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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,

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
and those they purport to represent;
NEVILLE SEYMOUR DAVIS, on behalf of
himself and those he purports to

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. _____

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.

COMPLAINT

Irving H. Picard, Esq., as trustee (the “Trustee”) for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and Bernard L. Madoff (“Madoff”), by and through his undersigned counsel, for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. The Trustee commences this adversary proceeding to prevent certain third party plaintiffs, whose names appears in the caption above (collectively, the “Third Party Plaintiffs”), from undermining this Court’s continuing jurisdiction over the estate of BLMIS and its customers’ property. By commencing actions against Ruth Madoff, Peter Madoff, Mark Madoff, Andrew Madoff and Shana Madoff (collectively, the “Madoff Defendants”) in various jurisdictions (“Third Party Actions”), the Third Party Plaintiffs have violated the automatic stay provisions of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), section 78eee(b)(2)(B) of SIPA and the other stay orders issued in connection with these proceedings (the “Stay Orders”), threaten the orderly administration of the BLMIS estate and

seek to diminish the pool of assets from which the Trustee must make equitable and *pro rata* distributions to the victims of Madoff's fraud.

2. By protecting this Court's jurisdiction over the administration of the BLMIS estate, the Trustee seeks to ensure that customer property is distributed to the victims of Madoff's massive Ponzi scheme in a fair and efficient manner consistent with SIPA and the Bankruptcy Code.

3. In early December 2008, BLMIS generated statements for its approximately 4,900 customer accounts. When added together, these statements purported to show that clients of BLMIS had approximately \$64.8 billion invested with BLMIS. In reality, BLMIS only had assets on hand worth a small fraction of that amount. On March 12, 2009, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]" (Plea Hr'g Tr. At 23:14-17) and pled guilty to an 11 count criminal information filed against him. On June 29, 2009, Madoff was sentenced to serve 150 years in federal prison for his crimes.

4. The Trustee, pursuant to his duties under SIPA, is working to locate, marshal and preserve customer property to maximize recovery for all of BLMIS' defrauded customers. Part of this recovery process involves identifying those individuals and entities who received avoidable transfers from BLMIS and attempting to recover these funds for the statutory *pro rata* distribution to all customers.

5. The Trustee has commenced adversary proceedings against the Madoff Defendants in this Court (the "Trustee's Madoff Actions"), seeking to recover nearly \$200 million that the Madoff Defendants received in fraudulent and unauthorized transfers from BLMIS, which money belongs to BLMIS and its defrauded customers.

6. The Third Party Actions threaten to thwart the Trustee's efforts, as the Third Party Plaintiffs seek to recover fictitious profits and avoidable transfers for themselves directly from the Madoff Defendants, instead of more appropriately through the equitable distribution process in the SIPA proceeding. To allow the Third Party Actions to proceed would frustrate the claims administration process established by this Court, allowing those who filed their own separate lawsuits to potentially recover more than other customers, while at the same time, usurping the Trustee's authority and divesting him of his power to marshal customer property for equitable distribution. The Third Party Actions must be enjoined, as the Third Party Plaintiffs' conduct is an affront to this Court's jurisdiction and willfully disregards the automatic stay provisions of the Bankruptcy Code, SIPA and the Stay Orders.¹

7. Accordingly, the Trustee respectfully requests that the Court: (i) declare that, as against the Madoff Defendants, the Third Party Actions violate the automatic stay and the Stay Orders and are void *ab initio*; and (ii) issue an injunction prohibiting the Third Party Plaintiffs from pursuing the Third Party Actions as against the Madoff Defendants, or any other actions as against the Madoff Defendants, and prohibiting discovery against the Trustee in connection with the Third Party Actions, until such time as the Trustee has completed the actions he has commenced against the Madoff Defendants.

JURISDICTION AND VENUE

8. This is an adversary proceeding brought in this Court—the Court in which the main underlying SIPA proceeding, No. 08-01789 (BRL) (Substantively Consolidated) is pending. The SIPA proceeding is a combined proceeding with the Securities and Exchange Commission (the "SEC") and was originally brought in the United States District Court for the

¹ As identified in paragraph 15, *infra*.

Southern District of New York as *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 prior to its removal to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and sections 78eee(b)(2)(A) and (b)(4) of SIPA.

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

10. Venue in this district is proper under 28 U.S.C. § 1409.

11. The Third Party Plaintiffs have availed themselves of this Court's jurisdiction by commencing actions seeking to recover customer property. The Third Party Plaintiffs, their claims and their actions are detailed further herein.

BACKGROUND, THE TRUSTEE AND STANDING

12. On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents and criminally charged with a multi-billion dollar securities fraud scheme in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. 240.10b-5 in the United States District Court for the Southern District of New York (the "District Court"), captioned *United States v. Madoff*, No. 08 MAG 2735.² Contemporaneously, the SEC filed a complaint in the District Court against, among others, Madoff and BLMIS (Case No. 09-CV-10791) The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment advisor activities of BLMIS.

13. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of SIPC. Thereafter, pursuant to section 78eee(a)(4)(B) of SIPA, SIPC filed an application in the District Court alleging, *inter*

² On March 10, 2009, the criminal case was transferred to Judge Denny Chin in the District Court and was assigned a new docket number, No. 09 CR 213 (DC).

alia, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA.

