

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Fernando A. Bohorquez, Jr.
Keith R. Murphy
David W. Rice

Hearing Date: September 28, 2016 at 10:00 a.m.
Objections Due: September 21, 2016 at 5:00 p.m.

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

ANNETTE BONGIORNO and RUDY
BONGIORNO,

Defendants.

Adv. Pro. No. 10-04215 (SMB)

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE APPROVING A SETTLEMENT AGREEMENT BY AND
AMONG THE TRUSTEE, ANNETTE BONGIORNO AND RUDY BONGIORNO**

TO: THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III (“SIPA”), and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”), by and through his undersigned counsel, submits this motion (the “Motion”) seeking entry of an order (the “Approval Order”), pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in an agreement (the “Agreement”)¹ by and among the Trustee on the one hand, and Annette Bongiorno (“Ms. Bongiorno”) and Rudy Bongiorno (“Mr. Bongiorno”) (collectively, “Transferees”), on the other hand. In support of the Motion, the Trustee represents as follows:

PRELIMINARY STATEMENT

The Trustee commenced an action against the Transferees in Adversary Proceeding No. 10-04215 to recover allegedly avoidable transfers made by BLMIS to the Transferees regarding BLMIS Account Nos. 101825, 1A0040, 1B0048, 1B0049, 1B0050, 1B0216, and 1RU014 (collectively, the “BLMIS Accounts”).

¹ The form of Agreement is attached hereto as Exhibit “A.”

As a result of extensive settlement negotiations among the Parties, the Parties entered into the Agreement, which represents a good faith, complete settlement of all disputes raised in this adversary proceeding between the Trustee and the Defendants. Under the Agreement, the Transferees will pay the Trustee a total of \$3,931,878 (the “Settlement Payment”). The Agreement will benefit the fund of customer property, as the Settlement Payment will increase the funds available for distribution to BLMIS customers with allowed claims.

The Trustee respectfully requests that the Court approve this settlement.

BACKGROUND

The Commencement of the BLMIS Liquidation Proceeding

1. On December 11, 2008 (the “Filing Date”),² the Securities and Exchange Commission (the “Commission”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against the Debtors (Case No. 08 CV 10791). In the complaint, the Commission alleged that the Debtors engaged in fraud through the investment adviser activities of BLMIS.

2. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

² In this case, the Filing Date is the date on which the Commission commenced its suit against BLMIS, December 11, 2008, and a receiver was appointed for BLMIS. See section 78lll(7)(B) of SIPA.

4. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

- (i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (iii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

5. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, this Court entered an order substantively consolidating Madoff's Chapter 7 estate with the BLMIS SIPA proceeding (the "BLMIS Estate").

The Trustee's Claims Against the Transferees

6. On November 12, 2010, the Trustee commenced an adversary proceeding in the Bankruptcy Court against Transferees in an action captioned *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Annette Bongiorno and Rudy Bongiorno*, Adv. Pro. No. 10-04215 (SMB) (the "Adversary Proceeding").

7. In the Adversary Proceeding, the Trustee sought to avoid and recover avoidable transfers from BLMIS to the BLMIS Accounts under sections 105(a), 544, 548(a), 550(a) and 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law ("NY DCL") §§ 273–279), N.Y. C.P.L.R. 203(g) and 213(8), and other applicable laws.

8. The Trustee has alleged that the Transferees are liable to the BLMIS Estate for the receipt of avoidable and recoverable transfers in the aggregate amount of Twenty-Two Million, Nine Hundred Nine Thousand, Eight Hundred Sixty-Eight United States Dollars (\$22,909,868) over the lifetime of their BLMIS accounts and Ms. Bongiorno's employment with BLMIS, and

during the two year period the Trustee alleged avoidable and recoverable transfers in the aggregate amount of Four Million, Nine Hundred Forty-One Thousand, Five Hundred Twenty-One United States Dollars (\$4,941,521), at least Three Million, Nine Hundred Thirty-Nine Thousand, Seven Hundred Sixty-Four United States Dollars (\$3,939,764) in the form of withdrawals from Transferees' BLMIS accounts, at least Nine Hundred Ninety Thousand, Eighty-Eight United States Dollars (\$990,088) in the form of salary and bonus payments made by BLMIS to Ms. Bongiorno, and at least Eleven Thousand, Six Hundred Sixty-Nine United States Dollars (\$11,669) in the form of credit card charges (collectively, the "Avoidable Transfers").

