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 for the Substantively Consolidated SIPA Liquidation  
 of Bernard L. Madoff Investment Securities LLC  
 and Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION  
 CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
 SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

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)

**TRUSTEE'S RESPONSE TO THE  
 STERLING DEFENDANTS'  
 STATEMENT OF MATERIAL  
 FACTS PURSUANT  
 TO LOCAL RULE 7056-1**

Adv. Pro. No. 10-5287 (BRL)

Pursuant to Local Bankruptcy Rule 7056-1(c), Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Securities LLC (“BLMIS”) and Bernard L. Madoff (“Madoff”) under the Securities Investor Protection Act §§ 78aaa *et seq.*, by and through his undersigned counsel, respectfully submits this Response to the Sterling Defendants’ Rule 7056-1 Statement of Undisputed Material Facts (“Statement”) in opposition to the Sterling Defendants’ Motion to Dismiss the Amended Complaint or, in the Alternative for Summary Judgment (“the Motion” or “Defs.’ Mot.”).<sup>1</sup>

1. Not disputed.

2. Disputed as incomplete and misleading as it omits from the cited testimony that investments with BLMIS were a part of the business of Sterling Equities (“Sterling”).

(Declaration of Fernando A. Bohorquez, Jr. dated May 19, 2011, (“Bohorquez Decl.”) Ex. 2,

Arthur Friedman Transcript, dated June 22, 2010, June 23, 2010, June 24, 2010, and June 29,

2010 (“Friedman Tr.”), 44:8-14.)<sup>2</sup> Fred Wilpon, Mark Peskin and David Katz also all testified

that investments with Madoff were a part of Sterling’s business. (Ex. 33, Fred Wilpon

Transcript, dated July 20, 2010 (“Wilpon Tr.”), 124:17-21; Ex. 9, Mark Peskin Transcript, dated

July 29, 2010, and July 30, 2010 (“Peskin Tr.”), 129:24-130:1; Ex. 8, David Katz Transcript,

dated August 31, 2010, and September 1, 2010 (“D. Katz Tr.”), 16:9-18, 28:20-30:2.)

3. Disputed as not supported by the testimony cited and disputed as to substance because the Sterling Partners’ ownership interest in Sterling Stamos was not passive. The

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<sup>1</sup> As there has been no discovery under the Federal Rules in this matter, the Trustee reserves the right to submit a supplemental response to the Sterling Defendants’ Statement as well as a counter-statement of material facts pursuant to Rule 7056-1. Further, to the extent the Sterling Defendants rely on self-serving unexamined testimony from declarations submitted in support of their Motion, the Court should not credit the testimony, much less rely on it to support an undisputed material fact. *See Madeira v. United Talmudical Acad.*, 351 F. Supp. 2d 162, 167 (S.D.N.Y. 2004); *E-Smart Techs. Inc. v. Corse*, No. 03 Civ. 7060(RO), 2004 WL 2093531, at \* 3 (S.D.N.Y. Sept. 17, 2004).

<sup>2</sup> The exhibits referenced herein (“Ex.”) are attached to the Bohorquez Decl.

Sterling Partners<sup>3</sup> – together with Peter Stamos – formed Sterling Stamos in 2002, and are both general partners and limited partners. (Ex. 8, D. Katz Tr. 109:10-22, 111:14-18; Ex. 9, Peskin Tr. 30:16-22.) Saul Katz and David Katz were members of Sterling Stamos’ “Senior Investment Team,” they were two of the four “primary portfolio decision makers” who were “actively involved in the investment decisions as well as the management of Sterling Stamos,” and they were members of Sterling Stamos’ “Investment Committee.” (Ex. 10; Ex. 11; Ex. 12.) Fred Wilpon acted as one of several “Investment Professionals” at Sterling Stamos. (Ex. 12.) Peter Stamos testified that Saul Katz was “intimately involved in the financial and business aspects of the business” and “involved in decisions about managers that [Sterling Stamos] should invest in and managers that [Sterling Stamos] should not invest in,” and Stamos further testified that “in the early stages of the company,” Sterling Stamos “didn’t make any...significant business decisions without [Saul Katz’s] approval.” (Ex. 13, Peter Stamos Transcript, dated August 19, 2010 (“Stamos Tr.”), 62:5-63:4.) David Katz also managed his own fund for Sterling Stamos, SP Trading. (Ex. 47.)

4. Immaterial as this statement is not relevant to any claims or defenses in this matter. Moreover, prior to Sterling’s first investments in BLMIS, Sterling had not yet become a full owner of the New York Mets, created and invested in the Sterling American Property real estate funds, or formed SportsNet New York (“SNY), a regional sports network in the New York tri-state area. (*See* Ex. 48, “History” of Sterling Equities as represented on its website: <http://www.sterlingequities.com/about/history.php>.)

5. Not disputed.

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<sup>3</sup> The general partners of Sterling include: Saul B. Katz, Fred Wilpon, Michael Katz, Richard Wilpon, David Katz, Thomas Osterman, Jeffrey Wilpon, Arthur Friedman, Gregory Katz, Marvin B. Tepper, and the late Leonard Schreier, whose BLMIS account interests after his death through the Filing Date were held by his estate (collectively, the “Sterling Partners”). (Compl. ¶ 44.)

6. Disputed as this statement mischaracterizes the testimony cited. Fred Wilpon testified:

I had a personal relationship with the Madoffs that developed over time, and not an everyday personal relationship, but *a friendship*. And so I made it a policy that when I saw him at charitable event or celebration of some kind, you know, *we attended his kids' weddings, he attended our kids', you know, we were family friends*, I just didn't discuss business with him. So my conversations with Bernie Madoff were really of a, just of a personal nature. Of what was happening in their lives and what was happening in our lives. (Ex. 33, Wilpon Tr. 42:12-43:5 (emphasis added).)

The Sterling Defendants' Motion refers to Madoff as the Sterling Defendants' trusted "friend." (See Defs.' Mot. at 53.)

