

**GIBBONS P.C.**

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- and -

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Attorneys for Attorneys for the Lautenberg Foundation,  
Joshua S. Lautenberg and Ellen Lautenberg

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

SECURITIES INVESTMENT PROTECTION  
CORPORATION,

Plaintiff,

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.

RICHARD I. STAHL; REED ABEND; THE  
LAUTENBERG FOUNDATION, JOSHUA S.  
LAUTENBERG, ELLEN LAUTENBERG;  
MATIAS ERAUSQUIN, ENRIQUE ERAUSQUIN,  
LILIANA CONTRONE and YOLANDA  
FRISCHKNECHT, on behalf of themselves

**SIPA LIQUIDATION  
No.: 08-01789 (BRL)**

(Substantively Consolidated)

**Adv. Pro. No. 10-03268 (BRL)**

**ANSWER TO COMPLAINT**

and those they purport to represent;  
NEVILLE SEYMOUR DAVIS, on behalf of  
himself and those he purports to represent;  
EMILIO CHAVEZ, JR.; RETIREMENT  
PROGRAM FOR EMPLOYEES OF THE TOWN  
OF FAIRFIELD, THE RETIREMENT PROGRAM  
FOR POLICE OFFICERS AND FIREMEN OF  
THE TOWN OF FAIRFIELD and THE TOWN OF  
FAIRFIELD; FLB FOUNDATION, LTD., JAY  
WEXLER, individually and derivatively on behalf  
of Rye Select Broad Market Prime Fund, L.P.;  
DANIEL RYAN and THERESA RYAN,  
individually and on behalf of the RYAN TRUST;  
MATTHEW GREENBERG, WALTER  
GREENBERG and DORIS GREENBERG,  
individually and on behalf of the estate of Leon  
Greenberg; and DONNA MCBRIDE,  
individually and derivatively on behalf of Beacon  
Associates LLC, II,

Defendants.

Defendants The Lautenberg Foundation, Joshua S. Lautenberg and Ellen  
Lautenberg (collectively “The Lautenberg Defendants”), by and through their undersigned  
attorneys, answer the Complaint of Irvin H. Picard, Esq. as trustee (the “Trustee”) and state as  
follows:

**NATURE OF THE ACTION**

1. The Lautenberg Defendants deny the allegations in this paragraph insofar  
as they relate to the Lautenberg Defendants’ action against Peter Madoff. To the extent the  
allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants  
lack knowledge or information sufficient to admit or deny them.

2. The Lautenberg Defendants deny that their action against Peter Madoff  
involves “customer property”, would interfere with the Court’s jurisdiction over the Debtor’s  
Estate, or would interfere with the Trustee’s liquidation of Bernard L. Madoff Investment

Securities LLC (“BLMIS”) under SIPA. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants lack knowledge or information sufficient to admit or deny them.

3. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph related to the specific number of BLMIS customers and amounts allegedly invested by those customers in BLMIS, except to admit the allegations based upon Bernard Madoff’s plea which are of public record.

4. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which relate to the Trustee’s efforts as set forth in this paragraph.

5. The allegations in this paragraph are based upon a documents which speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

6. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants’ action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

7. The Lautenberg Defendants deny that the Plaintiff is entitled to the relief requested in this paragraph.

#### **JURISDICTION AND VENUE**

8. The allegations in this paragraph state a legal conclusion to which no answer is required.

9. The allegations in this paragraph state a legal conclusion to which no

answer is required.

10. The allegations in this paragraph state a legal conclusion to which no answer is required.

11. The allegations in this paragraph state a legal conclusion to which no answer is required.

### **BACKGROUND, THE TRUSTEE AND STANDING**

12. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

13. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

14. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

15. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

16. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

17. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that

document.

18. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

19. The allegations in this paragraph setting forth the Trustee's duties are legal conclusions to which no further response is required. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph related to the Trustee's efforts as set forth in this paragraph.

20. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph relating to the ability of the Plaintiff to satisfy customer claims. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff.

21. The allegations in this paragraph state a legal conclusion to which no answer is required.

22. The allegations in this paragraph state a legal conclusion to which no answer is required.

23. The allegations in this paragraph state a legal conclusion to which no answer is required. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff.

a. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent

the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

b. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

c. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

d. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

#### **THE FRAUDULENT PONZI SCHEME**

24. The Lautenberg Defendants admit the allegations in this paragraph upon information and belief.

25. The Lautenberg Defendants admit the allegations in this paragraph upon information and belief.

26. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph related to the specific number of BLMIS customers and amounts allegedly invested by those customers in BLMIS, except to admit the allegations based upon Bernard Madoff's plea which are of public record.