9. Transferees did not file customer claims in connection with the BLMIS Accounts.

10. Transferees have disputed any liability to the BLMIS Estate for the Avoidable Transfers.

The Forfeiture Money Judgment

11. On July 29, 2013, Ms. Bongiorno, among others, was charged in a thirty-three-count Superseding Indictment, S10 10 CR. 228 (LTS) (the "Indictment"), with conspiracy to defraud Madoff Securities investment advisory clients, securities fraud, falsifying records of a broker dealer, falsifying records of an investment adviser, and tax evasion.

12. The Indictment included a forfeiture allegation, seeking forfeiture to the United States of all property, real and personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offenses charged in the Indictment, including, but not limited to, a sum of money representing the amount of proceeds obtained as a result of the said offenses, to wit, approximately \$170 billion, and all property traceable thereto, for which the defendants are jointly and severally liable.

13. On March 24, 2014, the jury returned a guilty verdict against Ms. Bongiorno as to the charges in the Indictment.

14. On December 9, 2014, the Honorable Laura Taylor Swain entered a Preliminary Order of Forfeiture as to Specific Property/Money Judgment (the “First Preliminary Order”), ordering a forfeiture money judgment against Ms. Bongiorno in the amount of \$155,158,703,200 in United States currency, representing proceeds traceable to the commission of the offenses charged in the Indictment, and the forfeiture of certain assets of Ms. Bongiorno which were found to constitute or be derived from proceeds traceable to the commission of the offenses charged in the Indictment, provided such assets were acquired on or after January 1, 1992 with funds transferred by Madoff Securities or for the benefit of Ms. Bongiorno on or after January 1, 1992 (the “Forfeitable Property”). Ms. Bongiorno was also sentenced to a prison term of six years.

The Amended Consent Forfeiture Order and Global Settlement

15. Subsequent to the entry of the First Preliminary Order, the Office of the United States Attorney for the Southern District of New York (the “Government”), Transferees, and Trustee negotiated and entered into an Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment (the “Amended Consent Forfeiture Order”), attached hereto as Exhibit D.

16. On June 14, 2016, the District Court entered the Amended Consent Forfeiture Order.

17. Pursuant to the Amended Consent Forfeiture Order, a money judgment in the amount of \$155,158,703,200 in United States currency (the “Money Judgment”) was entered

against Ms. Bongiorno, for which she is jointly and severally liable as to any forfeiture money judgment entered against her criminal codefendants.

18. Pursuant to the Amended Consent Forfeiture Order, Transferees consented to the forfeiture of certain assets (collectively, the “Specific Property”) set forth in Amended Consent Forfeiture Order at pages 11-12, including funds held in the name of Mr. Bongiorno at E*Trade Financial Corp. (the “E*Trade Account”) and Sun Trust Bank (the “Sun Trust Account”) (collectively, the “Recovered Stocks”) to go toward satisfaction of the Money Judgment.

19. In light of the Money Judgment and the Government’s claims to Transferees’ remaining assets, the Trustee and Transferees also entered into the Amended Consent Forfeiture Order to resolve claims asserted by the Trustee in the Bankruptcy Court Adversary Proceeding against the Transferees (the “Global Settlement”).

20. As part of the Global Settlement, the Government has agreed to transfer to the Trustee shares of stock with a total value of Three Million, Nine Hundred Thirty One Thousand, Eight Hundred Seventy Eight United States Dollars (\$3,931,878) from the E*Trade Account (the “Trustee Recovered Assets”). Pursuant to the Amended Consent Forfeiture Order, the Trustee has agreed to accept the Trustee Recovered Assets to resolve his claims against Transferees in this Adversary Proceeding to recover the Avoidable Transfers and to resolve any claims the Trustee could have asserted against the Government in any ancillary proceeding regarding the property of the Transferees.