7. Disputed as this statement is vague and incomplete in that it omits Saul Katz' testimony that Madoff went to a number of Saul Katz' family affairs and Saul Katz went to a number of Madoff's. (Ex. 40, Saul B. Katz Transcript, dated August 4, 2010 ("S. Katz Tr."), 75:19-22.) Saul Katz also testified that Madoff held Mets season tickets with seats next to or close to the owners seats, and that Madoff and his wife, Ruth, accompanied Saul Katz to Japan to watch a Mets exhibition game. (*Id.* 79:23-80:3, 80:12-19.)

8. Unsupported as this statement is based solely on inadmissible evidence.

9. Unsupported as this statement is based solely on inadmissible evidence.

10. Unsupported as this statement is based solely on inadmissible evidence.

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

12. Disputed as this statement mischaracterizes Fred Wilpon's opinion as material fact as to an issue for which he has insufficient knowledge or expertise.

13. Disputed as this statement is not supported by the testimony cited and misleading as Fred Wilpon testified that the Sterling Partners' relationship with Madoff began in late 1985

when Madoff proposed to Fred Wilpon a *quid pro quo* relationship whereby he would invest in certain of Sterling's real estate ventures and Fred Wilpon would invest in BLMIS. (Ex. 33, Wilpon Tr. 35:14-36:7.)

14. Unsupported by the evidence cited and Arthur Friedman lacks personal knowledge of the agreements executed by each BLMIS investor.

15. The Customer Agreements, Trading Authorizations and Option Agreements speak for themselves.

16. Unsupported by the evidence cited and Arthur Friedman lacks personal knowledge of the content of the monthly customer statements, quarterly reports and regular trade confirmations of "each BLMIS customer."

17. Not disputed.

18. Disputed as this statement is not supported by the testimony cited and as Fred Wilpon had other business discussions with Madoff, including but not limited to discussions related to the \$54 million transfer from Madoff to Sterling in May 2004. (Ex. 33, Wilpon Tr. 214:13-215:13; Ex. 40, S. Katz Tr. 198:12-199:5.)

19. Based on his investigation to date, the Trustee disputes this statement and anticipates submitting a complete response after he has had the opportunity to conduct discovery.

20. Disputed. All Sterling Partners had individual BLMIS accounts and all Sterling Partners had joint or tenant-in-common accounts. (*See, e.g.*, Ex. 49; Ex. 50.)

21. Disputed. The Sterling Partners make decisions as a group, including those related to their BLMIS investments. Sterling's Chief Financial Officer Mark Peskin testified that "[t]he partners make decisions as a group. Individually, they come together and they make decisions as a group." (Ex. 9, Peskin Tr. 62:17-20.) Fred Wilpon testified:

Bernie Madoff was a source of our investment funds, as other things were. And we decided, the group decided, we're going to invest in these different things and we're going to invest in Bernie. And so if the Mets have some money, put it into Bernie. If some other company has some money, we might have said put it into this, or put it into Bernie, or put it into something else. So, the overall decision was made that way....

(Ex. 33, Wilpon Tr. 57:2-11.) Fred Wilpon also testified that the Sterling Partners would collectively decide whether a Sterling-related entity would invest money in BLMIS. (Ex. 33, Wilpon Tr. 55:13-56:3.) Further, Mark Peskin confirmed that the Sterling Partners collectively made the decision to “double-up” certain BLMIS accounts.<sup>4</sup> (Ex. 9, Peskin Tr. 51:9-15; *see also* Ex. 2, Friedman Tr. 487:7-12.)

22. Disputed as to the first and second statements based upon the Trustee's answer to ¶ 21, which is incorporated as though fully set forth herein. (*See also* Ex. 2, Friedman Tr. 256:12-24.) Disputed as to the third statement on the grounds that it is not supported by the testimony cited.

23. Not disputed that Arthur Friedman so testified. But disputed as it omits Sterling's other uses of its BLMIS accounts such as their “double-up” investment accounts. (Ex. 9, Peskin Tr. 48:22-49:8; 49:22-50:12.)

24. Disputed as this statement is misleading and incomplete as it omits the fact that, at Madoff's request, “by design” Arthur Friedman was the liaison with BLMIS and day-to-day administrator of 483 BLMIS accounts opened on behalf of the Sterling Partners, their family members, related trusts, and Sterling-related entities as well as on behalf of their friends, employees, and business acquaintances. (Ex. 2, Friedman Tr. 72:10-73:10.)

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<sup>4</sup> The Sterling Partners referred to these BLMIS accounts as “double-ups” because they were used as collateral to receive borrowed funds that were deposited into these accounts doubling the amount invested and, therefore, doubling the returns. (Compl. ¶ 820.) Some of the “double up” entities named as Sterling Entity Defendants in the Complaint include: Sterling Thirty Venture LLC, Sterling 20 LLC, Sterling 10 LLC, Sterling Brunswick Seven LLC, Sterling Twenty Five LLC, and Sterling Tracing LLC. (*Id.* ¶¶ 821, 825.)

25. Disputed as to the first statement because the Sterling Partners did not help every friend or family member who was interested in opening BLMIS accounts – they in fact “turned down” more people than “got in.” (Ex. 33, Wilpon Tr. 144:16-24.) Further, Saul Katz had to pre-approve each request before an account could be opened. (Ex. 2, Friedman Tr. 361:7-362:15; 364:19-22.) Disputed as to the second statement on the grounds that by 2001 at the latest the Sterling Partners were aware of public skepticism about Madoff and even investigated protecting their BLMIS investments with fraud insurance that would cover a Ponzi scheme. (Ex. 3; Ex. 4; Ex. 6; Ex. 7.)

26. Disputed based upon the Trustee’s response to ¶ 25, which is incorporated as though fully set forth herein.

27. Disputed as incomplete as it omits that Sterling worked together with Madoff to initiate the BLMIS 401(k) retirement plan and obtain his approval for the description of the Madoff 401(k) plan investment option. (Ex. 51.) A consultant later advised Sterling to revise that description, warning them that it “could be construed as an endorsement of [the BLMIS] investment by the partners” and could “increas[e] [their] fiduciary liability.” (Ex. 52.) The consultant also advised: “It will be difficult for [him] to discuss the Madoff fund with participants – 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. 52.) This statement further omits that prior to the 401(k) plan’s implementation, Mr. Friedman testified that several banks were approached as potential custodians of the plan, but they refused to accept Madoff as an investment option because of the lack of information about Madoff and his inability to provide balances on a daily basis. (Ex. 2, Friedman Tr. 554:1-558:11.)

