

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

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IRVING H. PICARD,	:
	:
Plaintiff,	:
	:
- against -	: 11-CV-03605 (JSR) (HBP)
	:
SAUL B. KATZ, et al.,	:
	:
Defendants.	:
	:
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**DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL RULE 56.1(a)**

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Pursuant to Rule 56.1(a) of the Local Rules of the United States District Court for the Southern District of New York, Defendants respectfully submit this statement of undisputed material facts in support of their Motion for Summary Judgment.

The Sterling Partners' Early Trust in Madoff Was Well Founded

1. Nearly 40 years ago, Fred Wilpon and Saul Katz started a small real estate company called Sterling Equities ("Sterling"). (Declaration of Fred Wilpon ("F. Wilpon Decl."), dated Jan. 26, 2012, ¶ 2; Declaration of Saul B. Katz ("Mar. 19, 2011 S. Katz Decl."), dated Mar. 19, 2011, ¶ 2.)

2. Fred Wilpon convinced his Partners of the merits of owning a baseball team. (F. Wilpon Decl. ¶ 3.)

3. In 1980, the Sterling Partners acquired an interest in the New York Mets. (Mar. 19, 2011 S. Katz Decl. ¶ 3.)

4. Over time, the Sterling Partners' business enterprises grew and other ventures were added. (*Id.* ¶¶ 4-6.)

5. As their enterprises grew, the Sterling Partners' wealth and their business reputations grew as well. (Deposition Transcript of Christopher Stamos ("C. Stamos Tr."), Jan. 4, 2012, 50:25-51:8 (Declaration of Dana M. Seshens in Supp. of Mot. for Summ. J. ("Seshens Decl."), dated Jan. 26, 2012, Ex. A); *see also* Mar. 19, 2011 S. Katz Decl. ¶ 7; Deposition Transcript of Peter Stamos ("P. Stamos Tr."), Jan. 5, 2012, 300:16-301:19 (Seshens Decl., Ex. B).)

6. Bernard L. Madoff ("Madoff") founded Bernard L. Madoff Investment Securities LLC ("BLMIS") in 1960 and registered it as a broker-dealer with the

Securities and Exchange Commission (“SEC”). (Expert Report of Bruce G. Dubinsky (“Dubinsky Report”), ¶ 28, Nov. 22, 2011 (Seshens Decl., Ex. C).)

7. BLMIS operated three business units: (1) a market making business; (2) a proprietary trading business; and (3) an investment advisory business. (*Id.*)

8. Madoff was a technological innovator, initiating electronic trading at the Cincinnati Stock Exchange. *See* Peter Chapman, *Before the Fall: Bernard L. Madoff*, *Traders Mag.*, Mar. 2009, at 30 (Seshens Decl., Ex. E).

9. By the mid-1980s, Madoff had become “a prominent and respected member of the investing community, and had served as a member of the NASDAQ stock market’s Board of Governors and as the vice-chairman of the National Association of Securities Dealers (‘NASD’),” as well as vice-chairman of the Securities Industry Association, and head of its Trading Committee, and as chairman of NASDAQ. *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 393 (S.D.N.Y. 2010); Peter Chapman, *Before the Fall: Bernard L. Madoff*, *Traders Mag.*, Mar. 2009, at 30 (Seshens Decl., Ex. E).

10. In 2003, several prominent Wall Street firms, including Goldman Sachs, Merrill Lynch and Morgan Stanley, entered into a joint venture with Madoff. *See NASDAQ and Primex Announce End of Exclusive Rights Agreement*, PR Newswire, Dec. 31, 2003 (Seshens Decl., Ex. F); *3 Firms Plan to Develop New System For Trading*, *N.Y. Times*, June 8, 1999, at C8 (Seshens Decl., Ex. G); *see also* Mar. 19, 2011 S. Katz Decl. ¶ 9.

11. Fred Wilpon’s son, Jeff, and Madoff’s son, Mark, became friends in school in the 1970s. (Bankruptcy Rule 2004 Deposition Transcript of Fred Wilpon (“F. Wilpon Rule 2004 Tr.”), July 20, 2010, 34:7-35:13 (Seshens Decl., Ex. H).)

12. In 1985, Fred Wilpon and Saul Katz made their first investments with BLMIS. (Deposition Transcript of Fred Wilpon (“F. Wilpon Tr.”), Jan. 10, 2012, 143:18-144:9 (Seshens Decl., Ex. I); Mar. 19, 2011 S. Katz Decl. ¶ 7.)

13. Fred Wilpon and Saul Katz heard about Madoff’s reputation and investment performance from a number of trusted friends, including Howard Squadron and Arthur Levitt. (F. Wilpon Rule 2004 Tr. 39:25-40:7; 44:15-45:7 (Seshens Decl., Ex. H).)

