

**IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL  
CIRCUIT, IN AND FOR BROWARD  
COUNTY, FLORIDA**

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. CASE NO.: 12-24051 (07)  
Pension Trust, Carone Family Trust, Carone Marital COMPLEX LITIGATION UNIT  
Trust #1 UTD 1/26/00 and Matthew D. Carone  
Revocable Trust, JAMES JORDAN, as Trustee for  
the James A. Jordan Living Trust, ELAINE ZIFFER,  
as individual, and FESTUS AND HELEN STACY  
FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendants.

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**CONSERVATOR'S MOTION FOR CONTEMPT AGAINST  
HELEN D. CHAITMAN**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), hereby files this Motion For Contempt Against Helen D. Chaitman ("Chaitman") for violating this Court's January 17, 2013 Order Appointing Conservator (the "Conservator Order"), Order Authorizing the Conservator to File a Claim with the Madoff Victim Fund (the "MVF Order"), and the Stipulation entered into before the Court at the February 7, 2014 Status Conference (the "Stipulation"), and in support thereof states as follows:

Summary of Argument

At one time, Chaitman appeared to be the Partnerships' white knight who negotiated allowed claims with the Madoff Trustee. For her services, Chaitman and Becker and Poliakoff, LLP ("B&P") received approximately \$150 thousand from the Partnerships after the appointment of the Conservator.

Recently, Chaitman's actions have caused confusion and have costs the estate significant resources (both time and money). Among other things, Chaitman served a burdensome subpoena on the Conservator and has sent misleading correspondence directly to the partners.

Further, Chaitman is actively interfering with the Conservator's advancement of claims with the Madoff Victims Fund. Chaitman commenced an aggressive email campaign to partners soliciting business and discouraging cooperation with the Conservator.

Such actions violate the Conservator Order, MVF Order, and the Stipulation. The Conservator Estate ought not be burdened with the expense in defending against such tactics. Particularly from the Partnerships' former attorneys.

#### Background & Argument

1. On January 17, 2013, this Court entered an *Order Appointing Conservator* (the "Conservator Order"). The Conservator is empowered to "do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property." (Conservator Order at 5).

2. To aid the Conservator in his efforts, the Conservator Order states, among other things "all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator ...." (Conservator Order at 5-6).

#### *Chaitman and B&P Received approximately \$150 Thousand in Legal Fees from the Partnerships*

3. On April 1, 2013, the Conservator filed the *Conservator's Fee Report* (the "Fee Report"). Among other things, the Fee Report advised the Court that Chaitman and B&P served as counsel for the Partnerships in the BLMIS Liquidation<sup>1</sup> which resulted in the Partnerships being

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<sup>1</sup> After the discovery of the Madoff Ponzi Scheme, a liquidation proceeding was commenced in the Southern District of New York to liquidate Bernard L. Madoff Investment Securities LLC ("BLMIS") pursuant to the Securities Investment Act ("SIPA") (the "BLMIS Liquidation").

granted an allowed claim. The Fee Report sought authority to pay B&P \$150,383.32 (the “Legal Fees”) for such efforts.

4. On April 24, 2013, the Court granted the Fee Report in part and authorized the Conservator to distribute Legal Fees to B&P (the “Fee Order”). Thereafter, the Legal Fees were distributed to B&P in accordance with the Fee Order.

5. On or about November 18, 2013, it was published that a fund was being established for the direct and indirect victims of the Madoff Ponzi, the Madoff Victim Fund (the “MVF”).

6. On December 12, 2013, the Court entered the MVF Order which authorized the Conservator to, among other things, file a claim with MVF on behalf of the partners and members of the Partnerships, Guardian Angel Trust, LLC, and SPJ Investments, Ltd. and to take any steps necessary to accomplish the same. (MVF Order at ¶1).

7. In accordance with the MVF Order, the Conservator and his team have worked diligently to complete the MVF’s extensive claim form for each investor considered to be a “net loser” in the Madoff Ponzi scheme<sup>2</sup> by the initial February 28, 2014 claim deadline.<sup>3</sup>

### The Subpoena

8. On January 13, 2014, Chaitman sent a demand letter to the Conservator (the “Chaitman Letter”).<sup>4</sup> Among other things, the Chaitman Letter demanded the Conservator to

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<sup>2</sup> An investor is considered to be a “net loser” if the investor deposited, directly or indirectly, more money into Bernard L. Madoff Investment Securities, LLC (“BLMIS”) than the investor withdrew. Investors who withdrew more money from BLMIS than they deposited are not “net losers” and are not eligible to recover from the MVF. See MVF Frequently Asked Questions, Q5, available at: <http://www.madoffvictimfund.com/FAQ.shtml>.

<sup>3</sup> On February 21, 2014, the MVF announced extension of the claim deadline to April 30, 2014 (the “MVF Deadline”).

<sup>4</sup> Attached hereto as **Exhibit “A”** is a copy of the Chaitman Letter.

provide her with extensive information to file claims with MVF for approximately 92 partners of the Partnerships (including “net winners”).

9. On January 14, 2014, counsel for the Conservator responded to the Chaitman Letter. Counsel informed Chaitman that the Conservator obtained Court authority to file claims for “net loser” investors and provided her with a copy of the MVF Order. (“Conservator’s Response”).<sup>5</sup> Counsel assured Chaitman that MVF claims would be filed before the deadline.

10. On January 15, 2014, Chaitman served the Conservator with a subpoena (the “Subpoena”)<sup>6</sup> issued from the U. S. Bankruptcy Court for the Southern District of New York (the “N.Y. BK Court”) which oversees Madoff related litigation (the “Madoff Lawsuit”). The Conservator is not a party to the Madoff Lawsuit.

11. Among other things, the Subpoena requests that the Conservator provide:

- a. “All documents relating in any way to the Contributions or Distributions of any of the Claimants from” the Partnerships, Guardian Angel Trust, LLC, and SPJ Investments, Ltd. “from the inception of their relationship to present.” *See* Subpoena Request Nos. 1-4.
- b. “All communications relating in any way to any of the Claimants, including but not limited to communications between S&P and BLMIS.” *See* Subpoena Request No. 5.

12. The Subpoena requests documents which are not required to file a MVF claim.

13. The Conservator sought the advice of counsel licensed in New York: Friedman, Kaplan, Seiler & Adelman, LLP (“Friedman”) to respond to the N.Y. Subpoena.<sup>7</sup>

14. On January 29, 2014, Friedman sent a letter to Chaitman (the “Friedman Letter”).<sup>8</sup> The Friedman Letter advised that the Conservator would provide “a copy of the Partnerships’ Petition

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<sup>5</sup> Attached hereto as **Exhibit “B”** is a copy of the Conservator’s Response.

<sup>6</sup> A copy of the Subpoena is attached hereto as **Exhibit “C”**.

<sup>7</sup> On February 5, 2014, the Conservator filed a motion to retain and compensate Friedman for their services.

Form PV, along with all the supporting documentation pertaining to eligible Claimants” before February 28<sup>th</sup>.

15. On February 5, 2014, Chaitman sent Friedman a letter in which she threatens to file a motion for contempt against the Conservator (the “Contempt Letter”).<sup>9</sup> In the Contempt Letter, Chaitman acknowledges that the MVF claims are not before the N.Y. BK Court. For the first time, Chaitman claimed that the documents are responsive and related to the Madoff Lawsuit. Chaitman is purportedly attempting to establish that the partners without direct accounts with BLMIS are “customers” under the Securities Investments Protection Act (“SIPA”).<sup>10</sup> Pursuing such litigation depletes the Madoff estate through administrative expense. This reduces the funds available for partners Chaitman claims to represent.

16. On February 7, 2014, the Court held a status conference (the “Status Conference”). Among the items on the Status Conference agenda, were the Subpoena and the Friedman Application.

17. At the Status Conference, the Court directed Conservator’s counsel to contact B&P so that a representative would be present. Thereafter, Kevin Markow (“Markow”) appeared for B&P.

18. At the Status Conference, Markow and counsel for the Conservator entered into a Stipulation on the record. The Stipulation provided that the Subpoena is resolved and the Conservator will provide the Table I of the PV form for the MVF claim by March 10, 2014. Under the Stipulation, the Conservator produces fewer documents, at a later date, than demanded by the Subpoena.

19. After the Status Conference, counsel for the Conservator requested that Chaitman withdraw the Subpoena. Chaitman refused. To date, the Subpoena has not been withdrawn.

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<sup>8</sup> A copy of the Friedman Letter is attached hereto as **Exhibit “D”**.

<sup>9</sup> A copy of the Contempt Letter is attached hereto as **Exhibit “E”**.

<sup>10</sup> Such cause appears meritless in light of *In re Bernard L. Madoff Inv. Sec. LLC*, 708 F.3d 422 (2d Cir.2013) (finding that individuals who invested in feeder funds were not “customers” under SIPA). However, Chaitman is not afraid of advancing arguments which “border[] on the frivolous.” *In re Madoff*, 848 F. Supp. 2d 469, 488 (S.D.N.Y. 2012).