28. Disputed. Saul Katz testified that “if an opportunity came and if somebody needed a safe, steady return to help them live their life, we *introduced* them to [the] idea” of investing in BLMIS, (Ex. 40, S. Katz Tr. 90:10-17) and he explained what he would tell a prospective investor: “I’d tell you that Bernie’s been a friend of ours for a while, we’ve had a successful relationship with him, and we’ve invested money with him, and this has been our returns and we’re comfortable doing this. If this is what you’d like to do with some of your money, you’re certainly welcome to do it.” (*Id.* 91:2-8; *see also* Ex. 9, Peskin Tr. 52:18-53:24.)

29. Disputed based upon the Trustee’s response to ¶ 25, which is incorporated as though fully set forth herein.

30. Disputed as vague and, to the extent it is intelligible, this statement is immaterial.

31. Disputed as vague and, to the extent intelligible, based on his investigation to date, the Trustee disputes this statement and anticipates submitting a complete response after he has had the opportunity to conduct discovery.

32. Disputed based upon the Trustee’s response to ¶ 25, which is incorporated as though fully set forth herein, and on the grounds that every Sterling Partner shared BLMIS accounts together with their friends and family. (*See* Ex. 49; Ex. 50.)

33. Not disputed.

34. Not disputed.

35. Not disputed.

36. Disputed as this statement is a legal conclusion improperly asserted as a statement of material fact. Disputed as to substance because on the date of the SIPA filing, the Sterling Defendants had collectively received transfers from BLMIS of approximately \$300 million more than the funds they deposited. (*See* Compl. Appendix II, Ex. B.)



37. Not disputed that Fred Wilpon so testified. Disputed as to substance because, among other things, the Sterling Partners inquired into fraud insurance to cover their BLMIS investments and in fact created their own hedge fund to reduce their exposure to Madoff. (*See* Ex. 7; Ex. 6; Ex. 8, D. Katz Tr. 346:23-347:1, 347:20-25.)

38. Disputed because Stamos himself had concluded that Sterling Stamos' due diligence would have "stopped [Madoff] at the door," because Stamos was roundly congratulated for having followed his "gut instinct" and not investing Sterling Stamos' funds in Madoff, and because Stamos' brother, in an email immediately following disclosure of the fraud, wrote that "my brother Peter called it over 7 years ago." (Ex. 13, Stamos Tr. 212:5-25, 205:25-207:3, 211:20-212:17; Ex. 30; Ex. 21.) A Sterling Stamos employee congratulated both Stamos and Chachra, stating, "In the wake of the Madoff news, I want to commend you both for sticking to your principals and your best practices. It has not been easy to watch these 'returns' continue to come in positive, I know. Take a moment to acknowledge that your gut was right, and your conviction was not compromised despite all of those who continued to compare us to him." (Ex. 53.) Another Sterling Stamos employee wrote regarding Madoff's fraud, "I guess our CIO always said it was a scam, 'too good to be true' [...] Well there u go, it was too good to be true," and Peter Stamos testified that the employee was likely referring to Chachra. (Ex. 29; Ex. 13, Stamos Tr. 234:13-20.) Further, Arthur Friedman testified that "Peter Stamos expressed an opinion that Bernie Madoff was not transparent. That was his, quote, objection. And he advised us, or 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) (emphasis added.) In a December 2008 email, Stamos wrote, "Fortunately, our firm did not invest with Madoff. That firm and fund wouldn't make it through our risk and ops controls—lack of transparency, no third party administrator, etc. Unfortunately,

our partners—Saul and Fred—against our recommendations invested as individuals and through their real estate firm.” (Ex. 19.)

39. Disputed based upon the Trustee’s response to ¶ 38, which is incorporated as though fully set forth herein.

40. Disputed based upon the Trustee’s response to ¶ 38, which is incorporated as though fully set forth herein.

41. Disputed based upon the Trustee’s response to ¶ 38, which is incorporated as though fully set forth herein.

42. Disputed based upon the Trustee’s response to ¶ 38, which is incorporated as though fully set forth herein. Further, Chachra wrote in an email to investors that Sterling Stamos had “turned down the Madoff Funds more than 6 years ago and told many of our investors including the Wilpon and Katz families about our concerns” and that “we [at Sterling Stamos] had recommended to [the Wilpon and Katz families] to redeem [from Madoff] for years but they kept their investment independent of our recommendation,” (Ex. 18; Ex. 17) which included concerns about Madoff’s transparency. (Ex. 2, Friedman Tr. 578:2-14.) Additionally, years before the fraud was revealed, questions about Madoff were aired in articles published in the financial press and widely circulated and discussed at Sterling Stamos. (Ex. 23; Ex. 24; Ex. 25; Ex. 26; Ex.27; Ex. 28.)

43. Disputed based upon the Trustee’s response to ¶ 42, which is incorporated as though fully set forth herein.

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

45. Disputed based upon the Trustee's responses to ¶¶ 38 and 42, which are incorporated as though fully set forth herein.

46. Disputed. In a December 2008 email, Chachra wrote, "[Sterling Stamos] didn't have any exposure [to Madoff.] It was actually the Wilpon and Katz families' exposure on a direct basis. In fact, we had recommended to them to redeem for years but they kept their investment independent of our recommendation." (Ex. 17.)

47. Disputed. Friedman testified that "Peter Stamos expressed an opinion that Bernie Madoff was not transparent. That was his, quote, objection. And he advised us, or 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.) Peter Stamos testified that, in discouraging Saul Katz from moving money out of Sterling Stamos and into Madoff, he told Saul Katz "that we were a diversified portfolio of managers and that that was better for him than to have all his capital in one manager, and I believe I said, particularly in a manager whose strategy we cannot explain." (Ex. 13, Stamos Tr. 201:14-18.) He also testified that Sterling Stamos' due diligence protocols would have ensured that Madoff "would have been stopped at the door the moment we found any of these issues." (*Id.* 211:20-212:17.) When asked if he expressed this to Saul Katz, Stamos testified, "I believe that I expressed it and I know for a matter of fact that—I believe that, I believe that Mr. Dunleavy [a Merrill Lynch executive] expressed that at the board meeting as well." (*Id.* 212:5-25 (objection omitted).) Additionally, Stamos testified that he discussed with Saul Katz both the possibility that Madoff was front-running and the implications if Madoff were in fact front-running or investigated for front-running. (*Id.* 159:12-160:3; *see also id.* 151:6-8; 151:19-22.) Stamos also testified that he suggested and asked that Saul Katz withdraw his money from BLMIS. (*Id.* 164:12-165:2.) In a December 2008 email, Stamos wrote, "Fortunately, our firm

did not invest with Madoff. That firm and fund wouldn't make it through our risk and ops controls—lack of transparency, no third party administrator, etc. Unfortunately, our partners—Saul and Fred—against our recommendations invested as individuals and through their real estate firm.” (Ex. 19.)