14. Also on December 15, 2008, the District Court granted the SIPC application and entered a Protective Decree, which was consented to by BLMIS. The Decree, in pertinent part: (i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA; (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and (iii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

15. In an order entered on December 15, 2008, the District Court entered an order declaring that “all persons and entities are stayed, enjoined and restrained from directly or indirectly . . . interfering with any assets or property owned, controlled or in the possession of [BLMIS].” *SEC v. Bernard L. Madoff*, 08-CIV-10791 (LLS), Dkt. No. 4 ¶ IV (reinforcing automatic stay); *see also* Order on Consent Imposing Preliminary Injunction Freezing, Assets and Granting Other Relief Against Defendants, Dec. 18, 2008, Dkt. No. 8 at ¶ IX (“no creditor or claimant against [BLMIS], or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the control, possession or management of the assets subject to the receivership.”); Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief, Feb. 9, 2009, Dkt. No. 18 at ¶ IV (incorporating and making the December 18, 2008 stay order permanent). (These orders are collectively referred to as the Stay Orders.)

16. By orders dated December 23, 2008 and February 4, 2009, respectively, this Court approved the Trustee’s bond and found that the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.

17. On March 12, 2009, Madoff pled guilty to an 11-count criminal information. At the Plea Hearing, Madoff admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS].” See *United States v. Madoff*, No. 09 CR 213 (DC), Docket No. 57, Plea Hr’g Tr. at 23:14–17.

18. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff, and on June 9, 2009, this Court entered an order substantively consolidating the Chapter 7 estate of Madoff into the SIPA Proceeding.

19. Appointed under SIPA, the Trustee is charged with recovering and distributing customer property to BLMIS’s customers, assessing claims, and liquidating any other assets of the firm for the benefit of the estate and its creditors. Consistent with his duties, the Trustee is marshalling BLMIS’s assets, and is well underway in that process.

20. The assets recovered, however, will not be sufficient to reimburse the customers of BLMIS for the billions of dollars that they invested with BLMIS over the years. Consequently, the Trustee must use his authority under SIPA and the Bankruptcy Code to pursue recovery from, among others, those who enabled the Ponzi scheme to operate. Absent these recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of 15 U.S.C. § 78fff-2(c)(1).

21. Pursuant to section 78fff-1(a) of SIPA, the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code. Chapters 1, 3, 5 and subchapters I and II of chapter 7 of the Bankruptcy Code are applicable to this case, to the extent consistent with SIPA.

22. In addition to the powers of bankruptcy trustee, the Trustee has broader powers granted by SIPA pursuant to 15 U.S.C. §§ 78aaa *et seq.*

23. The Trustee is a real party in interest and has standing to bring these claims pursuant to 15 U.S.C. § 78fff-1 and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

a. The Third Party Plaintiffs request relief that will affect “customer property” as defined in 15 U.S.C. § 78lll(4).

b. The Third Party Plaintiffs request relief that may affect the distribution of customer property and the orderly administration of the estate.

c. BLMIS’s customers could be injured in the absence of the Trustee’s filing of this Complaint.

d. The Trustee will not be able to fully satisfy all claims.

THE FRAUDULENT PONZI SCHEME

24. Madoff founded BLMIS in 1960. Until his arrest, Madoff was the sole member and chairman of BLMIS. BLMIS had its principal place of business in New York and engaged in three primary types of business: market making, proprietary trading, and investment advisory services. BLMIS was registered with the SEC as a broker-dealer and then registered in 2006 as an investment adviser. Pursuant to its registration as a broker-dealer, BLMIS was a member of SIPC.

25. Madoff solicited billions of dollars under false pretenses and failed to invest investors’ money as promised. Instead, he deposited investors’ money in a bank account at J.P. Morgan Chase Manhattan Bank. *See* Madoff Allocation at p. 1. Madoff represented to clients and prospective clients that he would invest their money in shares of common stock, options and other securities and would, at their request, return profit and principal. *See id.* As the world is now aware, virtually no securities were purchased by Madoff for his customers.

26. By early December 2008, BLMIS generated statements for its approximately 4,900 active customer accounts. When added together, these statements erroneously showed that the customers of BLMIS had approximately \$64.8 billion invested with BLMIS. In reality, BLMIS had assets on hand worth only a small fraction of that amount. Madoff's massive Ponzi scheme imploded and came to an end on December 11, 2008, the date on which he was arrested.

THE COURT-ORDERED CLAIMS ADMINISTRATION PROCESS

27. The Trustee sought and obtained a Court order to implement a customer claims process in accordance with SIPA.

28. Pursuant to an application of the Trustee dated December 21, 2008 (Dkt. No. 8), this Court entered the Claims Procedures Order (Dkt. No. 12), which directed, among other things, that on or before January 9, 2009: (a) a notice of the commencement of this SIPA Proceeding be published; (b) a notice of the liquidation proceeding and claims procedure be given to persons who appear to have been customers of BLMIS; and (c) notice of the liquidation proceeding and a claim form be mailed to all known general creditors of BLMIS.

29. More than 16,000 potential customers, general creditor and broker-dealer claimants were included in the mailing of the notice.

30. Under the Claims Procedures Order, claimants were directed to mail their claims to the Trustee. All customers and creditors were notified of the mandatory statutory bar date for filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the "Bar Date"). The Trustee also provided several reminder notices.³

³ On May 21, 2009, the Trustee mailed a reminder notice to customers who had not yet filed a claim that the statutory bar date was July 2, 2009. On June 22, 2009, the Trustee mailed a final bar date reminder notice (the "Final Reminder Notice") to 7,766 known past and present customers of BLMIS from whom a claim had not yet been received. In addition, the Trustee posted the Final Reminder Notice on the Trustee's website.