14. Arthur Friedman generally attended to administrative matters for the Sterling Partners. (*Id.* 53:2-10.)

15. Arthur Friedman tracked transaction prices reflected on BLMIS statements by comparing them against publicly available information in the newspapers to see if they were within the reported price ranges—which they were. (Bankruptcy Rule 2004 Deposition Transcript of Arthur Friedman (“A. Friedman Rule 2004 Tr.”), June 22-24, 29, 2010, 123:13-125:10 (Seshens Decl., Ex. J).)

16. Arthur Friedman tracked transaction prices reflected on BLMIS statements to see if the reported value was at the high, low, or middle of the range and did not observe any pattern. (*Id.*)

17. Arthur Friedman attempted to replicate Madoff’s strategy on paper and was able to generate a profit. (*Id.* 144:14-145:17.)

18. Arthur Friedman eventually ceased his work, viewing these exercises as a success. (*Id.* 139:25-142:1; 144:14-145:17; Rule 27 Deposition Transcript of Arthur Friedman (“A. Friedman Rule 27 Tr.”), June 29, 2010, 21:5-22:13 (Seshens Decl., Ex. K).)

19. Because BLMIS was a registered broker, the Sterling Partners understood it was regulated by the SEC. (Deposition Transcript of Saul Katz (“S. Katz Tr.”), Jan. 13, 2012, 78:17-79:9 (Seshens Decl., Ex. L); F. Wilpon Tr. 76:4-18; 206:8-23 (Seshens Decl., Ex. I); Deposition Transcript of David Katz (“D. Katz Tr.”), Dec. 28, 2011, 221:16-23; 369:7-370:4 (Seshens Decl., Ex. M).)

20. The Sterling Partners heard that BLMIS had been involved with a situation in which some Florida investors had been sanctioned by the SEC, but BLMIS had been cleared. (F. Wilpon Tr. at 143:18-145:1 (Seshens Decl., Ex. I); S. Katz Tr. 249:16-250:20 (Seshens Decl., Ex. L); (Bankruptcy Rule 2004 Deposition Transcript of Saul Katz (“S. Katz Rule 2004 Tr.”), Aug. 4, 2010, 52:3-53:6 (Seshens Decl., Ex. N).)

21. To open an account, BLMIS required the execution of a customer agreement, an option agreement, and an agreement giving Madoff trading authorization. (Declaration of Arthur Friedman (“A. Friedman Decl.”), dated Nov. 11, 2009, ¶ 4 & Exs. A-C; Declaration of David Katz (“D. Katz Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Gregory Katz (“G. Katz Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Michael Katz (“M. Katz Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Saul Katz (“Jan. 26, 2012 S. Katz Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Thomas Osterman (“T. Osterman Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Marvin Tepper (“M. Tepper Decl.”), dated Jan. 26, 2012, ¶ 2; F. Wilpon Decl. ¶ 4; Declaration of Jeffrey Wilpon (“J. Wilpon Decl.”), dated Jan. 26, 2012, ¶ 3; Declaration of Richard Wilpon (“R. Wilpon Decl.”), dated Jan. 26, 2012, ¶ 3.)

22. Each BLMIS customer regularly received account statements and confirmations that reflected transactions in blue chip stocks ranging from Exxon-Mobil to

Coca-Cola when Madoff was “in the market” and U.S. Treasuries when he was not. (A. Friedman Decl. ¶¶ 5, 7 & Ex. D.)

23. The Sterling Partners understood Madoff’s strategy to be conservative. (S. Katz Tr. 36:12-25; 38:18-22 (Seshens Decl., Ex. L); F. Wilpon Rule 2004 Tr. 45:14-25 (Seshens Decl., Ex. H); A. Friedman Rule 2004 Tr. 484:10-485:8 (Seshens Decl., Ex. J); *cf.* S. Katz Tr. 110:10-21 (Seshens Decl., Ex. L).)

24. The Sterling Partners understood that Madoff’s strategy was intended to limit the effect of market volatility by “collaring” the trading range of blue chip securities with puts and calls. (S. Katz Tr. 36:12-25; 38:18-22 (Seshens Decl., Ex. L); F. Wilpon Rule 2004 Tr. 45:14-25 (Seshens Decl., Ex. H); A. Friedman Rule 2004 Tr. 484:10-485:8 (Seshens Decl., Ex. J); *cf.* S. Katz Tr. 110:10-21 (Seshens Decl., Ex. L).)

25. The businesses of the Sterling Partners opened BLMIS accounts and used them to manage their excess liquidity in much the same manner as traditional bank accounts. (A. Friedman Rule 2004 Tr. 107:24-109:3 (Seshens Decl., Ex. J); S. Katz Tr. 55:22-56:16 (Seshens Decl., Ex. L).)