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

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

50. Disputed as this statement is an opinion and/or legal conclusion rather than a statement of fact.

51. Disputed. Saul Katz is the Sterling Partner responsible for Sterling's finances and financial strategy. (Ex. 40, S. Katz Tr. 18:20-23; Ex. 33, Wilpon Tr. 52:9-11.) Saul Katz was marketed to Sterling Stamos investors as a “primary portfolio decision maker” who was “actively involved in the investment decisions as well as the management of Sterling Stamos,” and was a member of Sterling Stamos' “Investment Committee.” (Ex. 10; Ex. 11.) In Sterling Stamos' marketing materials, Saul Katz is listed as one of five members of Sterling Stamos' “Senior Investment Team.” (Ex. 12.) Sterling Stamos promoted to their investors the expertise and due diligence capabilities of the Wilpon and Katz families, including Fred Wilpon, in their marketing materials: “Founded over 30 years ago by the Wilpon and Katz families, Sterling Equities has developed deep expertise in hedge funds, private equity, and real estate. . . . [T]he Wilpon and Katz networks also provide unique proprietary sourcing and due diligence capabilities.” (Ex. 14.)

52. Disputed. Fred Wilpon was listed in Sterling Stamos' marketing materials as one of the hedge fund's "Investment Professionals." (Ex. 12.) Fred Wilpon also served on the Bear Stearns Board of Directors from 1993 until 2003. Sterling Stamos promoted to their investors the expertise and due diligence capabilities of the Wilpon and Katz families, including Fred Wilpon, in their marketing materials: "Founded over 30 years ago by the Wilpon and Katz families, Sterling Equities has developed deep expertise in hedge funds, private equity, and real estate. . . . [T]he Wilpon and Katz networks also provide unique proprietary sourcing and due diligence capabilities." (Ex. 14.)

53. Disputed as this statement is an opinion rather than a statement of fact, and disputed as to substance because Arthur Friedman himself testified that as early as 1986, "I was a pretty astute investor." (Ex. 2, Friedman Tr. 31:8-20.) Friedman also testified that for a short period of time in the 1980s, he attempted to replicate Madoff's split strike conversion strategy. (*Id.* 143:10-23, 144:14-145:17.)

54. Immaterial as this statement is not relevant to any claims or defenses in this matter. Disputed on the grounds of vagueness and, to the extent it is intelligible, this statement is disputed as to substance because David Katz managed his own fund for Sterling Stamos, SP Trading. (Ex. 47.) David Katz was listed also on Sterling Stamos' own documents as a "primary portfolio decision maker" who was "actively involved in the investment decisions as well as the management of Sterling Stamos," he was a member of the Sterling Stamos "Investment Committee," and he was listed as a member of Sterling Stamos' Senior Investment Team. (Ex. 10; Ex. 11; Ex. 12.)

55. Disputed. Sterling Stamos' marketing materials state: "Founded over 30 years ago by the Wilpon and Katz families, Sterling Equities has developed deep expertise in hedge

funds, private equity, and real estate. . . . [T]he Wilpon and Katz networks also provide unique proprietary sourcing and due diligence capabilities.” (Ex. 14.)

56. Disputed. This statement mischaracterizes Stamos’ opinion as material fact. Further disputed based upon the Trustee’s responses to ¶¶ 51-55, which are incorporated as though fully set forth herein.

57. Disputed. Sterling Stamos’ marketing materials listed Saul Katz and David Katz as members of Sterling Stamos’ “Senior Investment Team,” and listed Fred Wilpon as another “Investment Professional.” (Ex. 12.) Saul Katz and David Katz were listed on Sterling Stamos’ documents as two of four “primary portfolio decision makers” who were “actively involved in the investment decisions as well as the management of Sterling Stamos,” and were members of the Sterling Stamos investment committee. (Ex. 10; Ex. 11.) Peter Stamos testified that Saul Katz was “intimately involved in the financial and business aspects of the business” and was “involved in decisions about managers that [Sterling Stamos] should invest in and managers that [Sterling Stamos] should not invest in,” and that “in the early stages of the company,” Sterling Stamos “didn’t make any...significant business decisions without [Saul Katz’s] approval.” (Ex. 13, Stamos Tr. 62:5-63:4.) David Katz also managed his own fund at Sterling Stamos, SP Trading. (Ex. 47.)

58. Disputed as an incomplete statement of fact in that it fails to mention a 2004 email from a Sterling Stamos employee specifically referencing an “Investment Committee” of which Saul Katz and David Katz were members. (Ex. 10; *see also* Ex. 11.)

59. Disputed based upon the Trustee’s response to ¶ 57, which is incorporated as though fully set forth herein.

60. Not disputed.

61. Disputed based upon the Trustee's response to ¶ 57, which is incorporated as though fully set forth herein.

62. Disputed. David Katz managed his own fund at Sterling Stamos, SP Trading. (Ex. 47.)

63. Disputed. After Sterling Stamos redeemed its funds from Bayou, Saul Katz and subsequently all the Sterling Partners became aware of the specific "flags" identified by Sterling Stamos' due diligence process that led them to redeem from Bayou, many of which were the same "flags" applicable to Madoff that Sterling Stamos and other industry professionals had been calling to the Sterling Partners' attention for years: (i) lack of transparency into the manager's strategy; (ii) investment manager also serving as a broker-dealer; (iii) the investment manager's use of a non-traditional audit firm; and (iv) "style drift" (i.e. a change in investment strategy). (Ex. 31, Ashok Chachra Transcript, dated October 8, 2010 ("A. Chachra Tr."), 178:9-17; Ex. 13, Stamos Tr. 188:19-189:5; Ex. 33, Wilpon 156:13-157:7; Ex. 2, Friedman Tr. 577:3-12; Ex. 39; Ex. 9, Peskin Tr. 408:7-20; Ex. 54; Ex. 2, Friedman Tr. 434:16-435:4; Ex. 38.) Further, Peter Stamos testified that "at some point, as one of the owners of our business, [Saul Katz] became aware of the kinds of issues that [Sterling Stamos] started to monitor and put on our operational due diligence checklist, and I'm confident that he knew that [a fund manager who was also a broker dealer] was one of the operational due diligence issues that we raised with managers." (Ex. 13, Stamos Tr. 158:3-14.)