20. The Subpoena is superfluous as a result of the Stipulation. Accordingly, Chaitman's refusal to withdraw the Subpoena violates the MVF Order and Stipulation.

21. The Conservator is concerned that Chaitman's refusal to withdraw the Subpoena reflects her intent to advance the same. Such concern is based on certain contradictory representations Chaitman has made with respect to her document requests. In all events, the Conservator will perform as the Stipulation requires.

22. As discussed below, Chaitman has engaged in a misleading email campaign to solicit the partners' business and to interfere with the Conservator's performance of his duties.

23. Chaitman should be directed to withdraw the Subpoena and pay costs associated with same. Disgorgement of a portion of the Legal Fee is appropriate for the costs caused to the Partnerships.

*Interference with Conservator's Administration*

24. On February 6, 2014, Chaitman emailed certain partners regarding MVF (the "MVF Email").<sup>11</sup> The MVF Email provides that she will file claims for the recipient. Further, it advises that **"Mr. Von Kahle should not be filing for you; the money should be paid directly to you as the customer."** (MVF Email) (emphasis added).

25. Such statements interfere with the Conservator's ability Court-authorized duties.

26. Moreover, Chaitman's interference has caused confusion between the partners about, among other things, where they need to send supporting documents. The Partnerships incurred additional expense in responding to such confusion.

27. The MVF Email was misleading and causes the estate to incur additional fees and costs. The MVF Email requests that the recipient sign and return the attached forms. Only the

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<sup>11</sup> The Notice of Filing Email from Helen Davis Chaitman Dated February 6, 2014 is attached hereto as **Exhibit "F"**.

signature page is attached for the *Notice of Representation* form. The MVF Email advises the recipient to execute the signature page and return same.

28. Chatman's MVF Email represents that distributions from MVF should be paid directly to the partner. However, the purposefully omitted first page of the *Notice of Representation*, provides:

Please be advised that if you authorize a Representative to act on your behalf, all communications from the MVF will be sent to your Representative and not to you. **Any check issued by MVF as payment of remission on your claim will be sent to your Representative**, but will be made payable to you.

(MVF Notice of Representation at p.1).<sup>12</sup>

29. Accordingly, it would be Chaitman, not the partner who would receive the partner's MVF check. Such result is contrary to Chaitman's representations. If Chaitman truly wanted the money from MVF to go directly to the partners, she would allow the Conservator to complete the MVF claim without interference. Under the Conservator's approach, the partners receive the MVF check directly.

30. Upon information and belief, Chaitman entered into engagement agreements with several partners in the wake of the Madoff Ponzi's discovery. These engagement agreements provide, among other things, that Chaitman and B&P will be entitled to 20% of any recovery from the Madoff Ponzi.<sup>13</sup> Chaitman may attempt to recover an additional fee from a MVF distribution. This is contrary to the MVF's goals.

### Conclusion

31. Chaitman was compensated for her prior efforts in representing the Partnerships. Chaitman ought not be permitted to interfere with the Conservator's duties by confusing (and misleading) partners.

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<sup>12</sup> A complete copy of the MVF Notice of Representation Form is attached hereto as **Exhibit "G"**.

<sup>13</sup> An example of such engagement agreement is attached hereto as **Exhibit "H"**.

32. Chaitman ought to be directed to withdraw the Subpoena and pay for the costs of approximately \$33,000 related to same. If necessary, this Court ought to compel Chaitman and B&P to disgorge a portion of the Legal Fee.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) finding Chaitman in contempt of court for willfully violating the Conservator Order, MVF Order and Stipulation; (ii) enjoining Chaitman from interfering with the Conservator's administration of the Conservatorship, (iii) requiring Chaitman to pay for the attorney's fees and costs associated with the Subpoena or in the alternative requiring Chaitman to disgorge such amount from the Legal Fees paid by the Partnerships; and (iv) any for such other and further relief as this Court deems reasonable and just.

Dated: March 4, 2014

MESSANA, P.A.  
Attorneys for Conservator  
401 East Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, FL 33301  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
By: /s/ Thomas M. Messana  
Thomas M. Messana, Esq.  
Florida Bar No. 991422  
Brett D. Lieberman, Esq.  
Florida Bar No. 69583



## **Exhibit A**

January 13, 2014

**By Email: philv@moecker.com**

Philip von Kahle  
Michael Moecker & Associates, Inc.  
3613 North 29th Avenue  
Hollywood, Florida 33020

**Re: S&P General Partnership / P&S General Partnership**

Dear Phil:

As you may recall, this firm represents individual investors in S&P and P&S who have "net loser" claims in the Bernard L. Madoff Investment Securities LLC liquidation. By February 28, 2014, we have to file claims on behalf of these investors in order for them to obtain some criminal restitution through a fund administered by the United States Department of Justice. *See generally* [madoffvictimfund.com](http://madoffvictimfund.com). I know that S&P and P&S maintained records of deposits and withdrawals for each investor. Would you be good enough to send to me, as quickly as possible, a list of the deposits and withdrawals for each of the investors on the enclosed list. The DOJ has specifically stated that it will accept such information from a fund conservator/administrator.

Thank you very much.

Yours sincerely,



Helen Davis Chaitman

HDC:leb

Encl.

**BECKER & POLIAKOFF LLP CLIENTS**

	<b>CLAIMANT NAME</b>	<b>BLMIS ACCOUNT HOLDER NAME</b>	<b>BLMIS ACCOUNT NO.</b>
1.	ABRAHAM & RITA NEWMAN	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
2.	ABRAHAM & SHIRLEY SALAND	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
3.	CARONE FAMILY TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
4.	CARONE GALLERY INC PENSION TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
5.	CARONE MARTIAL TRUST #1	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
6.	CARONE MARTIAL TRUST #2	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
7.	GERALD LOGIN	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
8.	HENRY C. & IRMGARD M. KOEHLER, TRUSTEES	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
9.	HOLY GHOST FATHERS - SW BRAZIL	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
10.	HOLY GHOST FATHERS OF IRELAND, INC.	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
11.	JAMES A. JORDAN LIVING TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
12.	JOYCE FORTE OR BRUCE CUMMINGS OR LYNN CUMMINGS	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
13.	MATTHEW D. CARONE REVOCABLE TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
14.	MYRA FRIEDMAN REVOCABLE TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
15.	PAROQUIA DE SANTA LUZIA C/O FR. JOHN FITZPATRICK	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
16.	ROBERT & SUZANNE PLATI	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
17.	SAM & EDITH ROSEN	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
18.	SUZANNE KING PLATI REVOCABLE TRUST	P & S ASSOCIATES GEN PTNRSHIP	1ZA873
19.	ADAM S. HOLLOWAY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
20.	ALICE B. LUEN REVOCABLE LIVING TRUST DATED 3/21/1994	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
21.	ALICIA N. HOLLOWAY REVOCABLE TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
22.	ANDREA KING	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
23.	ANN M. SULLIVAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
24.	ANN OR MICHAEL SULLIVAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
25.	BARBARA & BRUCE AYMES	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
26.	BETTE ANNE POWELL	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
27.	BRENDA J. CHAPMAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
28.	CHARLES M. ROWAN JR. IRA ACCOUNT	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
29.	CINDY WALICK	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
30.	CORINNE G. PLAYSO	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
31.	CRAIG SNYDER	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
32.	CRAIG SNYDER TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
33.	CRISTINA P. STROBEL TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
34.	DENSEL L. RAINES	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
35.	DIANE M. DEN BLEYKER	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
36.	DON G. HOLLOWAY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
37.	DONALD A & M CAROLYN DUNKLE	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
38.	DONNA JEAN ROWAN, IRA ACCOUNT	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
39.	DOROTHEA V. MAREMA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
40.	E. ANNE SANDERS	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
41.	EDITH PILLSBURY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
42.	EDWARD J STROBEL TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
43.	EDWARD M. JACOBS	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
44.	ELLEN W. SANDERS	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
45.	FERNANDO M. ESTEBAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
46.	FOX FAMILY PARTNERSHIP	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
47.	GEORGE & SYBIL WIRICK	S & P ASSOCIATES GEN PTNRSHIP	1ZA874

