

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

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor,

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

SAUL B. KATZ, et al.,

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05287 (BRL)

11 Civ. 03605 (JSR) (HBP)

**TRUSTEE'S STATEMENT OF ADDITIONAL MATERIAL FACTS THAT ARE  
UNDISPUTED OR AS TO WHICH THERE EXISTS GENUINE ISSUES TO BE TRIED**

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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 Trustee’s Statement of Additional Material Facts That Are Undisputed Or As To Which There Exists Genuine Issues To Be Tried.

**I. BANKING ON MADOFF’S RETURNS AND ACCOUNTS FOR THEIR BUSINESS FINANCING, THE STERLING DEFENDANTS BECAME DEPENDENT UPON BLMIS**

1. Sterling Equities is a closely held family business run by Saul Katz, Fred Wilpon, David Katz, Arthur Friedman, Michael Katz, Richard Wilpon, Jeffrey Wilpon, Marvin Tepper, Thomas Osterman, and Gregory Katz (the “Sterling Partners”) comprised of (a) a real estate purchase, development and management company of over 23 million square feet of commercial and residential real estate; (b) a real estate investment fund, Sterling American Property (“SAP”), formed and operated by Sterling and American Securities Capital Partners, LLC (“American Securities”), a leveraged buyout firm; (c) a professional sports and entertainment business comprised of full ownership of the New York Mets (the “Mets”), the Major League Baseball franchise, and majority ownership of SportsNet New York (“SNY”); the network responsible for broadcasting New York-based sporting events, including all Mets games; (d) many private equity and venture capital investments, and (e) a hedge fund, Sterling Stamos, in which they are general partners. (*See* Defs.’ Answer, *Picard v. Katz, et al.*, No. 11 Civ. 3605 (S.D.N.Y. Oct. 11, 2011) (JSR), ECF No. 48 (“Answer”), ¶ 656.)

2. 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. (*See Answer*, ¶ 4, (ECF No. 48).); Ex. 1 to the February 9, 2012 Declaration of Fernando A. Bohorquez (“Bohorquez Dec.”),<sup>1</sup> SE\_T039132.)

3. All of these accounts received a special “KW” account prefix. (*See Answer*, ¶ 677, (ECF No. 48).)

**A. The Sterling Partners’ Business Plans Became Overly-Dependent Upon Their Guaranteed Madoff Returns**

4. Friedman testified that over the 20-year span, Madoff probably reported a monthly loss about 10 to 15 times. (Ex. 2, Arthur Friedman Rule 2004 Examination Transcript, dated June 22, 2010, June 23, 2010, June 24, 2010, and June 29, 2010 (“Friedman Tr.”) 125:11-126:33.)

5. 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.)

6. Asked whether there were down years with Madoff, Saul Katz responded, “Not that I recall.” (Ex. 4, Saul Katz Litigation Deposition Transcript, dated January 13, 2012 (“S. Katz Lit. Tr.”) 91:8-10.)

7. The Sterling Partners believed that Madoff was unaffected by the market forces. (Ex. 5, Michael Katz Litigation Deposition Transcript, dated December 9, 2011 (“M. Katz Tr.”) 148:21-24; 149:8-17.)

8. Even during periods of market dislocation, Michael Katz testified that the Sterling Partners “were fascinated that he was not killed in those markets . . . of turmoil.” (Ex. 5, M. Katz. Lit. Tr. 146:19-147:1.)

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<sup>1</sup> All exhibits referenced herein are attached to the Bohorquez Dec.

9. The Sterling Partners did not look to see how Madoff was unaffected. (Ex. 5, M. Katz. Lit. Tr. 148:11-20.)

10. Sterling's Madoff investments [REDACTED] (Ex. 6, Mark Peskin Litigation Deposition Transcript, dated December 29, 2011 ("Peskin Lit. Tr.") 241:7-16.)

11. Mets Controller Len Labita called the rate of return the "Madoff Effect." At one point, the Mets apparently considered whether to use an alternative method of calculating Major League Baseball revenue-sharing obligations that would allow it to invest more with BLMIS. In 2004, Labita sent Mark Peskin a chart called, "The Madoff Effect," with columns labeled "revenue sharing." In his transmittal email to Peskin, Labita noted: "The numbers get huge when you go out 30 years with a Madoff return of 10 percent." (Ex. 7, Trustee 68; Ex. 8, Leonard Labita Litigation Deposition Transcript, dated November 22, 2011 ("Labita Tr.") 187:24-25.)

12. [REDACTED] (Ex. 9, SE\_T731593 at 605, 622; Ex. 10, SE\_T732084 at 097, 113; Ex. 11, SE\_T732372 at 397, 413; Ex. 12, at 130; Ex. 13, SE\_T732203 at 226, 246; Ex. 14, SE\_T731498 at 523, 543.)

13. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 9, SE\_T731593 at 605.)

14. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] (Ex. 9, SE\_T731593 at 605.)

15. [REDACTED]

[REDACTED] (Ex. 9, SE\_T731593 at 622.)

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 9, SE\_T731593 at 622.)

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 10, SE\_T732084 at 097.)

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 10, SE\_T732084 at 097.)

19. [REDACTED]

[REDACTED] (Ex. 10, SE\_T732084 at 113.)

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 10, SE\_T732084 at 113.)

21. [REDACTED]

[REDACTED] (Ex. 11, SE\_T732372 at 396.)

22. [REDACTED]

[REDACTED] (Ex. 11, SE\_T732372 at 396.)

23. [REDACTED]

[REDACTED] (Ex. 11, SE\_T732372 at 413.)

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Ex. 11, SE\_T732372 at 413.)

25. [REDACTED]

[REDACTED] (Ex. 12, at 119.)

26. [REDACTED]

[REDACTED] (Ex. 12, at 119.)

27. [REDACTED]

[REDACTED] (Ex. 12, at 130.)

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12, at 130.)

29. [REDACTED]

[REDACTED] (Ex. 15, BASM000018161 at 185; Ex. 13, SE\_T732203 at 226.)

30. [REDACTED]

[REDACTED] (Ex. 15, BASM000018161 at 185; Ex. 13, SE\_T732203 at 226.)

31. [REDACTED]

[REDACTED] (Ex. 15, BASM000018161 at 204; Ex. 13, SE\_T732203 at 246.)

32. [REDACTED]

[REDACTED]

[REDACTED] (Ex. 15, BASM000018161 at 204; Ex. 13, SE\_T732203 at 246.)

33. [REDACTED]

[REDACTED] (Ex. 14, SE\_T731498 at 523.)

34. [REDACTED]

[REDACTED]

[REDACTED] (Ex. 14,  
SE\_T731498 at 543.)

35. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 14,

SE\_T731498 at 543.)

36. 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 even players' disability insurance. (Ex. 8, Labita Tr. 43:20-44:14; Ex. 6, Peskin Lit. Tr. 100:18- 101:15; Ex. 16, Trustee 67.)

37. The Mets put all excess cash in BLMIS. (Ex. 8, Labita Tr. 21:6-13, 199:10-14, 16-17; Ex. 17, Trustee 48.)

38. In Fred Wilpon's words, "if the Mets have some money, put it into Bernie." (Ex. 18, Fred Wilpon Rule 2004 Examination Transcript, dated July 20, 2010 ("F. Wilpon R. 2004 Tr.") 57:6-7.)

39. "Excess cash" that was deposited with BLMIS included gate receipts, revenue from advertising, concessions, and parking. (Ex. 8, Labita 41:18-42:3, 64:11-12.)

40. The Mets relied on Madoff's returns as a predictable source of income for a business – professional baseball – with an otherwise unpredictable revenue stream. (Ex. 19, Trustee 61; Ex. 8, Labita 109:22-25.)



41. The Mets controller Len Labita and CFO Mark Peskin held it as a given that BLMIS' returns [REDACTED] (Ex. 20, Trustee 63; Ex. 8, Labita 132:5-25.)

42. In planning for "cash crunches" from week to week, Labita would project what Madoff would earn on its accounts. (Ex. 19, Trustee 61 (italics added) ("We have roughly \$9.4M available in Madoff right now that *will* grow, before any withdrawals, to approx. \$12.9 between now and Oct 20<sup>th</sup> (our critical period).".))

43. [REDACTED] (Ex. 8, Labita 137:18-21.)

44. [REDACTED] [REDACTED] [REDACTED] (Ex. 8, Labita Tr. 258:2-12, 14-19, 21, 262:13-17, 19-23; Ex. 21, Trustee 75; Ex. 22, Trustee 76.)

45. The only other place that Mets would put money that was needed within a few days was overnight commercial paper, which yielded a varied and much smaller return than BLMIS. (Ex. 17, Trustee 48 (noting a 4.5 percent return on overnight commercial paper); Ex. 8, Labita Tr. 23:1-5.)

46. In March 2004, the Mets made a presentation to lenders which included a slide called "Liquid Investments." The Mets described its Madoff investments in the presentation as a "market neutral investing strategy" that provides a "safe alternative to unattractive money market yields." (Ex. 8, Labita Tr. 235:4-236:22; Ex. 23, Trustee 73.)

47. The presentation represented that: "Sterling earned an average annual return in excess of 18% over the previous 15 years, with the lowest annual return of 10 percent, "Over the

last 25 years, Madoff returns have averaged 18% with a standard deviation of 4%,” and the “above statistics predict positive annual returns 99.9% of the time.” (Ex. 23, Trustee 73, at SE\_T 663493.)

48. Sterling’s real estate business had several entities for the purpose of generating BLMIS income for particular properties. (Ex. 2, Friedman Tr. 49:16-50:12, 105:8-106:8; Ex. 5, M. Katz Tr. 97:18-98:11; Ex. 24, Trustee 85; Ex. 25, AF32 (SE\_T471909).)

49. College Place Enterprise, Sterling Brunswick and Charles 15 were all examples of Sterling real estate ventures with Madoff accounts to generate income. (Ex. 2, Friedman Tr. 105:8-106:8; Ex. 5, M. Katz Tr. 97:18-98:11; Ex. 24, Trustee 85; Ex. 25, AF32 (SE\_T471909).)

50. Profits from sales of certain real estate assets were invested in BLMIS. (Ex. 5, M. Katz Tr. 98:12-99:20.)

51. The Sterling Partners also used Madoff income to fund capital calls to SAP. (Ex. 26, SE\_T356382, at SE\_T356386.)

52. Sterling used the income from their Madoff accounts to fund the true-up/capital calls to its internal bank, Sterling Equities Funding (“SEF”). (Ex. 27, David Katz Rule 2004 Examination Transcript, dated August 31, 2010 and September 1, 2010 (“D. Katz R. 2004 Tr.”) 101:5-10; Ex. 28, Maureen O’Rourke Litigation Deposition Transcript, dated November 18, 2011 (“O’Rourke Tr.”) 61:13-22; 94:24-95:9; 96:8-19; Ex. 29, Mark Peskin Rule 2004 Examination Transcript, dated July 29, 2010 and July 30, 2010 (“Peskin R. 2004 Tr.”) 68:12-17; Ex. 5, M. Katz Tr. 113:18-114:7; Ex. 26, SE\_T356382, at SE\_T356386; Ex. 30, SE\_T559523-4.)

53. 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.)

**B. The Sterling Defendants Exploited the “Madoff Vig” in Ingenious Ways**

54. Saul Katz referred to the difference between the Madoff returns and the interest rates on loan proceeds they invested in Madoff as the Madoff “vig.” (Ex. 27, D Katz R. 2004 Tr. 264:3-25.)

55. The Mets invested its \$10 million line of credit from Chase Bank entirely in BLMIS as Madoff’s rate of return would exceed the interest rate on the line of credit. (Ex. 31, Trustee 54; Ex. 8, Labita Tr. 129:2-14.)

56. The Mets set up a deferred compensation “fund” with Madoff, wherein it would invest sums to cover the deferred salaries of the players. (Ex. 8, Labita Tr. 138:24-139:2, 139:15-140:2, 142:23-143:7, 14-24, 144:10-12, 14-19; Ex. 32, Trustee 209.)

57. The Mets used this fund for players including Bobby Bonilla, Darryl Strawberry, Roger Cedeno, and Cliff Floyd. (Ex. 8, Labita Tr. 143:14-24.)

58. According to Labita, [REDACTED]  
[REDACTED]  
(Ex. 8, Labita Tr. 155:20-25.)

59. At one point, instead of taking out disability insurance on certain Mets players, Saul Katz instead directed the premium money be invested in BLMIS. (Ex. 33, Trustee 66; Ex. 8, Labita Tr. 167:4-11; 168:2- 170:1.)

60. Saul Katz testified that he directed “the money that [the Mets] would have paid to the insurance company, put it aside in a separate account and we should be using that money only for paying for hurt players.” (Ex. 34, Saul Katz Rule 2004 Transcript, dated August 4, 2010 (“S. Katz R. 2004 Tr.”) 241:14-242:22; Ex. 8, Labita Tr. 168:4-8.)

61. [REDACTED] (Ex. 200, Trustee 207.)

62. By February 2008, the Mets had used the self-insurance fund for operational expenses when the team was “scrambling for cash.” (Ex. 16, Trustee 67; Ex. 8, Labita Tr. 175 7-17; Ex. 6, Peskin Lit. Tr. 112:8-16, 17-19; 112:23--113:21.)

63. It was a regular Sterling business practice to refinance real estate property mortgages to invest the excess proceeds in Madoff. (Ex. 5, M. Katz Tr. 94:12-95:2; Ex. 35, Trustee 84.)

64. For instance, the partners took money from a mortgage on a property at Charles 15 to put into Madoff, and the Madoff account was used as collateral for the mortgage. (Ex. 29, Peskin R. 2004 Tr. 76:12-19; Ex. 35, Trustee 84.)

65. Sterling Internal V is a pool representing the Sterling Partners’ limited partnership interest in Sterling American Properties V, the fifth fund launched by SAP. (Ex. 29, Peskin R. 2004 Tr. 76:2-77:3; Ex. 28, O’Rourke Tr. 188:16-23.)