64. Disputed. Peter Stamos testified, "I believe that any of our limited partners would have access to [the due diligence checklist] if they asked the questions, for example, what kind of issues do you look for." (Ex. 13, Stamos Tr. 182:12-18.) Chachra testified that Sterling Stamos marketing materials, which described the due diligence process, were likely shared with general

and limited partners. (Ex. 31, A. Chachra Tr. 117:15-118:2; Ex. 12.) Further, Peter Stamos testified that “at some point, as one of the owners of our business, [Saul Katz] became aware of the kinds of issues that [Sterling Stamos] started to monitor and put on our operational due diligence checklist, and I’m confident that he knew that [a fund manager who was also a broker dealer] was one of the operational due diligence issues that we raised with managers.” (Ex. 13, Stamos Tr. 158:3-14.)

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

66. Disputed. The November 7, 2005 Sterling Partner meeting minutes state: “Every partner should be analyzing their own exposure with Madoff...Discussed moving \$44mm in a Mets Madoff account to [Sterling Stamos Partners].” (Ex. 42.) The March 13, 2006 meeting minutes provide: “Peter [Stamos] has a concern about [Sterling Equities’] exposure to Madoff.” (Ex. 41.) Further, Arthur Friedman testified that Peter Stamos issued a “warning” to the Sterling Partners sometime between 2002 and 2005 regarding the potential investigation of BLMIS and the possible freezing of their accounts with Madoff (*See* Ex. 2, Friedman Tr. 579:25-580:12), and that this warning was reported to the Sterling Partners “at a partners meeting.” (Ex. 2, Friedman Tr. 580:22-25.)

67. Disputed. Friedman testified that Sterling Stamos’ reasons for redeeming their investments from Bayou were discussed at a meeting of the Sterling Partners. (Ex. 2, Friedman Tr. 577:3-12. *See, e.g.*, Ex. 36; Ex. 37.)

68. Disputed. Following Sterling Stamos’ decision to redeem its Bayou investments, the Sterling Partners meeting minutes record that “[Saul Katz] is concerned about the management of the company; [u]pset about how [Sterling Stamos] handled the Bayou issue.”



(Ex. 36; Ex. 37.) Further, based on the meeting minutes produced to the Trustee to date, Sterling Stamos was a discussion topic at Sterling Partner meetings. (*See, e.g.*, Ex. 36; Ex. 37.)

69. Disputed. Arthur Friedman testified that Peter Stamos issued a “warning” to the Sterling Partners sometime between 2002 and 2005 regarding the potential investigation of BLMIS and the possible freezing of their accounts with Madoff (See Ex. 2, Friedman Tr. 579:25-580:12), and that this warning was reported to the Sterling Partners “at a partners meeting.” (Ex. 2, Friedman Tr. 580:22-25.)

70. Disputed as incomplete as it omits David Katz’s testimony that when the Sterling Partners created Sterling Stamos in 2002, they were trying to minimize their exposure to black boxes and that one of Sterling Stamos’ main investment criteria was not to invest in black boxes. (Ex. 8, D. Katz. Tr. 147:8-148:1, 108:22-109:9.)

71. Not disputed insofar as BLMIS did not fit Sterling Stamos’ criteria for investment of third-party capital. Disputed as incomplete, insofar as it fails to note that Peter Stamos testified that despite his opinions about Madoff, Sterling Stamos’ due diligence protocols would have ensured that Madoff “would have been stopped at the door the moment we found any of these issues.” (Ex. 13, Stamos Tr. 211:20-212:17). Further, in emails immediately following disclosure of the Madoff fraud, Stamos’ brother wrote, “[m]y brother Peter called it over 7 years ago,” and, “my brother Peter made this call many years ago” when referring to the fraud at BLMIS. (Ex. 21; Ex. 22.) During the same time period, a Stamos employee wrote, “In the wake of the Madoff news, I want to commend you both for sticking to your principals and your best practices. It has not been easy to watch these ‘returns’ continue to come in positive, I know. Take a moment to acknowledge that your gut was right, and your conviction was not comprised despite all of those who continued to compare us to him.” (Ex. 53.)

72. Disputed. In a December 2008 email, Chachra wrote, “In fact, we [Sterling Stamos] turned down the Madoff Funds more than 6 years ago” and “our [Sterling Stamos] due diligence process rejected Madoff.” (Ex. 18.) Sterling Stamos’ Investor Talking Points December 16, 2008 stated, “We declined to invest with Madoff a few years ago; from a DD [due diligence] perspective we weren’t comfortable. We are saddened by the whole situation....ultimately, it validates the diversification of FoF model, and the importance of doing sophisticated diligence.” (Ex. 20.) Further, in a December 2008 email, Stamos wrote to a Sterling Stamos investor regarding another fund manager, “We’re thinking about delaying Lone Pine (5 million) until February 1 b/c they haven’t allowed us to complete operational and risk due diligence. If it means losing the allocation, I would recommend losing the allocation. This is the ops and risk discipline that kept us out of Madoff.” (Ex. 55).

73. Disputed based upon the Trustee’s response to ¶ 72, which is incorporated as though fully set forth herein.

74. Not disputed.

75. Not disputed.

76. Not disputed.

77. Disputed as this statement is not supported by the testimony cited and as to substance because Peter Stamos raised this issue as a concern with Saul Katz about Madoff. (Ex. 13, Stamos Tr. 197:9-20.)