**BECKER & POLIAKOFF LLP CLIENTS**

	<b>CLAIMANT NAME</b>	<b>BLMIS ACCOUNT HOLDER NAME</b>	<b>BLMIS ACCOUNT NO.</b>
48.	GUARDIAN ANGEL TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
49.	GUARDIAN ANGEL TRUST., L.L.C.	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
50.	HARVEY L. POWELL	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
51.	IRWIN B. REED TRUST DTD 6/7/00	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
52.	JAMES ALLEN JORDAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
53.	JANE GRAY SOLOMON TRUST	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
54.	JEFFREY & JOAN POSSER	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
55.	JENNY JACOB, UGMA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
56.	JESS L. AND/OR ALICE B. TAYLOR	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
57.	KATHRYN BABCOCK	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
58.	KATHRYN L. BABCOCK	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
59.	LOUIS S. O'NEAL JR.	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
60.	LOUIS S., JR. OR DARLENE A. O'NEAL	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
61.	MARGARET E. KNOPF DE ESTEBAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
62.	MARK & KAREN NEWMAN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
63.	MARTHA S. GENNETT	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
64.	MARTHA S. GENNETT, IRA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
65.	MARTHA S. GENNETT, ROTH IRA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
66.	MARTIN L. BRAUN	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
67.	MARVIN F. LUEN, TRUSTEE	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
68.	MATTHEW F.V. JACOB	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
69.	MICHAEL F. JACOB	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
70.	MICHAEL J. PODWILL	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
71.	NATALE BARBARA TRUST F/B/O MARY BARBARA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
72.	PHILLIP A. & JOLENE O. HOCOTT	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
73.	PHILLIP A. HOCOTT LIVING TRUST, PHILLIP A. & JOLENE O. HOCOTT, TRUSTEES	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
74.	RICHARD P. & DORA F. LONG	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
75.	RICHARD P. LONG	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
76.	ROBERT & DOROTHY HENLEY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
77.	ROBERT R. & GAIL PODWILL	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
78.	SCOTT S. PATIENCE	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
79.	SCOTT W. HOLLOWAY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
80.	SPJ INVESTMENTS, LIMITED PARTNERSHIP	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
81.	SPJ INVESTMENTS, LTD.	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
82.	STANLEY & EMILIE LEONARDI	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
83.	SUSAN MICHAELSON TRUST DATED 2/8/05	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
84.	TRISHA NICHOLS	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
85.	WALICK FAMILY EDUCATIONAL TRUST C/O GREGG AND CINDY WALICK	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
86.	WALTER M. & BRENDA J. BUCKLEY	S & P ASSOCIATES GEN PTNRSHIP	1ZA874
87.	WALTER M. BUCKLEY IRA	S & P ASSOCIATES GEN PTNRSHIP	1ZA874

## **Exhibit B**

**MESSANA P.A.**

A Law Firm  
www.messana-law.com

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Thomas M. Messana  
tmessana@messana-law.com  
954-712-7415

Via electronic mail to:  
[hchaitman@becker-poliakoff.com](mailto:hchaitman@becker-poliakoff.com)

January 14, 2014

Helen Davis Chaitman, Esq.  
Becker & Poliakoff  
45 Broadway, 8th Floor  
New York, NY 10006

Re: H. Chaitman Letter Dated January 13, 2014 re: S&P General Partnership/P&S General Partnership.

Dear Ms. Chaitman:

We are in receipt of your letter dated January 13, 2014 regarding the Madoff Victim Fund (the "Letter"). As you may be aware, on January 17, 2013 the Court entered an order (the "Appointing Order"), appointing Philip Von Kahle as Conservator of P&S, General Partnership ("P&S") and S&P, General Partnership ("S&P") (together, the "Partnerships"). The undersigned represents the Conservator in this capacity.

Thank you for your continued attention to the Partnerships. Rest assured, the Conservator is advancing the Partnerships' interests. Among other things, the Conservator has sought and obtained Court authority to file claims with the Madoff Victim Fund (see attached *Order Authorizing the Conservator to File a Claim with the Madoff Victim Fund* date December 12, 2013). The Conservator has begun the process of preparing claims and will file same on behalf of the Partnerships' net losers.

To avoid duplication of efforts and burdening Special Master Breeden, the Madoff Victim Fund, and the Partnerships' estate, the Conservator is not providing the Partnerships' records requested in your Letter. Rather, as directed by the Court, the Conservator will file claims on behalf of the Partnerships' net losers with the Madoff Victim Fund.

If you have any questions, please feel free to contact me or Brett Lieberman, an attorney with my firm.

Sincerely,



Thomas M. Messana

TMM/eam  
Encls.  
cc: Philip Von Kahle

## **Exhibit C**

BECKER & POLIAKOFF LLP  
Helen Davis Chaitman (4266)  
45 Broadway  
New York, NY 10006  
(212) 599-3322  
[hchaitman@beckerny.com](mailto:hchaitman@beckerny.com)

*Attorneys for Claimants*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)


In re:

BERNARD L. MADOFF,

Debtor.

### **NOTICE OF SUBPOENA**

**PLEASE TAKE NOTICE**, pursuant to Federal Rules of Civil Procedure 45 as made applicable to these proceedings by Rule 9016 of the Federal Rules of Bankruptcy Procedure, that claimants Barbara & Bruce Aymes; Kathryn Babcock; Kathryn L. Babcock; Natale Barbara Trust F/B/O Mary Barbara; Martin L. Braun; Walter M. & Brenda J. Buckley; Walter M. Buckley IRA; Carone Family Trust; Carone Gallery Inc. Pension Trust; Carone Martial Trust #1;

  
492  
1-15-14  
100pm



Carone Martial Trust #2; Matthew D. Carone Revocable Trust; Brenda J. Chapman; Joyce Forte or Bruce Cummings or Lynn Cummings; Diane M. Den Bleyker; Donald A. & M. Carolyn Dunkle; Fernando M. Esteban; Margaret E. Knopf de Esteban; Fox Family Partnership; Myra Friedman Revocable Trust; Martha S. Gennett; Martha S. Gennett, IRA; Martha S. Gennett, Roth IRA; Guardian Angel Trust; Guardian Angel Trust., L.L.C.; Robert & Dorothy Henley; Phillip A. & Jolene O. Hocott; Phillip A. Hocott Living Trust, Phillip A. & Jolene O. Hocott, Trustees; Adam S. Holloway; Alicia N. Holloway Revocable Trust; Don G. Holloway; Scott W. Holloway; Holy Ghost Fathers - SW Brazil; Holy Ghost Fathers of Ireland, Inc.; Alice B. Iuen Revocable Living Trust Dated 3/21/1994; Marvin F. Iuen, Trustee; Jenny Jacob, UGMA; Matthew F.V. Jacob; Michael F. Jacob; Edward M. Jacobs; James A. Jordan Living Trust; James Allen Jordan; Andrea King; Henry C. & Irmgard M. Koehler, Trustees; Stanley & Emilie Leonardi; Gerald Login; Richard P. & Dora F. Long; Richard P. Long; Susan Michaelson Trust Dated 2/8/05; Dorothea V. Marema; Abraham & Rita Newman; Mark & Karen Newman; Trisha Nichols; Louis S. O'Neal Jr.; Louis S., Jr. or Darlene A. O'Neal; Paroquia De Santa Luzia c/o Fr. John Fitzpatrick; Scott S. Patience; Edith Pillsbury; Robert & Suzanne Plati; Suzanne King Plati Revocable Trust; Corinne G. Playso; Michael J. Podwill; Robert R. & Gail Podwill; Jeffrey & Joan Posser; Bette Anne Powell; Harvey L. Powell; Densel L. Raines; Irwin B. Reed Trust DTD 6/7/00; Sam & Edith Rosen; Donna Jean Rowan, IRA Account; Charles M. Rowan Jr. IRA Account; Abraham & Shirley Saland; E. Anne Sanders; Ellen W. Sanders; Craig Snyder; Craig Snyder Trust; Jane Gray Solomon Trust; SPJ Investments, Limited Partnership; SPJ Investments, LTD.; Cristina P. Strobel Trust; Edward J Strobel Trust; Ann M. Sullivan; Ann or Michael Sullivan; Jess L. and/or Alice B. Taylor; Wallick Family Educational Trust c/o Gregg and Cindy Wallick; Cindy Wallick; George & Sybil Wirick, through their undersigned counsel, will serve a

Subpoena in the form attached hereto, on Philip J. von Kahle, as conservator for S&P Associates, General Partnership, and P&S Associates, General Partnership, January 15, 2014, or as soon thereafter as service may be effectuated.

Dated: New York, New York  
January 15, 2014

Respectfully submitted,

BECKER & POLIAKOFF LLP

By /s/ Helen Davis Chaitman

45 Broadway

New York, NY 10006

(212) 599-3322

Hchaitman@bplegal.com

*Attorneys for Claimants*

UNITED STATES BANKRUPTCY COURT

Southern

District of New York

In re Bernard L. Madoff Investment Securities LLC,  
Debtor

(Complete if issued in an adversary proceeding)

Case No. 08-01789 (BRL)

Chapter SIPA Liquidation (Substantively Consolidated)

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT  
INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Philip J. von Kahle, conservator for S&P Associates, General Partnership and P&S Associates, General Partnership  
(Name of person to whom the subpoena is directed)  
c/o Michael Moeckler & Associates, Inc., 3613 North 29th Avenue, Hollywood, FL 33020

☒ Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Those documents identified on Addendum A to this Subpoena.