26. The Sterling-related businesses deposited cash into their BLMIS accounts when it came in, as when the Mets sold season tickets in the fall/winter, and withdrew it from those accounts when it was needed, such as to pay operating expenses in the spring and summer. (Deposition Transcript of Mark Peskin (“M. Peskin Tr.”), Dec. 29, 2011, 112:17-113:21 (Seshens Decl., Ex. O); A. Friedman Rule 2004 Tr. 358:5-18 (Seshens Decl., Ex. J); *see also* Compl. ¶ 794.)

27. As a brokerage, BLMIS could provide liquidity. (S. Katz Tr. 37:8-38:10 (Seshens Decl., Ex. L); M. Peskin Tr. 87:2-23 (Seshens Decl., Ex. O); Bankruptcy Rule

2004 Deposition Transcript of Mark Peskin (“M. Peskin Rule 2004 Tr.”), July 29, 2010, 181:25-183:2 (Seshens Decl., Ex. P.)

28. Liquidity was important to the Sterling Partners given the relatively illiquid nature of many of their assets, such as real estate. (S. Katz Tr. 37:8-38:10 (Seshens Decl., Ex. L); M. Peskin Tr. 87:2-23 (Seshens Decl., Ex. O); M. Peskin Rule 2004 Tr. 181:25-183:2 (Seshens Decl., Ex. P).)

The Sterling Partners Trusted Madoff as a Broker for Their Family and Close Friends

29. Friends of the Sterling Partners sought access to BLMIS. (F. Wilpon Rule 2004 Tr. 87:6-16 (Seshens Decl., Ex. H); D. Katz Tr. 32:19-33:8 (Seshens Decl., Ex. M); *cf.* C. Stamos Tr. 118:17-119:3 (Seshens Decl., Ex. A).)

30. The Sterling Partners would never have knowingly put their friends at risk. (D. Katz Decl. ¶ 8; G. Katz Decl. ¶ 8; M. Katz Decl. ¶ 9; Jan. 26, 2012 S. Katz Decl. ¶ 9; T. Osterman Decl. ¶ 8; M. Tepper Decl. ¶ 6; F. Wilpon Decl. ¶ 9; J. Wilpon Decl. ¶ 8; R. Wilpon Decl. ¶ 8.)

31. The Sterling Partners believed that Madoff investments were “such a blessing that [they] wanted to share with [their] friends and family.” (S. Katz Rule 2004 Tr. 90:10-17 (Seshens Decl., Ex. N); F. Wilpon Rule 2004 Tr. 87:6-16; 143:7-20 (Seshens Decl., Ex. H).)

32. The Sterling Partners helped their friends and family with the administration of their BLMIS accounts. (S. Katz Rule 2004 Tr. 215:5-21 (Seshens Decl., Ex. N); F. Wilpon Rule 2004 Tr. 143:7-20; 145:5-146:5 (Seshens Decl., Ex. H).)

33. The Sterling Partners received no compensation for helping with the administration of the BLMIS accounts of their friends and family. (S. Katz Rule 2004 Tr.

215:5-21 (Seshens Decl., Ex. N); F. Wilpon Rule 2004 Tr. 143:7-20; 145:5-146:5
(Seshens Decl., Ex. H.)

34. The Sterling Partners offered BLMIS as one of the investment options in Sterling's self-directed 401(k) Retirement Plan, which was established in 1997.

(A. Friedman Rule 2004 Tr. 538:14-539:4 (Seshens Decl., Ex. J).)

The Sterling Partners Regularly Exposed Their Madoff Holdings to Scrutiny by Major Financial Institutions

35. The Sterling Partners and related borrowers regularly used their BLMIS holdings as support for their credit agreements. (M. Peskin Rule 2004 Tr. 177:24-181:10; 186:6-187:8 (Seshens Decl., Ex. P); F. Wilpon Tr. 74:5-24; 202:14-203:20 (Seshens Decl., Ex. I); S. Katz Tr. 233:23-234:16 (Seshens Decl., Ex. L).)

36. The Sterling Partners' BLMIS securities accounts were used to satisfy liquidity requirements or as collateral. (M. Peskin Rule 2004 Tr. 177:24-181:10; 186:6-187:8 (Seshens Decl., Ex. P); F. Wilpon Tr. 74:5-24; 202:14-203:20 (Seshens Decl., Ex. I); S. Katz Tr. 233:23-234:18 (Seshens Decl., Ex. L).)

37. The Sterling Partners' BLMIS statements were sent directly by BLMIS to lenders. (M. Peskin Rule 2004 Tr. 345:5-25 (Seshens Decl., Ex. P); Deposition Transcript of Steven Kenny ("S. Kenny Tr."), Dec. 9, 2011, 27:6-21 (Seshens Decl., Ex. Q).)