78. Not disputed insofar as Peter Stamos invested personally in BLMIS. Disputed as Stamos did not have a positive view of Madoff based on the Trustee’s response to ¶ 38, which is incorporated as though fully set forth herein.

79. Not disputed insofar as Peter Stamos testified that he withdrew his funds from BLMIS in 2003 and 2004. Disputed insofar as this statement is not supported by the testimony cited.

80. Disputed as this statement is misleading and mischaracterizes the testimony cited. Stamos testified that if a fund manager refused to complete a transparency report, then Sterling Stamos' due diligence protocols mandated that Sterling Stamos redeem its investments. (Ex. 13, Stamos Tr. 310:4-8.)

81. Disputed insofar as it is incomplete because Peter Stamos testified that he informed Saul Katz that BLMIS would not have met Sterling Stamos' due diligence standards because of Madoff's black box. (*Id.* 202:4-23.) Further, Merrill Lynch Executive Kevin Dunleavy told Saul Katz that a black box fund like Madoff would not pass Merrill Lynch's due diligence standards. (*Id.* 202:24-203:13.)

82. Disputed because it is not supported by the testimony cited and disputed as to substance as Friedman testified that "Peter Stamos expressed an opinion that Bernie Madoff was not transparent. That was his, quote, objection. And he advised us, or 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.) Stamos testified that, in discouraging Saul Katz from moving money out of Sterling Stamos and into Madoff, he told Saul Katz "that we were a diversified portfolio of managers and that that was better for him than to have all his capital in one manager, and I believe I said, particularly in a manager whose strategy we cannot explain." (Ex. 13, Stamos Tr. 201:12-18.) Peter Stamos testified that despite his opinion about Madoff, Sterling Stamos' due diligence protocols would have ensured that Madoff "would have been stopped at the door the moment we found any of these issues," and when asked if he expressed this to Saul Katz, Stamos testified, "I believe that I

expressed it and I know for a matter of fact that—I believe that, I believe that Mr. Dunleavy [Merrill Lynch executive] expressed that at the board meeting as well.” (*Id.* 211:20-212:17, 212:18-25 (objection omitted).) In a December 2008 email, Stamos wrote, “Fortunately, our firm did not invest with Madoff. That firm and fund wouldn’t make it through our risk and ops controls—lack of transparency, no third party administrator, etc. Unfortunately, our partners—Saul and Fred—against our recommendations invested as individuals and through their real estate firm.” (Ex. 19.)

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

84. Disputed. Sterling Partner David Katz was concerned enough about Madoff’s proprietary strategy that by 2002 he was “screaming” for diversification of their investments away from Madoff because the Sterling Partners did not know what Madoff did. (Ex. 8, D. Katz Tr. 31:10-32:16.) Further, Sterling Stamos was created as an “attempt to recreate Madoff-like return-risk” while reducing exposure to Madoff. (Ex. 15.)

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

86. Disputed. David Katz testified that the reason Sterling Stamos was created was specifically to diversify the Sterling Partners’ investments away from Madoff. (Ex. 8, D. Katz Tr. 346:23-347:1, 347:20-25; *see also* Ex. 56.)

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

88. Disputed as this statement is misleading. Stamos testified that by 2003 Sterling Stamos had both discussed registering as an investment advisor and identified its reasons for

registration. (Ex. 13, Stamos Tr. 46:13-47:3.) The two-year delay before Sterling Stamos registered was on account of a wholesale restructuring of Sterling Stamos that was done to appease Madoff's desire for secrecy. (*Id.* 49:15-50:1, 50:17-20, 51:5-12, 51:17-21, 52:1-7, 52:10-53:5, 56:14-21.) Peter Stamos testified that Saul Katz was concerned that registration "would possibly interfere in his relationship with Mr. Madoff." (*Id.* 49:15-50:1.) Peter Stamos also testified that Saul Katz's apprehension regarding Sterling Stamos' registration was based on the fact that "Mr. Madoff was concerned about confidentiality and things of that nature" and that the Sterling Partners' desire to remain private rather than register with the SEC stemmed from Madoff's request to keep his "relationship [with Sterling] private and confidential." (*Id.* 127:6-12.)

89. Disputed based upon the Trustee's response to ¶ 88, which is incorporated as though fully set forth herein.

90. Disputed based upon the Trustee's response to ¶ 88, which is incorporated as though fully set forth herein. Further disputed as to substance because prior to Sterling Stamos' registration, the Sterling Partners held themselves out as Sterling Stamos investment professionals to third party investors. (*See, e.g.*, Ex. 12 (Saul Katz and David Katz identified as members of Sterling Stamos' "Senior Investment Team," and Fred Wilpon identified as an "Investment Professional").) Sterling Stamos also promoted to their investors the expertise and due diligence capabilities of the Wilpon and Katz families in their marketing materials: "Founded over 30 years ago by the Wilpon and Katz families, Sterling Equities has developed deep expertise in hedge funds, private equity, and real estate...[T]he Wilpon and Katz networks also provide unique proprietary sourcing and due diligence capabilities." (Ex. 14.)

91. Disputed based upon the Trustee's response to ¶ 88, which is incorporated as though fully set forth herein.

92. Disputed as this statement is contradicted by the testimony cited in support: “[Saul Katz] raised the concern about disclosure of information from Mr. Madoff . . .” (Ex. 13, Stamos Tr. 274:15-25.) Further disputed based upon the Trustee's response to ¶ 88, which is incorporated as though fully set forth herein.

93. Disputed as misleading. Peter Stamos and Kevin Dunleavy specifically discussed with Saul Katz the possibility that Madoff was front-running. (*Id.* 152:21-153:2, 205:25-206:10.) Stamos also discussed with Saul Katz the implications if Madoff were in fact front-running or investigated for front-running. (*Id.* 159:12-160:3. *See also id.* 151:6-8, 151:19-22.)

