

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

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SECURITIES INVESTOR PROTECTION CORPORATION,		:
		:
Plaintiff-Applicant,		:
		:
- against -		:
		:
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,		:
		:
Defendant.		:
		:
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In re:		:
		:
BERNARD L. MADOFF,		:
		:
Debtor.		:
		:
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IRVING H. PICARD,		:
		:
Plaintiff,		:
		:
- against -		:
		:
SAUL B. KATZ, et al.		:
		:
Defendants.		:
		:
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**DECLARATION OF DANA M. SESHENS IN SUPPORT OF STERLING DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

I, DANA M. SESHENS, declare pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am an attorney with the firm of Davis Polk & Wardwell LLP, attorneys for the Sterling Defendants. I submit this declaration in support of the Sterling Defendants' motion to dismiss the amended complaint pursuant to Bankruptcy Rule 7012 or, in the alternative, for summary judgment pursuant to Bankruptcy Rule 7056. I am personally familiar with the facts set forth herein.

2. In my role as counsel for the Sterling Defendants, I was involved in and responsible for the Sterling Defendants' response to the Trustee's discovery requests, including, but not limited to, the production of documents.

3. The Trustee initiated discovery of the Sterling Defendants in 2009, invoking Bankruptcy Rule 2004 and issuing two subpoenas, dated October 7, 2009.

4. The Trustee's subpoenas were exceedingly broad, covering 71 entities and individuals, with close to 40 different document requests.

5. Nearly 700,000 pages of documents, comprised of both hard copy and electronic documents, were produced over the course of approximately one year.

6. Roughly 70 boxes of hard copy records were copied and produced to the Trustee.

7. With respect to electronic documents, Sterling ran, at the request of the Trustee, ninety seven (97) different search terms across the email boxes and individual electronic document folders of all of the Sterling Partners, among others.

8. Sterling produced more than 150,000 pages of electronic documents.

9. Based on review of the documents that Sterling produced, not one document contained a warning from anyone that Madoff might be engaged in fraud.

10. On May 11, 2010, the Trustee issued Rule 2004 subpoenas for deposition testimony from Sterling Partners Arthur Friedman, Fred Wilpon, Saul Katz, and Michael Katz, as well as Sterling's Chief Financial Officer, Mark Peskin, and Arthur Friedman's assistant. Subsequent to May 11, 2010, the Trustee requested Rule 2004 testimony from David Katz.

11. Between June and September 2010, Messrs. Friedman, Wilpon, S. Katz, D. Katz, and Peskin provided more than 10 days of deposition testimony on the record, while Mr. Friedman's assistant provided an informal interview.

12. Unknown to the Sterling Defendants at the time, the Trustee had also issued subpoenas to, and taken discovery from, numerous third parties, including Sterling's banks, Sterling Stamos Partners, Merrill Lynch, Bank of America, and possibly other financial institutions.

13. During the course of the Trustee's expansive Rule 2004 investigation, Sterling produced agendas and minutes from every Sterling partners' meeting for which they were taken and maintained.

14. Based on review of the partner meeting minutes that Sterling produced, there is no record of any discussion of any warning about the legitimacy of Madoff's operations, of the specifics of Sterling Stamos' due diligence process, or of Sterling Stamos' investment decision-making process.

15. The Sterling Defendants advised counsel for the Trustee that the original complaint was not consistent with the evidence.

16. Attached hereto as Exhibit A is a true and correct copy of the deposition of Peter Stamos, dated August 19, 2010.

17. Attached hereto as Exhibit B is a true and correct copy of an article by Adam Rubin, entitled *Picard Wants \$1 Billion from Wilpon/Katz*, ESPN.com New York, Feb. 5, 2011.

18. Attached hereto as Exhibit C is a true and correct copy of excerpts from the deposition of Ashok Chachra, dated October 8, 2010.

19. Attached hereto as Exhibit D is a true and correct copy of excerpts from the deposition of Saul Katz, dated August 4, 2010.

20. Attached hereto as Exhibit E is a true and correct copy of excerpts from the deposition of Fred Wilpon, dated July 20, 2010.

21. Attached hereto as Exhibit F is a true and correct copy of excerpts from the Rule 27 deposition of Arthur Friedman, dated June 29, 2010.

22. Attached hereto as Exhibit G is a true and correct copy of excerpts from the deposition of David Katz, dated August 31, 2010.

23. Attached hereto as Exhibit H is a true and correct copy of excerpts from the deposition of Arthur Friedman, dated June 22-24, 29 2010.

24. Attached hereto as Exhibit I is a true and correct copy of an article by Matt Ackermann, entitled *Fidelity Unit Seeks Growth Via Self-Clearing Market*, American Banker, dated April 9, 2008.

25. Attached hereto as Exhibit J is a true and correct copy of a Memorandum from Arthur Friedman to the Sterling Partners, dated November 28, 2005, regarding "Special Investment in Madoff," which was produced by Sterling to the Trustee in the course of discovery.

26. Attached hereto as Exhibit K is a true and correct copy of excerpts from the deposition of Mark Peskin, dated July 29, 2010.

27. Attached hereto as Exhibit L is a true and correct copy of a Memorandum from Barry Gonder to Sterling Doubleday File, dated August 24, 1990, regarding “Conversation with Bernie Madoff (212-230-2424) of Madoff Securities,” which was produced by Sterling to the Trustee in the course of discovery.

28. Attached hereto as Exhibit M is a true and correct copy of an article by Randall Smith, entitled *Wall Street Mystery Features a Big Board Rival*, Wall Street Journal, dated December 16, 1992.

29. Attached hereto as Exhibit N is a true and correct copy of certain pages from a Lenders’ Meeting Presentation, dated March 9, 2004, which was produced by Sterling to the Trustee in the course of discovery.

30. Attached hereto as Exhibit O is a true and correct copy of a chart comparing Madoff’s rates of return to various interest rates from April 1989 to April 2004, which was produced by Sterling to the Trustee in the course of discovery.

31. Attached hereto as Exhibit P is a true and correct copy of an article by Alison Leigh Cowan and Richard Sandomir, entitled *Madoff Fueled Mets’ Empire, Lawsuit Says*, New York Times, dated February 5, 2011.

32. Attached hereto as Exhibit Q is a true and correct copy of an article by Peter Chapman, entitled *Before the Fall: Bernard L. Madoff*, Traders Magazine, dated March 2009.

33. Attached hereto as Exhibit R is a true and correct copy of a brochure produced by SIPC, SIFMA, and NASAA, entitled *Understanding Your Brokerage Account Statements*.

34. Attached hereto as Exhibit S is a true and correct copy of an excerpt from the transcript of the oral argument in *In re Bernard L. Madoff Inv. Sec. LLC*, No. 10-2378 (2d Cir. Mar. 3, 2011).

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

Dated: New York, New York  
March 20, 2011

s/ Dana M. Seshens  
Dana M. Seshens