31. By the Bar Date, the Trustee had received 16,239 customer claims.

THE TRUSTEE'S ACTIONS AGAINST THE MADOFF DEFENDANTS

32. On July 29, 2009, the Trustee commenced his action against Ruth Madoff, *Picard v. Ruth Madoff*, Adv. Pro. No. 09-1391 (BRL) in this Court, alleging that, although not an employee of BLMIS, she received tens of millions of dollars from BLMIS for no legitimate business purpose or corresponding benefit to BLMIS, and to which she had no good faith basis to believe she was entitled. (Ruth Madoff Cmplt ¶¶ 2, 42.) (Dkt. No. 1.)

33. The Complaint is seeking the return from Ruth Madoff of more than \$44 million of BLMIS customer property under SIPA §§ 78fff(b), 78fff-1(a), and 78fff-2(c)(3), §§ 105(a), 502(d), 541, 542, 544, 548(a), 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. § 270 *et seq.*), and New York common law. The Trustee's common law claims sound in conversion and unjust enrichment, and the Trustee seeks the imposition of a constructive trust, an accounting, and compensatory and punitive damages. (*Id.* ¶¶ 104-123.)

34. On October 2, 2009, the Trustee commenced an action against Peter Madoff, Andrew Madoff, Mark Madoff and Shana Madoff, *Picard v. Madoff*, Adv. Pro. No. 08-01789 (BRL) alleging, *inter alia*, that, as senior executives of BLMIS, they had a duty to protect BLMIS and its customers from acts of mismanagement, and that they were derelict in their duties. (Trustee's Madoff Complaint ¶¶ 2, 28, 33, 51.) (Dkt. No. 1.)

35. The Trustee's Madoff Complaint alleges that at the same time they disregarded their regulatory and compliance duties, the four Madoff Defendants collectively received almost \$200 million of BLMIS customer funds. (*Id.* ¶ 4.)

36. With respect to Peter Madoff and Shana Madoff, the Trustee’s Madoff Complaint alleges that they, who were both responsible for “monitoring BLMIS’s operation and ensuring its compliance with federal securities laws and regulations and corresponding FINRA rules and regulations,” completely failed to discharge their duties. (*Id.* ¶¶ 37, 43, 44.)

37. The Trustee’s Madoff Complaint further alleges that Mark Madoff and Andrew Madoff either knew or should have known that serious violations of the securities laws were taking place in the businesses under their supervision and control, and that they either deliberately ignored or failed to detect and stop these violations. (*See id.* ¶¶ 47-49.) These businesses included not only BLMIS, but also Madoff Securities International Limited (“MSIL”), of which both Mark and Andrew Madoff were co-directors and controllers. (*Id.* at ¶¶ 7-8.)

38. The Trustee’s Madoff Complaint seeks the return from the named Madoff Defendants of nearly \$200 million of BLMIS customer property under SIPA §§ 78fff(b), 78fff-1(a), 78fff-2(c)(3), sections 105(a), 502(d), 541, 542, 544, 548(a), 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act, and New York common law. The Trustee’s Madoff Complaint also seeks compensatory and punitive damages for breach of fiduciary duty, conversion, unjust enrichment, negligence, and seeks the imposition of a constructive trust and an accounting. (*Id.* ¶¶ 176-214.)

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

39. There are currently 12 Third Party Actions pending against the Madoff Defendants that the Trustee seeks in this action to enjoin.

40. Each of the Third Party Actions is duplicative or derivative of the Trustee’s complaints against the Madoff Defendants.

41. Each of the Third Party Plaintiffs in all 12 Third Party Actions purports to be a customer or other creditor of BLMIS, or a so-called BLMIS feeder fund.

42. As is true of the Trustee's claims against the Madoff Defendants, all of the claims made in the Third Party Actions are based, , on the Madoff Defendants' conduct in their roles at BLMIS, as described below. The Third Party Plaintiffs do not allege any other, independent conduct by the Madoff Defendants.

43. Each of the Third Party Actions seeks customer property in the guise of damages.

42. Three of the Third Party Actions are against Madoff Defendants only, while the remaining nine actions name other defendants as well. At this time, the Trustee seeks an injunction only as to the Madoff Defendants, not other defendants. The Trustee's investigation is ongoing, and he reserves the right to seek injunctive and other relief with respect to other defendants.

THE THIRD PARTY ACTIONS

(1) Currently Active Third Party Actions

43. The following six Third Party Actions are currently active: *The Lautenberg Foundation v. Madoff*, Case No. 09-cv-00816 (D.N.J.); *Stahl v. Madoff*, Index No. 601862/2009 (Sup. Ct. N.Y. Co.); *Abend v. Madoff*, Index No. 601861/2009 (Sup. Ct. N.Y. Co.); *Erausqin v. Notz, Stucki Management (Bermuda) Limited*, Case No. 09-cv-07846 (S.D.N.Y.); *In re Herald, Primeo and Thema Funds Securities Litig.*, Case Nos. 09-cv-0289/09-cv-2558 (S.D.N.Y.); and *Chavez v. Picard*, Case No. 09-mc-0006 (N.D. Tex.).

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

44. All of the plaintiffs in the Lautenberg action have availed themselves of the claims procedures described above and have filed claims with the Trustee.

45. Each of the plaintiffs' allowed claims has been partially satisfied with funds advanced by SIPC, following the execution of assignments and releases.

46. Thus, the Lautenberg Plaintiffs (as defined below) are actively participating in the BLMIS liquidation and have submitted themselves to the jurisdiction of the Bankruptcy Court as BLMIS claimants, as evidenced by the filing of their customer claims.