94. Disputed based upon the Trustee's response to ¶ 93, which is incorporated as though fully set forth herein.

95. Not disputed insofar as Ashok Chachra so testified. Disputed as to substance because Ashok Chachra wrote in an email to investors that Sterling Stamos had “turned down the Madoff Funds more than 6 years ago and told many of our investors including the Wilpon and Katz families about our concerns,” and that “we [at Sterling Stamos] had recommended to [the Wilpon and Katz families] to redeem [from Madoff] for years but they kept their investment independent of our recommendation,” (Ex. 18, Ex. 17) which included concerns about Madoff's transparency. (Ex. 2, Friedman Tr. 578:2-14.) Further, a Sterling Stamos employee wrote regarding Madoff's fraud, “I guess our CIO always said it was a scam, ‘too good to be true’[...] Well there u go, it was too good to be true,” and Peter Stamos testified that the employee was likely referring to Chachra. (Ex. 29; Ex. 13, Stamos Tr. 234:13-20.)

96. Not disputed insofar as Ashok Chachra testified that he “did not think that Madoff was front running.” Disputed based upon the Trustee’s response to ¶ 95, which is incorporated as though fully set forth herein.

97. Disputed based upon the Trustee’s responses to ¶¶ 93-95, which are incorporated as though fully set forth herein.

98. Unsupported on the grounds that this statement is based solely on inadmissible evidence.

99. Not disputed.

100. Disputed as, among many other things, Peter Stamos testified that he told Saul Katz that he considered “a manager who was both a broker-dealer and a fund manager” to be a “yellow flag” that he would “monitor [] closely and consider whether [to] continue to be an investor in that fund.” (Ex. 13, Stamos Tr. 156:19-157:6.) Further, Peter Stamos testified that Merrill Lynch Executive Kevin Dunleavy expressed his concern to Saul Katz “of a rumor that he had heard that it was possible that Mr. Madoff was using information from his broker-dealer to help him as an investment manager,” specifically “in the context of something like front-running.” (*Id.* 83:11-14, 83:17-84:8, 205:12-206:10; *see also id.* 159:12-160:3, 151:6-8, 151:19-22.)

101. Not disputed that Ashok Chachra so testified, but disputed as this statement is incomplete as it fails to mention that the Bayou fund also had several other red flags, including a lack of transparency into the manager’s strategy, an investment manager also serving as a broker-dealer; and the investment manager’s use of a non-traditional audit firm. (Ex. 33, Wilpon Tr. 156:13-157:7; Ex. 13, Stamos Tr. 175:17-176:20, 188:19-189:5.)

102. Not disputed that Chachra so testified, but disputed as to substance based upon the Trustee's response to ¶ 101, which is incorporated as though fully set forth herein.

103. Not disputed.

104. Disputed. Sterling Partners Saul Katz and Fred Wilpon, and Sterling Chief Financial Officer Mark Peskin all acknowledged that the "special investment" opportunity employed a new strategy. Saul Katz testified that Madoff was "going to try a new strategy that he thinks may be more efficient and make us more money"; Fred Wilpon testified "Bernie had an idea, which would divert from his normal procedure . . . . I have no idea what the strategy was"; Mark Peskin testified that he understood the special investment opportunity to be "a change of formula, a change of thought process . . . . It was just a different kind of strategy that was being tested." (*See* Ex. 40, S. Katz Tr. 172:8-15; Ex. 33, Wilpon Tr. 230:11-24; Ex. 9, Peskin Tr. 408:10-12, 408:24-25.)

105. Disputed. Arthur Friedman testified that in evaluating whether to invest in Madoff's special investment opportunity, "certainly a question that would come up was the legality . . . ." (Ex. 2, Friedman Tr. 437:24-25.)

106. Not disputed.

107. Disputed as misleading because the Sterling Partners were aware of Madoff's auditor, Friebling and Horowitz, a non-traditional audit firm. (*See* Ex. 38.)

108. Disputed as not supported by the cited testimony and misleading. Friedman testified that all but one of the exercises "weren't necessarily due diligence." (Ex. 2, Friedman Tr. 124:1-125:1.) Friedman testified to one exercise he deemed as "due diligence" that occurred during the "very early stages," of Sterling's investment relationship with BLMIS and described it as the tracking of market prices. (*Id.*)



109. Disputed as incomplete. Friedman testified that he did not recollect how long he conducted these exercises and that “it might have been just a matter of months” in the “very early stages” of Sterling’s investment relationship with BLMIS. (*Id.* 124:1-125:1, 143:21-23.) Further disputed as this statement mischaracterizes as a material fact Friedman’s opinion as to whether those stocks were within the reported price ranges.

110. Disputed as incomplete. Friedman’s testified that he did not recall how long he prepared projections, but “it might have been just a matter of months” during the “very early stages” of Sterling’s investments with Madoff. (*Id.* 124:1-2, 143:21-23.)

111. Disputed as this statement mischaracterizes Friedman’s opinion as to whether the values and returns always fell within his anticipated ranges as a material fact. Further, disputed as the testimony cited does not support this statement. Friedman testified “[t]o the best of my recollection, it was -- first of all, it did fall within -- again, what I projected was the maximum that we could gain and the maximum we could loss -- lose.” (*Id.* 125:4-7.)

112. Disputed insofar as this statement is incomplete because it fails to note that Mr. Friedman testified that although he tried to replicate the strategy, he could not generate the same level of returns. (*See id.* 144:14-145:17.)

113. Disputed as this statement is incomplete as there was a disparity between his results and Madoff’s – that he recalled his results achieved a six percent return while Madoff’s achieved closer to a fifteen percent return. (Ex. 2, Friedman Tr. 144:19-145:9.)

114. Not disputed.

115. Disputed as this statement is not supported by the cited testimony. Disputed based upon the Trustee’s response to ¶¶ 108 and 109, which are incorporated as though fully set forth herein.

116. Not disputed insofar as the Sterling Defendants deposited and withdrew funds, and received account statements from BLMIS. Disputed as the Sterling Defendants received statements and confirmations that did not reflect the actual purchase and sale of equities, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC)* (“*Net Equity Decision*”), 424 B.R. 122, 128 (Bankr. S.D.N.Y. 2010), and that the Sterling Defendants received the transfers while on inquiry notice of possible fraud at BLMIS. (*See, e.g., Ex. 7; Ex. 6; Ex. 17.*)

117. Not disputed insofar as the Sterling Defendants used their BLMIS accounts “as leverage, like margin loans, to increase returns on their security investments.” Disputed insofar as the witnesses cited lack the requisite personal knowledge to testify as to any financial institution’s review of the Sterling Defendants’ BLMIS holdings.

