

# BakerHostetler

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May 19, 2016

### VIA ECF

Hon. Gregory H. Woods  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States  
Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *A&G Goldman Partnership, et al. v. Picard, et al.*,  
Case Nos. 16-cv-2058 (Lead Case), 16-cv-2065 (GHB) (S.D.N.Y)

Dear Judge Woods:

We represent Irving H. Picard, an Appellee in the above-referenced bankruptcy appeals and Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Estate of Bernard L. Madoff (the “Trustee”). We submit this letter jointly with Appellees the Picower Parties<sup>1</sup> (together with the Trustee, the “Appellees”) to request an extension of the page limitations under Section 3.A of Your Honor’s Individual Rules of Practice in Civil Cases. Appellees request a maximum of 40 pages each for their respective opposition briefs. The opposition briefs are due on or before June 24, 2016. (ECF No. 17.)

As the Court is aware, all parties jointly moved to consolidate the above appeals for the sake of efficiency, and the Court so ordered the consolidation today. Accordingly, the Trustee will

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<sup>1</sup> The “Picower Parties” refers to 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 Gabrielle H. Picower.

Hon. Gregory H. Woods  
May 19, 2016  
Page 2

submit one opposition brief to cover both appeals and the Picower Parties will do likewise. Based on previous briefing in this and similar cases,<sup>2</sup> counsel for the Appellees each believes that they will need a maximum of 40 pages to brief the opposition to the consolidated appeals. Indeed, the appeals are part of six years of lengthy and complex litigation concerning whether putative claims against the Picower Parties are barred by a permanent injunction (the “Permanent Injunction”) issued by the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) in connection with the Picower Parties’ settlement of the Trustee’s fraudulent transfer and other related claims against them for \$7.2 billion in early 2011. The Permanent Injunction bars any claims that are “duplicative or derivative” of claims that were brought or that could have been brought by the Trustee against the Picower Parties. *Picard v. Picower*, No. 09-01197 (Bankr. S.D.N.Y. Jan. 13, 2011), ECF No. 43. In the last six years, two bankruptcy court judges, two district court judges and the Court of Appeals for the Second Circuit all have opined on the scope of the Permanent Injunction and the meaning of a “derivative” claim in the context of claims brought by Appellants as well as a competing set of class action plaintiffs.<sup>3</sup>

The instant appeals concern whether the Bankruptcy Court correctly held that Appellants’ latest complaint by Appellant, the “Goldman III Complaint,” is barred by the Permanent Injunction. Among other things, the Goldman III Complaint incorporates by reference voluminous transcripts from the criminal trial of numerous BLMIS employees. Thus, in addition to briefing the extensive history and applicable rulings, a significant issue on appeal likely will be whether the allegations in the Goldman III Complaint should be disregarded to the extent that they mischaracterize the testimony incorporated by reference. Counsel for both of the Appellees believe in their professional judgment that up to 40 pages will be required by each to properly address the issues on appeal.

Counsel for each of the Appellees conferred with counsel for Appellants several times in an attempt to come to a consensus on expanding the page limits. Counsel for Appellants declined to consent to the 40 pages requested, but provided no justifiable reason for their position, other than that the number of pages requested seems too great, or that the request goes beyond what the Court rules provide. Meanwhile, counsel for both Appellees promptly consented to Appellants’ own page extension request yesterday.

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<sup>2</sup> For example, in the Bankruptcy Court below, the Trustee submitted 55 pages of briefing, and the Picower Parties submitted 58 pages of briefing.

<sup>3</sup> *Picard v. Fox*, 429 B.R. 423 (Bankr. S.D.N.Y. 2010) (enjoining Fox I); *Fox v. Picard*, 848 F. Supp. 2d 469 (S.D.N.Y. 2012) (affirming order enjoining Fox I); *SIPC v. Bernard L. Madoff Inv. Sec. LLC*, 477 B.R. 351 (Bankr. S.D.N.Y. 2012) (enjoining Goldman I); *A & G Goldman Partnership v. Picard*, No. 12 Civ. 6109 (RJS), 2013 WL 5511027 (S.D.N.Y. Sept. 30, 2013) (affirming order enjoining Goldman I); *Marshall v. Picard*, 740 F.3d 81 (2d Cir. 2014) (affirming decisions enjoining Fox I); *Picard v. Marshall*, 511 B.R. 375 (Bankr. S.D.N.Y. 2014) (enjoining Fox II and Goldman II); *Fox v. Picard*, 531 B.R. 345 (S.D.N.Y. 2015) (affirming order enjoining Fox II).

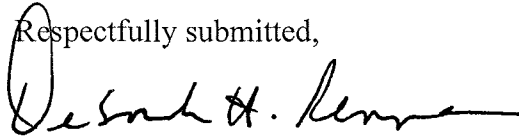
Hon. Gregory H. Woods

May 19, 2016

Page 3

Appellees respectfully request that the Court grant a page limit extension to 40 pages for each of the Appellees' opposition briefs. Counsel for both of the Appellees apologize to the Court for burdening it with this matter, and are hopeful that any such future matters can be worked out among counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah H. Renner". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Deborah H. Renner

cc: Marcy R. Harris, Counsel to the Picower Parties (*by email*)  
All Counsel of Record (*by email*)