38. BLMIS accounts were accepted by the Sterling Partners' banks and were considered cash equivalents due to their liquidity. (M. Peskin Rule 2004 Tr. 179:21-181:10; 186:6-187:8; 345:11-25 (Seshens Decl., Ex. P); F. Wilpon Tr. 202:14-203:20 (Seshens Decl., Ex. I); S. Kenny Tr. 27:6-21; 169:1-170:12 (Seshens Decl., Ex. Q).)

39. In 1990, Travelers Insurance Company undertook due diligence of BLMIS in connection with a financing sought by the Mets. (S. Katz Rule 2004 Tr. 53:11-54:6 (Seshens Decl., Ex. N).)

40. A Travelers representative wrote a due diligence memorandum, which was circulated to the Sterling Partners. (Travelers Mem., dated Aug. 24, 1990 (Seshens Decl., Ex. R).)

41. The due diligence memorandum reported that the Travelers representative had spoken personally with Madoff and that he was satisfied with the results of his diligence. (*Id.*)

42. The due diligence memorandum discussed Madoff's strategy and performance history. (*Id.*)

43. In 1993, J.P. Morgan analyzed one of Saul Katz's BLMIS accounts. (S. Katz Tr. 246:17-247:20 (Seshens Decl., Ex. L); *see also* Analysis of Bernard L. Madoff's Investment Mgmt. for Saul B. Katz (Account KW024) for 1992, at 3 (Seshens Decl., Ex. S).)

44. J.P. Morgan undertook this analysis as part of an exercise to gain more business from Mr. Katz. (S. Katz Tr. 246:17-247:20 (Seshens Decl., Ex. L).)

45. According to the J.P. Morgan analysis, it did an "in depth analysis" for one account for 1992 and a more cursory analysis for 1991. (Analysis of Bernard L. Madoff's Investment Mgmt. for Saul B. Katz (Account KW024) for 1992, at 3 (Seshens Decl., Ex. S).)

46. According to the J.P. Morgan analysis, it recommended diversification with J.P. Morgan to Saul Katz. (*Id.* at 19.)

47. The J.P. Morgan analysis raised no question as to the validity of Madoff, his strategy, or BLMIS. (*Id.*)

48. In 2000, the Sterling Partners obtained a Fitch rating in connection with the issuance of certain notes collateralized by BLMIS accounts. (M. Katz Decl. ¶ 7; S. Katz Decl. ¶ 7; Letter from Robert J. Grossman to Marvin B. Tepper (May 25, 2000) at 2 (Seshens Decl., Ex. T).)

49. According to a letter from Fitch, Fitch's rating relied in part on the prior Travelers' analysis and discussed Madoff's strategy and historical performance with respect to the Sterling Partners. (Letter from Robert J. Grossman to Marvin B. Tepper (May 25, 2000) at 2 (Seshens Decl., Ex. T).)

50. According to a letter from Fitch, Fitch reaffirmed its rating early in 2003, stating that the "affirmation reflects the consistent level of returns generated by the Account which collateralizes the Notes." (Letter from Sharon Bonelli to Arthur Friedman (Jan. 2, 2003) at 1 (Seshens Decl., Ex. U).)

**Defendants Diversified, But Still Entrusted
Hundreds of Millions of Dollars to Madoff**

51. As the Sterling Partners' businesses prospered, they generated more and more liquidity. (S. Katz Tr. 13:8-14:3 (Seshens Decl., Ex. L).)

52. David Katz had been impressing upon Saul Katz and the rest of the Sterling Partners to diversify their liquid investments because he thought it was unwise to have so much money in one place. (Bankruptcy Rule 2004 Deposition Transcript of David Katz ("D. Katz Rule 2004 Tr."), Aug. 31-Sept. 1, 2010, 80:12-81:20; 84:12-25; 145:9-147:7; 346:23-347:19 (Seshens Decl., Ex. V); S. Katz Rule 2004 Tr. 114:16-115:20 (Seshens Decl., Ex. N).)

53. David Katz did not impress upon Saul Katz and the rest of the Sterling Partners the need to diversify their liquid investments because he had concerns about Madoff. (D. Katz Rule 2004 Tr. 80:12-81:20; 84:12-25; 145:9-147:7; 346:23-347:19 (Seshens Decl., Ex. V); S. Katz Rule 2004 Tr. 114:16-115:20 (Seshens Decl., Ex. N).)

54. Diversification became a higher priority for the Sterling Partners after Fred Wilpon and Saul Katz had a discussion with Madoff about what would happen to their accounts when he retired. (S. Katz Tr. 50:20-52:5 (Seshens Decl., Ex. L); F. Wilpon Tr. 52:8-53:14 (Seshens Decl., Ex. I).)