PLACE Becker & Poliakoff, P.A.  
1 East Broward Blvd., Suite 1800  
Fort Lauderdale, Florida 33301

DATE AND TIME  
January 31, 2014

☐ Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: January 15, 2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Claimants as defined in addendum A to this Subpoena, who issues or requests this subpoena, are: Helen Davis Chaitman, Esq., Becker & Poliakoff, 45 Broadway, 8th Fl, New York, New York 10006; HChaitman@beckerny.com; 212-599-3322

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

## ADDENDUM A

### DEFINITIONS AND INSTRUCTIONS

1. "Claimants" shall include:

Barbara & Bruce Aymes;  
Kathryn Babcock;  
Kathryn L. Babcock;  
Natale Barbara Trust F/B/O Mary Barbara;  
Martin L. Braun;  
Walter M. & Brenda J. Buckley;  
Walter M. Buckley IRA;  
Carone Family Trust;  
Carone Gallery Inc. Pension Trust;  
Carone Martial Trust #1;  
Carone Martial Trust #2;  
Matthew D. Carone Revocable Trust;  
Brenda J. Chapman;  
Joyce Forte or Bruce Cummings or Lynn Cummings;  
Diane M. Den Bleyker;  
Donald A. & M. Carolyn Dunkle;  
Fernando M. Esteban;  
Margaret E. Knopf de Esteban;  
Fox Family Partnership;  
Myra Friedman Revocable Trust;  
Martha S. Gennett;  
Martha S. Gennett, IRA;  
Martha S. Gennett, Roth IRA;  
Guardian Angel Trust;  
Guardian Angel Trust., L.L.C.;  
Robert & Dorothy Henley;  
Phillip A. & Jolene O. Hocott;  
Phillip A. Hocott Living Trust, Phillip A. & Jolene O. Hocott, Trustees;  
Adam S. Holloway;  
Alicia N. Holloway Revocable Trust;  
Don G. Holloway;  
Scott W. Holloway;  
Holy Ghost Fathers - SW Brazil;  
Holy Ghost Fathers of Ireland, Inc.;  
Alice B. Iuen Revocable Living Trust Dated 3/21/1994;  
Marvin F. Iuen, Trustee;  
Jenny Jacob, UGMA;  
Matthew F.V. Jacob;  
Michael F. Jacob;  
Edward M. Jacobs;

James A. Jordan Living Trust;  
 James Allen Jordan;  
 Andrea King;  
 Henry C. & Irmgard M. Koehler, Trustees;  
 Stanley & Emilie Leonardi;  
 Gerald Login;  
 Richard P. & Dora F. Long;  
 Richard P. Long;  
 Susan Michaelson Trust Dated 2/8/05;  
 Dorothea V. Marema;  
 Abraham & Rita Newman;  
 Mark & Karen Newman;  
 Trisha Nichols;  
 Louis S. O'Neal Jr.;  
 Louis S., Jr. or Darlene A. O'Neal;  
 Paroquia De Santa Luzia c/o Fr. John Fitzpatrick;  
 Scott S. Patience;  
 Edith Pillsbury;  
 Robert & Suzanne Plati;  
 Suzanne King Plati Revocable Trust;  
 Corinne G. Playso;  
 Michael J. Podwill;  
 Robert R. & Gail Podwill;  
 Jeffrey & Joan Posser;  
 Bette Anne Powell;  
 Harvey L. Powell;  
 Densel L. Raines;  
 Irwin B. Reed Trust DTD 6/7/00;  
 Sam & Edith Rosen;  
 Donna Jean Rowan, IRA Account;  
 Charles M. Rowan Jr. IRA Account;  
 Abraham & Shirley Saland;  
 E. Anne Sanders;  
 Ellen W. Sanders;  
 Craig Snyder;  
 Craig Snyder Trust;  
 Jane Gray Solomon Trust;  
 SPJ Investments, Limited Partnership;  
 SPJ Investments, LTD.;  
 Cristina P. Strobel Trust;  
 Edward J Strobel Trust;  
 Ann M. Sullivan;  
 Ann or Michael Sullivan;  
 Jess L. and/or Alice B. Taylor;  
 Wallick Family Educational Trust c/o Gregg and Cindy Wallick;  
 Cindy Wallick; and

George & Sybil Wirick;

including all affiliates, representatives, agents, employees, attorneys and/or persons acting or purporting to act on their behalf.

2. “S&P” means S & P Associates, General Partnership, the entity that held account number 1ZA874 at Bernard L. Madoff Investment Securities LLC (“BLMIS”) into which some of the Claimants invested, including its affiliates, representatives, agents, employees, attorneys and/or persons acting or purporting to act on its behalf.

3. “Guardian Angel” means Guardian Angel Trust, LLC, a Florida limited liability company, including its affiliates, representatives, agents, employees, attorneys and/or persons acting or purporting to act on its behalf. Guardian Angel was a general partner of S&P.

4. “SPJ” means SPJ Investments, LTD., a Florida limited partnership, including its affiliates, representatives, agents, employees, attorneys and/or persons acting or purporting to act on its behalf. SPJ was a general partner of S&P.

5. “P&S” means P & S Associates, General Partnership, the entity that held account number 1ZA873 at BLMIS into which some of the Claimants invested, including its affiliates, representatives, agents, employees, attorneys and/or persons acting or purporting to act on its behalf.

6. “Contribution” means deposit made with P&S, S&P, SPJ, or Guardian Angel for investment into BLMIS.

7. “Distribution” means withdrawal received from P&S, S&P, SPJ, or Guardian Angel in connection with BLMIS investments.

8. “Document” is used in its broadest sense and means any attempts to record or transmit information or knowledge and includes the original and all drafts of a writing, which

includes, without limitation, all written, recorded, digital, graphic or photographic matter, including electronically stored information (“ESI”), however produced, reproduced or stored, of every kind and description including any agenda, supplements, amendments, revisions, exhibits or appendices thereto, and includes, without limiting the generality of the foregoing, originals (or copies where originals are not available) and drafts of the following: all papers, emails, letters, notes, memoranda, pamphlets, correspondence, telegrams, cables, photographs, microfilm, prints, recordings, transcriptions, blueprints, drawings, books, accounts, objects, notes, electronic or magnetic recordings or sound recordings of any type of personal or telephone conversations or meetings or conferences, minutes of directors or committee meetings, other minutes, reports, studies, written forecasts, projects, analyses, contracts, licenses, agreements, ledgers, journals, books of account, vouchers, bank checks, invoices, charge slips, expense account reports, hotel charges, receipts, freight bills, working papers, drafts, statistical records, cost sheets, abstracts of bids, stenographers' notebooks, calendars, appointment books, telephone slips, wire transfer slips and logs, diaries, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing, however denominated by you.

9. “Related to” and “relating to” or any variation thereof shall be construed to include refer to, summarize, reflect, constitute, contain, embody, mention, show, comprise, evidence, discuss, describe, comment upon, concerning, regarding, alluding to, pertaining to, probative of, in connection with, dealing with, in respect of, about, involving, identifying, or proving.

10. “You” shall mean Philip J. von Kahle, as conservator for S&P and P&S, as well as any of your agents, accountants, attorneys, employees, servants, assigns, or any individual or entity acting or purporting to act on your behalf.

11. “And” and “or” shall be construed conjunctively or disjunctively, whichever makes this request more inclusive.

12. The singular number and masculine gender used within this document embraces and shall be read and applied as the plural or the feminine or neuter as circumstances make it appropriate.

13. To the extent not clarified above, these requests specifically include documents in electronic form, including emails and other Electronically Stored Information (“ESI”) which may or may not be reduced to hard copy in the normal course of business and which may be stored or archived on file servers, hard drives, hard or floppy disks or diskettes, backup tapes, or other storage media. ESI should be produced in an intelligible format or together with a sufficient description of the system or program from which each was derived to permit rendering the material intelligible.

14. Responsive documents shall be produced in electronic format.

15. In the event You object to the production of any document responsive to this request, as privileged or confidential, please state:

- a. the name of each author, writer, sender or initiator of the document, if any;
- b. the name of each recipient, addressee, or party for whom the document was intended or received, if any;
- c. the date of the document, if any, or an estimate thereof and so indicated as an estimate if no date appears on the document;
- d. a description of the general nature of the document and a description of the general subject matter as described in the document, or if no description appears, then sufficient other description to identify the document for a subpoena duces tecum, including the number of pages and attachments;
- e. the specific privilege or objection that you contend applies to the document (e.g., attorney-client privilege).



### REQUESTS

1. All documents relating in any way to the Contributions or Distributions of any of the Claimants from S&P from the inception of their relationship to the present.
2. All documents relating in any way to the Contributions or Distributions of any of the Claimants from Guardian Angel from the inception of their relationship to the present.
3. All documents relating in any way to the Contributions or Distributions of any of the Claimants from SPJ from the inception of their relationship to the present.
4. All documents relating in any way to the Contributions or Distributions of any of the Claimants from P&S from the inception of their relationship to the present.
5. All communications relating in any way to any of the Claimants, including but not limited to communications between S&P and BLMIS.