**THE COURT-ORDERED CLAIMS ADMINISTRATION PROCESS**

27. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

28. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

29. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

30. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents.

31. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

**THE TRUSTEE'S ACTIONS AGAINST THE MADOFF DEFENDANTS**

32. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

33. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

34. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that

document. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff.

35. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff.

36. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff.

37. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document.

38. The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter Madoff. The Lautenberg Defendants further deny that all of the property the Trustee seeks to recover from Peter Madoff is “customer property”.

**THE THIRD PARTY ACTIONS VIOLATE THE EXISTING STAYS AS  
THEY ARE DUPLICATIVE OR DERIVATIVE OF THE TRUSTEE’S COMPLAINTS  
AND SEEK CUSTOMER PROPERTY**

39. The Lautenberg Defendants admit that their action against Peter Madoff is currently pending. To the extent the allegations in this paragraph relate to the actions of co-

defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

40. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. The Lautenberg Defendants further state that their action against Peter Madoff was filed over seven months before the Trustee's Complaint against him. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

41. The Lautenberg Defendants admit that they were customers of BLMIS. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

42. The allegations in this paragraph refer to and are based upon documents that speak for themselves, and the Lautenberg Defendants deny any allegation inconsistent with those documents. The Lautenberg Defendants further state that they have alleged an independent duty owed to them by Peter Madoff.

43. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

42. [sic] The allegations in this paragraph refer to and are based upon a document that speaks for itself, and the Lautenberg Defendants deny any allegation inconsistent with that document. The Lautenberg Defendants deny that the Trustee has standing to pursue a claim based upon duties owed directly to them as alleged in their Complaint against Peter

Madoff. The Lautenberg Defendants further state that their claims are based upon independent duties owed to them by Peter Madoff.

### **THE THIRD PARTY ACTIONS**

#### **(1) Currently Active Third Party Actions**

43. [sic] The Lautenberg Defendants admit the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. The Lautenberg Defendants deny knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

#### **(a) *The Lautenberg Foundation v. Madoff, Case No. 09-cv-00816 (D.N.J.)***

44. The Lautenberg Defendants admit the allegations in this paragraph.

45. The Lautenberg Defendants admit the allegations in this paragraph.

46. The allegations in this paragraph state a legal conclusion to which no answer is required.

47. The Lautenberg Defendants admit the allegations in this paragraph.

48. The Lautenberg Defendants admit the allegations in this paragraph.

49. The Lautenberg Defendants admit the allegations in this paragraph.

50. The Lautenberg Defendants deny the allegations in this paragraph. The Lautenberg Defendants allege a breach of duties owed directly to them by Peter Madoff. The Lautenberg Defendants further state that to the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

51. The Lautenberg Defendants deny the allegations in this paragraph.

- (b) ***Stahl v. Madoff, Index No. 601862/2009 (Sup. Ct. N.Y. Co.)***  
***Abend v. Madoff, Index No. 601861/2009 (Sup. Ct. N.Y. Co.)***

52. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

53. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

54. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

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56. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

57. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

58. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

59. The Lautenberg Defendants lack knowledge or information sufficient to

admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

60. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

61. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

62. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

63. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

64. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

65. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

(c) ***Erausquin v. Notz, Stucki Management (Bermuda) Limited, Case No. 09-cv-07846 (S.D.N.Y.)***

66. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the

Lautenberg Defendants and relate solely to certain co-defendants.

67. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

68. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

69. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

70. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

71. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

72. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**(d) *In re Herald, Primeo and Thema Funds Securities Litigation,*  
Case No. 09-cv-0289/09 (S.D.N.Y.)**

73. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

74. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

75. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

76. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

77. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

78. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

79. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

80. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

81. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the

Lautenberg Defendants and relate solely to certain co-defendants.

(e) ***Chavez v. Picard, Case No. 09-mc-00006 (N.D. Tex.)***

82. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

83. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

84. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

85. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

86. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

87. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**2. Currently Stayed Third Party Actions**

88. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the

Lautenberg Defendants and relate solely to certain co-defendants.