21. Pursuant to the Amended Consent Forfeiture Order, Transferees have relinquished any claim to the Specific Property and the Trustee Recovered Assets and have agreed that they will not contest the judicial forfeiture of such property under the U.S. forfeiture laws or assist a third party in doing so; the Government has relinquished any claims to the Trustee Recovered

Stocks and has agreed not to seek the forfeiture of the same; and the Trustee has relinquished any claims to assets forfeited by Transferees under the Amended Consent Forfeiture Order other than the Trustee Recovered Assets.

SETTLEMENT DISCUSSIONS AND THE TRUSTEE'S INVESTIGATION

22. The Parties, through their respective counsel, have engaged in extensive settlement discussions aimed at resolving the Trustee's claims. These discussions followed earlier discussions which were not successful in resolving the Trustee's claims.

23. Prior to entering into the Global Settlement and executing the Agreement, the Trustee conducted a comprehensive investigation of the funds that Transferees received from BLMIS. This investigation included, but was not limited to: the review and analysis of the BLMIS-related transactional histories as reflected in the BLMIS account statements of Transferees; correspondence and other records and documents available to the Trustee; and a substantial review of records and documents submitted by Transferees in connection with the BLMIS Criminal Trial.

24. After a review of the relevant records and a thorough and deliberate consideration of the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to reach a resolution rather than to continue the litigation.

25. Consistent with the Amended Consent Forfeiture Order, on June 14, 2016, the Parties executed the proposed Agreement attached as Exhibit A.

OVERVIEW OF THE AGREEMENT

26. The principal terms and conditions of the Agreement are generally as follows (as stated above, the Agreement is attached as Exhibit A and should be reviewed for a complete account of its terms):³

(a) As set forth in the Agreement, the Trustee has agreed, in satisfaction of the BLMIS Estate's claims against Transferees, to accept payment by the Government of the Trustee Recovered Assets in the amount of Three Million, Nine Hundred Thirty One Thousand, Eight Hundred Seventy Eight United States Dollars (\$3,931,878), pursuant to the terms of the Amended Consent Forfeiture Order.

(b) In accordance with the Amended Consent Forfeiture Order, the Government has agreed to transfer the Trustee Recovered Assets from the Recovered Stocks in the E*Trade Account to the custody of the Trustee. Transferees authorized the transfer to the Trustee of the Trustee Recovered Assets and agreed such transfer will be made for the benefit of the Trustee.

(c) Pursuant to the Agreement, Ms. Bongiorno agrees to cooperate with Trustee and SIPC in connection with any efforts to recover Customer Property. Ms. Bongiorno's cooperation shall include making herself reasonably available to assist in the Trustee's ongoing investigation of the BLMIS fraud and, among other things, to provide truthful and complete testimony by declaration, at deposition, or at trial. For example, Ms. Bongiorno recently participated in a deposition to provide testimony regarding profit withdrawal transactions at BLMIS. During the period of Ms. Bongiorno's incarceration, her counsel shall assist as necessary to make Ms. Bongiorno reasonably available to the Trustee and SIPC, and the Trustee will reimburse Ms. Bongiorno for reasonable expenses related thereto. If Ms. Bongiorno fails to cooperate, the

³ Terms not otherwise defined shall have the meaning ascribed to them in the Agreement.

Agreement shall operate as a tolling agreement which allows Trustee to re-assert any and all of the avoidance claims asserted against Ms. Bongiorno in the Adversary Proceeding, within one (1) year of the date of such failure to cooperate, and Ms. Bongiorno waives any statute of limitations defense in connection with such re-asserted claims. Ms. Bongiorno's obligation to cooperate shall terminate upon the date the Liquidation Proceeding is closed pursuant to section 350 of the Bankruptcy Code or as otherwise provided by a final, non-appealable order closing the Liquidation Proceeding.