55. Fred Wilpon and Saul Katz inquired of Madoff about his succession plan. (S. Katz Tr. 50:20-52:5 (Seshens Decl., Ex. L); F. Wilpon Tr. 52:8-53:14 (Seshens Decl., Ex. I).)

56. Madoff told Fred Wilpon and Saul Katz that his brokerage business would not survive his retirement because his sons ran, and wanted to continue to run, a different part of the business and no one else was poised to take over. (S. Katz Tr. 51:5-25 (Seshens Decl., Ex. L); S. Katz Rule 2004 Tr. 116:6-118:12 (Seshens Decl., Ex. N); F. Wilpon Tr. 52:21-53:20 (Seshens Decl., Ex. I).)

57. Madoff told Fred Wilpon and Saul Katz that he would liquidate their investments upon his retirement and send them a check that they could deposit with U.S. Trust. (S. Katz Tr. 51:5-25 (Seshens Decl., Ex. L); S. Katz Rule 2004 Tr. 116:6-118:12 (Seshens Decl., Ex. N); F. Wilpon Tr. 52:21-53:20 (Seshens Decl., Ex. I).)

58. The Sterling Partners wanted a better alternative to something like U.S. Trust to preserve their families' wealth for the future. (S. Katz Tr. 51:5-25 (Seshens Decl., Ex. L); S. Katz Rule 2004 Tr. 116:6-118:12 (Seshens Decl., Ex. N); F. Wilpon Tr.

52:21-53:20 (Seshens Decl., Ex. I); *see also* S. Katz Tr. 52:25-53:4; 54:8-55:16 (Seshens Decl., Ex. L).)

59. In 2002, the Sterling Partners and Peter Stamos created what would become Sterling Stamos Partners (“Sterling Stamos”). (Bankruptcy Rule 2004 Deposition Transcript of Peter Stamos (“P. Stamos Rule 2004 Tr.”), Aug. 19, 2010, 34:19-25; 101:10-102:16 (Seshens Decl., Ex. W); S. Katz Tr. 34:3-35:19 (Seshens Decl., Ex. L); S. Katz Rule 2004 Tr. 137:18-24 (Seshens Decl., Ex. N).)

60. Peter Stamos is an economist and former Rhodes Scholar. (S. Katz Rule 2004 Tr. 13:12-14:1; 135:4-24 (Seshens Decl., Ex. N); D. Katz Rule 2004 Tr. 90:18-91:20 (Seshens Decl., Ex. V).)

61. Saul Katz met Peter Stamos through his charitable work for the North Shore/Long Island Jewish Hospital System. (S. Katz Rule 2004 Tr. 13:12-14:1; 135:4-24 (Seshens Decl., Ex. N); D. Katz Rule 2004 Tr. 90:18-91:20 (Seshens Decl., Ex. V).)

62. Saul Katz thought Peter Stamos would be ideal to run an alternative investment vehicle for the Katz and Wilpon families. (S. Katz Rule 2004 Tr. 13:12-14:1; 135:4-24 (Seshens Decl., Ex. N).)

63. Once Sterling Stamos launched, the Sterling Partners began to deposit some of their growing liquidity into the funds run by Sterling Stamos. (S. Katz Rule 2004 Tr. 154:2-157:2 (Seshens Decl., Ex. N); F. Wilpon Tr. 72:4-73:3 (Seshens Decl., Ex. I); M. Peskin Rule 2004 Tr. 234:24-237:11; 243:21-245:4 (Seshens Decl., Ex. P).)

64. Defendants, in the aggregate, left half a billion dollars with Madoff even after Sterling Stamos started. (Mar. 19, 2011 S. Katz Decl. ¶ 12.)

65. Peter Stamos and his family had been BLMIS investors. (P. Stamos Rule 2004 Tr. 93:1-4 (Seshens Decl., Ex. W); P. Stamos Tr. 95:5-12 (Seshens Decl., Ex. B).)

66. Peter Stamos told Saul Katz he thought Madoff was an honest and honorable broker. (P. Stamos Rule 2004 Tr. 161:18-162:7; 211:3-212:4 (Seshens Decl., Ex. W); F. Wilpon Tr. 67:3-19 (Seshens Decl., Ex. I).)

67. Sterling Stamos, as a fiduciary, decided not to invest third party funds with any manager who employed a proprietary or “non-transparent” strategy. (P. Stamos Tr. 295:13-296:12 (Seshens Decl., Ex. B); P. Stamos Rule 2004 Tr. 201:19-202:3 (Seshens Decl., Ex. W).)