66. In connection with funding the Sterling Partners’ [REDACTED] commitment to their real estate investment fund Sterling American Properties V, [REDACTED] [REDACTED] placed the borrowed funds into a Madoff account. (Ex. 29, Peskin R. 2004 Tr. 76:2-79:19, 77:4-11, 79:25-80:19, 376:20-379:10; Ex. 28, O’Rourke Tr. 189:25-190:7; Ex. 36, MP23 (SE\_T618921-25), Ex. 29, Peskin R. 2004 Tr. 77:4-11, 79:25-80:19; Ex. 28, O’Rourke Tr. 190:9-17.)

67. The Sterling Partners put the [REDACTED] borrowed into a Madoff account in Sterling Internal V’s name and then used this money to fund half of the partners’ commitment to SAP. (Ex. 29, Peskin R. 2004 Tr. 77:4-11, 79:25-80:19; Ex. 28, O’Rourke Tr. 190:9-17.)

68. Sterling “could borrow the money at a lower rate than . . . [Sterling] would be receiving from the Madoff investment . . . [and] use the difference in earnings to lower [their] out-

of-pocket commitment. The funding was the same, but lower the funding of the commitment from our excess cash . . .". (Ex. 29, Peskin R. 2004 Tr. 79:20-80:6.)

69. The Madoff income was assumed to be greater than the interest Sterling paid on the mortgage. (Ex. 5, M. Katz Tr. 96:11-97:1, 97:4-17; Ex. 29, Peskin R. 2004 Tr. 76:12-19.)

70. The SAP V Madoff account in the name of Sterling Internal V was created to invest a [REDACTED]. (Ex. 29, Peskin R. 2004 Tr. 79:20-80:6.)

71. On one occasion, Saul Katz put money into Madoff as a form of self-insurance for his wife's jewelry, rather than buying an insurance policy. (Ex. 37, Noreen Harrington Litigation Deposition Tr., dated December 30, 2011 ("Harrington Tr.") 65:14-66:3.)

**C. Madoff was the Investment Arm of Sterling's Business and Its [REDACTED]**

72. 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.)

73. The ability to access money quickly was critically important to Sterling's decision to invest in BLMIS. (Ex. 4, S. Katz Lit. Tr. 37:8- 38:10.)

74. 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.)

75. The Madoff investments were Sterling's [REDACTED]. (Ex. 5, M. Katz Tr. 171:18-22.)

76. Any spare partner dollar, or any money generated by one of the Sterling's businesses, was invested in Madoff. (Ex. 2, Friedman Tr. 44:15-45:15, 107:13-108:15; Ex. 3, D. Katz R. 2004 28:20-23; 29:14-16; 29:24-30:2; 38:25-39:11.)

77. [REDACTED]  
[REDACTED] (Ex. 9, SE\_T731593 at 601; Ex. 10, SE\_T732084 at 093; Ex. 11, SE\_T732372 at 389; Ex. 38, SE\_T731678 at 734; Ex. 13, SE\_T732203 at 219; Ex. 14, SE\_T731498 at SE\_T731516; Ex. 39, SE\_T716967 at 83.)

78. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Ex. 9, SE\_T731593 at 601.)

79. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex.10, SE\_T732084 at 093.)

80. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 11, SE\_T732372 at 389.)

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 12, BASM000003083 at 118.)

82. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 13, SE\_T732203, at 219.)

83. [REDACTED]

[REDACTED] (Ex. 14, SE\_T731498 at 516.)

84. [REDACTED]

[REDACTED] (Ex. 39, SE\_T716967 at 983.)

85. Until the formation of Sterling Stamos in 2002, Madoff was the Sterling Partners' only source of liquidity. (Ex. 27, D. Katz R. 2004 Tr. 29:24-30:2, 31:5-17, 170:10-20, 171:9-172:22; Ex. 1, SE\_T039132.)

86. [REDACTED]

[REDACTED] (Ex. 29, Peskin R. 2004 Tr. 40:9-17.)

87. The Sterling Partners decided which entities would invest with Madoff and how much. (Ex. 18, F. Wilpon R. 2004 Tr. 32:8-12, 55:13-57:11; Ex. 29, Peskin R. 2004 Tr. 76:12-19; Ex. 2, Friedman Tr. 121:10-122:13.)

88. Every bi-weekly management meeting had "Madoff" as a topic on the agenda, after the Mets and before Sterling Stamos. (Ex. 40, SE\_T668238; Ex. 41, SE\_T668244; Ex. 42, SE\_T668254; Ex. 43, SE\_T668277.)

89. Madoff's returns and projected returns for Defendants' BLMIS accounts were reported at every bi-weekly management meeting. (Ex. 29, Peskin R. 2004 Tr. 28:4-11, 28:21-29:8, 39:23-40:23, 135; Ex. 18, F. Wilpon R. 2004 Tr. 61:7-20, 108:13-109:7; Ex. 5, M. Katz Tr. 130:14-131:3.)



90. Every month, Sterling tracked the gains and income across the hundreds of BLMIS accounts in which the Defendants held interests. (Ex. 44, Cynthia Rongione Litigation Deposition Transcript, dated November 15, 2011 (“Rongione Tr.”) 38:16-40:7, 42:21-44:8, 47:8-16, 49:5-20, 50:10-52:25, 60:8-61:5, 63:25-64:21; Ex. 29, Peskin R. 2004 Tr. 129:5-132:20.)

91. 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, 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.)

**D. Banking on the BLMIS Double Ups, the Sterling Defendants Overleveraged on Madoff-Related Debt**

92. The Sterling Partners referred to certain 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.)

93. The 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.)

94. The Partners used more than 28 BLMIS accounts, established for the benefit of the Partners, their family members, trusts and related entities, as collateral for loans used for further investments with BLMIS. (*See Answer*, ¶ 816, (ECF No. 48).)

95. Peskin testified that the Sterling Partners controlled the investments of their own children and trusts in the double-up accounts. (Ex. 29, Peskin R. 2004 Tr. 52:14-20, 52:24-53:6.)

96. The double-up loan and related pledge collateral account control agreements, among other things, required the Sterling Partners to maintain minimum balances in their Madoff accounts. (*See, e.g.*, Ex. 45, Sterling Thirty Venture LLC, Pledged Collateral Account Control Agreement, (SE\_T460699) (SE\_T460701) (Section 4); Ex. 46, Sterling 30 Venture LLC Credit Agreement (SE\_T673552) (SE-T673574) (section 8.01).)

97. [REDACTED]  
[REDACTED] (*See, e.g.*, Ex. 46, Sterling 30 Venture LLC Credit Agreement (SE\_T673552) (673570-673572) (Section 6.01(d)).)

98. [REDACTED]  
[REDACTED] (Ex. 47, BASM000013095, at BASM000013098.)

99. Sterling monitored the amount of excess cash above the required minimum balance for its double-up accounts and then would “sweep” the excess funds out of the double-up accounts to use for everything from SEF capital calls to funding business operating expenses. (Ex. 2, Friedman Tr. 506:12-508:5; Ex. 48, AF30, at SE\_T401191,93; Ex. 28, O’Rourke Tr. 82:9-83:19, 92:23-95:11; Ex. 49, Trustee 26; Ex. 50, Trustee 27; Ex. 51, SE\_T434091.)

100. On or about April 26, 2005, SAP IV, one of SAP’s real estate funds that had no ownership interest in any double-up entity, made a capital call to its partners to raise money to fund its operations. SEF sent the funds to SAP IV to meet the capital call; however, the funds sent consisted of “excesses” above the required minimum account balances withdrawn from the double-up accounts associated with two double-up entities, Sterling Thirty Ventures LLC and Sterling 20 LLC. (Ex. 52, SE\_T559859.)

101. Additionally, several Sterling entities with BLMIS accounts had loan agreements specifying that the loan proceeds could be invested with BLMIS, without using the BLMIS account as collateral. (Ex. 29, Peskin R. 2004 Tr. 82:16-83:13.)

102. These entities used money from these accounts to fund commitments to American Securities. (Ex. 29, Peskin R. 2004 Tr. 82:16-83:13.)

103. Certain loans required the Mets to maintain minimum balances in restricted accounts, and Sterling always maintained those accounts at BLMIS. (Ex. 53, Trustee 206 at SE\_T619569 (restricted minimum balance of \$44 million in 1KW423 required by Bank of America); Ex. 54, Trustee 72, at SE\_T690364.)

104. [REDACTED]  
[REDACTED] (Ex. 29, Peskin R. 2004 Tr. 59:3-19); Ex. 2, Friedman Tr. R. 2004 51:19-52:25; Ex. 28, O'Rourke Tr. 18:24-20:2; Ex. 27, David Katz R. Tr. 2004 114:15- 115:1; Ex. 4, S. Katz Lit. Tr. 15:15-16:13.)

105. [REDACTED] (Ex. 2, Friedman Tr. 56:2- 57:14; Ex. 28, O'Rourke Tr. 18:12-20; 22:22- 23:21; Ex. 55, SE\_T567509, at 514.)

106. [REDACTED]  
[REDACTED] (Ex. 29, Peskin R. 2004 Tr. 179:21-180:8; Ex. 56, SE\_T370973 (MP6); Ex. 57, Trustee 199.)

107. [REDACTED]  
[REDACTED] (Ex. 29, Peskin R. 2004 Tr. 172:13-173:9; Ex. 28, O'Rourke Tr. 24:15-25:3); Ex. 58, Trustee 29.)

108. [REDACTED]

[REDACTED] (Ex. 28, O'Rourke Tr. 112:7-20; Ex. 59, Trustee 12.)

109. Sterling provided the banks certifications on a monthly or quarterly basis, stating that they were in compliance with [REDACTED]

[REDACTED] (Ex. 28, O'Rourke Tr. 24:15-25:17, 28:11-22; Ex. 29, Peskin R. 2004 Tr. 177:24-1179:2-180:2-20; Ex. 60, SE\_T854609.)

110. Madoff was the first item on the HELL sheet and was the first item on every liquidity analysis. (Ex. 29, Peskin R. 2004 Tr. 179:12-181:17; Ex. 1, SE\_T039132; Ex. 56, MP6.)

**[REDACTED] The Sterling Partners Knew that Even an Investigation of Madoff [REDACTED]**

111. By 2001, Sterling had seven double-up and other Madoff-related loans totaling [REDACTED] in debt to Bank of America. (Ex. 9, SE\_T731593 at 625, 637, 668-670, 672-73.)

112. By 2003, Sterling had [REDACTED] in Madoff-related debt. (Ex. 11, SE\_T732372 at 412.)

113. From 2004 to 2007, Sterling's Madoff-related debt had grown from [REDACTED] to [REDACTED]. (Ex. 38, SE\_T731678 at 758, 759; Ex. 39, SE\_T716967 at 6989, 6997-999, 7020, 7022.)

**1. An Investigation Into Madoff Could [REDACTED]**

114. [REDACTED]

[REDACTED] (Ex. 61, Pledge and Security Agreement, by and between Charles Sterling Sub LLC and Bank of

America. (SE T461857), (SE\_T461859 – SE T461860), (Section 4.02); Ex. 62, Pledge and Security Agreement, by and between FS Company LLC and Bank of America. (SE T459168), (SE T459170 - SE T459171), (Section 4.02); Ex. 63, Pledge and Security Agreement, by and between Judith Wilpon and Iris Katz and Bank of America. (SE T460359), (SE T460364) (Section 5.02); Ex. 64, Pledge and Security Agreement, by and between RV-RJW LLC and Bank of America. (SE T459359), (SE T459361 - SE T459362), (Section 4.02); Ex. 65, Pledge and Security Agreement, by and between Saul B Katz Family Trust and Bank of America. (SE T555875), (SE T555877), (Section 4.02); Ex. 66, Pledge and Security Agreement, by and between Sterling 10 LLC and Bank of America. (SE T461047 ), (SE T461049 - SE T461050), (Section 4.02); Ex. 67, Pledge and Security Agreement, by and between Sterling 20 LLC and Bank of America. (SE T459534), (SE T459536 - SE T459537), (Section 4.02); Ex. 68, Pledge and Security Agreement, by and between Sterling Brunswick Seven LLC and Bank of America. (SE T459753),(SE T459755 - SE T459756), (Section 4.02); Ex. 69, Pledge and Security Agreement, by and between Sterling Thirty Venture LLC and Bank of America. (SE T673654), (SE T673656), (Section 4.02); Ex. 70, Pledge and Security Agreement, by and between Sterling Tracing LLC and Bank of America. (BASM000021949), (BASM000021951 - BASM000021952), (Section 4.02); Ex. 71, Pledge and Security Agreement, by and between Sterling Twenty Five LLC and Bank of America. (SE T460010), (SE T460012 - SE T460013), (Section 4.02).)

115. For example, section 4.02 of the Pledge and Security Agreement of Sterling Thirty provides:



[REDACTED]

[REDACTED]

(See, e.g., Ex. 69, Pledge and Security Agreement, by and between Sterling Thirty Venture LLC and Bank of America. (SE T673654), (SE T673656), (Section 4.02).)

116. All the outstanding Bank of America double-up loans had a consistent definition for the term "Lien." "Lien is defined as: [REDACTED]

[REDACTED] Ex. 72, Credit Agreement, by and between Charles Sterling Sub LLC and Bank of America. (SE T461817), (SE T461822), (Section 1.01); Ex. 73, Credit Agreement, by and between FS Company LLC and Bank of America. (SE T459126), (SE T459131), (Section 1.01); Ex. 74, Credit Agreement, by and between Judith Wilpon and Iris Katz and Bank of America. (SE T460255), (SE T460263), (Section 1.01); Ex. 75, Credit Agreement, by and between RV-RJW LLC and Bank of America. (SE T459302), (SE T459307), (Section 1.01); Ex. 76, Credit Agreement, by and between Saul B Katz Family Trust and Bank of America. (SE T555756), (SE T555763), (Section 1.01); Ex. 77, Credit Agreement, by and between Sterling 10 LLC and Bank of America. (SE T460997), (SE T461003), (Section 1.01); Ex. 78, Credit Agreement, by and between Sterling 20 LLC and Bank of America. (SE T459477), (SE T459480), (Section 1.01); Ex. 79, Credit Agreement, by and between Sterling Brunswick Seven LLC and Bank of America. (SE T459713), (SE T459718), (Section 1.01); Ex. 46, Credit Agreement, by and between Sterling Thirty Venture LLC and Bank of America. (SE T673552), (SE T673561), (Section 1.01); Ex. 80, Credit Agreement, by and between Sterling Tracing LLC and Bank of America. (SE T460853), (SE T460858), (Section 1.01).)