47. On or about February 24, 2009, the Lautenberg Foundation, Joshua S. Lautenberg and Ellen Lautenberg (collectively, the "Lautenberg Plaintiffs") commenced an action against Peter Madoff in the District Court for the District of New Jersey (the "Lautenberg Action").

48. The Lautenberg Plaintiffs allege violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78 and SEC Rule 10b-5, 17 C.F.R., § 240, 10b-5, breach of fiduciary duty, negligent misrepresentation, negligence, liability under Section 20(a) of the Exchange Act and aiding and abetting breach of fiduciary duty against Peter Madoff. (Lautenberg Cmplt at ¶¶ 35-62.)

49. The Lautenberg Plaintiffs seek compensatory, consequential and punitive damages, attorneys' fees and other expenses and interest. (*Id.* at pp. 22-23.) They estimate their loss at a minimum to be \$8,992,000. (*Id.* ¶ 23.)

50. The Lautenberg Plaintiffs allege nothing other than pieces of what the Trustee alleges in his Madoff Complaint—that Peter Madoff knew or should have known of the Ponzi scheme and ignored obvious "red flags" and acquiesced in BLMIS's false representations. (*See, e.g., id.*, ¶¶ 31-34, 38.) There is absolutely no conduct alleged other than what the Trustee alleges.

51. The damages sought by the Lautenberg Plaintiffs are thus based entirely on their investment through BLMIS—nothing more, and are entirely duplicative of the Trustee’s allegations.

(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. Both Richard Stahl (“Mr. Stahl”) and Reed Abend (“Mr. Abend”) are former BLMIS employees who worked for the firm’s proprietary trading operations.

53. Both have availed themselves of the claims procedures described above and have filed claims in the BLMIS liquidation proceeding for deferred compensation and back pay.

54. Both claims are still being investigated by the Trustee.

55. Thus, Mr. Stahl and Mr. Abend are actively participating in the BLMIS liquidation and have submitted themselves to the jurisdiction of the Bankruptcy Court as BLMIS claimants, as evidenced by the filing of their customer claims.

56. Notably, among the damages these plaintiffs seek in their state court actions are damages in the exact dollar amounts specified in their creditor claims filed with the Trustee.

57. On or about June 10, 2009, Mr. Stahl and Mr. Abend, represented by the same counsel, filed separate actions in the Supreme Court of the State of New York, against Mark Madoff and Andrew Madoff, seeking the same recovery of deferred compensation and back pay that they seek as creditors of the estate.

58. Mr. Stahl seeks approximately \$1,300,000 in compensatory damages and Mr. Abend seeks \$475,000 in compensatory damages. (Stahl Cmplt ¶¶ 26, 36, 41, p. 9; Abend Cmplt ¶¶ 25, 35, 40, pp. 8-9.)

59. Their causes of action sound in fraud, fraudulent omission and failure to pay wages under New York Labor Law. (*Id.*, ¶¶ 31-47 and 30-46, respectively.)

60. The Stahl and Abend Complaints allege, in essence, that Mark and Andrew Madoff knew or should have known about their father's Ponzi scheme; that they never told BLMIS's employees about it or misrepresented the legitimacy of the Investment Advisory ("IA") business to BLMIS employees, including Stahl and Abend, in order to "perpetuate their father's lawless conduct" and induce the employees to continue to work for the "legitimate" arm of BLMIS. (Stahl Cmplt 7, 22-24); Abend Cmplt 7, 21-23)

61. The Stahl and Abend Complaints further allege that, in connection with the May *Barron's* article entitled "Don't Ask, Don't Tell," where the author questioned Madoff's consistent returns, "the Madoff Sons told the employees of the Trading Business—including Plaintiff—that the suspicions raised by the article were not true. The Madoff Sons went on to state falsely that Madoff's investment advisory business was completely legitimate." (Stahl Cmplt ¶¶ 22, 23; Abend Cmplt ¶¶ 21, 22.)

62. These alleged statements mimic misrepresentations made by Bernard Madoff, including in another May 2001 article, that the IA business was legitimate.

63. Mr. Stahl's and Mr. Abend's claims are based on the same operative facts as the claims by the Trustee, and the conduct alleged is inextricably linked to the Ponzi scheme. Moreover, they seek money from Andrew Madoff and Mark Madoff that they should be seeking—and are seeking—from the BLMIS estate. They allege no injury independent of the Ponzi scheme.

64. Discovery has commenced in both cases. Counsel for Mr. Stahl and Mr. Abend were scheduled to depose Mark Madoff and Andrew Madoff during the week of May 17, 2010, although those depositions now appear to have been delayed.

65. The parties also seek the Trustee's deposition and documents. The document requests to the Trustee are exceedingly broad and onerous. For example, Mr. Stahl seeks: "[a]ll communications sent by the Madoff Sons," "[a]ll documents and communications relating or referring to the legality of BMIS;" "[a]ll documents and communications relating or referring to the roles(s) of the Madoff Sons in the London office of BMIS;" and "[a]ll documents provided by the Madoff Sons to SIPC." Subpoena Duces Tecum, Subpoena Ad Testificandum, *Stahl v. Madoff*, Nos. 2,6,15,18. Meanwhile, Mark Madoff and Andrew Madoff seek, for example: "[a]ll documents concerning the operations of the Investment Advisory Business at BLMIS" and "[a]ll documents concerning Bernard Madoff's Ponzi scheme." Subpoena Duces Tecum, *Abend v. Madoff, Stahl v. Madoff*, Nos. 3 and 8.

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

66. The plaintiffs in this putative class action allege that they were investors in Plaza Investments International Limited ("Plaza Fund"), a feeder fund which invested in BLMIS.