(d) The Trustee will release, acquit, and absolutely discharge the Defendants on the specific terms set forth in the Agreement.

(e) The Defendants will release, acquit, and absolutely discharge the Trustee and BLMIS and its consolidated estate on the specific terms set forth in the Agreement.

(f) As soon as practicable after this Court's approval of the Agreement, counsel for Trustee and counsel for Transferees shall respectively execute, and Trustee shall subsequently file, a Stipulation of Dismissal dismissing the Adversary Proceeding with prejudice and without costs to either Trustee or Transferees.

RELIEF REQUESTED

27. By this Motion, the Trustee respectfully requests that the Court enter an order substantially in the form of the proposed Order attached as Exhibit B approving the Agreement.

LEGAL BASIS

28. Bankruptcy Rule 9019(a) states, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Courts have held that in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise proposed is fair and equitable, reasonable, and

in the best interests of a debtor's estate. *In re Ionosphere Clubs, Inc.*, 156 BR 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

29. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Liu v. Silverman (In re Liu)*, No. 98-5027, 1998 U.S. App. LEXIS 31698, at *3 (2d Cir. Dec. 18, 1998) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); *see also* *Masonic Hall & Asylum Fund v. Official Comm. Of Unsecured Creditors (In re Refco, Inc.)*, No. 05-6006, 2006 U.S. Dist. LEXIS 85691, at *21-22 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. at 426. The “court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

30. In deciding whether a particular compromise falls within the “range of reasonableness,” courts consider the following factors:

- a. the probability of success in the litigation;
- b. the difficulties associated with collection;
- c. the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
- d. the paramount interests of the creditor (or in this case, customers).

In re Refco, Inc., 2006 U.S. Dist. LEXIS 85691 at *22; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

31. The bankruptcy court may credit and consider the opinions of the trustee or debtor and their counsel in determining whether a settlement is fair and equitable. *See In re Purified*

Down Prods., 150 B.R. at 522; *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505. Even though the court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532,536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). The competency and experience of counsel supporting the settlement may also be considered. *Nellis*, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

32. The Agreement furthers the interests of BLMIS customers by recovering approximately all two-year BLMIS Account fraudulent transfers to Transferees in the amount of \$3,931,878. The Agreement also resolves all claims between the Parties and avoids the cost and delay of what could otherwise be lengthy and contentious litigation. Further, the Agreement provides for Ms. Bongiorno’s cooperation with the Trustee’s ongoing investigation and recovery efforts. (Affidavit of the Trustee in Support of the Motion (the “Picard Affidavit”). A true and accurate copy of the Picard Affidavit is attached as Exhibit C.

CONCLUSION

33. In sum, the Trustee submits that the Agreement should be approved to avoid lengthy, burdensome, and expensive litigation and because it represents a fair and reasonable compromise of the Trustee’s claims. Because the Agreement is well within the “range of reasonableness” and confers a benefit on the BLMIS Estate, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

NOTICE

34. In accordance with Bankruptcy Rules 2002 and 9019, notice of this Motion has been given to (a) SIPC; (b) Roland Riopelle, Sercarz & Riopelle, LLP, 810 Seventh Avenue, Suite 620, New York, NY 10019; and (c) James Druker, Kase & Druker, 1325 Franklin Avenue, Suite 225, Garden City, NY 11530. Notice of this Motion will also be provided via email and/or U.S. Mail to all persons who have filed notices of appearance in the BLMIS proceeding and to all defendants in this adversary proceeding pursuant to the Order Establishing Notice Procedures and Limiting Notice, ECF No. 4560. The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests entry of an Order substantially in the form of Exhibit B granting the relief requested in the Motion.

Dated: August 24, 2016
New York, New York

Respectfully submitted,

By: /s/ Fernando A. Bohorquez, Jr.
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Fernando A. Bohorquez, Jr.
Email: fbohorquez@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
David W. Rice
Email: drice@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Fernando A. Bohorquez, Jr.
Keith R. Murphy
David W. Rice

Hearing Date: September 28, 2016 at 10:00 a.m.
Objections Due: September 21, 2016 at 5:00 p.m.