68. Sterling Stamos’ policy precluded it from investing with many successful investment managers, including BLMIS. (P. Stamos Tr. 279:14-280:11; 295:13-296:12 (Seshens Decl., Ex. B); P. Stamos Rule 2004 Tr. 161:18-162:7; 201:19-202:3 (Seshens Decl., Ex. W).)

69. Peter Stamos viewed Sterling Stamos as competing with BLMIS for the Sterling Partners’ money. (P. Stamos Tr. 103:20-105:10; 301:20-302:18 (Seshens Decl., Ex. B); P. Stamos Rule 2004 Tr. 154:6-155:1 (Seshens Decl., Ex. W).)

70. Peter Stamos would have told the Sterling Partners if he had any concerns about Madoff. (P. Stamos Tr. 103:20-105:10; 301:20-302:18 (Seshens Decl., Ex. B); P. Stamos Rule 2004 Tr. 154:6-155:1 (Seshens Decl., Ex. W).)

71. Peter Stamos had no concerns about Madoff. (P. Stamos Tr. 103:20-105:10; 279:14-280:11; 284:16-285:1; 301:20-302:18 (Seshens Decl., Ex. B); P. Stamos Rule 2004 Tr. 154:6-155:1 (Seshens Decl., Ex. W).)

The Sterling Partners Trusted Madoff Until the End

72. Fred Wilpon felt betrayed when Madoff's fraud was revealed on December 11, 2008. (F. Wilpon Rule 2004 Tr. 42:12-43:21; 64:10-25 (Seshens Decl., Ex. H).)

73. On December 11, 2008, before Madoff's arrest was made public, a \$1 million deposit was made into a Sterling-related Madoff account. (Mar. 19, 2011 S. Katz Decl. ¶ 11.)

74. Fred Wilpon, Saul Katz, their Partners, children and grandchildren, family trusts, charitable foundations, and businesses, including the New York Mets, lost in the aggregate more than \$500 million on December 11, 2008. (*Id.* ¶ 12.)

There Is No Evidence That Any Defendant Was Willfully Blind

75. No Sterling Partner ever subjectively believed that there was any probability that Madoff was running a Ponzi scheme or engaged in a fraud. (D. Katz Decl. ¶ 6; G. Katz Decl. ¶ 6; M. Katz Decl. ¶ 6; S. Katz Decl. ¶ 6; T. Osterman Decl. ¶ 6; F. Wilpon Decl. ¶ 7; J. Wilpon Decl. ¶ 6; R. Wilpon Decl. ¶ 6; M. Tepper Decl. ¶ 5.)

The Sterling Partners Never Sought Insurance Because of Concerns About a Madoff Fraud or Ponzi Scheme

76. Chuck Klein is a trusted business partner of the Sterling Partners. (S. Katz Rule 2004 Tr. 100:16-101:21 (Seshens Decl., Ex. N).)

77. Chuck Klein purchased a third-party fidelity policy for all of the securities investments his company made on behalf of its clients. (*Id.*; Bankruptcy Rule 2004 Deposition Transcript of Charles D. Klein ("C. Klein Rule 2004 Tr."), Nov. 8, 2010, 191:14-192:14; 193:16-194:17; 204:24-205:13 (Seshens Decl., Ex. X).)

78. Chuck Klein suggested to the Sterling Partners that they consider purchasing a third-party fidelity insurance policy. (S. Katz Rule 2004 Tr. 100:16-101:21 (Seshens Decl., Ex. N).)

79. The Sterling Partners respected Chuck Klein and his business judgment. (*Id.*)

80. Arthur Friedman met with Chuck Klein's broker. (*Id.* 101:10-21; A. Friedman Rule 2004 Tr. 422:6-22 (Seshens Decl., Ex. J).)

81. The Sterling Partners concluded that the insurance was unnecessary and expensive. (S. Katz Rule 2004 Tr. 100:16-101:21; 102:7-19 (Seshens Decl., Ex. N); A. Friedman Rule 2004 Tr. 433:16-434:4 (Seshens Decl., Ex. J).)

82. Chuck Klein purchased fidelity insurance for all of his firm's third-party investments, with firms such as Bear Stearns, Credit Suisse, as well as Madoff. (C. Klein Rule 2004 Tr. 191:14-192:14; 193:14-194:17; 204:24-205:13 (Seshens Decl., Ex. X).)

83. Chuck Klein testified that he purchased the third-party fidelity insurance policy because he thought it was "the cheapest put" he ever had seen. (*Id.* 194:9-15.)

84. Arthur Friedman took notes during his meeting with Chuck Klein's insurance broker. (A. Friedman Rule 2004 Tr. 429:25-431:22 (Seshens Decl., Ex. J).)