[REDACTED] (Ex. 81, Mortgage, Security Agreement & Business Loan Agreement, by and between FFB Aviation and Bank of America. (BASM000005380) (BASM000005388), (Section 8.9); Ex. 82, Loan Agreement, by and between Fred Wilpon and Bank of America. (SE T854197), (SE T854212), (Section 8.9); Ex. 83, Loan Agreement, by and between Wilpon Family Trust and Bank of America. (SE T779090), (SE T779104), (Section 7.10); Ex. 84, Loan Agreement, by and between Katz Family Trust and Bank of America. (SE T779217), (SE T779231), (Section 7.10); Ex. 85, Loan Agreement, by and between Wilpon 2002 Trust and Bank of America. (BASM000007479), (BASM000007490), (Section 7.10); Ex. 86, Loan Agreement, by and between Katz 2002 Trust and Bank of America. (BASM000007888), (BASM000007899), (Section 7.10); Ex. 87, Loan Agreement, by and between Iris J Katz and Bank of America. (SE T711553), (SE T711568), (Section 8.9); Ex. 88, Loan Agreement, by and between Saul B Katz and Bank of America. (SE T902078), (SE T902091), (Section 8.9); Ex. 89, Loan Agreement, by and between Sterling Internal IV and Bank of America. (BASM000003879), (BASM000003892), (Section 7.11); Ex. 90, Credit Agreement, by and between Sterling Internal V and Bank of America / Citibank / Wachovia. (SE T778597), (SE T778636), (Section 9.01(k)); Ex. 91, Credit Agreement, by and between Sterling VC IV and Bank of America. (SE T779293), (SE T779324), (Section 8.01(k)); Ex. 92, Credit Agreement, by and between Sterling VC V and Bank of America. (SE T779475), (SE T779507), (Section 8.01(k)); Ex. 93, Credit Agreement, by and between Sterling Dist and Bank of America. (SE T779672), (SE T779703), (Section 8.01(k)))

118. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ((See, e.g., Ex. 46, Credit Agreement, by and between Sterling Thirty Venture LLC and Bank of America. (SE T673552), (SE T673579) (Section 9(j)); see also, Ex. 72, Credit Agreement, by and between Charles Sterling Sub LLC and Bank of America. (SE T461817), (SE T461831), (Section 7(k)); Ex. 73, Credit Agreement, by and between FS Company LLC and Bank of America. (SE T459126), (SE T459140), (Section 7(k)); Ex. 74, Credit Agreement, by and between Judith Wilpon and Iris Katz and Bank of America. (SE T460255), (SE T460282), (Section 9(j)); Ex. 75, Credit Agreement, by and between RV-RJW LLC and Bank of America. (SE T459302), (SE T459317), (Section 7(k)); Ex. 76, Credit Agreement, by and between Saul B Katz Family Trust and Bank of America. (SE T555756), (SE T555780), (Section 9(j)); Ex. 77, Credit Agreement, by and between Sterling 10 LLC and Bank of America. (SE T460997), (SE T461011) (Section 7(k)); Ex. 78, Credit Agreement, by and between Sterling 20 LLC and Bank of America. (SE T459477), (SE T459490) (Section 7(k)); Ex. 79, Credit Agreement, by and between Sterling Brunswick Seven LLC and Bank of America. (SE T459713), (SE T459728) (Section 7(k)); Ex. 80, Credit Agreement, by and between Sterling Tracing LLC and Bank of America. (SE T460853), (SE T460868) (Section 7(k)); Ex. 94, Credit Agreement, by and between Sterling Twenty Five LLC and Bank of America. (SE T459951), (SE T459966) (Section 7(k)).

119. [REDACTED]

[REDACTED] (Ex. 95, Trustee 119, BASM00015478, BASM0001594-96; Ex. 57, Trustee 199.)



**2. The Sterling Partners Knew That An Investigation into Madoff Could [REDACTED] and Were Willing to Execute False Documents to Avoid a Default**

120. Peter Stamos warned Arthur Friedman and other Sterling Partners of the danger the Sterling Partners might encounter if the SEC or other regulatory agency investigated Madoff. (Ex. 96, Peter Stamos Litigation Deposition Transcript, dated January 5, 2012 (“P. Stamos Lit. Tr.”) 264:16-267:6; Ex. 2, Friedman Tr. 579:5-23.)

121. Peter Stamos warned Arthur Friedman that one of the dangers of a regulatory investigation into Madoff was that the assets of the Sterling Partners could be frozen and they could potentially default on their Madoff-related loan obligations. (Ex. 2, Friedman Tr. 579:5-23; see Ex. 96, P. Stamos Lit. Tr. 264:16-267:6. )

122. Stamos’ warnings about the possibility of an investigation of Madoff and the potential freezing of the Sterling Partners’ BLMIS accounts occurred somewhere between 2002 and 2005. (Ex. 2, Friedman Tr. 579:24-580:12.)

123. Peter Stamos confirmed that he had so warned Arthur Friedman, Saul Katz and perhaps one or two other Sterling Partners about the potential risks if Madoff were investigated by authorities. (Ex. 96, P. Stamos Lit. Tr. 265:16 – 267:6.)

124. Stamos’ warnings about the possibility of an investigation of Madoff and the potential freezing of the Sterling Partners’ BLMIS accounts was reported to the Sterling Partners at a Partners’ meeting. (Ex. 2, Friedman Tr. 580:22-580:25.)

125. Michael Katz’s handwritten notes reflect that he was concerned about the effect that a potential Madoff insolvency could have upon his wife’s personal guarantee obligations: “By putting dollars into [Sterling Stamos Partners], I’m not protected from Madoff bankruptcy because [his wife] DHK is on the guarantee as of now. I am trying to get her off.” (Ex. 97, Trustee 106; Ex. 5, M. Katz Tr. 307:16-308:18.)

126. In or around May 2004, the Sterling Partners had decided to exercise their option to buy out the Mets broadcast rights from Cablevision, but were concerned about whether their bank financing – two \$27 million loans from JPMorgan and Citigroup, respectively – would come through on time. (Ex. 18, F. Wilpon R. 2004 Tr. 212:22-213:18; 213:21-214:2; Ex. 34, S. Katz R. 2004 Tr. 197:8-199:5; Ex. 29, Peskin R. 2004 Tr. 267:22-268:14.)

127. Worried that their time to exercise the option would run out prior to receipt of the bank financing, Saul Katz, Fred Wilpon and Marvin Tepper called Madoff and requested to redeem \$54 million from their BLMIS accounts to ensure that they had the necessary funding to consummate the buy-out. (Ex. 34, S. Katz R. 2004 Tr. 197:8-198:18; Ex. 18, F. Wilpon R. 2004 Tr. 212:22-215:3; Ex. 2, Friedman Tr. 222:22-223:18, 224:24-225:19; Ex. 29, Peskin R. 2004 Tr. 267:14-270:12.)

128. Saul Katz and Fred Wilpon testified that Madoff responded that he was allegedly “in the market” and that such a withdrawal would lower their returns; instead, Madoff offered to loan them the \$54 million. (Ex. 34, S. Katz 2004 Tr. 198:19-199:8; Ex. 18, F. Wilpon R. 2004 Tr. 214:18-215:13; Ex. 5, M. Katz Tr. 322:9-323:17, 328:3-15; Ex. 2, Friedman Tr. 226:15-228:3.)

129. On or about May 26, 2004, Madoff wired \$54 million to a Sterling-related bank account. (*See Answer*, ¶ 993, (ECF No. 48).)

130. The bank financing for the \$54 million came through shortly thereafter, and the Sterling Partners returned the \$54 million to Madoff on May 27, 2004. (Ex. 18, F. Wilpon R. 2004 Tr. 212:22-213:1, 213:21-216:18; Ex. 34, S. Katz R. 2004 Tr. 197:8-199:14.)

131. Fred Wilpon testified that he was unsure if the funds from Madoff were a loan or an advance but that no interest was ever paid. (Ex. 18, F. Wilpon R. 2004 Tr. 224:10-24.)

132. Fred Wilpon testified that at one of the Sterling Partner's management meetings "something was said that Bernie made this accommodation." (Ex. 18, F. Wilpon R. 2004 Tr. 228:22-229:7.)

133. The transaction is described as a loan rather than an investment on the Sterling Partner's management meeting minutes. (Ex. 41, SE\_T668244, at SE\_T668247.)

134. On or about May 25, 2004, Saul Katz, Fred Wilpon, and Ruth Madoff executed a letter agreement that purported to document a \$54 million investment by Ruth Madoff into the Sterling entity that would later become SportsNet New York ("SNY"). (Ex. 98, MADTEE00645190.)

135. The letter agreement provided:

This will confirm the conversations with respect to an investment by you [Ruth Madoff] in the Network. Over the years you have invested with us in, among other things, real estate funds; and we contemplate extending this relationship to the Network .... You are simultaneously wiring to Sterling Equities Associates the sum of \$54 million which is expected to be the approximate amount of your proposed investment with the Network.

(Ex. 98, MADTEE00645190.)

136. Saul Katz and Fred Wilpon testified that the signed letter agreement did not accurately reflect the transaction that it described. (Ex. 34, S. Katz R. 2004 Tr. 195:19-25, 203:20-23, 204:21-205:2, 205:25-206:11; Ex. 18, F. Wilpon R. 2004 Tr. 218:8-11, 220:15-25.)

137. Wilpon and Saul Katz deny any knowledge as to why the letter was drafted to misrepresent the transaction. (Ex. 18, F. Wilpon R. 2004 Tr. 219:23-220:14; Ex. 34, S. Katz R. 2004 Tr. 206:9-11, 208:15-18.)

138. Freidman, Peskin and David Katz were surprised as to its contents. (Ex. 2, Friedman Tr. 228:23-229:6, 229:15-21, 230:12-23, 231:3-7; Ex. 29, Peskin R. 2004 Tr. 276:16-277:21, 278:16-279:1; Ex. 27, D. Katz R. 2004 Tr. 283:3-22.)

139. Marvin Tepper – the purported author - denies any recollection. (Ex. 99, 10/08/19 Proffer of M. Tepper.)

140. Ruth Madoff never made any such investment into any Sterling entity. (Ex. 34, S. Katz R. 2004 Tr. 196:8-197:7; Ex. 18, F. Wilpon R. 2004 Tr. 219:9-12.)

141. Neither Fred Wilpon nor Saul Katz had discussions with Ruth Madoff concerning a potential investment related to SNY. (*See Answer*, ¶ 1003, (ECF No. 48).)

142. Saul Katz testified that a possible reason for why the letter agreement was drafted to reflect an investment from Ruth Madoff rather than a loan was due to concerns related to certain financial liquidity covenants with the banks. (Ex. 34, S. Katz. R. 2004 Tr. 206:21-207:11.)

143. Sterling's CFO, Mark Peskin, discussed the details of the \$54 million bank financing and liquidity covenants with both Saul Katz and Michael Katz. (Ex. 6, Peskin Lit. Tr. 190:12-192:16, 192:18-19.)

144. [REDACTED]

[REDACTED] (Ex. 100, Trustee 32, Trustee 33.)

145. [REDACTED]

[REDACTED] (Ex. 28, O'Rourke Tr. 148:22-150:23; Ex. 100, Trustee 32/33.)

146. [REDACTED]

[REDACTED] (Ex. 28, O'Rourke Tr. 148:22-150:23; Ex. 100 Trustee 32, Trustee 33.)

**F. Sterling's Financial Collapse with Madoff Proves Its Dependency**

147. By the time the Ponzi scheme collapsed, the Partners had borrowed more than [REDACTED] through sixteen "Madoff Loans" to sixteen different Defendants. (Ex. 95, Trustee 119.)

148. The Partners secured each of these loans with the purported securities held in Defendants' BLMIS accounts. (Ex. 49, Trustee 119, at BASM000015494-95.)

149. Due to covenant thresholds and cross default provisions, Sterling had an additional sixteen loans with another approximately [REDACTED] million in exposure to Bank of America. (Ex. 95, Trustee 119.)

150. [REDACTED]  
[REDACTED] (Ex. 95, Trustee 119, at BASM000015489; Ex. 101, Trustee 203, at SE\_T643536; Ex. 6, Peskin Lit. Tr. 11:2-9, 19-22, 12:7-16, 13:6-9.)

151. The Sterling Partners' liquidity crisis and their defaults and cross-defaults across all of their loans, credit facilities, pledge agreements and guarantees required a complete restructuring of all their outstanding indebtedness. (Ex. 102, Trustee 121; Ex. 6, Peskin Lit. Tr. 9:4-15, 9:22-10:11, 13:24-18:11.)

**II. THE DEFENDANTS WERE COMPLETELY DEPENDENT UPON THEIR MADOFF ACCOUNTS AS THE WARNINGS AND RED FLAGS OF FRAUD AMASSED**

**A. By 2001, the Sterling Partners Had Already Looked Into Potential Fraud Insurance for their Madoff Accounts**

152. In February 2001, after Arthur Friedman was informed by Saul Katz that American Securities had purchased some form of insurance with regard to the accounts that they had in Madoff, he explored procuring the insurance through the same broker American Securities

had used, Robert Duran at Frank Crystal & Co. (Ex. 103, SE\_T021087; Ex. 2, Friedman Tr. 419:16-420:8.)

153. Friedman wrote a memo to Fred Wilpon and Saul Katz dated February 26, 2001 regarding the subject “Madoff Insurance” where he explained: “American Securities has purchase[d] a third-party fiduciary policy covering their account at Madoff. I was referred to their insurance agent, Robert Duran at Frank Crystal & Co.[]. The policy covers fraud and has a \$500,000 deductible. The cost is 30 cents per \$100. The cost per \$1.0M = \$3,000. If we were to insure \$200.0M the cost would be \$600,000.” (Ex. 103, SE\_T021087.)

154. Friedman’s handwritten notes at the bottom of the February 26, 2001 memo state: “How to define fraud get Robt Duran here[.]” (Ex. 103, SE\_T021087; Ex. 2, Friedman Tr. 423:22-424:9, 425:10-16.)