Dated: New York, New York  
January 15, 2014

Respectfully submitted,

BECKER & POLIAKOFF LLP  
By /s/ Helen Davis Chaitman  
45 Broadway  
New York, NY 10006  
(212) 599-3322  
Hchaitman@bplegal.com

*Attorneys for Claimants*

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

Title VI. Trials

Federal Rules of Civil Procedure Rule 45

Rule 45. Subpoena

Currentness

**(a) In General.**

**(1) Form and Contents.**

**(A) Requirements--In General.** Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action and its civil-action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(d) and (e).

**(B) Command to Attend a Deposition--Notice of the Recording Method.** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

**(C) Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.** A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

**(D) Command to Produce; Included Obligations.** A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

**(2) Issuing Court.** A subpoena must issue from the court where the action is pending.

(3) **Issued by Whom.** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

(4) **Notice to Other Parties Before Service.** If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

**(b) Service.**

(1) **By Whom and How; Tendering Fees.** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

(2) **Service in the United States.** A subpoena may be served at any place within the United States.

(3) **Service in a Foreign Country.** 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) **Proof of Service.** Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

**(c) Place of Compliance.**

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises--or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) *When Permitted.*** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) *Specifying Conditions as an Alternative.*** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) *Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

**(A) *Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) *Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) *Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

**(D) *Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery

from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(f) Transferring a Subpoena-Related Motion.** When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made.

**(g) Contempt.** The court for the district where compliance is required--and also, after a motion is transferred, the issuing court--may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**CREDIT(S)**

(Amended December 27, 1946, effective March 19, 1948; December 29, 1948, effective October 20, 1949; March 30, 1970, effective July 1, 1970; April 29, 1980, effective August 1, 1980; April 29, 1985, effective August 1, 1985; March 2, 1987, effective August 1, 1987; April 30, 1991, effective December 1, 1991; April 25, 2005, effective December 1, 2005; April 12, 2006, effective December 1, 2006; April 30, 2007, effective December 1, 2007; April 16, 2013, effective December 1, 2013.)

**PRACTICE COMMENTARIES**

*by David D. Siegel*

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C45-1.       Introductory.

## **Exhibit D**

**FRIEDMAN KAPLAN SEILER & ADELMAN LLP**

7 TIMES SQUARE

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PEARLINE M. HONG  
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JENNIFER A. MUSTES  
EMILY L. CHANG  
ANDREW M. ENGLANDER  
CHARLES E. ENLOE  
ALEXANDER D. LEVI  
ELIZABETH S. LOSEY  
SARAH F. FOLEY  
JAMUNA D. KELLEY  
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TANVIR VAHORA  
NORA BOJAR  
KEVIN J. LIN  
ANDREW C. KOSTIC

BRUCE S. KAPLAN  
EDWARD A. FRIEDMAN  
GARY D. FRIEDMAN  
BARRY A. ADELMAN  
ERIC SEILER  
ROBERT D. KAPLAN  
ANDREW W. GOLDWATER  
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MARY E. MULLIGAN  
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KENT K. ANKER  
AMY C. BROWN  
RICARDO SOLANO JR.  
JOHN N. ORSINI  
JEFFREY R. WANG  
JEFFREY C. FOURMAUX  
JASON C. RUBINSTEIN  
MICHAEL A. GORDON

January 29, 2014

BY E-MAIL & FEDEX

Helen Davis Chaitman, Esq.  
Becker & Poliakoff LLP  
45 Broadway  
New York, NY 10006

Re: Subpoena served in *SIPC v. Bernard L. Madoff Inv. Sec., LLC*,  
Adv. Proc. No. 08-1789 (SMB) (Bankr. S.D.N.Y.)

Dear Ms. Chaitman:

We represent Philip J. von Kahle, Conservator for S&P Associates General Partnership ("S&P") and P&S Associates General Partnership ("P&S") (the "Conservator"), in connection with the document subpoena served on the Conservator by counsel for Claimants in the above-referenced action (the "Action") on or about January 15, 2014 (the "Subpoena").<sup>1</sup> This letter serves as the Conservator's objections and responses to the Subpoena, pursuant to Rule 45(d)(2)(B) of the Federal Rules of Civil Procedure and Rule 9016 of the Federal Rules of Bankruptcy Procedure.

---

<sup>1</sup> Subject to and without waiving the Conservator's objection to the Subpoena's definition of "Claimants," as set forth below, this letter employs the Subpoena's definition of "Claimants" for ease of reference.



Helen Davis Chaitman, Esq.

- 2 -

January 29, 2014

I. **The Conservator's General Objections to the Subpoena**

The Conservator objects to the Subpoena on the ground that the issuing Court lacks subject matter jurisdiction to issue the Subpoena. The subject matter jurisdiction of the U.S. Bankruptcy Courts is limited to bankruptcy cases, "core" proceedings that arise under them, and "non-core" matters that are otherwise related to them. The Action does not involve the Madoff Victim Fund ("MVF"), MVF claim petitions are not "core" proceedings arising under the Action, and MVF claim petitions are not "non-core" matters that relate to the Action.

The Conservator objects to the Subpoena and its requests on the ground that they are vague, ambiguous, overly broad, oppressive, or fail to describe the requested documents and communications with reasonable particularity. The Conservator further objects to the Subpoena's requests insofar as they seek the production of "all" documents or communications, without date restriction, on the ground that such requests are overly broad and oppressive where particular documents or communications, particular groups of documents or communications, or a particular date range can be specified.

The Conservator objects to the Subpoena and its requests on the ground that they seek the production of documents or communications subject to or protected by any applicable statutory or common law privilege or immunity from discovery, including, without limitation, the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities. To the extent that any of the Subpoena's requests may be construed as seeking the disclosure of documents or communications subject to these privileges or immunities, the Conservator herein invokes such privileges and immunities.

The Conservator objects to the Subpoena and its requests on the ground that they seek the production of documents or communications that contain, reflect, refer, or relate to confidential or proprietary information; trade secrets; competitively sensitive business or financial information; or other private, sensitive, or confidential information.

The Conservator objects to the Subpoena, its definitions, and its requests on the ground that they call for the production of documents and communications that are not within his possession, custody, or control, or are in the possession, custody, or control of Claimants.

The Conservator objects to the Subpoena's requests on the ground that they are cumulative and/or duplicative of each other.

The Conservator objects to the Subpoena and its requests on the ground that they seek the production of documents or communications that are irrelevant or are not reasonably calculated to be of assistance to Claimants in their submission of claims to the MVF.

Helen Davis Chaitman, Esq.

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January 29, 2014

The Conservator objects to the Subpoena's definition of "Claimants" on the ground that it is vague, ambiguous, overly broad, unduly burdensome, encompasses irrelevant persons and entities, and refers to unknown persons and entities. The Conservator further objects to the Subpoena's definition of "Claimants" on the ground that it includes persons and entities who are considered, or encompass investors who are considered, to be "net winners" in the fraud related to Bernard L. Madoff Investment Securities, LLC ("BLMIS") and, accordingly, are ineligible to submit claims to the MVF.

The Conservator objects to the Subpoena's definitions of "S&P," "Guardian Angel," "SPJ," and "P&S" (collectively, the "Partnerships") on the ground that they are overly broad, unduly burdensome, encompass irrelevant persons and entities, and refer to unknown persons and entities.

The Conservator objects to the Subpoena's definition of "document" on the ground that it is vague, ambiguous, overly broad, and unduly burdensome. The Conservator further objects to the Subpoena's definition of "document" on the ground that it purports to impose obligations that are different, greater, or more burdensome than, or are inconsistent with, Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure, Rule 26.3 of the Local Civil Rules of the United States District Court for the Southern District of New York, and Rule 7026-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York.

The Conservator objects to the Subpoena's definition of "you" on the ground that it is overly broad, unduly burdensome, encompasses irrelevant persons and entities, refers to unknown persons and entities, and purports to require the Conservator to search for and produce documents and communications that are not within his possession, custody, or control.

The Conservator objects to Instruction 13, as well as the Subpoena's definition of "document," on the grounds that these provisions purport to include documents or communications, if any, maintained only in electronic or digital form on backup tapes, servers, or other similar archival media, and that it would be unduly burdensome for the Conservator to search for or produce such documents or communications.

The Conservator objects to Instruction 15 on the ground that it purports to impose obligations that are different, greater, or more burdensome than, or are inconsistent with, Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure and Rule 9016 of the Federal Rules of Bankruptcy Procedure.

## **II. Objections and Responses to the Specific Requests**

Subject to and without waiving the foregoing general objections, the Conservator objects and responds to the Subpoena's specific requests as follows.

Helen Davis Chaitman, Esq.

