

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 supplemental declaration in further 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.

2. Specifically, I submit this declaration to address the Trustee's assertions regarding the nature and scope of his Rule 2004 investigation of the Sterling Defendants, set forth in his opposition brief ("Trustee Opp.") and the accompanying declaration of his counsel, Fernando A. Bohorquez, Jr. ("Bohorquez Decl."). Many of the Trustee's assertions are inaccurate or omit material information.

3. 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 and witnesses. As a result, I am personally familiar with the facts set forth herein.

A. The Broad Scope of the Trustee's Discovery Demands

4. Contrary to the Trustee's insinuation that his subpoenas did not focus on what he deems the "critical issues" in this case, inquiry notice and due diligence (Trustee Opp. at 48), his subpoenas sought, among other things, information about "the legality of Madoff's operations" and the "feasibility of Madoff's returns." At no time during the course of the Trustee's Rule 2004 investigation did the Sterling Defendants prevent the Trustee from supplementing, modifying, or expanding his document requests.

5. As a result of the parties' meet-and-confer process, during which they addressed the Sterling Defendants' responses and objections to the Trustee's document requests, the parties agreed upon the requests to which Sterling would respond and the scope of those requests. At no time did the parties fail to reach agreement, and the Sterling Defendants complied with all agreed-upon requests.

B. Hard-Copy Document Production Was Fully Responsive

6. The Trustee asserts that the majority of the documents contained in the 70 boxes of hard-copy documents produced by the Sterling Defendants included BLMIS account statements, wire transfers, check requests, and portfolio management reports. (Trustee Opp. at 48-49; Bohorquez Decl. ¶¶ 11-13).

a. These are all among the hard-copy documents that were responsive to the Trustee's document requests.

b. The Sterling Defendants also produced non-privileged, responsive hard-copy documents from every Sterling Partner, among other Sterling personnel, who possessed them, including records of hard-copy correspondence with BLMIS dating back several years.

c. At no time during the course of the Trustee's Rule 2004 investigation did the Sterling Defendants refuse to provide non-privileged hard-copy documents responsive to any of the agreed-upon requests, and at no time did the Trustee seek judicial intervention to compel the Sterling Defendants to do so.

C. Electronic Document Production Was Fully Responsive

7. The Trustee asserts that the Sterling Defendants' production of electronic documents was limited. (Trustee Opp. at 49-50; Bohorquez Decl. ¶¶ 8-10, 16-21, 24.)

a. The Sterling Defendants' electronic document productions included emails; electronic documents from the individual network folders of the Sterling Partners, among other Sterling personnel; electronic documents from among twelve folders on Sterling's shared network drives that, on their face, appeared to contain potentially responsive information; and documents from Sterling's PDF document library.

b. Pursuant to the Trustee's request, the Sterling Defendants applied each of ninety-seven search terms provided by the Trustee to documents collected from the electronic mailboxes and individual network folders of every Sterling Partner, among other Sterling employees, and produced all non-privileged electronic documents culled by those search terms and responsive to the agreed-upon document requests.

c. At no time during the course of the Trustee's Rule 2004 investigation did the Sterling Defendants prevent the Trustee from supplementing, modifying, or expanding his requested search terms.

d. Pursuant to the agreed-upon requests, any document concerning any warning about Madoff's or BLMIS' legitimacy from Sterling Stamos, Merrill Lynch, Bank of America, or any other third-party referenced in the Complaint would have been responsive. The Sterling Defendants produced no such document.

e. In one of a number of instances where the Trustee supplemented the agreed-upon document requests, in July 2010 the Trustee sought from the Sterling Defendants documents concerning Sterling Stamos' decision to withdraw funds from Bayou. Reserving their relevance objection, the Sterling Defendants agreed to run the search term "Bayou" through all unproduced documents collected from the Sterling

custodians and to review those documents to identify any responsive to the supplemental request. One responsive document, a general Sterling Stamos email update about the Bayou litigation involving Sterling Stamos, was produced.

f. The Trustee's assertion that the Sterling Defendants did not collect or produce any electronic documents from any employees or officers of the New York Mets is incorrect. (Trustee Opp. at 49; Bohorquez Decl. ¶ 9.) Documents were produced from Fred Wilpon, Mets Chief Executive Officer, Saul Katz, Mets President, Jeff Wilpon, Mets Senior Executive Vice President and Chief Operating Officer, and Mark Peskin, Mets Chief Financial Officer.

g. The Sterling Defendants provided the Trustee with access to Sterling's books and records, including the records of Sterling's Partnership Accounting department, through the production of (i) numerous iterations of Sterling's "Hell sheet," which details the balances held in the Sterling Defendants' BLMIS accounts; (ii) accounting records for Sterling's internal bank, Sterling Equities Funding; (iii) bank account statements for numerous Sterling-related BLMIS account holders; and (iv) various liquidity and other financial analyses maintained by Partnership Accounting in the ordinary course of business.

h. Fred Wilpon testified to his limited use of email and electronic communications, including that he does not send email.

i. The approximately 30,000 pages the Trustee contends were produced by the Sterling Defendants after September 1, 2010 comprised 685 documents, inclusive of attachments. Of these approximately 30,000 pages and 685 documents, 19,000 pages and 312 documents were produced from Mark Peskin's files, which were

first requested in July 2010. The majority of the remainder of the documents consisted of accounting records, bank statements, personal files of certain Sterling Partners, and real estate-related documents.

j. At no time did the Sterling Defendants refuse to produce non-privileged electronic documents responsive to any of the agreed-upon requests, and at no time did the Trustee seek judicial intervention to compel the Sterling Defendants to do so.

D. All Requested Deponents Were Made Available for Examination under Oath

8. The Trustee asserts that he did not examine certain of the Sterling Partners as part of his Rule 2004 investigation. (Bohorquez Decl. ¶¶ 22-23.)

a. The Sterling Defendants made every Sterling witness that the Trustee sought for deposition available, including Sterling principals Fred Wilpon and Saul Katz. At no time did the Sterling Defendants refuse to produce a requested witness, nor did the Trustee seek judicial intervention to compel the Sterling Defendants to do so.

b. Sterling counsel placed no time or subject matter limitations on the depositions. For example, Arthur Friedman's deposition ran more than seventeen hours on the record.

c. The Sterling witnesses who sat for deposition were the Sterling principals most knowledgeable about Madoff and BLMIS.

E. The Trustee Took Extensive Discovery Related to the \$54 Million Bridge Loan

9. Depositions were taken of both Saul Katz and Fred Wilpon, the two Sterling Partners principally involved in the \$54 million bridge loan from Madoff. Both were questioned extensively about the transaction.

10. At the Trustee's request, Sterling Partner Marvin Tepper, Sterling's then-general counsel, submitted a proffer regarding the transaction.

11. The Sterling Defendants undertook a diligent search for hard copy and electronic documents regarding the transaction and produced any such non-privileged documents.

F. Attached Exhibits

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

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

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

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

16. Attached hereto as Exhibit X is a true and correct copy of a Letter from Arthur Friedman to Frank DiPascali, dated October 28, 2004, which was produced by Sterling to the Trustee in the course of discovery.

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

18. Attached hereto as Exhibit Z are true and correct copies of three monthly account statements issued for BLMIS account 1KW300, which were produced by Sterling to the Trustee in the course of discovery.

19. Attached hereto as Exhibit AA is a true and correct copy of an excerpt from the trial transcript in *In re Bayou Group, LLC*, 09 CV 2340 (S.D.N.Y. May 11, 2011).

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

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

Dated: New York, New York
June 20, 2011

s/ Dana M. Seshens
Dana M. Seshens