155. In June 2001, both Arthur Friedman and Michael Katz met with Duran of Frank Crystal & Co., which Friedman memorialized in a memo dated June 13, 2001 to “All Partners” regarding the subject “Madoff Insurance” that explained that the policy would cover: “1) Fraud & Fidelity 2) Insolvency for any reason” and that coverage “will be limited to a maximum of \$100M in total and, probably, they would limit coverage to accounts greater than \$10M.” (Ex. 104, SE\_T553941.)

156. Friedman’s handwritten notes from this meeting indicate that the insurance policy for the Madoff investments would provide coverage for “Fraud or Fidelity (Ponzie)” or “Insolvency for whatever reason.” (Ex. 105, SE\_T553944.)

157. Michael Katz testified that he had never heard of anyone insuring their securities investments against fraud and that the only time had heard of anybody purchasing fraud

insurance was the insurance policy that Chuck Klein discussed with Saul Katz. (Ex. 5, M. Katz Tr. 260:14-20, 260:22-261:3.)

158. David Katz testified that it was “silly” for the Sterling Partners to purchase the Madoff fraud insurance because they “couldn’t get anywhere near the amount [they] needed to cover it...[t]he amount of money...the amount you could take out in insurance was low per account compared to what we had invested.” (Ex. 27, D. Katz R. 2004 Tr. 277:6-15; *see also*, Ex. 104, SE\_T553941.)

159. American Securities documents described the fraud “insurance in place on the investment in Madoff” as “unique in the insurance industry” and as “one of a kind.” (Ex. 106, PJADMIN00007396.)

160. American Securities internal correspondence reflects discussions that its fraud insurance “covers theft” in the event “Madoff runs off with our money” and provides “primarily protection against a ‘ponzi’ scheme or some situation where [American Securities] went to redeem the principal and it wasn’t ‘there.’” (Ex. 107, PJADMIN00007456; Ex. 108, PJADMIN00007362.)

161. Other internal correspondence at American Securities reflects that with regard to its fraud insurance, American Securities was focused on coverage for its Madoff investment. (Ex. 108, PJADMIN00007362; Ex. 109, PJASAG0000010; Ex. 110, PJADMIN00007641; Ex. 111, PJADMIN00007355.)

162. When American Securities’ policy was in danger of not getting renewed, an internal email regarding “Third Party Fidelity Bond – Madoff Investment” was circulated by Olga Dimini of American Securities, which explained that the lead insurer, AIG, had “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, PJADMIN00007355.)

163. American Securities was unable to renew their fraud insurance policy. (Ex. 112, Charles Klein Rule 2004 Examination Transcript, dated November 8, 2010 (“Klein Tr.”) 197:16-18; 202:2-9.)

164. 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.)

165. Around the same time frame they were considering fraud insurance, the Sterling Partners circulated amongst themselves an April 2001 article contained in an industry newsletter called Mar/Hedge, entitled “Madoff Tops Charts: Skeptics Ask How.” (Ex. 113, SE\_T554010.)

166. The Mar/Hedge article reported that many hedge fund industry professionals were openly “skeptical” about the consistency of Madoff’s returns and “baffled” by the inability of other hedge fund professionals to duplicate Madoff’s strategy. (Ex. 113, SE\_T554010.)

167. The Mar/Hedge article also reported that experts in the industry raised the prospect that Madoff could be “subsidizing” the returns of his investment advisory business with his market-making business operations. (Ex. 113, SE\_T554010.)

168. In May 2001, the Sterling Partners circulated amongst themselves an article published by Barron’s, entitled “Don’t Ask, Don’t Tell,” which reported industry professionals’ suspicions about the legitimacy of Madoff’s returns to investors and the air of secrecy required by Madoff. (Ex. 114, SE\_T021079.)



169. The Barron's article stated that "[Madoff's] returns have been so consistent that some on the Street have begun speculating that Madoff's market-making operation subsidizes and smooths [sic] his hedge-fund returns." (Ex. 114, SE\_T021079.)

170. The article also reported that "three option strategists at major investment banks told Barron's they couldn't understand how Madoff churns out such numbers" and that one particular BLMIS investor told Barron's that "[w]hen [Madoff] couldn't explain (to my satisfaction) how they were up or down in a particular month...I pulled the money out." (Ex. 114, SE\_T021079.)

**B. The Sterling Partners' Investment Fund Partners Warned the Defendants not to Continue to Invest with Madoff**

171. In 2002, the Sterling Partners founded their own investment fund, Sterling Stamos, and it has successfully grown to manage approximately \$8 billion. (Ex. 115, Peter Stamos Rule 2004 Examination Transcript, dated August 19, 2010 ("P. Stamos R. 2004 Tr.") 34:19-25; Ex. 131, <http://www.sterlingstamos.com/defaultflash.aspx>.)

172. Sterling Stamos was founded as a 50-50 partnership between the Sterling Partners and Peter Stamos. (Ex. 96, P. Stamos Lit. Tr. 15:2-8.)

173. Since its founding, Peter Stamos has served as the Chief Executive Officer and Chairman of Sterling Stamos, and the Sterling Partners delegated all authority over Sterling Stamos to Peter Stamos. (Ex. 96, P. Stamos Lit. Tr. 32:5-16, 46:12-23.)

174. 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, Kevin Okimoto Litigation Deposition Transcript, dated January 6, 2012 ("Okimoto Tr.") 206:11-207:2; Ex. 117, Trustee 308.)

175. 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.)

176. 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, Okimoto Tr. 54:15-21, 60:13-61:2.)

177. Sterling Stamos marketed the Sterling Partners as sophisticated hedge fund investors with proprietary sourcing and due diligence capabilities. (Ex. 117, Trustee 308.)

178. Saul Katz sought Madoff-like returns and frequently compared the returns of Sterling Stamos to those of Madoff. (Ex. 118, Ashok Chachra Rule 2004 Examination Transcript, dated October 8, 2010 ("Chachra Tr.") 161:18-162:6; Ex. 37, Harrington Tr. 65:14-66:3; Ex. 116, Okimoto Tr. 89:17-20; Ex. 115, P. Stamos R. 2004 Tr. 233:18-24; Ex. 118, Trustee 302; Ex. 120, SSMT01010357.)

**1. Sterling Stamos' Chief Investment Officer Warned Saul Katz and David Katz in 2003 that Madoff's Investment Returns were Either a "Fiction" or the Result of "Violations of Securities Laws"**

179. In 2002, Sterling Stamos hired Noreen Harrington, a former executive of Goldman Sachs and Merrill Lynch to serve as Chief Investment Officer of Sterling Stamos. (Ex. 37, Harrington Tr. 14:6-10.)

180. Harrington came to Sterling Stamos highly recommended by a partner at Lehman Brothers, after having been a veteran in the hedge fund industry for over twenty years. (Ex. 96, P. Stamos Lit. Tr. 42:9-18, 155:2-156:4; Ex. 37, Harrington Tr. 14:6-22, 18:16-18.)

181. As Chief Investment Officer, Harrington was responsible for, among other things, selecting fund managers and supervising Sterling Stamos' due diligence processes and protocols. (Ex. 96, P. Stamos Lit. Tr. 156:5-25; Ex. 37, Harrington Tr. 18:19-19:14.)

182. 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.)

183. 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, SENH00000077; Ex. 96, P. Stamos Lit. Tr. 188:19-190:12.)

184. The Merkin investment was driven by Saul Katz who said that Sterling Stamos' funds were more volatile than Madoff's. (Ex. 37, Harrington Tr. 83:4-84:3; 115:3-13.)

185. Saul Katz thought that an investment with Merkin would help Sterling Stamos have a better return. (Ex. 37, Harrington Tr. 83:4-84:3, 115:3-13.)

186. Saul Katz also said that with better returns, Sterling Stamos could be more successful in attracting funds and Sterling Stamos' investment performance could be better. (Ex. 32, Harrington Tr. 83:4-84:3.)

187. In the summer of 2003, Harrington and her then-associate, Ashok Chachra, met with Merkin. (Ex. 37, Harrington Tr. 67:9-17; Ex. 96, P. Stamos Lit. Tr. 166:7-17.)

188. At that meeting with Merkin, Harrington described to Merkin the due diligence process that Sterling Stamos would have to undertake before they would make any investments in his fund. (Ex. 37, Harrington Tr. 69:6-71:23.)

189. Merkin refused to permit Harrington to perform any due diligence into Madoff or his fund, telling her: “You don’t get it do you? ... You don’t get it, do you? This is a privilege. You don’t get to ask questions.” (Ex. 37, Harrington Tr. 71:24-73, 113-114.)

190. 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.)

191. Harrington also learned that Madoff, and by extension Merkin, “went to cash at the end of a quarter,” which was one good way to fly “below the radar” of regulators. (Ex. 37, Harrington Tr. 76:6-23; 86:5-88:15.)

192. Following the Merkin meeting, Harrington’s immediate reaction was that Sterling Stamos could not go forward with an investment with Merkin because Merkin’s prospectus allowed him to give money to third parties, and he gave money to Madoff. (Ex. 37, Harrington Tr. 75:13-21; Ex. 132, SSKW00023944.)

193. Harrington testified that she needed to conduct diligence into Merkin and Madoff, especially because they were “joined at the hip.” (Ex. 37, Harrington Tr. 74:17-76:23, 112:24-115:2.)

194. Harrington and Chachra analyzed the correlation between the Merkin and Madoff strategies and the stock market. (Ex. 37, Harrington Tr. 86:5-88:15, 91:12-96:12, 104:13-21; Ex. 119, Chachra Tr. 32:14-33:19.)

195. Harrington and Chachra analyzed the liquidity of both Merkin’s and Madoff’s funds. (Ex. 37, Harrington Tr. 86:5-88:15, 91:12-96:12, 104:13-21; Ex. 119, Chachra Tr. 32:14-33:19; Ex. 119, Chachra Tr. 32:14-33:19.)

196. After the Merkin meeting, Harrington and Chachra analyzed the impact on the market of Madoff's purported going to cash at the end of each quarter and did not see any "footprint" in the marketplace of Madoff "going to cash." (Ex. 37, Harrington Tr. 86:5-88:15, 91:12-96:12, 191:10-193:8.)

197. Harrington concluded that neither Merkin nor Madoff could have been engaged in the trading strategy they claimed because Madoff's returns were too flat and she could not "understand the math here of how somebody can get these kinds of returns that are so positive." (Ex. 37, Harrington Tr. 96:13-98; 116:7-19.)

198. In the summer of 2003, Harrington met with Saul Katz, David Katz and Peter Stamos to give them a negative recommendation about any investment with Merkin or Madoff. (Ex. 37, Harrington Tr. 111:15-113:5.)

199. 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. 117:24-118:1-9.)

200. Peter Stamos testified that Harrington expressed her "substantive concerns about Merkin" (Ex. 96, P. Stamos Lit. Tr. 167:25-168:1), and that she was concerned that Merkin was simply "a fund that channels money to Madoff." (Ex. 96, P. Stamos Lit. Tr. 169:170:2.)

201. Harrington told Saul and David Katz that Madoff's trading strategy lacked transparency. (Ex. 37, Harrington Tr. 112-114; 122.)

202. Harrington told Saul and David Katz that Madoff's returns were either the result of illegal front-running or a fiction, and most likely violative of the securities laws. (Ex. 37, Harrington Tr. 117:4-25, 125-126:6.)

203. Harrington told Saul 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, 123-124.)

204. Harrington told Saul Katz that the reason she suspected Madoff was "front-running" was because, as his own broker-dealer, Madoff could "get a quick return that wouldn't have any correlations to the overall return of the market that day." (Ex. 37, Harrington Tr. 118:18-119:3.)

205. Saul Katz did not accept Harrington's negative recommendation of Madoff, and instead, became very angry. (Ex. 37, Harrington Tr. 115-117.)

206. Harrington asked Saul Katz for a meeting with Madoff to assuage her reservations, but that meeting did not happen. (Ex. 37, Harrington Tr. 119:24-120:11.)

207. 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.)

208. Harrington resigned from Sterling Stamos as a result of the decision to invest with Madoff. (Ex. 37, Harrington Tr. 126:17-127:11; Ex. 96, P. Stamos Lit. Tr. 194:6-195:18.)

209. On December 15, 2008, Harrington sent an email to Sterling Stamos' Chief Financial Officer stating: "Now maybe, Peter will acknowledge, that in 2003 that I was right and he was wrong regarding the due diligence on Merkin and Madoff." (Ex. 124, Trustee 227.)

210. Years after Harrington's resignation, a Sterling Stamos' risk officer wrote that the Merkin fund which invested with Madoff had "blow-up" risk associated with it. (Ex. 123, Trustee 309.)

211. Former Sterling Stamos Partner, Derek Daley, wrote two emails to Peter Stamos, one in June 2003 and the second in August 2003, expressing that he was “worried” that “Ezra Merkin’s Ascot fund [was] simply a ‘feeder’ fund into Bernie Madoff fund.” (Ex. 124, Trustee 306.)

212. In email correspondence with Peter Stamos, Tim Dick, a consultant to Sterling and Sterling Stamos, stated that he informed Saul Katz that he “couldn’t make Bernie’s math work—something wasn’t right”:

I remember the discussions we had about Bernie in the early days of [Sterling Stamos] . . . . Thank goodness you diversified Saul—it is too bad Fred didn’t buy in to the same degree . . . . In my introductory discussion with Saul, he brought up Bernie and I told him I couldn’t make Bernie’s math work—something wasn’t right . . . . I don’t think Saul was very pleased with the discussion although I tried to be objective . . . .

(Ex. 125, SSMT01010527.)

213. Peter Stamos’ response to email stated: “Your (our) instincts and analyses were right on both fronts . . . . I’ve always been so proud of your judgment and integrity.” (Ex. 125, SSMT01010527.)

214. Peter Stamos testified that Tim Dick’s conversation with Saul Katz occurred in the early stages of Sterling Stamos’ development in late 2002 or early 2003. (Ex. 115, P. Stamos R. 2004 Tr. 314:1-7.)

**2. A Merrill Lynch Executive Advised the Sterling Partners of Concerns about Madoff and Merrill Lynch’s Refusal to Market Madoff Investments to Its Clients**

215. Kevin Dunleavy was a top executive at Merrill Lynch who held several positions there from June of 1981 through September 2009. (Ex. 126, Kevin Dunleavy Litigation Deposition Transcript, dated December 21, 2011 (“Dunleavy Tr.”) 10:20-15:20.)