- 4 -

January 29, 2014

A. Request Nos. 1 through 4

The Conservator objects to Request Nos. 1 through 4 on the ground that any production made in response to these Requests would be unnecessary and superfluous. Specifically, we understand that Claimants' counsel made these Requests in order to obtain information for use in completing MVF claim forms for Claimants who were indirect investors in BLMIS.<sup>2</sup> However, as Claimant's counsel has already been advised, the Conservator was authorized by the Circuit Court of Broward County, Florida to submit claims to the MVF on behalf of the partners and members of the Partnerships, including eligible Claimants, and the Conservator has begun the process of preparing those claims.<sup>3</sup>

In accordance with instructions from the MVF, the Conservator will submit Petition Form PV on behalf of the Partnerships' investors, including all eligible Claimants, and will provide the necessary documentation to establish the relationship between the Partnerships and these investors and the actual investor net losses."<sup>4</sup> Although individual investors, including eligible Claimants, are required to submit certifications to the MVF as provided on Petition Form PV, the MVF specifically allows pooled investment vehicles, such as the Partnerships, to document their investors' investments and losses,<sup>5</sup> and the MVF will aggregate claim information for the same investor, whether submitted on Petition Form PV or Petition Form IND.<sup>6</sup> Therefore, aside from the Petition Form PV certification, the Conservator will supply the MVF with all of the materials in his possession needed to support eligible Claimants' MVF claims. There is no reason for Claimants to submit the same documentation in support of their Petition Form PV certifications that the Conservator has been authorized by court order to submit in support of any claims that Claimants may have. Further, the Conservator is providing the "net loser" partners and investors in the Partnerships, including eligible

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<sup>2</sup> See the January 14, 2014 e-mail from Helen Davis Chaitman to Thomas Zeichman, attached hereto as Exhibit A.

<sup>3</sup> See the January 14, 2014 letter from Thomas M. Messana to Helen Davis Chaitman, and the December 12, 2013 Order authorizing the Conservator to file a claim with the MVF on behalf of the partners and members of the Partnerships, attached hereto as Exhibits B and C, respectively.

<sup>4</sup> See MVF Petition Form PV, available at: [http://www.madoffvictimfund.com/MVF\\_Form\\_PV.pdf](http://www.madoffvictimfund.com/MVF_Form_PV.pdf). Pursuant to MVF instructions, this documentation may include "a copy of the partnership agreement, an operating agreement, an account opening document, an investment management agreement or a trust agreement[,] as well as "statements, wire transfer confirmations, cancelled checks, receipts, letters from fund administrators or investment advisors (on company letterhead), etc." *Id.*

<sup>5</sup> See MVF Frequently Asked Questions, Q11 and Q15, available at: <http://www.madoffvictimfund.com/FAQ.shtml>.

<sup>6</sup> See MVF Petition Form PV.

Helen Davis Chaitman, Esq.

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January 29, 2014

Claimants, with a certification and release which he can submit with the Partnerships' Petition Form PV.<sup>7</sup>

The Conservator further objects to Request Nos. 1 through 4 on the ground that they are vague, ambiguous, overly broad, and unduly burdensome. Specifically, Request Nos. 1 through 4 are overly broad because they encompass Claimants who are ineligible to submit claims to the MVF. Request Nos. 1 through 4 are unduly burdensome because certain documents responsive to these requests are likely to contain confidential and sensitive financial information pertaining to persons and entities other than Claimants. In order to safeguard the privacy of these persons and entities, any production of documents in response to Request Nos. 1 through 4 would entail substantial and laborious redactions. Requiring the Conservator to undertake the expense and effort to redact and produce such documents would be unnecessary and wasteful in light of the Conservator's preparation of a Petition Form PV on behalf of the Partnerships' investors, including eligible Claimants.

Subject to and without waiving the general and specific objections set forth above, the Conservator is willing to meet and confer with Claimant's counsel concerning the production of documents responsive to Request Nos. 1 through 4. Specifically, the Conservator is willing to produce to Claimants' counsel, prior to February 28, 2014, a copy of the Partnerships' Petition Form PV, along with all the supporting documentation pertaining to eligible Claimants. This production will provide eligible Claimants with all documents needed to support their Petition Form PV certifications, while minimizing the burden on the Conservator.

B. Request No. 5

The Conservator objects to Request No. 5 on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome, and that it seeks the production of documents that are not reasonably calculated to be of assistance to Claimants in their submission of claims to the MVF. Claimants do not require the communications called for by Request No. 5 in order to file individual claims with the MVF, particularly in light of the Conservator's willingness to produce to Claimants' counsel a copy of the Partnerships' Petition Form PV and the relevant supporting documentation for eligible Claimants. Additionally, searching for and producing these communications would be extremely burdensome on the Conservator, especially at a time when his efforts are best spent preparing the Petition Form PV on behalf of eligible Claimants, as well as the other partners and members of the Partnerships.

\* \* \*

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<sup>7</sup> See the January 29, 2014 letter from the Conservator to "net loser" Partnership investors and the attached certification and release, attached hereto as Exhibit D.

## **Exhibit E**

February 5, 2014

**BY EMAIL: sberman@fklaw.com**  
**& FEDERAL EXPRESS**

Scott M. Berman, Esq.  
Friedman Kaplan Seiler & Adelman LLP  
7 Times Square  
New York, New York 10036

**Re: Subpoena served in *SIPC v. Bernard L. Madoff Inv. Sec., LLC*.**  
**Adversary Proceeding No.: 08-01789 (SMB) (Bankr. S.D.N.Y.)**

Dear Mr. Berman:

We represent persons listed in Addendum A (the "Claimants") to the document subpoena served on Philip J. von Kahle (the "Conservator"), conservator for S&P Associates General Partnership ("S&P") and P&S Associates General Partnership ("P&S") (together with S&P, the "Partnerships"). We write in response to your January 29, 2014 letter objecting to the Subpoena.

Setting aside your boilerplate objections that provide no legal basis for the Conservator's failure to produce a single document responsive to the Subpoena, you object to the Subpoena on the sole basis that the Bankruptcy Court for the Southern District of New York, from where the Subpoena was issued, lacks subject matter jurisdiction to issue the Subpoena because the documents are sought in connection with the Claimants' pursuit of claims from the Madoff Victim Fund, which do not involve a "core" or "non-core" matter before the court.

While the Breeden claims are not before the issuing court, you ignore the fact that there is an active matter before the bankruptcy court to which the documents demanded in the Subpoena are relevant. The documents requested in the Subpoena are relevant to an active litigation between the Trustee for the Bernard L. Madoff Investments Securities, LLC ("BLMIS") and the Claimants as to whether the Claimants, as investors through a group account, are considered "customers" under the Securities Investor Protection Act ("SIPA") and thus entitled up to \$500,000 in SIPC insurance. The docu-

ments requested in the Subpoena are critical to the Claimants' ability to succeed on those claims and Mr. Von Kahle is taking a very dangerous position in refusing to cooperate in that discovery.

The documents requested in the Subpoena are called for in, and essential to, the Claimants' litigation of whether they are "customers" under SIPA and are entitled to receive SIPC insurance. If Mr. Von Kahle refuses to produce the documents by February 10, 2014, we will make a motion to hold him in contempt.

Yours sincerely,

A handwritten signature in cursive script that reads "Helen Davis Chaitman" followed by a stylized monogram or initials.

Helen Davis Chaitman

HDC:leb

## **Exhibit F**



IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)  
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.  
Pension Trust, Carone Family Trust, Carone Marital  
Trust #1 UTD 1/26/00 and Matthew D. Carone  
Revocable Trust, JAMES JORDAN, as Trustee for  
the James A. Jordan Living Trust, ELAINE ZIFFER,  
an individual, and FESTUS AND HELEN STACY  
FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

\_\_\_\_\_ /

**NOTICE OF FILING:**

**EMAIL FROM HELEN DAVIS CHAITMAN DATED FEBRUARY 6, 2014**

Philip J. Von Kahle, as Conservator for P&S, General Partnership and S&P, General  
Partnership, by and through counsel, hereby gives notice of filing the attached *Email from Helen  
Davis Chaitman Dated February 6, 2014* in the above-styled matter.

Respectfully submitted this February 6, 2014.

MESSANA, P.A.  
*Attorneys for Conservator*  
Post Office Drawer 2485  
Fort Lauderdale, FL 33303  
Telephone: 954-712-7400  
Facsimile: 954-712-7401  
e-mail: tmessana@messana-law.com

By: /s/ Thomas M. Messana  
Thomas M. Messana  
Florida Bar No. 991422

**From:** Carol Fox [REDACTED]  
**Sent:** Thursday, February 06, 2014 1:53 PM  
**To:** Chaitman, Helen Davis  
**Cc:** Gorchkova, Julie; [blanco@bplegal.com](mailto:blanco@bplegal.com); Kent Fox  
**Subject:** FW: In re Madoff, P&S / S&P - Breeden (MVF) claim & representation forms signature pages

Dear Ms. Chaitman,

Effective today, I wish to terminate our retainer agreement for cause I believe your conflict of interest with respect to your representation of the S&P General Partnership and my family as investors in the same extended far beyond the bounds of your disclosed representation of both net winners and net losers in the Madoff case. I have downloaded and completed the claim forms relating to the Madoff Victims Fund on behalf of the Fox Family Partnership and Barbara B. Fox, Trustee as indirect investors in BLMIS. The signature forms for direct investors will be provided to Mr. Von Kahle, the court-appointed Conservator of S&P General Partnership. To reiterate, you do not have the permission of the Fox Family Partnership or Barbara B. Fox, Trustee to represent us in this matter. At your earliest convenience, please provide me with any documents we may need to sign or prepare in order to formally terminate our relationship.