(a) ***Retirement Program Employees of the Town of Fairfield v. Bernard L. Madoff, Case No. cv 09-5011561-S (Conn. Super. Ct.)***

89. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

90. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

91. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

92. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

93. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

94. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

95. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

96. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

97. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

98. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**(b) The Cotchett Law Firm Actions**

99. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

***Wexler v. KPMG, LLP, et al., Index No. 101615/2009 (Sup. Ct. N.Y. Co.)***

100. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

101. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

102. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

103. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

104. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

***Ryan v. Friehling & Horowitz, P.C., et al., Index No. 101616/2009 (Sup. Ct. N.Y. Co.)***

105. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

106. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

107. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

108. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

109. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

***Greenberg v. Friehling & Horowitz, P.C., et al., Index No. 650663/2009***  
**(Sup. Ct. N.Y. Co.)**

110. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

111. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

112. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

113. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

114. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

***McBride v. KPMG International, et al., Index No. 650632/2009*** (Sup. Ct. N.Y. Co.)

115. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

116. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the

Lautenberg Defendants and relate solely to certain co-defendants.

117. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**The Cotchett Law Firm Complaints**

118. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

119. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

120. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

121. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**(c) *FLB Foundation, Ltd. v. BLMIS*, Index No. 101615/2009 (N.Y. Sup. Ct.)**

122. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

123. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the

Lautenberg Defendants and relate solely to certain co-defendants.

124. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

125. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

126. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

127. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

128. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

129. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

**THE THIRD PARTY ACTIONS THREATEN THIS COURT'S JURISDICTION AND THE ADMINISTRATION OF THE ESTATE AND AN INJUNCTION IS NECESSARY TO PRESERVE AND PROTECT THE ESTATE**

130. The Lautenberg Defendants admit the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. The Lautenberg

Defendants deny knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

131. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

132. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

133. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

134. The Lautenberg Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph, which are unrelated to the claim against the Lautenberg Defendants and relate solely to certain co-defendants.

135. The Lautenberg Defendants deny the allegations in this paragraph.

136. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

137. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants

deny knowledge or information sufficient to admit or deny them.

138. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

**COUNT ONE  
DECLARATORY RELIEF**

139. The Lautenberg Defendants incorporate by reference the responses to paragraphs 1-138 as if fully set forth herein.

140. The Lautenberg Defendants admit that this is the relief sought, but deny the Trustee's entitlement thereto.

a. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

b. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

141. The allegations in this paragraph state a legal conclusion to which no answer is required. The Lautenberg Defendants also deny that their action against Peter Madoff involves or seeks control over the Debtor's property.

**COUNT TWO**  
**PRELIMINARY INJUNCTIVE RELIEF**

142. The Lautenberg Defendants incorporate by reference the responses to paragraphs 1-141 as if fully set forth herein.

143. The Lautenberg Defendants admit that this is the relief sought, but deny the Trustee's entitlement thereto.

a. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

b. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

c. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

d. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

e. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent

the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

f. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

g. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

h. The Lautenberg Defendants deny the allegations in this paragraph insofar as they relate to the Lautenberg Defendants' action against Peter Madoff. To the extent the allegations in this paragraph relate to the actions of co-defendants, the Lautenberg Defendants deny knowledge or information sufficient to admit or deny them.

144. The Lautenberg Defendants admit that this is the relief sought by the Plaintiff, but deny the Plaintiff's entitlement thereto.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The Adversary Complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or in part, by the equitable doctrines of waiver, equitable estoppel, and/or laches.

**THIRD AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or in part, by the doctrines of acquiescence and consent.

**FOURTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or in part, by the doctrine of inconsistent positions.

**FIFTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or in part, by judicial estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred, either in whole or part, because the Trustee's claims are premature.

**EIGHTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because the Trustee does not have standing to pursue the claims being asserted by the Lautenberg Plaintiffs against Peter Madoff.

**NINTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because the claims asserted by the Lautenberg Plaintiffs are not property of the Estate.

**TENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because none of the claims being asserted by the Lautenberg Plaintiffs are based upon a fraudulent transfer theory.

**ELEVENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because there is no basis to find that all of Peter Madoff's assets are customer property under 15 U.S.C. § 78fff-2(c)(3).

**TWELFTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because there is no basis to find that all of Peter Madoff's assets are proceeds of customer property under 15 U.S.C. § 78lll(4).

**THIRTEENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because the Trustee is not entitled to priority over the Lautenberg Plaintiffs' claims.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because the Trustee cannot establish a likelihood of success on the merits.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The relief sought in the Adversary Complaint is barred because the Trustee cannot establish irreparable harm.

**PRAYER FOR RELIEF**

WHEREFORE the Lautenberg Defendants respectfully request that all relief requested by the Trustee be denied.

Dated: July 15, 2010

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