216. In 2004, Merrill Lynch partnered with Sterling Stamos and began marketing Sterling Stamos' investment funds to Merrill Lynch's client-investors. (*See generally* Ex. 126, Dunleavy Tr. 24:16-25:15, 40:10-41:14; Ex. 127, Kevin Barcelona Litigation Deposition Transcript, dated December 15, 2011 and January 12, 2012 ("Barcelona Tr.") 171.)

217. As part of the business relationship between Merrill Lynch and Sterling Stamos, Dunleavy was Sterling Stamos' primary point of contact. (Ex. 126, Dunleavy Tr. 15:21-16:1-7, 41:2-14; Ex. 119, Chachra Tr. 65:18-25.)

218. After a few years, Merrill Lynch negotiated with Sterling Stamos to become a 50 percent owner. (Ex. 126, Dunleavy Tr. 51:14-19; Ex. 127, Barcelona Tr. 176:8-14.)

219. In the process of acquiring its ownership stake in Sterling Stamos, Merrill Lynch conducted extensive due diligence into Sterling Stamos' investments, and discovered that it had hundreds of millions of dollars invested with Madoff. (Ex. 126, Dunleavy Tr. 54:20-56:1, 57:12-58:11.)

220. Merrill Lynch's due diligence did not view Madoff favorably. (Ex. 126, Dunleavy Tr. 59:2-14.)

221. Merrill Lynch was concerned about Madoff because he self-cleared, self-custodied, and self-executed his trades. (Ex. 126, Dunleavy Tr. 59:19-25.)

222. Dunleavy expressed concern that Madoff was both a broker deal and cleared his own trades as well as being an investment manager. (Ex. 115, P. Stamos R. 2004 Tr. 80:13-81:1, 83:11-14.)

223. Merrill Lynch's due diligence team was "uncomfortable" with Madoff because the team had never before seen an investment manager without independent intermediaries



responsible for clearing and custodial functions, which was the industry “norm.” (Ex. 126, Dunleavy Tr. 60:1-24, 61:16-22, 67:9-12, 68:12-16.)

224. Dunleavy said that it was his experience, and also the norm, that financial institutions had people that cleared securities for them. (Ex. 126, Dunleavy Tr. 61:8-15.)

225. Because of these concerns, Merrill Lynch refused to market Madoff investments to their clients. (Ex. 126, Dunleavy Tr. 66:24-67:20.)

226. Dunleavy also expressed concern that Defendants Fred Wilpon and Saul Katz had a substantial amount of assets invested with Madoff. (Ex. 115, P. Stamos R. 2004 Tr. 82:3-13.)

227. Merrill Lynch mandated Sterling Stamos to divest itself of its substantial Madoff investments before Merrill Lynch would buy into Sterling Stamos. (Ex. 126, Dunleavy Tr. 66:24-67:20.)

228. Sterling Stamos divested itself from its Madoff investments. (Ex. 126, Dunleavy Tr. 68:24-69:5, 127:20-25, 142:9-14; Ex. 128, Trustee 157.)

229. Dunleavy testified “it was my understanding that the redemption took place before we did the closing of Merrill Lynch taking ownership.” (Ex. 126, Dunleavy Tr. 127:20-25.)

230. Merrill Lynch closed on its Sterling Stamos purchase transaction and paid the Sterling Partners “a substantial amount.” (Ex. 27, D. Katz R. 2004 Tr. 12:25-13:4; Ex. 126, Dunleavy Tr. 51:14-19.)

231. The issue of investing with Madoff was again raised by Saul Katz at a Sterling Stamos board meeting in 2008 when Saul Katz urged the board to invest Sterling Stamos’ assets with Madoff to improve Sterling Stamos’ investment returns. (Ex. 126, Dunleavy Tr. 96:24-97:10; Ex. 129, Trustee 152, at SSMT02285581-87.)

232. Dunleavy repeated his warnings to Saul Katz that Merrill Lynch's due diligence would not permit Madoff to be marketed to their retail investors: "referr[ing] back to our original issue with [Madoff's] self-clearing, self-custody, self-dealing and that that would not be acceptable for Merrill Lynch Retail." (Ex. 126, Dunleavy Tr. 97:11-98:14; Ex. 129, Trustee 152, at SSMT02285581-87.)

**3. Additional Evidence Confirms that Others at Sterling Stamos Warned the Sterling Partners to Redeem their Investments from Madoff**

233. Peter Stamos was introduced to Madoff through Saul Katz. (Ex. 115, P. Stamos R. 2004 Tr. 93:1-18.)

234. By the late 1990s, Peter Stamos, his brother Basil Stamos, his father, and his father-in-law all had investments with BLMIS. (Ex. 115, P. Stamos R. 2004 Tr. 95:24-96:25; Ex. 96, P. Stamos Lit. Tr. 95:5-96:10; Ex. 130, Basil Stamos Litigation Deposition Transcript, dated January 3, 2010 ("B. Stamos Tr.") 34:14-35:6.)

235. Basil Stamos was head of corporate philanthropy at Sterling Stamos, and held an ownership interest. (Ex. 130, B. Stamos Tr. 13:2-14:4, 16:12-20.)

236. In the fall of 2004, Peter Stamos fully redeemed his Madoff investments. (Ex. 96, P. Stamos Lit. Tr. 91:3-95:1; Ex. 133, Trustee 296; Ex. 134, Trustee 297.)

237. In the fall of 2004, Basil Stamos fully redeemed his Madoff investments. (Ex. 96, P. Stamos Lit. Tr. 91:3-95:1, 98:7-102:1; Ex. 130, B. Stamos Tr. 43:20-44:5; Ex. 136, AMF00306318.)

238. In the fall 2004, Peter Stamos' father fully redeemed his Madoff investments. (Ex. 96, P. Stamos Lit. Tr. 91:3-95:1, 98:7-102:1; Ex. 130, B. Stamos Tr. 45:21-46:9; Ex. 135, AMF00304852.)

239. In the fall of 2004, Peter Stamos' father-in-law fully redeemed his Madoff investments. (Ex. 96, P. Stamos Lit. Tr. 91:3-95:1, 98:7-102:1; Ex. 130, B. Stamos Tr. 45:21-46:9; Ex. 136, AMF00306320.)

240. In the fall of 2004, Peter Stamos contacted Sterling Equities partner Arthur Friedman to close the Stamos family members' four Madoff accounts. (Ex. 96, P. Stamos Lit. Tr. 91:3-95:1, 98:7-102:1; Ex. 130, B. Stamos Tr. 45:21-46:9; Ex. 134, Trustee 297, AMF00084339.)

241. Basil Stamos closed his Madoff account because Peter Stamos told him that it was risky to have all of his money with one fund manager who was not transparent. (Ex. 130, B. Stamos Tr. 44:1-5.)

242. Peter Stamos told Basil Stamos that he too was withdrawing his own money from Madoff. (Ex. 130, B. Stamos Tr. 44:1-5.)

243. Chris Stamos was the former Chief Operating Officer of Sterling Stamos. (Ex. 137, Christopher Stamos Litigation Deposition Transcript, dated January 4, 2012 ("C. Stamos Tr.") 84:6-85:6.)

244. Chris Stamos said that Madoff was a little scary to the Stamos family because they did not know what kind of strategy Madoff was using. (Ex. 137, C. Stamos Tr. 141:6-16.)

245. Peter Stamos told Saul Katz about his concern that Saul Katz's Madoff investments allowed for single-manager risk. (Ex. 115, P. Stamos R. 2004 Tr. 92:5-21.)

246. Chris Stamos testified that a "variety of risks" accompany single manager risk, including "issues like fraud[.]" (Ex. 137, C. Stamos Tr. 21:17-22:4.)

247. Basil Stamos was "proud" of his brother Peter for getting his family's investments out of Madoff. (Ex. 130, B. Stamos Tr. 65:1-17.)

248. After Madoff was arrested in 2008, Basil Stamos wrote emails to friends and colleagues that his brother Madoff “called” the Madoff fraud years ago. (Ex. 138, Trustee 233; Ex. 139, Trustee 234; Ex. 140, Trustee 235; Ex. 141, Trustee 236; Ex. 142, Trustee 237; Ex. 143, Trustee 238; Ex. 144, Trustee 239; Ex. 145, Trustee 240; Ex. 146, Trustee 241; Ex. 147, Trustee 242.)

249. After Madoff was arrested in 2008, Basil Stamos also wrote to a colleague that Peter Stamos counseled him out of BLMIS and “instructed others” to stay away from Madoff for years. (Ex. 148, Trustee 243.)

250. Saul Katz and Fred Wilpon were among those that Peter Stamos instructed to stay away from Madoff. (Ex. 130, B. Stamos Tr. 95:21-97:7, 105:4-23.)

251. Peter Stamos told his investors that the Katz/Wilpon family continued to invest with Madoff against Sterling Stamos’ recommendations. (Ex. 149, SSMT0934925.)

252. Ashok Chachra wrote to one investor:

[We] told many of our investors including the Wilpon and Katz families about our concerns.

Notwithstanding our concerns, the Wilpon and Katz families continued to invest with Madoff securities.

Please let me know if you would like to discuss this further as we are trying to inform all of our investors that our due diligence process rejected Madoff but, unfortunately, the Katz and Wilpon families maintained their investment independent of our advice.

(Ex. 150, PM3, SSMT01194929.)

253. Chachra wrote to another investor:

We had recommended to [the Wilpon and Katz families] to redeem [from Madoff] for years but they kept their investment independent of our recommendation.

(Ex. 151, SSMT01061678.)

254. The topic of Madoff came up at regular meetings between Saul Katz, Peter Stamos and other investment professionals at Sterling Stamos. (Ex. 115, P. Stamos R. 2004 Tr. 160:13-161:5.)

255. Peter Stamos told Saul Katz that because Madoff was an investment advisor who was his own broker-dealer, Madoff had the information necessary to commit illegal front-running. (Ex. 115, P. Stamos R. 2004 Tr. 155:14-160:3.)

256. Peter Stamos told Saul Katz that when one functioned as both a broker-dealer and 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.)

257. Peter Stamos told Saul Katz that Madoff would have been stopped at the door by the Sterling Stamos due diligence process because, as a fiduciary, Peter Stamos 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.)

258. BLMIS lacked transparency and did not have a third-party administrator and therefore could not pass Sterling Stamos’ risk management due diligence or operational due diligence process. (Ex. 149, SSMT00934925; Ex. 152, SSMT00935530; Ex. 215, SSMT00802052.)

259. Peter Stamos told Saul Katz that BLMIS lacked transparency and he was unable to explain Madoff’s strategy. (Ex. 115, P. Stamos R. 2004 Tr. 200:20-202:10; Ex. 2, Friedman Tr. 578:1-14; Ex. 130, B. Stamos Tr. 44:1-5, 65:1-17, 95:21-97:8, 105:4-23.)

260. Sterling Stamos board member Spiro Stamos told Saul Katz that Sterling Stamos did not invest in non-transparent investment managers. (Ex. 115, P. Stamos R. 2004 Tr. 202:24-203:24; Ex. 129, SSMT02285582.)

261. Saul Katz “categorically” dismissed warnings concerning Madoff. (Ex. 115, P. Stamos R. 2004 Tr. 158:15-162:17.)

262. Merrill Lynch executive Dunleavy had not heard of Madoff until he learned of him through Sterling Stamos in 2007. (Ex. 126, K. Dunleavy Tr. 73:4-8.)

263. Dunleavy was surprised to see such outstanding performance from Madoff, a manager he had never heard of. (Ex. 126, Dunleavy Tr. 74:5-8.)

264. Harrington had heard the name “Madoff” in passing, but knew nothing about him until she came to work for Sterling Stamos in 2002. (Ex. 37, Harrington Tr. 64:15-65:1.)

265. After Madoff’s fraud was revealed, Sterling Stamos and Peter Stamos advised Sterling Stamos investors that they had no exposure to Madoff. (Ex. 154, SSMT01089216.)

266. Shortly thereafter, news reports identified that Merkin’s funds, including the Ascot Fund, were invested with Madoff. (Ex. 115, P. Stamos R. 2004 Tr. 309:18-21.)

267. Sterling Stamos’ investors were concerned about Sterling Stamos’ exposure to Madoff through several of Merkin’s funds, including Merkin’s Ascot Fund, a feeder fund into Madoff. (Ex. 155, SSMT01062442; Ex. 154, SSMT01089216.)

268. Peter Stamos assured his investors that he was unaware that Sterling Stamos had investments with Madoff. (Ex. 155, SSMT01062442; Ex. 154, SSMT01089216.)

269. Peter Stamos was interviewed by the New York Attorney General’s Office in connection with Sterling Stamos’ indirect exposure to Madoff. (Ex. 115, P. Stamos R. 2004 Tr. 6:18-7:13; Ex. 96, P. Stamos Lit. Tr. 11:21-12:6.)

270. Peter Stamos knew that Sterling Stamos had investments in Madoff through Merkin's Ascot Fund. (Ex. 37, Harrington Tr. 113:21-114:4; Ex. 121, SENH00000077; Ex. 153, SSMT01252043.)

271. In November 2004, Peter Stamos emailed Merkin, "We had a tough conversation with our attorneys on Thursday evening that will have several implications for our investments with our friend in the Lipstick Building." (Ex. 156, PS9.)

272. After Madoff was arrested, Dunleavy told a colleague that Merrill Lynch made Peter Stamos redeem his Madoff investments in 2006. (Ex. 128, Trustee 157, ML&CI000002187-9.)

### **III. THE STERLING DEFENDANTS KNEW OF SIGNIFICANT AND MOUNTING RED FLAGS OF FRAUD AT BLMIS, YEAR AFTER YEAR**

#### **A. The Sterling Partners Were Warned that Madoff Could be Illegally Front Running**

273. Noreen Harrington warned Saul Katz of the potential that Madoff may be illegally front-running. (Ex. 37, Harrington Tr. 117:4-19, 118:18-119:8.)

274. Peter Stamos and Saul Katz discussed the rumor that Madoff may be front-running. (Ex. 115, P. Stamos R. 2004 Tr. 151:13-17, 151:19-152:10; Ex. 96, P Stamos Lit. Tr. 264:16-20.)