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

ANNETTE BONGIORNO and RUDY
BONGIORNO,

Defendants.

Adv. Pro. No. 10-04215 (SMB)

**NOTICE OF MOTION FOR ENTRY OF AN ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING
A SETTLEMENT AGREEMENT BY AND AMONG THE TRUSTEE,
ANNETTE BONGIORNO AND RUDY BONGIORNO**

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC, under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on September 28, 2016 at 10:00 a.m., or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving a certain settlement agreement by and among the Trustee, on the one hand, and Annette Bongiorno (“Ms. Bongiorno”) and Rudy Bongiorno (“Mr. Bongiorno”) (collectively, “Transferees”), on the other hand, as more particularly set forth in the Motion annexed hereto (the “Motion”).

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **5:00 p.m. on September 21, 2016** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and must be served upon (a) Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, Attn: Fernando A. Bohorquez, Jr.; (b) Sercarz & Riopelle, LLP, 810 Seventh Avenue, Suite 620, New York, NY 10019, Attn: Roland Riopelle; (c) Kase & Druker, 1325 Franklin Avenue, Suite 225, Garden City, NY 11530, Attn: James Druker; and (d) Securities Investor Protection Corporation, 1667

K Street, NW, Suite 1000, Washington DC, 20006-1620, Attn: Kevin Bell. Any objections must specifically state the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

PLEASE TAKE FURTHER NOTICE that failure to file timely objections may result in the entry of an order granting the relief requested in the Motion without further notice to any party or an opportunity to be heard.

Dated: August 24, 2016
New York, New York

Respectfully submitted,

By: /s/ Fernando A Bohorquez, Jr.
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Fernando A. Bohorquez, Jr.
Email: fbohorquez@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com
David W. Rice
Email: drice@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “Agreement”) is made and entered into as of June 14, 2016, by and between Irving H. Picard, in his capacity as the Trustee (“Trustee”) for the liquidation proceedings under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 case of Bernard L. Madoff (“Madoff” and, collectively, the “BLMIS Estate”) pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), on the one hand, and Annette Bongiorno (“Ms. Bongiorno”) and Rudy Bongiorno (“Mr. Bongiorno”) (collectively, “Transferees”), on the other hand. Trustee and Transferees shall be hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, BLMIS and its predecessor were registered broker-dealers with the United States Securities and Exchange Commission (the “Commission”) and members of the Securities Investor Protection Corporation (“SIPC”);

WHEREAS, on December 11, 2008, the Commission filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the “Receiver”) for the assets of BLMIS (No. 08-CV-10791(LSS));

WHEREAS, on December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging,

inter alia, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed Irving H. Picard as the trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (SMB) (“Liquidation Proceeding”). By Order dated June 9, 2009, the Chapter 7 estate of Madoff (the “Madoff Estate”) was substantively consolidated with the estate of BLMIS;

WHEREAS, pursuant to section 78fff-1(a) of SIPA, Trustee has the general powers of a bankruptcy trustee in a case under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), as well as the powers granted pursuant to SIPA. Chapters 1, 3, 5 and subchapters I and II of Chapter 7 of the Bankruptcy Code apply to this SIPA proceeding to the extent consistent with SIPA;

WHEREAS, under SIPA, Trustee is charged with the responsibility to marshal and liquidate the assets of BLMIS for distribution to BLMIS customers and others in accordance with SIPA in satisfaction of allowed claims, including through the recovery of avoidable transfers such as preference payments and fraudulent transfers made by BLMIS;

WHEREAS, Trustee’s claims against transferees who received avoidable transfers from BLMIS arise under SIPA, including sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3), sections 105(a), 541, 544, 547, 548, 550(a) and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001) and other applicable laws;