67. Plaza Fund filed a customer claim with the Trustee, which has not yet been determined by the Trustee.

68. On or about September 11, 2009, Matias Erausquin, Enrique Erausquin, Liliana Controne and Yolanda Frischknecht (collectively, the "Erausquin Plaintiffs") commenced a putative class action in the Southern District of New York (the "Erausquin Action") on behalf of themselves and all others similarly situated, against among others, Peter Madoff, Andrew Madoff and Mark Madoff.

69. The Erausquin Plaintiffs allege that the three Madoff defendants, among others, "were active and knowing participants in the fraud." (Erausquin Cmpl't ¶ 101.), that obvious red flags should have alerted the defendants of the BLMIS fraud, (*Id.*, ¶¶ 47-56), and that plaintiffs

have suffered damages as a “direct and proximate result of [defendants’] failure to fulfill their duties.” (*Id.*, ¶ 6.)

70. The Erausquin Plaintiffs seek to certify a class, defined as “all persons or entities who owned shares of the Plaza Fund as of December 10, 2008 and were damaged thereby.” (*Id.*, ¶ 7.)

71. Their claims against the named Madoff Defendants are for unjust enrichment and aiding and abetting breach of fiduciary duty, and plaintiffs seek preliminary and permanent injunctive relief, and the imposition of a constructive trust, compensatory, consequential, general and punitive damages, disgorgement and restitution, attorneys’ fees and costs, and interest.

72. The Erausquin complaint against the named Madoff Defendants is based on the same operative facts as those alleged in the Trustee’s Madoff Complaint, and the Erausquin Plaintiffs allege no conduct that is separate or independent from the Madoff Defendants’ roles at BLMIS.

**(d) *In re Herald, Primeo and Thema Funds Securities Litigation,*
Case Nos. 09-cv-0289/09-cv-2558 (S.D.N.Y.)**

73. Neville Seymour Davis (“Mr. Davis”), the named plaintiff, alleges that he was an investor in Thema International Fund plc (“Thema Fund”), a feeder fund that invested in BLMIS

74. On June 26, 2009, Mr. Davis filed a customer claim with the Trustee. The claim was denied as Mr. Davis had no customer account at BLMIS.

75. On July 2, 2009, Thema Fund filed customer claims with the Trustee, which have not yet been determined by the Trustee.

76. On February 11, 2010, a few months after the Trustee filed his Madoff Complaint, Mr. Davis filed an Amended Class Action Complaint in the Southern District of New York on behalf of himself and all persons and entities who either owned shares of Thema Fund on

December 10, 2008, or purchased shares of Thema between January 12, 2004 and December 14, 2008, inclusive.

77. The Amended Complaint includes claims against Peter Madoff, Andrew Madoff and Mark Madoff for aiding and abetting breach of fiduciary duty, “aiding and abetting gross negligence and negligence” and unjust enrichment. (Davis Cmplt ¶ 577-89.)

78. The Amended Complaint alleges that the named Madoff Defendants knew of the Ponzi scheme and that they “actively participated in perpetrating [it].” (*Id.*, ¶¶ 54-56, 273, 276). Mr. Davis bases these allegations on the Madoff family defendants’ unique knowledge of BLMIS, the “red flags” they were surrounded with on a daily basis, their senior positions at BLMIS and relationships with Madoff. (*Id.* ¶¶ 273-275.)

79. Mr. Davis also alleges, paralleling similar allegations in the Trustee’s Madoff Complaint, that the Madoff Defendants “failed to develop and implement effective internal controls that, had they been implemented, would have prevented Plaintiff’s losses.” (*Id.*, ¶ 276.) Through this conduct, the Madoff family members are alleged to have “substantially assisted the other Defendants’ mismanagement and wrongful conduct . . . causing enormous losses to Plaintiff and the Class.” (*Id.*, ¶ 277.)

80. Mr. Davis seeks, on behalf of himself and the purported class, damages of principal initially invested in Thema, interest and profits that would have been otherwise been earned and punitive damages, and attorneys’ fees and costs.

81. Mr. Davis’s claims against Peter Madoff, Andrew Madoff and Mark Madoff are based on the same operative facts underlying the action filed against them by the Trustee and no independent conduct is alleged.

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

82. On February 17, 2009, Emilio Chavez, Jr. (“Mr. Chavez”), an inmate at a Texas correctional facility, filed a customer claim with the Trustee. The Trustee has been unable to link Chavez’ claim to any account at BLMIS.

83. By filing a customer claim, Mr. Chavez is actively participating in the BLMIS liquidation and has submitted himself to the jurisdiction of the Bankruptcy Court as a BLMIS claimant.

84. On or about March 5, 2009, Chavez commenced an action in the District Court for the Northern District of Texas (the “Chavez Action”), on behalf of fourteen entities against, among others, Peter Madoff, Shana Madoff and Andrew Madoff.

85. The Chavez Action alleges violations of the Securities Act of 1933 § 12, 15 U.S.C. § 77, the Exchange Act § 10(b), 15 U.S.C. § 78(b), 17 CFR § 240.10b-5, the Hobbs Act, the Racketeer Influenced and Corrupt Organizations Act, breach of implied contract and fiduciary duties, fraud, misrepresentation, deceptive trade practice, misappropriation of funds, theft, bad faith, mismanagement, deception and extortion.

86. Mr. Chavez alleges that he opened several accounts, that he was misled into believing his investments were bona fide, and that he was issued worthless bonds and non-registered securities to mask the Ponzi Scheme (Chavez Cmplt pp. 6-7). He alleges that, as a result, more than \$750 million was “diverted from the true purchase of securities into a criminal enterprise” and that he suffered losses and damages in excess of that amount. (*Id.* p. 7).