275. Peter Stamos explained to Saul Katz that "if one were both a broker-dealer and an investment manager, one could use information that when garnered from one's broker-dealership would give you advantages as an investment manager, and that would be inappropriate," which relates "to having information that could allow one to possibly front-run." (Ex. 115, P. Stamos R. 2004 Tr. 159:8-160:3.)

276. Peter Stamos and Saul Katz also discussed the potential implications if Madoff were front-running, which included: "a regulatory review," during which time it would be

possible for Sterling's BLMIS investments to be "frozen." (Ex. 96, P. Stamos Lit. Tr. 264:16-265:1, 265:22-266:3.)

277. Kevin Dunleavy informed Saul Katz of his concerns about Madoff potentially front-running, but Saul Katz "rejected his arguments." (Ex. 115, P. Stamos R. 2004 Tr. 83:17-84:8, 205:12-206:10, 206:19-20, 206:23-207:3; Ex 96, P. Stamos Lit. Tr. 264:25-11.)

278. Michael Katz confirmed that he heard that Madoff might be front-running at a cocktail party, and knew at the time this would have been illegal (Ex. 5, M. Katz Tr. 287:1-10, 297:15-298:10.)

279. David Katz testified that he heard that Madoff was possibly using his market-making business to subsidize his investment advisory business. (Ex. 27, D. Katz R. 2004 Tr. 259:22-260:1.)

280. Arthur Friedman testified that he knew of reports that Madoff was front-running at BLMIS and that such a practice was illegal. (Ex. 2, Friedman Tr. 156:22-157:7.)

**B. The Sterling Partners Were Warned About Madoff's Lack of Transparency**

281. Peter Stamos informed Saul Katz that Madoff "would not have made it into [Sterling Stamos'] portfolio as...he would not have made the transparency requirements or the operational due diligence requirements, or the investment due diligence requirements because of transparency." (Ex. 115, P. Stamos R. 2004 Tr. 200:20-202:23.)

282. Arthur Friedman testified that he was aware that Peter Stamos had an "objection" to BLMIS because of Madoff's lack of transparency and advised the Sterling Partners that "he was of the opinion that we shouldn't have as much money in Madoff as we do." (Ex. 2, Friedman Tr. 578:2-14.)

283. In the early 2000s, David Katz was "screaming" to the rest of the Sterling Partners to diversify their investments away from Madoff to create Sterling Stamos because "we



don't know what [Madoff] does.” (Ex. 27, D. Katz R. 2004 Tr. 31:10-32:16, 73:21-75:17, 346:23-347:1.)

284. Martin Sass has been chairman and CEO of his own investment advisory firm, M.D. Sass Investor Services, since 1972, has been in the investment advisory business since 1963, and has served as Chair of Brooklyn College Foundation's Investment Committee since around 2002. (Ex. 157, Martin Sass Litigation Deposition Transcript, dated December 22, 2011 (“Sass Tr.”) 28:14-22, 20:18-25.)

285. Sterling Partner Richard Wilpon, through his board membership on the Brooklyn College Foundation (“BCF”), was informed by Sass that BCF's Investment Committee had outright rejected investing any of BCF's funds in BLMIS and “had discussed Madoff and expressed discomfort with [him], given his lack of transparency and inability to explain how he generated alleged consistent positive monthly returns even during bear markets like 2008, claiming his investment process was ‘proprietary’.” (Ex. 158, Trustee 160; Ex. 157, Sass Tr. 59:15-64:3.)

286. The BCF Investment Committee's rejection of Madoff took “no longer than two minutes.” (Ex. 157, Sass Tr.47:16-18, 57:19-25, 58:11-20.)

287. Sass testified that his “skepticism” about Madoff's lack of transparency and consistent, positive returns informed the BCF Investment Committee's rejection of Madoff: “I just have always felt uncomfortable about black boxes, investment strategies where, you know, managers have some system that they refuse to describe, and they lack transparency...[H]aving been in this business a long time, since 1963, I've run into many managers, and heads of companies, by the way, also, corporations, who when you start digging in, you don't get anything. And that just raises skepticism as an investment professional. Somebody asks me

what I do, I tell them exactly what I do and how I do it and that's how I believe in managing money and investing with managers . . . . I was skeptical about a fund that never had a down month, that invested in the securities markets every year for decades, consistently had relatively strong positive returns every single month. Skeptical.” (Ex. 157, Sass Tr. 48:11-49:1-14.)

288. Sass invested with BLMIS in February 1990 but quickly redeemed his entire investment - despite its “very attractive returns” – after Madoff refused to discuss with him how those returns were generated. (Ex. 157, Sass Tr. 49:20-25, 50:11-20.)

289. Sass testified that Madoff's lack of transparency was “generally known in the industry.” (Ex. 157, Sass Tr. 66:12-17.)

**C. The Sterling Partners Knew that Madoff's Returns Were Not Correlated to the Market or to his Purported Strategy**

290. The Sterling Partners knew that Madoff's purported split-strike strategy was intended to limit the upside and the downside. (Ex. 4, S. Katz Lit. Tr. 36:12-25, 38:18-22; Ex. 18, F. Wilpon R. 2004 Tr. 45:14-25; Ex. 2, Friedman Tr. 147:20-148:10, 484:25-485:8; Ex. 159 Initial Expert Report of Dr. Steve Pomerantz, dated November 22, 2011 (“Pomerantz Report”), ¶¶ 135-6.)

291. Documents in the Sterling Partners' own files show that under this “split-strike” strategy, they will not be immune from market volatility and should expect losses. (Ex. 160, SE\_T433829, SE\_T433830; Ex. 161, Trustee 357.)

292. On September 13, 1990, Sterling Partner Marvin Tepper circulated to Sterling Partners Fred Wilpon, Saul Katz, Richard Wilpon, Michael Katz and Arthur Friedman an August 24, 1990 memorandum written by Barry Gonder to “Sterling Doubleday File” regarding the subject, “Conversation with Bernie Madoff...of Madoff Securities.” (Ex. 160, SE\_T433829, SE\_T433830.)

293. Gonder's memorandum addressed Madoff's purported strategy and stated that "[a] severe decline in the market would yield zero to a 1% loss in the stock/portfolio" and that "[t]he range of potential returns is -1% to 20%." (Ex. 160, SE\_T433829, SE\_T433830) (emphasis added.)

294. Gonder's memorandum also explained that Madoff's returns were impacted by market volatility; indeed, this was one of the "[k]ey variables driving the strategy:"

- If the market is flat, but volatility and volumes are satisfactory...E(R) = 12%
- If the market is up 10%/year with good volatilities and volumes; E(R) = 18%+
- If the market is down; E(R) = 0% to 7%.

(Ex. 160, SE\_T433829, SE\_T433830.)

295. Contained in Saul Katz's hard copy files was a July 1993 J.P. Morgan, "Analysis of Bernard L. Madoff's Investment Management for Saul B. Katz (Account KW024) for 1992," which was performed to "[b]etter understand Madoff's results" and involved determining the "risk, or volatility, inherent in this portfolio." (Ex. 161, Trustee 357.)

296. 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.)

297. Throughout a period of close to a quarter century, the Sterling Partners never once suffered an annual loss. (Ex. 23, Trustee 73; Ex. 162, Trustee 34; Ex. 163, AF6 (SE\_T553984); Ex. 164, AF38 (SE\_T475550); Ex. 4, S. Katz R. 2004 Tr. 113:11-14; Ex. 165, Fred Wilpon Litigation Deposition Transcript, dated January 10, 2012 ("F. Wilpon Lit. Tr.") 190:3-8; Ex. 2, Friedman Tr. 125:11-126:33.)

298. 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, AF6 (SE\_T553984); Ex. 164, AF38 (SE\_T475550).)

299. 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.)

300. The Sterling Partners touted these results to the Sterling 401(k) plan participants, stating: “[t]he partners of Sterling Equities have been investing with Madoff since October 1985. Their returns in any year have never averaged lower than 16.5% and have averaged in excess of 19% during this eleven year period.” (Ex. 162, Trustee 34.)

301. The Sterling Partners had no understanding of how Madoff achieved these returns. (Ex. 27, D. Katz R. 2004 Tr. 73:21-74:6, 74:12-16; Ex. 34, S. Katz R. 2004 Tr. 104:7-11; Ex. 18, F. Wilpon R. 2004 Tr. 190:3-12, 190:14-15.)

302. The Sterling Partners knew that Madoff’s returns were entirely unaffected by the market. (Ex. 5, M. Katz Tr. 148:21-24.)

303. The Sterling Partners discussed Madoff’s performance even during periods of market dislocation and “were fascinated that he was not killed in those markets . . . of turmoil.” (Ex. 5, M. Katz. Lit. Tr., 146:19-147:1.)

304. The Sterling Partners never looked into how Madoff returns could be consistently immune from market conditions in light of a purported “split strike” strategy that involved investing in securities and options. (Ex. 5, M. Katz Lit. 148:11-20; 149:8-17.)

305. 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.)

306. 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.)

307. All Sterling Partners knew of Madoff's "rule of thumb" that BLMIS returns would routinely be 2-2.5% of the long-bond rate. (Ex. 34, S. Katz R. 2004 Tr. 67:13-24; Ex. 5, M. Katz. Lit. Tr. 138:16-25, 139:6-140:5, 140:20-141:4; Ex. 29, Peskin R. 2004 Tr. 208:9-211:5; Ex. 2, Friedman Tr. 190:18-192:9, 597:12-18, 599:5-599:12); Ex. 18, F. Wilpon R. 2004 Tr. 240:20-241:1.)

308. The Sterling Partners did not understand why Madoff's returns were correlated to a multiple of the bond rate. (Ex. 34, S. Katz R. 2004 Tr. 67:25-68:6; Ex. 5, M. Katz. Lit. Tr. 139:21-140:1, 140:6-9, 142:18-25; Ex. 29, Peskin R. 2004 Tr. 210:17-24; Ex. 2, Friedman Tr. 192:19-25, 597:4-18; Ex. 18, F. Wilpon R. 2004 Tr. 240:20-241:1.)

309. The Sterling Partners did not take any steps to understand why Madoff's returns were correlated to a multiple of the bond rate. (Ex. 5, M. Katz. Lit. Tr. 139:21-140:1, 140:10-19, 142:18-143:6; Ex. 2, Friedman Tr. 599:5-12; Ex. 29, Peskin R. 2004 Tr. 210:25-211:5; Ex. 18, F. Wilpon R. 2004 Tr. 241:2-5.)

310. On numerous occasions, Arthur Friedman asked his assistant, Cynthia Rongione (formerly Bernstein), to try to figure out Madoff's strategy. (Ex. 44, Rongione Tr. 101:5-23, 102:8-18.)

311. Despite Rongione's efforts – including reviewing BLMIS account statements and running calculations -- she “just really couldn't make any sense out of it” and “never really succeeded.” (Ex. 44, Rongione Tr. 102:8-103:5.)

**D. The Sterling Partners Were Aware of Madoff's Practice of Going to Cash At Year End and Were Warned that it was a Red Flag**

312. The Sterling Partners and their CFO were aware that Madoff without fail went “out of the market” and liquidated all of their holdings to cash at every year end. (Ex. 4, S. Katz Lit. Tr. 88:20-89:3; Ex. 44, Rongione Tr. 130:11-131:2, 188:21-189:16; Ex. 6, Peskin Lit Tr. 264:5-13.)

313. Saul Katz knew that Madoff's options would expire and usually liquefy at the end of every quarter as this was when he could withdraw money out of his Madoff accounts. (Ex. 34, S. Katz R. 2004 Tr. 191:17-192:2.)

314. The Sterling Partners and their CFO never inquired as to why Madoff without fail went “out of the market” and liquidated all of their holdings to cash at every year end. (Ex. 6, Peskin Lit. Tr. 265:2-11; Ex. 4, S. Katz Lit. Tr. 89:4-11.)

315. After Harrington learned that both Madoff and Merkin 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 Tr. 76:2-76:23, 87:4-6, 87:7-88:15, 205:3-16.)

316. 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.)

**E. The Sterling Partners Knew that Madoff's Auditor Was a Red Flag**

317. Michael Katz testified that while he did not know the name of Madoff's auditor, he knew that it was a small accounting firm, which raised a concern for him because it "wasn't a Big Eight firm," which would have been better because "[t]hey never have problems." (Ex. 5, M. Katz Tr. 157:16-158:11, 158:17-19, 159:3-7, 164:2-9.)

318. The Sterling Partners use KPMG for the Mets and Ernst & Young for both SAP and Sterling Stamos. (Ex. 5, M. Katz Tr. 159:8-21; Ex. 96, P. Stamos Lit. Tr. 47:8-48:4, 48:17-23.)

319. Saul Katz was informed by numerous people at Sterling Stamos that after their experience with the Bayou fraud, they instituted changes to their due diligence processes whereby the identity of a fund's auditor had to be known to them or else an on-site visit was required. (Ex. 115, P. Stamos R. 2004 Tr. 187:17-188:9, 188:19-189:5.)

320. The Sterling Partners did not take any steps to investigate Madoff's auditor. (Ex. 5, M. Katz Tr. 159:22-24, 160:4-9.)

**IV. THE STERLING PARTNERS DELIBERATELY CHOSE TO CONTINUE INVESTING WITH MADOFF AND TO REFRAIN FROM ANY SCRUTINY OF THEIR INVESTMENTS**

**A. The Sterling Partners Conducted No Due Diligence into their Investments**

321. The Sterling Partners admittedly are aware of and have performed extensive due diligence in connection with the many significant real estate transactions in which they were involved. (Ex. 166, Trustee 80; Ex. 5, Trustee 81; Ex. 5, M. Katz Tr. 59:19-60:2.)

322. With respect to the ongoing diligence process in place for making investments in SAP, Michael Katz testified: "[w]e do market studies, we do business plans, we do investor books, we do legal due diligence, financial due diligence, and we obtain outside consultants for banks, which would be the appraisals, engineers, environmentals. Identify markets, business

plans, investors, legal, financial, outside with finance. And we get a joint venture partner to run the property. Okay, that's basically it. We do that for each one of our assets.” (Ex. 5, M. Katz Tr. 42:9-43:1, 44:16-45:13.)

