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VIA ECF & EMAIL

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Picard v. Marshall, Adv. Pro. No. 14-01840 (Bankr. S.D.N.Y.)

Dear Judge Bernstein:

We represent Irving H. Picard, the Trustee in the above matter. We write in response to the October 7, 2014 letter request (the "Letter Request") made by counsel for Susanne Stone Marshall, Adele Fox, Marsha Peshkin and Russell Oasis (collectively, the "Fox Plaintiffs") to withdraw part of their pending discovery motion (the "Discovery Motion") before this Court. The Letter Request should be denied for three reasons.

First, as this Court previously advised the Fox Plaintiffs when they sought discovery through a letter request, requests for substantive relief must be made through a motion: "[T]he Court does not grant substantive relief sought by letter in the absence of consent by the affected parties." (Memorandum Endorsed Order Signed on 7/1/2014, ECF No. 55.) Here, the Trustee has not consented to the relief sought.

Second, this Court already has taken the fully submitted motion under advisement, and the Letter Request was made nearly three weeks after oral argument. The Trustee has incurred fees and costs in briefing and arguing the Discovery Motion, including the portion sought to be withdrawn. Whether the Fox Plaintiffs fear an adverse ruling or are withdrawing a portion of their Discovery Motion for other strategic reasons, it is inappropriate for them to do so at this stage.

Third, in the event the Court decides to reach the merits of the Letter Request, the Fox Plaintiffs' request should be denied. Counsel for the Fox Plaintiffs state that they would prefer to bring their Fed. R. Civ. P. 27 (Fed. Bank. R. 7027) motion to the district court "to conserve judicial resources." It is unclear what they mean. To the extent counsel imply that this Court is without

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jurisdiction to decide that portion of their Discovery Motion, they are incorrect. Requests to depose a debtor, here, Bernard Madoff, are properly before this Court as the court administering the estate. *See, e.g., In re Residential Capital, LLC*, 480 B.R. 529, 537 (Bankr. S.D.N.Y. 2012) (Glenn, J.) (Bankruptcy Code authorizes the bankruptcy court to limit or restrict third-party discovery from the debtor absent further order of the court).¹ In this case, this Court is the most appropriate court to consider Rule 27 relief given that it is fully cognizant both of the debtor and the history of these litigants and their multiple efforts to bring claims outside the scope of the permanent injunction contained in the Trustee's settlement with the Picower Parties.²

In addition, as counsel for the Trustee argued, the Fox Plaintiffs' Rule 27 motion is insufficient and unsupported on its face for multiple reasons, including that it is unverified and fails to apprise the Court of the anticipated testimony of the witness,³ as it is instead being used as a means to obtain improper pre-complaint discovery. The Fox Plaintiffs also fail to establish that there is some outside force preventing them from filing a complaint now which would necessitate a deposition to preserve testimony at all. (See Trustee's Brief, ECF No. 69, at 18-21 (Aug. 8, 2014); Sept. 18, 2014 Hearing Transcript at 12-15.)

Accordingly, the Trustee respectfully requests that the Letter Request be denied.

Respectfully submitted,



Deborah H. Renner

cc: Helen Davis Chaitman, Esq. (via ECF and email)
Marcy Harris, Esq. (via ECF and email)
Frederick Schmidt, Esq. (via ECF and email)

¹ The Trustee assumes that the Letter Request's reference to a "request to take discovery from the Trustee and Bernard Madoff pursuant to Rule 27" is an error given that the Fox Plaintiffs sought no Rule 27 relief related to the Trustee.

² The "Picower Parties" are: Capital Growth Company; Decisions, Inc.; Favorite Funds; JA Primary Limited Partnership; JA Special Limited Partnership; JAB Partnership; JEMW Partnership; JF Partnership; JFM Investment Companies; JLN Partnership; JMP Limited Partnership; Jeffrey M. Picower Special Company; Jeffrey M. Picower, P.C.; the Picower Foundation; the Picower Institute of Medical Research; the Trust F/B/O Gabrielle H. Picower; Barbara Picower, individually, and as executor of the estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust F/B/O Gabriel H. Picower.

³ The Trustee recently discovered that counsel for the Fox Plaintiffs, Helen Davis Chaitman, has written and is publishing and circulating chapters of her book regarding the BLMIS case, in which she states that she has interviewed Mr. Madoff by phone over the past five years. Helen Chaitman and Lance Gotthoffer, *JPMadoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook*, Chapter 2 at 2, 6, available at JPMadoff.com. Counsel's ability to interview Mr. Madoff only makes their inability to state his anticipated testimony and any specific independent claim more egregious in the context of Rule 27.