87. No specific allegations are made against the named Madoff Defendants, and no facts are alleged that would distinguish Chavez from any other purported victim of the Madoff Ponzi scheme.

2. Currently Stayed Third Party Actions

88. In addition to the six active Third Party Actions described above, there are also six Actions that have been temporarily stayed for which the Trustee also seeks injunctive relief: *Retirement Program for Employees of the Town of Fairfield v. Bernard L. Madoff*, Case No. cv-09-5011561-5 (Conn. Super. Ct.); *Wexler v. KPMG*, Index No. 101615/2009 (Sup. Ct. N.Y. Co.); *Ryan v. Friehling & Horowitz, P.C.*, Index No. 101616/2009 (Sup. Ct. N.Y. Co.); *Greenberg v. Friehling & Horowitz, P.C.*, Index No. 650633/2009 (Sup. Ct. N.Y. Co.); *McBride v. KPMG Int'l*, Index No. 650632/2009 (Sup. Ct. N.Y. Co.); and *FLB Foundation, Ltd. v. BLMIS*, Index No. 101615/2009 (Sup. Ct. N.Y. Co.).

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

89. On March 2, 2009, Retirement Program For Employees of the Town of Fairfield and Retirement Program for Police Officers and Firemen of the Town of Fairfield (the “Retirement Programs”) filed a customer claim with the Trustee.⁴

90. The claim was denied as the Retirement Programs did not have customer accounts at BLMIS.

91. The Retirement Programs allege in their Complaint that they were investors in Maxam Absolute Return Fund, L.P. (“Maxam Fund”), a feeder fund that invested in BLMIS. (Retirement Programs Cmplt ¶ 59-62.)

92. On March 2, 2009, Maxam Fund filed a customer claim with the Trustee, which has not yet been determined by the Trustee.

⁴ The Town of Fairfield, also a plaintiff in the action, did not file a claim. However, its claim is derivative of the Retirement Programs.

93. On March 30, 2009, the Retirement Programs and the Town of Fairfield (the “Fairfield Plaintiffs”) commenced an action in the Superior Court of Connecticut (the “Fairfield Action”) against, among others, Peter Madoff, Ruth Madoff, Mark Madoff, and Andrew Madoff.

94. With respect to Peter Madoff, the Fairfield Plaintiffs allege that he “intentionally utilized his management authority at BLMIS...to help further defendants’ criminal scheme” and “either knew or willfully refused to know that [Madoff] and the Feeder Fund Defendants were operating an illegal investment services operation...[,]” (*Id.*, ¶¶ 73-74.)

95. The Fairfield Plaintiffs’ claims against Peter Madoff are for statutory theft and aiding and abetting theft. (*Id.*, Fifth Count ¶ 81.)

96. The other Madoff Defendants are alleged to have received fraudulent transfers from Madoff and BLMIS. (*Id.*, 18th Count ¶¶ 90-97; 19th Count ¶¶ 87-91; 20th Count; 21st Count.) The claims against the other Madoff Defendants are for unjust enrichment and avoidance of fraudulent conveyance. (*Id.*)

97. The Fairfield Plaintiffs seek to “to recover the multi-million dollar losses the Town’s retirement plans have sustained as a result of defendants’ wrongful participation in the notorious fraudulent investment scheme perpetrated by [Madoff].” (*Id.* p. 1.)

98. The Fairfield Plaintiffs thus seek, as to the named Madoff Defendants, the same relief sought by the Trustee--the avoidance of fraudulent and preferential transfers and conveyances made from BLMIS and Madoff to the Madoff Defendants.

(b) The Cotchett Law Firm Actions

99. The following four actions were filed in New York County by the law firm of Cotchett, Pitre & McCarthy (the “Cotchett Law Firm Actions”). Two complaints were filed after the Trustee filed his Madoff Complaint, while the remaining two were amended after that action

was filed. As discussed further below, each complaint, as currently filed or amended, contains substantively the same factual allegations and each is based on the same operative facts as the Trustee's Madoff Complaint.

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

100. Jay Wexler filed a customer claim with the Trustee. However, since Wexler had no customer account with BLMIS, his claim was denied.

101. Mr. Wexler alleges that he was an investor in Rye Select Broad Market Prime Fund, L.P. ("Rye Fund"), which itself invested in the Tremont Fund, a BLMIS customer.

102. The Rye Fund has filed two customer claims, which have not yet been determined by the Trustee.

103. The action brought by Mr. Wexler, both individually and derivatively on behalf of the Rye Fund, was filed on February 5, 2009 (the "Wexler Action") against, among others Mark Madoff, Andrew Madoff and Peter Madoff.

104. The complaint was amended on October 20, 2009, adding defendants and causes of action against the named Madoff Defendants. As discussed below, the allegations in the Amended Wexler Complaint are substantially similar to those in the other Cotchett Law Firm Actions and allege no conduct independent of the Trustee's Madoff Complaint.

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

105. Daniel Ryan filed customer claims with the Trustee. Neither claim has been determined.

106. Theresa Ryan filed four customer claims with the Trustee, including one for the Lawrence J. Ryan By-Pass Trust (the "Ryan Trust"). Two claims have yet to be determined

The others have been allowed and fully satisfied with funds advanced by SIPC, following the execution of releases.

107. Ms. Ryan has filed a claims objection with respect to one of her claims.

108. Daniel Ryan and Theresa Ryan, individually and on behalf of the Ryan Trust (the “Ryan Plaintiffs”), commenced their action on February 5, 2009 (the “Ryan Action”) against, among others, Andrew Madoff, Mark Madoff and Peter Madoff. The Complaint was amended on October 22, 2009.