323. 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.)

324. 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.)

325. 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.)

326. 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, Steven Kenny Litigation Deposition, dated December 9, 2011 (“Kenny Tr.”) 169:20-23, 170:13-174:6, 177:25-178:4, 183:1-6.)

327. 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, Kenny Tr. 231:4-18, 241:21-242:9.)

328. 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.)



329. 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, F. 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.)

330. 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.)

331. In October 2000, Friedman answered Kenny's questions about the "ultimate safety of the 'Madoff Strategy'" during three periods when the stock market "suffered major hits" by detailing Madoff returns for selected Sterling Defendants accounts and enclosing corresponding account statements. (Ex. 169, EM4, BASM000013598; Ex. 170, Trustee 343.)

332. Not a single Sterling Partner recalls receiving the Travelers Insurance Company memorandum prepared by Barry Gonder. (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; Ex. 29, Peskin R. 2004 Tr. 111:17-20.)

333. 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.)

334. 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.)

335. Fitch did not conduct any independent due diligence, but rather issued a rating based entirely on "documents and information provided by" Sterling, as well as the then-decade

old memorandum from Traveler's. (Exhibit T to Declaration of Dana M. Seshens, dated 1/26/12 at SE\_T671161-2.)

336. The 2000 Fitch ratings expressed concerns about Madoff's investment strategy. (Exhibit T to Declaration of Dana M. Seshens, dated 1/26/12 at SE\_T671161.)

337. The 2003 Fitch ratings expressed concerns about Madoff's investment strategy. (Exhibit U to Declaration of Dana M. Seshens, dated 1/26/12, at SE\_T671170-1.)

338. In a November 8, 2002 letter to Derek McGirt of Fitch Ratings, Arthur Friedman wrote that he hoped McGirt was "enlightened" by their conversation and was "now an expert in the investment strategy used by Bernard Madoff." (Ex. 171, SE\_T699258.)

**B. Even After Having Lost Millions in the Bayou Ponzi Scheme, the Sterling Partners Still Conducted No Due Diligence on their Madoff Investments**

339. The Sterling Partners were exposed to another Ponzi scheme, the Bayou fund, in which they invested through Sterling Stamos. (Ex. 34, S. Katz R. 2004 Tr. 182:14-20, 183:3-19; Ex. 5 M. Katz Tr. 296:17-23, 297:7-14; Ex. 6, Peskin Lit. Tr. 251:21-252:12.)

340. Shortly before that fraudulent scheme collapsed, Sterling Stamos' due diligence process led it to redeem its investments from Bayou. (Ex. 172, Trustee 232; Ex. 173, SSMT02406520; Ex. 115, P. Stamos R. 2004 Tr. 175:17-176:20.)

341. Sterling Stamos informed the Sterling Partners of the specific "flags" identified by its due diligence process that led it to redeem out of Bayou before its Ponzi scheme was revealed. (Ex. 119, Chachra Tr. 178:11-17; Ex. 115, P. Stamos R. 2004 Tr. 188:19-189:5.)

342. The Sterling Partners were aware that Sterling Stamos redeemed from Bayou because of: (i) a lack of transparency into the manager's strategy; (ii) an investment manager also serving as a broker-dealer; (iii) the investment manager's use of a non-traditional audit firm; (iv) growth in assets under management; and (v) "style drift"—meaning a change in investment

strategy. (Ex. 119, Chachra Tr. 176:13-178:17; Ex. 2, Friedman Tr. 577:3-12; Ex. 18, F. Wilpon R. 2004 Tr. 156:13-157:7; Ex. 115, P. Stamos R. 2004 Tr. 188:19-189:5.)

343. Sterling Stamos' CIO Ashok Chachra testified that he "definitely" remembered discussing with Saul Katz that "similar to Bayou [BLMIS has] a broker-dealer." (Ex. 119, Chachra Tr. 174:18-20, 175:14-21.)

344. The reasons why Sterling Stamos redeemed from Bayou were reported at a bi-weekly Sterling Partner management meeting. (Ex. 6, Peskin Lit. Tr. 251:21-14; Ex. 2, Friedman R. 2004 Tr. 577:3-12.)

345. The Sterling Partner bi-weekly meeting minutes reflect various discussions amongst the Sterling Partners relating to Bayou over a two-year period. (Ex. 174, Trustee 105; Ex. 175, Trustee 341; Ex. 176, Trustee 342; Ex. 177, SE\_T668878.)

346. The Sterling Partners' Management Meeting Minutes from October 10, 2005 indicate that they had "learned a lot from the Bayou experience." (Ex. 174, Trustee 105.)

347. The Sterling Partners' Management Meeting Minutes from November 7, 2005 state: "Every partner should be analyzing their own exposure with Madoff." (Ex. 178, Trustee 101.)

348. In November 2005, the *New York Post* reported on a class-action suit filed against Sterling Stamos and specifically noted that, "Met owner Fred Wilpon's Sterling Stamos...duped [clients] into investing in the scandal-scarred Bayou Management hedge fund," and Peter Stamos notified both Saul Katz and Fred Wilpon about the claim. (Ex. 179, Trustee 340.)

349. Following the collapse of Bayou, the Sterling Partners' lender, Bank of America, questioned Sterling's CFO Mark Peskin: "Are there any other funds you were invested in that when completing your ongoing due diligence, as you did for Bayou, you reached similar

conclusions with respect to the funds [sic] ability to manage the asset base given the size of its staff. If yes, did you exit those funds.” (Ex. 170, Trustee 343.)

350. After the Bayou experience, the Sterling Partners never performed basic, independent due diligence on their investments at BLMIS. (Ex. 4, S. Katz Lit. Tr. 236:5-236:8.)

351. After the Bayou experience, Madoff offered the Sterling Partners a “special investment” opportunity in November 2005 that would purportedly generate 50% greater returns than usual through a “new” strategy. (Ex. 180, AF23; Ex. 181, SE\_T559817; Ex. 2, Friedman Tr. 434:16-435:23; Ex. 34, S. Katz R. 2004 Tr. 172:8-15; Ex. 18, F. Wilpon R. 2004 Tr. 230:11-24; Ex. 29, Peskin R. 2004 Tr. 408:10-12; 408:24-25.)

352. The Sterling Partners did not understand this “new” strategy or why Madoff could not employ this “new” strategy in their other BLMIS accounts. (Ex. 2, Friedman Tr. 437:2-11, 440:18-21, 440:23-24, 452:3-6; Ex. 18, F. Wilpon R. 2004 Tr. 230:11, 232:20-22.)

353. The Sterling Partners invested in this special investment opportunity. (Ex. 181, SE\_T559817.)

354. They invested in this special investment opportunity without further inquiry of Madoff, without conducting any diligence, and without asking Sterling Stamos about the strategy. (Ex. 2, Friedman R. 2004 Tr. 440:11-24; Ex. 159, Pomerantz Report, ¶¶ 120-23.)

**C. The Sterling Defendants Were So Willfully Blind They Remained Ignorant About What Madoff Charged Them**

355. The Sterling Partners did not know what fees they were paying Madoff to manage their investments and they did not ask him: Fred Wilpon “did not know the details” and never had any discussions with Madoff regarding the fees he was charging or the commissions he was making off of trades (Ex. 18, F. Wilpon R. 2004 Tr. 193:13-16; Ex. 165, F. Wilpon Lit. Tr. 192:14-20); while David Katz thought that Madoff was making money off commissions on

trades, he had “no clue as to what he was making” (Ex. 3, D. Katz Lit. Tr. 350:12-351:4; *see also* Ex. 27, D. Katz R. 2004 Tr. 261:1-3); Michael Katz understood that Madoff charged brokerage fees, but never made a determination as to how much he paid Madoff in fees (Ex. 5, M. Katz Tr. 154:2-155:2, 155:8-14); Arthur Friedman had no recollection how much money Madoff made in fees or commissions and confirmed that neither he nor anyone at Sterling was ever tasked with tracking these amounts. (Ex. 2, Friedman Tr. 668:24-669:14.)

356. David Katz was unaware of anyone at Sterling ever inquiring into how much Madoff was making off of their investments. (Ex. 3, D. Katz Lit. Tr. 351:5-14.)

357. The only discussions the Sterling Partners allegedly had regarding Madoff’s fee structure was that one simply existed. (Ex. 5, M. Katz Tr. 155:8-14.)

358. Pursuant to the agreement with Sterling Stamos, the Sterling Partners were entitled to receive industry standard management fees [REDACTED] [REDACTED]. (Ex. 5, M. Katz Tr. 185:13-16, 185:22-186:13; Ex. 213, Trustee 187 at SE\_T954296.)

**D. The Sterling Defendants Had A Duty To Perform Due Diligence In Connection With Their 401(k) Plan And Admittedly Did Not Do So**

359. On May 1, 1997, Sterling Partners through their holding company Sterling Equities Associates formed what they purported to be a participant directed 401(k) retirement plan on behalf of its employees (the “Sterling Plan”). (Ex. 216, Trustee 95; Ex. 217, SE\_T011665.)

360. The plan documents designated Arthur Friedman and Michael Katz as the trustees of the plan (the “Sterling Partner Trustees”) and Sterling Equities Associates as the plan sponsor (collectively the “Plan Fiduciaries”). (Ex. 216, Trustee 95; Ex. 217, SE\_T011665.)

361. The plan documents also designated M&T Bank as custodian of the plan, and EBS Benefit Solutions acted as record-keeper of the plan. (Ex. 216, Trustee 95; Ex. 217, SE\_T011665; Ex. 218, SE\_T021235.)

362. Sterling calculated the performance figures for the BLMIS option and sent it to EBS for distribution to plan participants. (Ex. 2, Friedman Tr. 546:1-25; Ex. 28, O'Rourke Tr. 169:16-174:3.)

363. The Sterling Plan documents stated that M&T was the custodian of the plan's assets despite the fact that over 90% of the plan's funds were in the custody of BLMIS. (Ex. 216, Trustee 95; Ex. 217, SE\_T011665; Ex. 219, SE\_T007804; Ex. 5, M. Katz Tr. 254:17-255:10; Ex. 189, Expert Report of Harrison J. Goldin, dated November 22, 2011 ("Goldin Report") at 22-23.)

364. Friedman testified that before M&T Bank was selected to serve as custodian, one or more other financial institutions refused to act as a plan custodian because of Madoff's inability to provide information on a daily basis. (Ex. 2, Friedman Tr. 554:13-555:14.)

365. Michael Katz testified that he understood that his responsibility as a trustee "was to make sure that their monies were protected ... in a manner that as if it was my money, or better." (Ex. 5, M. Katz Tr. 227:22- 228:3.)

366. Michael Katz testified that the 401(k) account was treated just like any other Madoff account. (Ex. 5, M. Katz Tr. 230:20-23.)

367. Both Arthur Friedman and Michael Katz testified that they conducted no diligence on BLMIS in connection with creating the 401(k) plan. (Ex. 5, M. Katz Tr. 244:7-20; Ex. 2, Friedman Tr. 570:5-15.)

368. In early 2004, Sterling considered adding BLMIS as a fund option for the New York Mets Employee Savings Plan (the “Mets BLMIS option”). (Ex. 182, Trustee 217; Ex. 183, SE\_T620565.)

369. Sterling and the Mets planned for the Mets BLMIS option to be virtually identical to the BLMIS option that was already in place with the Sterling Plan and used virtually the same language to describe the option in both plans. (Ex. 183, SE\_T620565.)

370. Mark Peskin, CFO for both the Mets and Sterling Equities, and Anne Pawelczak, the head of Human Resources for both Sterling Mets and Sterling Equities, had several communications with Joseph Reese about adding the Mets BLMIS option during 2004 and 2005. (Ex. 184, Trustee 192; Ex. 185, Joseph Reese Litigation Deposition Transcript, dated December 29, 2011 (“Reese Tr.”) 54:19-55:10; 85:7-23; 87:4-10.)

371. Reese served as an advisor to the Mets for their 401(k) plan. (Ex. 185, Reese Tr. 35:21-36:19, 39:6-9; Ex. 6, Peskin Lit. Tr. 164:7-23.)

372. Reese testified that he repeatedly told Peskin and Pawelczak that BLMIS was “an inappropriate investment for their 401(k) plan because there was no information available” on it. (Ex. 185, Reese Tr. 59:13-60:8.)

373. Reese testified that he examined the proposed plan description for the Mets BLMIS option and told Pawelczak that they would be “crazy” to distribute the Madoff description to plan participants and that they should consult with an ERISA attorney. (Ex. 185, Reese Tr. 59:13-62:12.)

374. Sterling Equities Associates had been distributing this plan description to its employees since 1997. (Ex. 184, Trustee 192; Ex. 162, Trustee 34.)

375. Reese told Pawelczak by phone and by email that the description was an improper endorsement of the BLMIS option by the Trustees. (Ex. 184, Trustee 192; Ex. 185, Reese Tr. 59:13-62:12, 62:17-63:21, 67:14-68:13.)

376. Reese told Pawelczak that the description was misleading because it indicated that there are no fees associated with the option. (Ex. 184, Trustee 192; Ex. 185, Reese Tr. 60:14-62:12, 69:12-70:8; Ex. 6, Peskin Lit. Tr. 229:9-230:3.)

377. Reese also informed Pawelczak that “this is an unusual fund from a 401(k) perspective in that it isn’t publicly traded and, therefore, there is little information to go by and no independent analysis of this investment to follow.” (Ex. 184, Trustee 192; Ex. 185, Reese Tr. 70:9-16.)

378. Pawelczak shared Reese’s concerns with Peskin. (Ex. 184, Trustee 192.)

379. On November 9, 2005, Peskin informed Pawelczak that Mets employees would “NOT be offered [the] opportunity to invest in Madoff.” (Ex. 186, Trustee 219.)

380. The controller for the Mets, Len Labita, testified that the trustees for the Mets 401(k) plan, who he believed were Saul Katz, Fred Wilpon, and Jeff Wilpon, decided against adding the BLMIS option to the Mets 401(k) because they “determined that they were not able to get adequate information from Madoff to provide to the participants[.]” (Ex. 8, Labita Tr. 205:2-20, 206:5-21.)