85. Arthur Friedman's notes from his meeting with Chuck Klein's insurance broker reflected what the broker explained to Mr. Friedman about the scope of the insurance coverage, including coverage of a "Ponzie" scheme. (*Id.*)

**Nothing About Sterling Stamos Undercut
The Sterling Partners' Trust in Madoff**

86. Sterling Stamos was started for reasons of diversification and because the Sterling Partners were concerned about Madoff's lack of a succession plan. (D. Katz Rule 2004 Tr. 80:12-81:3; (Seshens Decl., Ex. V); D. Katz Tr. 11:7-11 (Seshens Decl., Ex. M); A. Friedman Rule 2004 Tr. 351:14-353:7 (Seshens Decl., Ex. J); S. Katz Rule 2004 Tr. 114:16-115:20; 176:13-177:6 (Seshens Decl., Ex. N); S. Katz Tr. 34:18-35:19; 51:5-25 (Seshens Decl., Ex. L); F. Wilpon Tr. 52:21-53:20 (Seshens Decl., Ex. I); Bankruptcy Rule 2004 Deposition Transcript of Ashok Chachra ("A. Chachra Rule 2004 Tr."), Oct. 8, 2010, 136:25-137:21 (Seshens Decl., Ex. Y); P. Stamos Rule 2004 Tr. 101:23-103:9 (Seshens Decl., Ex. W).)

87. The Sterling Partners were concerned that if Sterling Stamos registered as an investment advisor, one or more of them might have to register as well, which would cause disclosure of all of the Sterling Partners' otherwise private investment and business holdings, including with BLMIS. (S. Katz Tr. 256:6-257:17; 267:21-268:4 (Seshens Decl., Ex. L); F. Wilpon Tr. 98:4-100:8 (Seshens Decl., Ex. I); P. Stamos Rule 2004 Tr. 51:5-12 (Seshens Decl., Ex. W); P. Stamos Tr. 58:14-62:4 (Seshens Decl., Ex. B).)

88. The Sterling Partners were also concerned that, through Sterling Stamos' registration, their ownership interest in Sterling Stamos might give rise to an increased risk of third-party liability for Peter Stamos' investment decisions. (S. Katz Tr. 256:6-257:17; 265:16-266:22 (Seshens Decl., Ex. L); D. Katz Tr. 250:21-252:3 (Seshens Decl., Ex. M).)

89. The Sterling Partners had no involvement in Sterling Stamos' investment decisions. (A. Chachra Rule 2004 Tr. 121:4-122:2; 124:5-10; 133:22-

134:3 (Seshens Decl., Ex. Y); P. Stamos Tr. 311:15-312:1 (Seshens Decl., Ex. B);
P. Stamos Rule 2004 Tr. 136:18-21 (Seshens Decl., Ex. W); D. Katz Rule 2004 Tr.
173:24-174:12, 174:21-175:4 (Seshens Decl., Ex. V); S. Katz Rule 2004 Tr.
128:12-18; 138:11-25; 139:9-23 (Seshens Decl., Ex. N); F. Wilpon Tr. 98:4-20
(Seshens Decl., Ex. I.)

**The Sterling Partners Understood That Madoff's
Returns Were Intended to Be Consistent and
Were Not Concerned When They Were**

90. The Sterling Partners understood that Madoff's split-strike conversion strategy was intended to yield consistent returns. (S. Katz Tr. 36:12-25; 38:18-22 (Seshens Decl., Ex. L); F. Wilpon Rule 2004 Tr. 45:14-25 (Seshens Decl., Ex. H); A. Friedman Rule 2004 Tr. 484:10-485:8 (Seshens Decl., Ex. J); *cf.* S. Katz Tr. 110:10-21 (Seshens Decl., Ex. L).)

91. The Sterling Partners were satisfied by, not suspicious about, Madoff's consistent returns. (S. Katz Tr. 188:10-189:17 (Seshens Decl., Ex. L); F. Wilpon Rule 2004 Tr. 190:3-191:5 (Seshens Decl., Ex. H); F. Wilpon Tr. 175:11-22 (Seshens Decl., Ex. I); Deposition Transcript of Michael Katz, Dec. 9, 2011, 147:2-148:10 (Seshens Decl., Ex. Z).)

92. Peter Stamos told the Sterling Partners that consistency is something to look for in an investment manager. (P. Stamos Rule 2004 Tr. 205:6-11 (Seshens Decl., Ex. W).)

The Sterling Partners Thought Proprietary Strategies Entirely Appropriate and Were Not Concerned About Madoff’s “Black Box”

93. The Sterling Partners were aware that numerous investment managers employed proprietary, or “black box,” investment strategies. (S. Katz Rule 2004 Tr. 126:11-127:4 (Seshens Decl., Ex. N).)