Thank you.

Best regards,

Carol Fox  
[REDACTED] (cell)

**From:** Carol Fox [REDACTED]  
**Sent:** Thursday, February 06, 2014 1:29 PM  
**To:** Carol Fox  
**Subject:** Fwd: In re Madoff, P&S / S&P - Breeden (MVF) claim & representation forms signature pages

Sent from my iPhone

Begin forwarded message:

**From:** "Chaitman, Helen Davis" <[hchaitman@bplegal.com](mailto:hchaitman@bplegal.com)>  
**Date:** February 6, 2014 at 12:46:11 PM EST  
**To:** "Chaitman, Helen Davis" <[hchaitman@bplegal.com](mailto:hchaitman@bplegal.com)>, "Gorchkova, Julie" <[JGorchkova@bplegal.com](mailto:JGorchkova@bplegal.com)>, "Blanco, Lourdes" <[blanco@bplegal.com](mailto:blanco@bplegal.com)>  
**Subject:** In re Madoff, P&S / S&P - Breeden (MVF) claim & representation forms signature pages

Dear Friends:

As a net loser, you may be entitled to receive money from the Madoff Victims Fund. I will be filing the claim forms for you as part of our retainer

agreement. There will be no additional charge for this. Please be good enough to print out, sign, and return to me by mail the attached claim signature form (page 12) and representation form (page 3). We will email you the claim form for your approval before we file it and we will attach your original signature pages. Mr. Von Kahle should not be filing for you; the money should be paid directly to you as the customer.

**Helen Davis Chaitman**

Attorney at Law

Becker & Poliakoff

45 Broadway, 8th Floor | New York, NY 10006

Tel: 212.599.3322 | Cell: 908.303.4568 | Fax: 212.557.0295

[E-Mail](#) | [Website](#)

## **Exhibit G**

# NOTICE OF REPRESENTATION

## MADOFF VICTIM FUND

Distribution Vehicle for Forfeited Assets

on behalf of the



## UNITED STATES DEPARTMENT OF JUSTICE

*All submissions to the Madoff Victim Fund will be considered only  
if they are verified under the penalty of perjury pursuant to 28 U.S.C. § 1746.*

If your Petition is submitted by an attorney, legal guardian or third party ("Representative"), you, as the claimant, are required to complete this Notice of Representation, authorizing your Representative to submit a Petition on your behalf and to represent you in all matters pertaining to your claim for a distribution from the Madoff Victim Fund ("MVF"). Verbal notifications of representation are not acceptable. Please be advised that if you authorize a Representative to act on your behalf, all communications from the MVF will be sent to your Representative and not to you. Any check issued by MVF as payment of remission on your claim will be sent to your Representative, but will be made payable to you.

**Please note:** You, as the claimant, must review the Petition in its entirety and sign the Certification and Release. Your Representative may not sign it for you.

### Authorization

The undersigned Petitioner has authorized the Representative designated below to file a Petition for remission against the MVF on their behalf and to represent them in all matters pertaining to the MVF.  
(Provide the name and contact information of your Representative)

Claimant's Name: \_\_\_\_\_ MVF Petition # (if known): \_\_\_\_\_

Claimant's Street Address: \_\_\_\_\_

City, State/Province, Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Representative Firm: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

### Acknowledgments and Representations

The undersigned acknowledges and represents under penalty of perjury that:

1. I have reviewed the Petition in full. The Petition is truthful and accurate in all respects.
2. In the event I discharge my Representative, I understand that I am obligated to provide the MVF written notice revoking or terminating this Notice of Representation.
3. By executing this Notice of Representation, I am instructing MVF to accept all representations and information provided by my Representative and to otherwise permit my Representative to exercise the authority granted by the undersigned Petitioner under this Notice of Representation. I acknowledge that MVF shall incur no liability to me or any third party for doing so.

4. Petitioner hereby releases and fully discharges, and consents and agrees that it shall make no claim of any kind or nature whatsoever against any person in connection with the administration and distribution of the MVF, including the U.S. Department of Justice, U.S. Attorney's Office, Special Master and their respective employees and agents, for their reliance on this Notice of Representation.

**Each of the undersigned declares under penalty of perjury under the laws of the United States of America (and the applicable laws of any other jurisdiction) on information and belief that the statements made in this Notice of Representation are true and correct.**

Executed on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in  
(Month) (Year)  
\_\_\_\_\_  
(City, State, Country)

#### Individuals

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Type or print name of Petitioner

\_\_\_\_\_  
Signature of Joint Petitioner (if any)

\_\_\_\_\_  
Type/print name of Joint Petitioner (if any)

\_\_\_\_\_  
Capacity of persons signing above  
(i.e., Underlying Investor, Executor, POA, etc.)

#### Corporations, Partnerships, Other Entities

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Type/print name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Entity

\_\_\_\_\_  
Capacity of persons signing above  
(i.e., President, Managing Partner, Trustee, etc.)

## **Exhibit H**



ADMINISTRATIVE OFFICE  
3111 STIRLING ROAD  
FORT LAUDERDALE, FL 33312  
954-987-7550

WWW.BECKER-POLIAKOFF.COM  
WWW.SECCORPLAW.COM

Please reply to the New York Office.

March 26, 2010

To the Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC

Retainer

Dear Madoff Investor:

I am writing to confirm your retention of Becker & Poliakoff, LLP, ("B&P") to litigate, on behalf of the approximately 200 investors (the "Investors") in Bernard L. Madoff Investment Securities LLC ("Madoff"), through S&P Associates General Partnership, P&S Associates General Partnership, SPJ Limited Partnership and Guardian Angel Trust, LLC (the "Entities"), their claim that each of them is a customer under the Securities Investor Protection Act ("SIPA"), entitled to up to \$500,000 in SIPC insurance.

It is a necessary precondition of litigating such claims that each of the Entities objects to a determination letter received from Irving H. Picard, Trustee. You have agreed to promptly provide me with any such determination letters so that I can file an objection within 30 days. As you know, we have already filed objections on behalf of each of the Investors.

You have informed me that the Investors are not in a financial condition to pay for the litigation of their claim as customers. **Accordingly, no money is due up front, only at conclusion.** We agree to provide the aforesaid services on a contingency fee basis, which means that we will retain as our fee: twenty percent (20%) of any recovery the Investors receive on their Madoff claims (other than tax refunds) by settlement, judgment, court order, or otherwise (the "Contingency Fee"). In addition, you agree to reimburse us for all expenses and disbursements we incur while performing services for you (such as filing fees, postage and phone/fax charges). Any unpaid expenses will be deducted from the gross recovery before the computation of our fee. **You have no obligation to pay the expenses except out of a possible recovery.** Our Statement of Billing Policies is included with this Retainer Agreement and is part of the terms of our engagement. The contingent fee would be payable upon receipt of the recovery.

# BECKER & POLIAKOFF, LLP

Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC  
March 26, 2010  
Page 2

Please be further advised that, if you should decide to discontinue our services at any time, in view of the work we will have put into your case, you shall remain liable for either the reasonable value of our legal services or Becker & Poliakoff, LLP's proportionate share of the above-defined "Contingency Fee" (which form of compensation is solely at Becker & Poliakoff, LLP's election), plus expenses incurred to the date of termination.

We would require that this letter be sent to each Investor and returned to us with the Investor's consent indicated by his/her signature.

## **Conflicts Waiver**

As you are aware, both Irving Picard and SIPC have claimed that I personally have a conflict of interest because I am, in Picard's words, a "net loser." I opened my account with Madoff in 2005 and I never withdrew any money. Thus, in theory, I would benefit economically from Picard's methodology which knocks out all claims where there is not a net investment on a cash in/cash out basis. Picard's motion to dismiss the Peskin/Ebel complaint was based, in large part, on the same argument because the Peskins and Maureen Ebel also are "net losers" in Picard's words. (I specifically selected them as plaintiffs because I knew they had no clawback exposure and I didn't want to subject anyone who was kind enough to consent to be a test case to a retaliatory suit by Picard.) However, as indicated in our brief in opposition to Picard's motion and as I argued before Judge Lifland on February 2, 2010, we do not believe that it is beneficial for any investor for "net equity" to be defined as Picard and SIPC have chosen to define it. Indeed, the mathematical calculations incorporated into our brief indicate that, in many instances, "net losers" are better off if Picard abides by the law both in terms of what they would receive from the bankruptcy estate and because they would then "promptly" receive their \$500,000. The time value of money far exceeds any incremental benefit they would receive if "net winners" claims were knocked out except in the case of a small number of large, late term investors.

