. 158:15-162:17.) Further, to the extent the Sterling Defendants rely on self-serving unexamined testimony from declarations submitted in support of their Motion, the Court should not credit the testimony, much less rely on it to support an undisputed material fact.

97. Disputed in that the Sterling Partners made investment decisions related to Madoff on behalf of all Defendants based, in part, upon the Trustee's response to ¶ 14, which is incorporated as though fully set forth herein and including, but not limited to, the following:

- The Sterling Partners' management meeting agendas and minutes reflect that they collectively discussed and made decisions with respect to all aspects of their business – be it SAP, the Mets, Sterling Stamos, and "Madoff" – each of which constituted separate line items. (Ex. 18, F. Wilpon R. 2004 Tr. 18:2-4, 18:8-19:1.)
- The Sterling Partners collectively discussed and made decisions with respect to all Defendants' BLMIS investments. (Ex. 18, F. Wilpon R. 2004 Tr. 124:9-14, 124:17-21; Friedman R. 2004 Tr. 121:10-122:13.)
- As a rule, every Defendant needed Saul Katz's permission to open a BLMIS investment account. (Ex. 2, Friedman R. 2004 Tr. 361:7-361:22, 369:14-22; Ex. 29, Peskin, R. 2004 Tr. 93:18-94:5.)
- Saul Katz managed Sterling's financial strategy and investments, including Defendants' investments with BLMIS. (Ex. 18, F. Wilpon R. 2004 Tr. 52:7-11, 54:6-9, 54:17-55:2; Ex. 27, D. Katz R. 2004 Tr. 28:20-23, 29:8-18.)

- Saul Katz was the "overseer" of the cash aspect of Sterling's business, which was "invested in Madoff," and the manager of Sterling's financial strategy and investments. (Ex. 18, F. Wilpon, R. 2004 Tr. 52:7-11, 54:6-9, 54:17-55:2; Ex. 27, D. Katz R 2004 28:20-23; 29:8-18; 29:24-30:2; 38:25-39:11; Ex. 96, P. Stamos Lit. Tr. 16:2-12; 16:15-17:7.)
- Further, to the extent the Defendants rely on self-serving unexamined testimony from declarations submitted in support of their Motion, the Court should not credit the testimony, much less rely on it to support an undisputed material fact.

98. Disputed based upon the Trustee's response to ¶ 97, which is incorporated as though fully set forth herein.

99. Disputed based upon the Trustee's response to ¶ 14, which is incorporated as though fully set forth herein.

100. Disputed based upon the Trustee's response to ¶ 14, which is incorporated as though fully set forth herein.

101. Disputed based upon the Trustee's response to ¶ 14, which is incorporated as though fully set forth herein.

102. Disputed as incomplete based upon the Trustee's response to ¶ 14, which is incorporated as though fully set forth herein.

Dated: New York, New York
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Respectfully submitted,

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