109. As discussed below, the allegations in the Amended Ryan Complaint are substantially similar to those in the other Cotchett Law Firm actions and allege no conduct independent of the Trustee’s Madoff Complaint.

Greenberg v. Friehling & Horowitz, P.C., et al., Index No. 650633/2009 (Sup. Ct. N.Y. Co.)

110. Matthew Greenberg filed customer claims with the Trustee and his allowed claim was partially satisfied by the Trustee with funds advanced by SIPC, following the execution of a release.

111. Walter Greenberg filed a customer claim with the Trustee and his allowed claim was partially satisfied by the Trustee with funds advanced by SIPC, following the execution of a release.

112. Doris Greenberg filed a customer claim with the Trustee and her allowed claim was partially satisfied by the Trustee with funds advanced by SIPC, following the execution of a release.

113. On February 20, 2009, Ms. Greenberg also filed a claim on behalf of the estate of Leon Greenberg (the “Estate”), for which she is the executor. The Estate’s allowed claim was

partially satisfied by the Trustee with funds advanced by SIPC, following the execution of a release.

114. Matthew Greenberg, Walter Greenberg, Doris Greenberg and the Estate, holders of investment accounts at BLMIS (the “Greenberg Plaintiffs”) commenced their action on October 22, 2009 against, among others, Andrew Madoff, Mark Madoff, and Peter Madoff. As discussed below, the allegations in the Greenberg Complaint are substantially similar to those in the other Cotchett Law Firm Actions and allege no conduct independent of the Trustee’s Madoff Complaint.

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

115. Donna M. McBride, who alleges that she was a member of Beacon Associates LLC II (“Beacon Fund”), filed two customer claims with the Trustee. Both claims were denied, as Ms. McBride had no customer account at BLMIS

116. Beacon Fund appears to be a subsidiary fund of Beacon Associates LLC, which did file a claim with the Trustee. Beacon Associates LLC’s claim has not yet been determined by the Trustee.

117. On October 22, 2009, Donna M. McBride, individually and derivatively on behalf of Beacon Fund commenced an action against among others, Peter Madoff Andrew Madoff and Mark Madoff.

The Cotchett Law Firm Complaints

118. The plaintiffs in the Cotchett Law Firm Actions described above all allege that Peter Madoff, Mark Madoff and Andrew Madoff had actual knowledge of the fraud based on their roles and responsibilities at BLMIS and MSIL and their knowledge of the indications of

fraud. (Wexler Cmplt ¶ 412; Ryan Cmplt ¶ 322; Greenberg Cmplt. ¶ 315; McBride Cmplt ¶ 342.)

119. They further allege that Peter Madoff, Mark Madoff and Andrew Madoff used BLMIS for their personal use, receiving loans and millions of dollars for personal expenses, including vacations, cars and home purchases. (Wexler Cmplt ¶ 300; Ryan Cmplt ¶ 227; Greenberg Cmplt ¶ 224; McBride Cmplt ¶ 241.)

120. The allegations regarding the nature of the misuse of BLMIS funds were not included in the original complaints filed by Wexler and the Ryan Plaintiffs, appearing only in the amended complaints filed after the Trustee filed the Trustee's Madoff Complaint and mimicking the Trustee's allegations.

121. The plaintiffs in the Cotchett Law Firm Actions bring claims against the Madoff Defendants for, across all complaints, aiding and abetting fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, aiding and abetting fraud in the inducement, conversion and unjust enrichment.

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

122. FLB Foundation, Ltd. ("FLB") filed a customer claim with the Trustee.

123. FLB's claim was denied as the FLB customer account was overdrawn, or in a negative net equity position.

124. On or about February 18, 2009, FLB commenced an action in the Supreme Court of the State of New York, Queens County, which was subsequently transferred to New York County.

125. On August 11, 2009, FLB filed an amended complaint, against, among others, Ruth Madoff, Mark Madoff, Andrew Madoff, Shana Madoff and Peter Madoff.

126. In its Amended Complaint, FLB alleges that the FLB defendants conspired with each other to unlawfully take \$50 billion and withheld information regarding how funds were being maintained (FLB Am. Cmplt ¶¶ 26-27.)

127. The FLB Amended Complaint does little more than list the positions of the Madoff Defendants at BLMIS.

128. In response to motions to dismiss filed by the relevant Madoff Defendants, FLB filed an affirmation in opposition to these motions, which mimics the Trustee's Madoff Complaint, and contains little else.

129. FLB brings causes of action against the Madoff Defendants for conspiracy to hinder, delay and defraud, false representation, wrongful appropriation of funds, negligence, and unjust enrichment and seeks damages.

**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, Stahl, Abend, Erausquin, Herald and Chavez actions are each active and currently pending in their respective courts. In addition, the Stahl and Abend Plaintiffs have, as discussed above, served burdensome discovery requests on the Trustee.

131. The remaining six actions have been temporarily stayed, but have not yet been finally discontinued.

132. The Fairfield Action was dismissed as against the Madoff Defendants pursuant to the defendants' motion, but the dismissal was appealed by the Fairfield Plaintiffs on May 3, 2010.

133. The four Cotchett Law Firm Actions have been stayed pending the resolution of motions to dismiss filed by certain non-Madoff defendants in the various actions.

134. The FLB Action was consolidated with the consolidated Wexler Action on October 1, 2009. It therefore has been stayed along with the Wexler Action. The Madoff Defendants have each filed motions to dismiss the FLB Action that are being held in abeyance while the action is stayed.