WHEREAS, pursuant to an order of the Bankruptcy Court, dated December 23, 2008

(the “Claims Procedures Order”, Case No. 08-01789 (SMB),¹ ECF No. 12), Trustee is authorized to enter into settlements with claimants in connection with any claims upon which there is a disagreement, provided that Trustee obtains the approval of SIPC. Pursuant to the Claims Procedures Order, no further order of the Bankruptcy Court is necessary as long as any obligations incurred by the BLMIS Estate under the settlements are ascertainable from the books and records of BLMIS or are otherwise established to the satisfaction of Trustee;

WHEREAS, on November 12, 2010, Trustee commenced an adversary proceeding in the Bankruptcy Court against Transferees in an action captioned *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Annette Bongiorno and Rudy Bongiorno*, Adv. Pro. No. 10-04215 (SMB) (the “Adversary Proceeding”);

WHEREAS, Trustee alleges that Transferees are liable to the BLMIS Estate for the receipt of avoidable and recoverable transfers in the aggregate amount of Twenty-Two Million, Nine Hundred Nine Thousand, Eight Hundred Sixty-Eight United States Dollars (\$22,909,868), consisting of at least Eighteen Million, Nine Hundred Thirty-One Thousand, Four Hundred Twenty-Five United States Dollars (\$18,931,425) in the form of withdrawals from Transferees’ BLMIS accounts, at least Three Million, Nine Hundred Thirty-One Thousand, Eight Hundred Seventy-Eight United States Dollars (\$3,931,878) in the form of salary and bonus payments made by BLMIS to Ms. Bongiorno, and at least Forty-Five Thousand, Five Hundred Sixty-Five United States Dollars (\$45,565) in the form of credit card charges (collectively, the “Life-to-Date Transfers”);

WHEREAS, Trustee alleges that Transferees are liable to the BLMIS Estate for the receipt of avoidable and recoverable transfers during the six year period, at a minimum, in the

¹ All ECF numbers referenced herein are applicable to Case No. 08-01789 (SMB), unless otherwise stated.

aggregate amount of Eleven Million, One Hundred Ninety-Six Thousand, Eight Hundred Twenty-Six United States Dollars (\$11,196,826), at least Nine Million, Three Hundred Thirty-Seven Thousand, Six Hundred Eighty-Two United States Dollars (\$9,337,682) in the form of withdrawals from Transferees' BLMIS accounts, at least One Million, Eight Hundred Twenty-Three Thousand, Two Hundred Twenty-Eight United States Dollars (\$1,823,228) in the form of salary and bonus payments made by BLMIS to Ms. Bongiorno, and at least Thirty-Five Thousand, Nine Hundred Sixteen United States Dollars (\$35,916) in the form of credit card charges (collectively, the "Six-Year Transfers");

WHEREAS, Trustee alleges that Transferees are liable to the BLMIS Estate for the receipt of avoidable and recoverable transfers during the two year period, at a minimum, in the aggregate amount of Four Million, Nine Hundred Forty-One Thousand, Five Hundred Twenty-One United States Dollars (\$4,941,521), at least Three Million, Nine Hundred Thirty-Nine Thousand, Seven Hundred Sixty-Four United States Dollars (\$3,939,764) in the form of withdrawals from Transferees' BLMIS accounts, at least Nine Hundred Ninety Thousand, Eighty-Eight United States Dollars (\$990,088) in the form of salary and bonus payments made by BLMIS to Ms. Bongiorno, and at least Eleven Thousand, Six Hundred Sixty-Nine United States Dollars (\$11,669) in the form of credit card charges (collectively, the "Two-Year Transfers," together with the Life-to-Date Transfers and the Six-Year Transfers, the "Avoidable Transfers");

WHEREAS, Transferees did not file claims in connection with BLMIS Account Nos. 101825, 1A0040, 1B0048, 1B0049, 1B0050, 1B0216, and 1RU014 (collectively, the "BLMIS Accounts");

WHEREAS, on July 29, 2013, Ms. Bongiorno, among others, was charged in a thirty-three-count Superseding Indictment, S10 10 CR. 228 (LTS) (the “Indictment”), with conspiracy to defraud Madoff Securities investment advisory clients, securities fraud, falsifying records of a broker dealer, falsifying records of an investment adviser, and tax evasion.