118. Not disputed insofar as the Sterling Defendants’ BLMIS holdings were accepted as collateral. Disputed insofar as the witnesses cited lack the requisite personal knowledge to testify to the financial institutions’ acceptance of those holdings as valuable collateral.

119. Not disputed.

120. Unsupported as this statement is based solely on inadmissible evidence.

121. Disputed as this statement is not supported by the testimony cited. Saul Katz testified that “I certainly didn’t depend on Barry Gonder’s memo . . .”. (Ex. 40, S. Katz Tr. 57:3-4.)

122. Immaterial as this statement is not relevant to any claims or defenses in this matter. Disputed as solely based on Saul Katz’s declaration to support a statement for which he has no personal knowledge; no admissible evidence has been presented.

123. Disputed. Stamos testified that “[o]n any concerns that I would raise about Mr. Madoff, [Saul Katz] dismissed it categorically, as these are not issues that he needed to worry about, other than diversification.” (Ex. 13, Stamos Tr. 161:8-13. *See, e.g.*, Ex. 7; Ex. 6; Ex. 8, D. Katz Tr. 346:23-347:1, 347:20-25.)

124. Disputed as this statement is not supported by the testimony cited.

125. Disputed as this statement is in part not supported by the testimony cited.

126. Disputed as improper under Local Bankruptcy Rule 7056-1(e) as statement does not cite to any portion of the attached report.

127. Immaterial as this statement is not relevant to any claims or defenses in this matter. Disputed as not supported on the grounds that this statement is based solely on inadmissible evidence.

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

129. Based on his investigation to date, the Trustee disputes this statement and anticipates submitting a complete response after he has had the opportunity to conduct discovery.

130. Based on his investigation to date, the Trustee disputes this statement and anticipates submitting a complete response after he has had the opportunity to conduct discovery.

131. Disputed. Tim Dick, who served as a consultant to both Sterling and Sterling Stamos, wrote:

I remember those 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. 32 (emphasis added).)

132. Disputed. Sterling Partner David Katz testified that the reason Sterling did not obtain fraud insurance for its BLMIS investments was because “we couldn’t get anywhere near the amount we needed to cover it.” (Ex. 8, D. Katz 276:17-278:12.)

133. Disputed as this statement is not supported by the testimony cited and disputed as to substance as Arthur Friedman’s handwritten notes from a 2001 meeting between Sterling Partners, Arthur Friedman and Michael Katz, and insurance broker Robert Duran memorialized that these attendees discussed an insurance policy covering “Fraud & Fidelity (Ponzie)” (Ex. 7; Ex. 2, Friedman Tr. 429:1-14; *see also* Ex. 6.)

134. Disputed based upon the Trustee’s response to ¶ 133, which is incorporated as though fully set forth herein.

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

136. Disputed as this statement is incomplete and misleading as it omits that the 99.9% predicted returns of Madoff over a 20-year period were compared to Sterling Stamos’ predicted returns over less than a two-year period. (*See* Ex. 57.)

137. Disputed as this statement is not supported by the evidence cited. When David Katz was asked about the document offered in support of this statement during his Bankruptcy Rule 2004 examination, he testified that he would be “shocked” if such a document was prepared by anyone at Sterling, and that “it had to be” prepared by someone outside of Sterling. (Ex. 8, D. Katz Tr. 233:12-234:16.)

138. Disputed. Sterling Stamos was created as an “attempt to recreate Madoff-like return-risk” while reducing exposure to Madoff. (Ex. 15.) Further, after Madoff’s fraud was revealed, Sterling Stamos employees stated that the Sterling Partners gave them “crap about not

generating returns like Madoff's" and that the Sterling Partners who gave them the "most crap" were Saul and Michael Katz. (Ex. 29; Ex. 13, Stamos Tr. 233:18-234:6.)

139. Immaterial as this statement is not relevant to any claims or defenses in this matter. Disputed as this statement is not supported by the testimony cited.

140. Not disputed.

141. Disputed as incomplete in that it omits the fact that Sterling's decision not to have a trustee-directed 401(k) plan was motivated at least in part to avoid focus on Madoff. In 1996, Sterling and 401(k) plan custodian, M&T Bank, held a meeting to discuss Sterling's 401(k) plan options, including whether to set up a trustee-directed or participant-directed 401(k) plan. In Friedman's handwritten notes from the meeting, he wrote, regarding the trustee-directed option, that "everyone [would] ask and know about [Bernard Madoff]." (Ex. 58.)

142. The Trustee disputes this statement as an incomplete statement of fact because the employees were not able to ask BLMIS employees or Madoff questions about the 401(k) plan's BLMIS option. (Ex. 2, Friedman Tr. 72:10-73:10.)

143. The Trustee disputes this statement and anticipates submitting a complete response after he has had the opportunity to conduct discovery.

144. Disputed insofar as it relates to the Wilpons' investment decisions on behalf of their Family Foundation, as this statement is not supported by the testimony cited. To the extent this statement relies on the testimony of Arthur Friedman, Friedman lacks sufficient personal knowledge to attest to this statement.

145. The Trustee has not had an opportunity to conduct discovery, and he expects to obtain relevant information during the discovery phase of litigation to allow him to more fully respond to this statement.

146. Disputed. Madoff transferred to the Sterling Partners \$54 million, interest-free, for an undetermined period of time and that the Sterling Partners turned to Madoff because they were concerned about whether their bank loan requests would be timely granted before their Cablevision buyout option lapsed. (Ex. 33, Wilpon Tr. 213:2-214:2; Ex. 40, S. Katz Tr. 197:8-199:5.)

147. Not disputed.

148. Not disputed.

149. Disputed as this statement misleadingly omits that the Sterling Partners agreed with Madoff to create and sign a false document that misrepresented the nature of the transaction. (Ex. 43; Ex. 40, S. Katz Tr. 195:19-197:7, 204:21-205:2, 206:2-8; Ex. 33, Wilpon Tr. 219:9-12, 220:15-25; Ex. 2, Friedman 231:3-10. *See, e.g.*, Ex. 40, S. Katz Tr. 208:15-18.)

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

Date: May 19, 2011  
New York, New York

By: /s/ Fernando A. Bohorquez, Jr.

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