In addition, this firm provides a wide range of services to corporations, investment bankers and individuals, including private and public transactions in numerous industries. Without a conflicts waiver, conflicts of interest may arise that could deprive the Company or other clients of the right to select BP as their counsel.

Thus, as an integral part of this engagement, the Company agrees that BP may, now or in the future, represent other entities or persons, including in litigation, that may be adverse to the Company on matters not substantially related to the legal services that BP has rendered, is rendering, or in the future will render to the Company, or any affiliate of the Company, under this engagement, or any other oral or written agreement (an "Allowed Representation"). Further,



Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC  
March 26, 2010  
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the Company agrees that it will not, for itself or any other entity or person, assert as a basis for the disqualification of BP from any Allowed Representation, (a) BP's representation of the Company or any affiliate in any past, present or future matter or (b) BP's actual, or possible possession of confidential information belonging to the Company or an affiliate.

### General Terms

In the unlikely event that a dispute arises relating to any aspect of this Retainer Agreement letter, you have an absolute right to seek arbitration or mediation of that dispute as provided by 22 NYCRR Section 137. By executing this letter, we mutually agree to submit this matter to arbitration before one arbitrator of the American Arbitration Association in New York, New York pursuant to its rules of Commercial Arbitration. Arbitration generally is a faster and less costly process than litigation. An arbitration award is final and binding (with certain, limited rights of review by a court) and you would be foregoing several rights including rights to a jury trial and to more extensive pretrial procedures than are usually available in arbitration. The rules of evidence and procedure also are more relaxed in arbitration. The laws of the State of New York will apply in any such arbitration or mediation.

This Retainer Agreement is required to be delivered to you by the ethical rules of the New York State Bar Association and is intended to provide a basic description of the terms and conditions of our retention. Please read it carefully and let us know if you have any questions or concerns regarding the terms of our retention prior to signing it. If you have any questions or concerns, it will be our pleasure to discuss them fully with you so that we have a mutually acceptable understanding of our retention and the services to be performed. Once this letter is executed, it will constitute a legally binding agreement between B&P and you, and shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

I ask that each signatory to this retainer letter acknowledge, by signing this retainer letter and returning it to me, that he/she understands this issue and waives any conflict that may exist in view of the fact that I will be representing in the bankruptcy case both "net winners" and "net losers." If you are unclear as to the nature of the alleged conflict, please call me and I will be happy to discuss it with you.

BECKER &  
POLIAKOFF, LLP

Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC  
March 26, 2010  
Page 4

I very much look forward to working with you on this matter and hope that we will be able to achieve a satisfactory result.

Yours sincerely,

  
Helen Davis Chaitman

HDC:leb

AGREED AND CONSENTED TO:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE:

\_\_\_\_\_

EMAIL:

\_\_\_\_\_

# BECKER & POLIAKOFF, LLP

Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC  
March 26, 2010  
Page 5

## STATEMENT OF BILLING POLICIES

**LEGAL SERVICE FEES** Our policy is to bill monthly, based on services performed and expenses incurred on your behalf in the previous month. In determining our legal service fees, time charges are but one of several criteria used. We also consider other applicable factors such as the difficulty of the matter, time limitations imposed by the client or by the circumstances, the skill requisite to perform the legal service properly, the responsibility involved, the amount involved, and the results obtained, and Becker & Poliakoff, LLP, reserves the right to bill appropriately in such cases.

**EXPENSES** Out-of-pocket charges billed to you include, but are not limited to, such items as messenger services, filing fees, forum fees, witness fees, transcripts, deposition expenses, computerized legal research, photocopying, document management and outside photocopying, printing costs, postage, transportation, travel and related expenses such as meals and lodging. If we are required to work under emergency circumstances requiring staff overtime, our practice is to bill for such overtime. Your bills will also reflect charges for additional expenditures made on your behalf, such as long distance and cellular telephone calls, reproduction and out-bound faxes. There will be no charge for local telephone calls or in-bound faxes. The standard charges for these services are listed below:

<u>Service</u>	<u>Current Charge</u>
Photocopies	\$0.25/page
Long distance telephone calls	Actual charge
Overnight Courier	Actual charge
Cell phone calls	Actual charge
Out-bound faxes	\$1.00/page
Computerized legal research	Hourly rate, which includes standard subscription and maintenance costs and account charges billed by the vendors to Becker & Poliakoff, LLP.

Out-of-pocket charges in excess of \$300 will be sent directly to you for payment or, if you prefer, we can establish a separate expense retainer that will be held in an escrow account to be applied against these expenses.

# BECKER & POLIAKOFF, LLP

Partners of  
S&P Associates General Partnership  
P&S Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC  
March 26, 2010  
Page 6

## **EXPERTS**

You will be directly responsible for retaining expert consultants and witnesses, who will bill you separately. In circumstances where it may be appropriate for Becker & Poliakoff to engage the expert (such as to preserve any applicable privilege), you will nonetheless be directly responsible for entering into satisfactory financial arrangements with the expert consultant or witness.

## **ESCROW ACCOUNT**

If we receive advanced funds belonging to you that are to be placed in an escrow account or held for a specified purpose (other than advanced for our legal fees), we will place these funds in a pooled trust account, pursuant to New York State Bar local rules. Unless we make a separate arrangement with you, the funds will be deposited in a non-interest bearing account.

## **PAYMENT**

Payment is due on receipt and, except as expressly agreed to otherwise, is not contingent or dependent on the outcome of the engagement, such as prevailing in a lawsuit or concluding a transaction. If a bill remains unpaid after thirty days, we may assess a carrying charge of 15% per annum (1.25% / month) on the unpaid balance that will be added to the bill. We reserve the right to end our work on this matter and any other matters for which we may be simultaneously engaged, and to withdraw from the representation on proper notice if we do not receive payment in full when due.



**BECKER &  
POLIAKOFF, LLP**

45 BROADWAY  
11TH FLOOR  
NEW YORK, NY 10006  
212.599.3322 PHONE  
212.557.0295 FAX

21 EAST FRONT STREET  
SUITE 400  
RED BANK, NJ 07701  
732.842.1662 PHONE  
732.842.9047 FAX

*Please reply to New York office.*

ADMINISTRATIVE OFFICE  
3111 STIRLING ROAD  
FORT LAUDERDALE, FL 33312  
954-987-7550

WWW.BECKER-POLIAKOFF.COM  
WWW.SECCORPLAW.COM

March 26, 2010

To the Partners of  
P&S Associates General Partnership  
S&P Associates General Partnership  
SPJ Limited Partnership  
Guardian Angel Trust, LLC

Dear Madoff Investor:

In December 2009, I was retained by P&S Associates General Partnership and S&P Associates General Partnership (the "Partnerships") to file objections on behalf of all investors through the Partnerships to the determination letters sent by Irving H. Picard, Trustee of Bernard L. Madoff Investment Securities, LLC ("Madoff"). The objections were necessary to preserve the claim that each of you that filed a SIPC claim and received a determination letter from Mr. Picard is a "customer" under the Securities Investor Protection Act entitled to up to \$500,000 in SIPC insurance. I filed those objections and preserved those claims.

Mr. Picard is now scheduling to litigate the validity of those claims and, at the request of the Partnerships, I have offered to litigate those claims for any Investors who so choose, at a 20% contingent fee plus recovery of any out-of-pocket costs incurred. You are not liable for these costs except out of any recovery. I enclose a copy of the retainer agreement describing the relevant terms of the retention. If anyone would prefer to work on a straight fee basis, I would be happy to work that way as well.

If you would like me to represent you, I will need your written authorization. Therefore, each of you that would like me to represent you must review the enclosed retainer agreement that I sent to the Partnerships and sign on the last page, indicating your consent. **Please be sure to date your signature, print your name and fill out the contact information.**

If you have any questions, call me at (908) 303-4568 or email me at: [HChaitman@becker-poliakoff.com](mailto:HChaitman@becker-poliakoff.com).

Yours sincerely,

  
Helen Davis Chaitman

HDC:leb

LEGAL AND BUSINESS STRATEGISTS

MEMBERS OF CONSULEGIS AN INTERNATIONAL ASSOCIATION OF LAW FIRMS, AND NETWORK OF LEADING LAW FIRMS

BECKER &  
POLIAKOFF, LLP

Michael Sullivan  
Managing Partner  
S&P General Partnership  
P&S General Partnership  
July 8, 2011  
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I very much look forward to working with you on these matters and hope that we will be able to achieve satisfactory results.

Yours sincerely,



Helen Davis Chaitman

HDC:leb  
Enclosure

AGREED AND CONSENTED TO:

P&S General Partnership  
S&P General Partnership

By: \_\_\_\_\_

Name: Michael Sullivan  
Title: Managing Partner