WHEREAS, the Indictment included a forfeiture allegation, seeking forfeiture to the United States of all property, real and personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offenses charged in the Indictment, including, but not limited to, a sum of money representing the amount of proceeds obtained as a result of the said offenses, to wit, approximately \$170 billion, and all property traceable thereto, for which the defendants are jointly and severally liable;

WHEREAS, on March 24, 2014, the jury returned a guilty verdict against Ms. Bongiorno as to the above-referenced charges of the Indictment;

WHEREAS, on December 9, 2014, the Honorable Laura Taylor Swain entered a Preliminary Order of Forfeiture as to Specific Property/Money Judgment (the “First Preliminary Order”), ordering a forfeiture money judgment against Ms. Bongiorno in the amount of \$155,158,703,200 in United States currency, representing the proceeds obtained as a result of the offenses charged in the Indictment; and the forfeiture of certain assets of Ms. Bongiorno which were found to constitute or be derived from proceeds traceable to the commission of the offenses charged in the Indictment, provided such assets were acquired on or after January 1, 1992 with funds transferred by Madoff Securities or for the benefit of Ms. Bongiorno on or after January 1, 1992 (the “Forfeitable Property”);

WHEREAS, the Office of the United States Attorney for the Southern District of New York (the “Government”), Transferees, and Trustee entered into an Amended Consent

Preliminary Order of Forfeiture as to Specific Property/Money Judgment (the “Consent Forfeiture Order”), dated June 14, 2016, attached hereto as Exhibit A;

WHEREAS, the Trustee and Transferees entered into the Consent Forfeiture Order to resolve claims asserted by the Trustee in the Bankruptcy Court Adversary Proceeding against the Transferees (the “Global Settlement”);

WHEREAS, pursuant to the Consent Forfeiture Order, a money judgment in the amount of \$155,158,703,200 in United States currency (the “Money Judgment”) was entered against Ms. Bongiorno, for which she is jointly and severally liable as to any forfeiture money judgment entered against her criminal codefendants;

WHEREAS, pursuant to the Consent Forfeiture Order, Transferees consented to the forfeiture of certain assets (collectively, the “Specific Property”) set forth in Exhibit A hereto at pages 11-12, including funds held in the name of Mr. Bongiorno at E*Trade Financial Corp. (the “E*Trade Account”) and Sun Trust Bank (the “Sun Trust Account”) (collectively, the “Recovered Stocks”) to go toward satisfaction of the Money Judgment;

WHEREAS, within fourteen (14) days of entry of the Consent Forfeiture Order, the Government has agreed to transfer to the Trustee shares of stock with a total value of Three Million, Nine Hundred Thirty One Thousand, Eight Hundred Seventy Eight United States Dollars (\$3,931,878) from the E*Trade Account (the “Trustee Recovered Assets”);

WHEREAS, pursuant to the Consent Forfeiture Order, the Trustee has agreed to accept the Trustee Recovered Assets to resolve his claims against Transferees in this Adversary Proceeding to recover the Avoidable Transfers and to resolve any claims the Trustee could have asserted against the Government in any ancillary proceeding regarding the property of the Transferees;

WHEREAS, pursuant to the Consent Forfeiture Order, Transferees relinquished any claim to the Specific Property and the Trustee Recovered Assets and agreed that they will not contest the judicial forfeiture of such property under the U.S. forfeiture laws or assist a third party in doing so;

WHEREAS, pursuant to the Consent Forfeiture Order, the Government relinquished any claims to the Trustee Recovered Stocks and agreed not to seek the forfeiture of the same;

WHEREAS, pursuant to the Consent Forfeiture Order, the Trustee relinquished any claims to assets forfeited by Transferees under the Consent Forfeiture Order other than the Trustee Recovered Assets;

WHEREAS, the Parties desire to settle any and all claims and disputes the Parties may have against each other with respect to BLMIS, the BLMIS Accounts, and the Avoidable Transfers without the expense, delay and uncertainty of litigation;

WHEREAS, as soon as practicable after submission of the Consent Forfeiture Order to the District Court for approval, the Parties have agreed to seek approval of this Agreement, incorporating the terms of the Consent Forfeiture Order, by the Bankruptcy Court;

WHEREAS, approval of this Agreement shall be contingent upon the entry by the District Court of the Consent Forfeiture Order and approval of this Agreement by the Bankruptcy Court.