94. The Sterling Partners had no concern about the proprietary nature of Madoff’s strategy. (S. Katz Rule 2004 Tr. 108:1-20; 126:11-127:4 (Seshens Decl., Ex. N); D. Katz Rule 2004 Tr. 145:9-147:7 (Seshens Decl., Ex. V); F. Wilpon Tr. 66:4-17 (Seshens Decl., Ex. I).)

95. The Sterling Partners knew that Sterling Stamos would not, as a fiduciary, invest third-party funds with Madoff because he employed a proprietary strategy. (S. Katz Tr. 191:20-192:7 (Seshens Decl., Ex. L); D. Katz Tr. 317:1-25 (Seshens Decl., Ex. M); F. Wilpon Tr. 67:3-19 (Seshens Decl., Ex. I).)

There Is No Evidence That Any Defendant Took Deliberate Action to Avoid Learning the Truth About Madoff’s Ponzi Scheme

96. No Sterling Partner deliberately avoided learning information that would have confirmed that Madoff was running a Ponzi scheme. (D. Katz Decl. ¶ 7; G. Katz Decl. ¶ 7; M. Katz Decl. ¶ 8; S. Katz Decl. ¶ 8; T. Osterman Decl. ¶ 7; F. Wilpon Decl. ¶ 8; J. Wilpon Decl. ¶ 7; R. Wilpon Decl. ¶ 7; M. Tepper Decl. ¶ 5.)

Willful Blindness Must Be Proven as to Each Defendant and Cannot Be Imputed Collectively

97. The Sterling Equities partnership did not make any investment decisions for anyone. (D. Katz Decl. ¶ 3; G. Katz Decl. ¶ 3; M. Katz Decl. ¶ 3; S. Katz Decl. ¶ 3; T. Osterman Decl. ¶ 3; F. Wilpon Decl. ¶ 4; J. Wilpon Decl. ¶ 3; R. Wilpon Decl. ¶ 3; M. Tepper Decl. ¶ 2; *see also* S. Katz Rule 2004 Tr. 22:24-23:25 (Seshens Decl., Ex. N); F. Wilpon Rule 2004 Tr. 55:8-12 (Seshens Decl., Ex. H).)

98. Each Sterling Partner made his own decisions about whether or not to invest his excess cash. (D. Katz Decl. ¶ 3; G. Katz Decl. ¶ 3; M. Katz Decl. ¶ 3; S. Katz Decl. ¶ 3; T. Osterman Decl. ¶ 3; F. Wilpon Decl. ¶ 4; J. Wilpon Decl. ¶ 3; R. Wilpon Decl. ¶ 3; M. Tepper Decl. ¶ 2; *see also* S. Katz Rule 2004 Tr. 22:24-23:25 (Seshens Decl., Ex. N); F. Wilpon Rule 2004 Tr. 55:8-12 (Seshens Decl., Ex. H); M. Peskin Rule 2004 Tr. 51:19-52:13; 55:23-56:3 (Seshens Decl., Ex. P); A. Friedman Rule 2004 Tr. 487:19-488:6 (Seshens Decl., Ex. J).)

99. Arthur Friedman had no authority to make investment decisions other than his own. (A. Friedman Rule 2004 Tr. 71:22-72:22; 122:14-20; 249:6-12 (Seshens Decl., Ex. J); F. Wilpon Rule 2004 Tr. 53:2-10; 109:17-110:7 (Seshens Decl., Ex. H).)

100. Arthur Friedman lacked the authority to decide whether or when to deposit or withdraw funds for any Defendant's BLMIS account. (A. Friedman Rule 2004 Tr. 71:22-72:22; 122:14-20; 249:6-12 (Seshens Decl., Ex. J); F. Wilpon Rule 2004 Tr. 53:2-10; 109:17-110:7 (Seshens Decl., Ex. H).)

101. Arthur Friedman acted as the contact point with BLMIS for administrative convenience. (A. Friedman Rule 2004 Tr. 71:22-72:22; 122:14-20; 249:6-12 (Seshens

Decl., Ex. J); F. Wilpon Rule 2004 Tr. 53:2-10; 109:17-110:7 (Seshens Decl., Ex. H); *see also* S. Katz Rule 2004 Tr. 58:14-59:10 (Seshens Decl., Ex. N).)

102. Arthur Friedman collected and transmitted transfers to and from BLMIS and received account statements, confirms and other documentation. (A. Friedman Rule 2004 Tr. 71:22-72:22; 249:6-12 (Seshens Decl., Ex. J); F. Wilpon Rule 2004 Tr. 109:17-110:7 (Seshens Decl., Ex. H); *see also* S. Katz Rule 2004 Tr. 58:14-59:10 (Seshens Decl., Ex. N); M. Peskin Rule 2004 Tr. 95:12-95:22 (Seshens Decl., Ex. P).)

Dated: New York, New York
January 26, 2012

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