381. BLMIS remained an option in the Sterling Equities retirement plan. (*See, e.g.*, Ex. 187, SE\_T014145; Ex. 188, SE\_T015657.)

382. As plan fiduciaries, the Sterling Partners departed from industry standards by among other things, failing to conduct further due diligence into Madoff in the face of all of the warnings signs of which they were aware, and by failing to make appropriate disclosure of



Madoff's fees and their conflict of interest given Madoff's investments in Sterling. (Ex. 189, Goldin Report at 4-5, 13-16, 24-25.)

**E. Rather Than Scrutinize their Madoff Investments in the Face of Red Flags, the Sterling Partners Instead Took Affirmative Steps to Protect Madoff from Scrutiny**

383. The Sterling Partners knew of Madoff's demands for confidentiality about his investment advisory business: the May 2001 "Don't Ask, Don't Tell" Barron's article circulated amongst the Sterling Partners reported on Madoff's demands for secrecy from his investors. (Ex. 114, SE\_T021079.)

384. David Katz testified that he had heard that Madoff requested secrecy with respect to his investment strategy and business, and that "at the beginning," he was aware "you weren't supposed to tell anyone you were invested." (Ex. 27, D. Katz R. 2004 Tr. 262:9-17.)

385. Sterling Stamos first considered registering as an investment advisor with the Securities and Exchange Commission ("SEC") as early as 2003 in order to "become a more institutional quality firm" and because it would eventually be required. (Ex. 115, P. Stamos R. 2004 Tr. 46:8-47:3.)

386. 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. 50:12-20, 51:5-12, 51:17-21, 127:6-12.)

387. Peter Stamos testified that Saul Katz was "concerned" that Sterling Stamos' registration "would possibly interfere in his relationship with Mr. Madoff." (Ex. 115, P. Stamos R. 2004 Tr. 49:15-50:1.)

388. Peter Stamos testified that Saul Katz was specifically "concern[ed]" that if 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.” Ex. 96, P. Stamos Lit. Tr. 65:24-66:7.)

389. Peter Stamos testified that all of the Sterling Partners had concerns with having to disclose their Madoff investments. (Ex. 115, P. Stamos R. 2004 Tr. 49:15-50:1; 129:17-130:17.)

390. 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.)

391. 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.)

392. 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.)

393. Sterling Partner bi-weekly management meeting agendas listed the “Registered Investment Advisor Issue” as a recurring topic of discussion from the fall of 2004 through the summer of 2005. (*See, e.g.*, Ex. 191, Trustee 354; Ex. 192, Trustee 355; Ex. 193, SE\_T668408.)

394. 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.)

395. 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 adviser. (Ex. 115, P. Stamos R. 2004 Tr. 51:5-52:7, 55:16-56:13.)

396. 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. 56:14-56:21.)

397. In order to create this formal separation, Sterling Stamos was restructured, which involved separating the physical office space and information technology system that the two companies were sharing. (Ex. 115, P. Stamos R. 2004 Tr. 56:22-57:13.)

398. The restructuring also involved separating the financial management of the business and the investment side of the business so as to create the appearance that Saul Katz and the rest of the Sterling Partners "were not involved in the investment decision-making of the firm." (Ex. 115, P. Stamos R. 2004 Tr. 56:22-57:20, 63:18-24, 63:25-64:24.)

399. Whereas prior to Sterling Stamos registering as an investment advisor, Saul Katz would participate in investment committee meetings where decisions were made about in which managers Sterling Stamos would invest, after Sterling Stamos' restructuring, a separation was created between the investment committee and the business decisions about the firm, which

entailed separate board meetings to discuss business issues and separate investment committee meetings to discuss investment issues. (Ex. 115, P. Stamos R. 2004 Tr. 59:17-63:5, 63:25-64:24.)

**V. THE STERLING PARTNERS' WILLFUL BLINDNESS IS IMPUTED AS A MATTER OF LAW TO ALL DEFENDANTS**

400. A former relationship manager at Bank of America referred to the various Sterling-related entities, trusts, and individuals as all part of the same Katz/Wilpon "Super Family." (Ex. 167, Kenny Tr. 214:18-215:8.)

401. The Sterling Partners described Sterling Equities as [REDACTED] (Ex. 55, Trustee 202, at SE\_T567512.)

402. Internal Bank of America documents described Sterling Equities as being "comprised of the families and relatives of Fred Wilpon and Saul Katz. The two clans own the NY Mets sports franchise, the SportsNet NY cable channel, extensive real estate holdings, hedge funds, and other business ventures." (Ex. 194, Trustee 139, at BASM000009081.)

403. Internal Bank of America documents also describe Sterling Equities as "essentially a family wealth office...diversified over three areas – real estate, professional baseball...and wealth preservation through liquid investments." (Ex. 194, Trustee 139, at BASM000009094.)

404. The Sterling Partners make all decisions for Sterling Equities. (Ex. 29, Peskin R. 2004 Tr. 51:9-15, 62:14-20; Ex. 2, Friedman Tr. 8:1-7.)

405. 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.

(E.g., Ex. 40, SE\_T668238; Ex. 41, SE\_T668244; Ex. 42, SE\_T668254; Ex. 43, SE\_T668277; Ex. 18, F. Wilpon R. 2004 Tr. 18:2-4; 18:8-19:1.)

406. The Sterling Partners collectively discussed and made decisions with respect to all Defendants' BLMIS investments. (Ex. 18, F. Wilpon R. 2004 Tr. 57:2-11, 124:9-14, 124:17-21; Ex. 2, Friedman R. 2004 Tr. 121:10-122:13.)

407. 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.)

408. 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.)

409. 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 Tr. 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.)

410. Saul Katz "managed" the liquidity "silo" of the Sterling business. (Ex. 4, Saul Katz Lit. Tr. 12:17-13:7; 14:4-15:14.)

411. 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. (Ex. 18, F. Wilpon, R. 2004 Tr. 105:10-22; Ex. 96, P. Stamos Lit. Tr. 93:1-9.)

412. On behalf of all Defendants, Arthur Friedman coordinated all 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.)

413. Friedman received and reviewed the BLMIS account statements, portfolio management reports, and trade confirmations for Defendants' BLMIS accounts. (Ex. 2, Friedman Tr. 569:9-23; Ex. 44, C. Rongione Tr. 63:14-20.)

414. Friedman calculated Defendants' average monthly and yearly returns with BLMIS. (Ex. 2, Friedman Tr. 607:2-608:17; Ex. 44, C. Rongione Tr. 63:14-20, 97:4-98:10.)

415. Friedman would track the balances to inform the Defendants 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, AF25; Ex. 6, Peskin Lit. Tr. 51:16-52:13.)

416. 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.)

417. Friedman fielded questions from Defendants about BLMIS. (Ex. 6, Peskin Lit. Tr. 146:8-21; Ex. 18, F. Wilpon R. 2004 Tr. 109:17-110:2.)

418. Friedman transferred money in and out of Defendants' BLMIS accounts, including transfers made with the intent to maximize SIPC "coverage." (Ex. 2, Friedman Tr. 297:9-18, 297:20-299:19.)

419. Peskin testified that the Sterling Partners controlled the investments of their own children and trusts in the double-up accounts. (Ex. 29, Peskin R. 2004 Tr. 52:14-20, 52:24-53:6.)

420. The Sterling Partners made their first double-up investments in the names of Judith Wilpon and Iris Katz. In 1996, Bank of America loaned Mrs. Wilpon and Mrs. Katz \$25 million, secured by the purported securities held in their BLMIS accounts. (Ex. 196, Trustee 120, at BASM000011225.)

421. The Sterling Partners benefitted from the loan. (Ex. 197, Trustee 83, at SE\_T699329.)

422. The Partners “selected” Mrs. Wilpon and Mrs. Katz because they “represent[ed] the broader financial interests of the 10 Sterling Equities partners.” (Ex. 196, Trustee 120, at BASM000011227.)

423. In 1999, the Partners requested extensions on the loans to Mrs. Wilpon and Mrs. Katz “to allow Sterling more time to determine its long term strategy for the loan” because “the Sterling Partners were undergoing a review of their overall financial position.” (Ex. 196, Trustee 120, at BASM000011227.)

424. Most family members and all trusts Defendants held interests in at least one double up account. (*See generally*, Ex. 214, SE\_T600640; *See, e.g.*, Ex. 207 Credit Agreement between Saul Katz Family Trust and Fleet National Bank (SE\_T555756) (SE\_T555765); Ex. 208, Sterling 10 LLC Operating Agreement (SE\_T461075) (SE\_T461079-SE\_461090); Ex. 209, Sterling 20 LLC Operating Agreement (SE\_T459573) (SE\_T459578); Ex. 210, Sterling Thirty Venture LLC Operating Agreement (SE\_T673693) (SE\_T673700); Ex. 211, Sterling Tracing LL Operating Agreement (SE\_T460952) (SE\_T460976); Ex. 212, Sterling Twenty Five LLC Operating Agreement (SE\_T460058) (SE\_T460087-SE\_T460088).)

425. Each participant in a double-up entity ultimately received BLMIS funds in line with their percentage interest in the account. (Ex. 5, M. Katz Tr. 116:14-117:9; Ex. 29, Peskin R. 2004 Tr. 367:20-369:7.)

426. The Sterling Partners also directed the flow of, and transferred funds between, the BLMIS accounts in which their family members held interests. (Ex. 198, Trustee 86; Ex. 199, SE\_T367223 at SE\_T367235; Ex. 201, SE\_T471875.)

427. Sterling's financial statements, which were sent to lenders, reflected all Defendants' assets, including all Defendants' BLMIS investments. (Ex. 10, SE\_732084 at SE\_732085-087, 093-096; Ex. 11, SE\_T732372 at 373-376.)

428. In loaning money to Defendants, Bank of America [REDACTED] (Ex. 168, Margolis Tr. 72:24-73:12, 73:16-25, 77:10-17.)

429. Bank of America recognized that the Sterling Partners owned, managed and controlled the various Defendants. (Ex. 168, Margolis Tr. 72:24-73:25, 77:10-17.)

430. A former relationship manager at Bank of America referred to the various Sterling-related entities, trusts, and individuals as all part of the same Katz/Wilpon "Super Family." (Ex. 167, Kenny Tr. 214:18-215:12.)

431. In the restructuring, the Sterling Partners determined that their own and the other Defendants' finances, debt and ownership interests in the myriad of Sterling entities and trusts were too interrelated to restructure Defendants' debts on a discrete loan by loan basis. (Ex. 29, Peskin R. 2004 Tr. 432:4-20; Ex. 6, Peskin Lit. Tr. 9:22-10:11; Ex. 167, Kenny Tr. 111:10-24, 125:8-15.)



432. Consequently, neither the Partners nor their lenders attempted to restructure the 40 separate loans individually. (Ex. 167, Kenny Tr. 111:10-24, 125:5-19.)

433. To help negotiate the global restructuring, the Sterling Partners tasked Peskin with representing the Partners, Sterling, and the collective interests of all the other Defendants in negotiations with the various lenders. (Ex. 6, Peskin Lit. Tr. 9:4-8; Ex. 167, Kenny Tr. 110:9-111:4.)

434. Saul Katz “talked about Sterling as a group, individuals, trusts, what have you; [and] that as a group we – we, Sterling Equities, were prepared to make good on all of our loans.” (Ex. 6, Peskin Lit. Tr. 45:4-14.)

435. Saul Katz repeatedly said throughout the negotiations that “Sterling” would repay all the money Defendants had borrowed. (Ex. 6, Peskin Lit. Tr. 45:4-14; Ex. 167, Kenny Tr. 84:15-24, 131:8-132:20, 133:2-6; Ex. 95, Trustee 119, at BASM000015480.)

436. This was true even though the Sterling Partners had an “absolute” ability to “walk away” from the non-recourse loans. (Ex. 167, Kenny Tr. 131:18-132:1; Ex. 95, Trustee 119, at BASM000015480.)

437. Their lenders understood that “Sterling Equities” [REDACTED]

[REDACTED] (Ex. 95, Trustee 119, at BASM000015478.)

438. In presentations and proposed restructuring plans, the Sterling Partners represented that [REDACTED]

[REDACTED] (Ex. 202, Trustee 122, at BASM000035534.)

439. The Sterling Partners also identified [REDACTED]

[REDACTED] (Ex. 203, Trustee 204, at BASM000017836.)

440.

[REDACTED] (Ex. 29, Peskin R. 2004 Tr. 443:24-444:24; Ex.6 Peskin Lit. Tr. 49:18-50:7, 50:9-51:7, 60:1-9, 61:2-15, 61:24-62:10, 62:12-22; Ex. 167, Kenny Tr. 138:23-139:2.)

441. For example,

[REDACTED] (Ex. 204, Trustee 127, at BASM000019253-54; Ex. 205, Trustee 200, at SE\_T753387; Ex.6, Peskin Lit. Tr. 49:18-50:7, 50:9-51:7, 60:1-9, 61:2-15, 61:24-62:10, 62:12-22.)

442.

[REDACTED] (Ex. 95, Trustee 119, at BASM000015481-82; Ex. 6, Peskin Lit. Tr. 54:7-11, 13-17.)

443.

[REDACTED] (Ex. 6, Peskin Lit. Tr. 49:18-50:7, 50:9-51:7, 59:17-60:9, 69:20-23, 69:25-70:1, 73:4-8, 73:10-20; Ex. 206, Trustee 205, at BASM000017756.)

444.

[REDACTED] (Ex. 57, Trustee 199, at SE\_T709257, SE\_T709261, SE\_T709264-65.)

445.

[REDACTED] (Ex. 95, Trustee 119, at

BASM000015474; Ex. 6, Peskin, Lit. Tr. 36:1-37:12, 37:25-38:7, 38:16-39:7, 39:10, 39:14-40:8, 40:12-15, 17-18, 22-25, 41:2-6, 68:23-25, 69:2-17, 19-23, 69:25-71.)

446. [REDACTED]

[REDACTED] (Ex. 6, Peskin Lit. Tr. 68:23-25, 69:2-17, 19-23, 69:25-71.)

447. [REDACTED]

(Ex. 6, Peskin Lit. Tr.

71:2-4, 6-25, 72:10-19.)

Dated: New York, New York  
February 9, 2012

Respectfully submitted,

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