135. Both the Trustee and the Third Party Plaintiffs allege that the Madoff Defendants owe them money damages for losses related to Madoff's fraud. The Third Party Actions thus are duplicative or derivative of the Trustee's Madoff Actions.

136. Each of the Third Party Actions is an attempt by the Third Party Plaintiffs to satisfy claims relating to their investments in, or dealings with, BLMIS or its feeder funds by circumventing the claims determination and allowance process, of which all of the Third Party Plaintiffs are either direct or indirect participants.

137. The Third Party Plaintiffs seek to take for themselves funds that otherwise would be recoverable by the Trustee and equitably distributed to customers of BLMIS in accordance with this Court's March 1, 2010 Net Equity Decision and March 8, 2010 Net Equity Order.

138. The Third Party Actions all seek to tap into the same pool of money as the Trustee, and the "damages" sought by the Third Party Plaintiffs are nothing more than what they seek as customers, purported customers, or creditors of the estate.

**COUNT ONE
DECLARATORY RELIEF**

139. The Trustee incorporates by reference the allegations contained in paragraphs 1–138 of this Complaint as if fully realleged herein.

140. The Trustee seeks a declaration that the Third Party Actions violate the automatic stay provisions under 11 U.S.C. § 362(a), 15 U.S.C. § 78eee(b)(2)(B) and the Stay

Orders and are therefore void *ab initio*. This declaratory relief is warranted for, without limitation, the following reasons:

a. By seeking to recover damages from the Madoff Defendants, the Third Party Actions improperly contravene the claims administration process in the SIPA proceeding and side-step the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

b. Additionally, the Third Party Actions improperly seek recover on a claim against debtors in violation of 11 U.S.C. § 362(a)(1) and seek to obtain possession of debtor property in direct violation of 11 U.S.C. § 362(a)(3), 15 U.S.C. § 78eee(b)(2)(B) and the Stay Orders.

141. The Court has authority pursuant to sections 105(a) and 362(a) of the Bankruptcy Code to issue declaratory relief because this controversy is actual and justiciable, and the Court has jurisdiction over matters affecting BLMIS property and the effective and equitable administration of the debtors' estate.

COUNT TWO PRELIMINARY INJUNCTIVE RELIEF

142. The Trustee incorporates by reference the allegations contained in paragraphs 1–141 of this Complaint as if fully realleged herein.

143. The Trustee seeks an Order that any further prosecution of the Third Party Actions be enjoined pursuant to section 105(a) of the Bankruptcy Code, made relevant to these proceedings by section 78fff(b) of SIPA, pending the completion of the Trustee's Madoff Actions. Specifically, the Trustee requests that this Court enjoin the prosecution of the Third Party Actions for, without limitation, the following reasons:

a. The Third Party Actions improperly infringe on the jurisdiction of this Court. The issues in the Third Party Actions arise out of the Ponzi scheme and the BLMIS liquidation proceedings, and any funds recovered in those actions have a strong likelihood of consisting of customer property, recoverable by the Trustee pursuant to section 78fff-2(c)(3) of SIPA. As such, the proper forum for the litigation of issues raised in the Third Party Actions is this Court.

b. To the extent that Third Party Plaintiffs are successful in the Third Party Actions, section 78fff-2(c)(1)—which provides for the ratable distribution of customer property to customers—would be violated because the Third Party Plaintiffs would receive more than their proportionate share of customer property to the detriment of other similarly situated customers.

c. There is an inadequate remedy at law to protect and preserve the assets that constitute customer property. The Third Party Actions threaten the administration of the liquidation, and an injunction is necessary to preserve and protect customer property and the Trustee's efforts to gather and collect customer property for the benefit of the victims who have filed claims.

d. An injunction will prevent the substantial confusion of other investors and potential plaintiffs with respect to whether they must file separate actions to protect their interests.

e. An injunction will maximize judicial economy. Instead of having a court in another jurisdiction considering these issues, this Court, which is already familiar with the relevant facts, can most expeditiously resolve the issues raised in the Third Party Actions.

f. An injunction will avoid the possibility of inconsistent decisions and will ensure preservation of uniformity of decision.

g. An injunction will allow the Trustee to avoid appearing in the Third Party Actions and thus prevent the Trustee from incurring needless litigation costs.

h. The injunction will not harm the public interest, and, in fact, is in the best interest of BLMIS customers and the orderly administration of the claims administration process.

144. The Trustee believes that the injunction requested herein is necessary and appropriate to carry out his duties in accordance with the provisions of SIPA and the Bankruptcy Code and that any further prosecution of the Third Party Actions, prior to the completion of the Trustee's Madoff Actions, would seriously impair and potentially defeat this Court's ability to administer the BLMIS proceedings.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Third Party Plaintiffs:

i. declaring that the Third Party Actions violate the automatic stay provisions under 11 U.S.C. § 362(a) and section 78eee(b)(2)(B)(i) of SIPA and the Stay Orders and are therefore void *ab initio*;

ii. issuing a preliminary injunction, pursuant to section 105(a) of the Bankruptcy Code, prohibiting the Third Party Plaintiffs, and those acting in concert or participation with them, or on their behalf, from pursuing the Third Party Actions as against the Madoff Defendants, or any other actions as against the Madoff Defendants, and prohibiting the Third Party Plaintiffs from seeking discovery as against the Trustee, until such time as the Trustee has completed the actions he has commenced against the Madoff Defendants.; and

iii. granting the Trustee such other relief as the Court deems just and proper.

Dated: New York, New York
May 27, 2010

/s/ David J. Sheehan
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