DEFINITION

The following definition shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

“Unknown Claims” shall mean any Released Claims (as defined in Section 4 herein), that Transferees do not know or suspect to exist in their favor at the time of giving the release in this

Agreement that if known by them, might have affected their settlement and release in this Agreement. With respect to any and all Released Claims, Transferees shall expressly waive or be deemed to have waived, the provisions, rights and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Transferees expressly waive, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. Transferees may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Transferees shall expressly have and shall be deemed to have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. Transferees acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

NOW THEREFORE, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is recognized for all purposes, the Parties agree as follows:

1. Payment of Trustee Recovered Assets to Trustee under the Global Settlement.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration (including, without limitation, the release set forth in Section 4), the receipt and sufficiency of which is hereby acknowledged for purposes of this settlement only, the Trustee has agreed, in satisfaction of the Estate's claims against Transferees, to accept payment by the Government of the Trustee Recovered Assets in the amount of Three Million, Nine Hundred Thirty One Thousand, Eight Hundred Seventy Eight United States Dollars (\$3,931,878), pursuant to the terms of the Consent Forfeiture Order.

(b) For the purpose of effecting the Consent Forfeiture Order, the Government has agreed to transfer the Trustee Recovered Assets from the Recovered Stocks in the E*Trade Account to the custody of the Trustee within fourteen (14) days of entry of the Consent Forfeiture Order;

(c) Transferees have authorized the transfer to the Trustee of the Trustee Recovered Assets and have agreed such transfer will be made for the benefit of the Trustee.

2. Cooperation of Ms. Bongiorno.

(a) Ms. Bongiorno agrees to cooperate with Trustee and SIPC in connection with any efforts to recover Customer Property² from the principals or agents of BLMIS, the customers of BLMIS or anyone else. Ms. Bongiorno's cooperation shall include making herself reasonably available to Trustee, his counsel, and his agents to assist in the Trustee's ongoing investigation of

² "Customer Property" shall have the same meaning as that provided under section 78III(4) of SIPA: "cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property (continued . . .)"

the BLMIS fraud and, among other things, to provide truthful and complete testimony by declaration, at deposition, or at trial.

(b) During the period of Ms. Bongiorno's incarceration, her counsel shall assist as necessary to make Ms. Bongiorno reasonably available to the Trustee and SIPC to assist in the Trustee's ongoing investigation.

(c) If Trustee and/or SIPC request Ms. Bongiorno to travel in connection with her cooperation in any pending or future proceeding to recover Customer Property, Trustee shall reimburse Ms. Bongiorno for reasonable expenses.

(d) Notwithstanding the release contained in Section 3 below, in the event that Ms. Bongiorno fails to cooperate as required in this section, this Agreement shall operate as, and is, a tolling agreement which allows Trustee to re-assert any and all of the avoidance claims which Trustee asserted against Ms. Bongiorno in the Adversary Proceeding, within one (1) year of the date of such failure to cooperate notwithstanding section 546(a) of the Bankruptcy Code, and Ms. Bongiorno hereby waives, and agrees not to have the benefit of, any statute of limitations defense in connection with such re-asserted claims.

(e) Ms. Bongiorno's obligation to cooperate, as provided in Section 2(a), shall terminate upon the date the Liquidation Proceeding is closed pursuant to section 350 of the Bankruptcy Code or as otherwise provided by a final, non-appealable order closing the Liquidation Proceeding.

3. Release by Trustee.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby

transferred by the debtor, including property unlawfully converted."

acknowledged, except with respect to any rights arising under this Agreement, Trustee hereby releases, remises and forever discharges only Transferees from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by the Trustee on behalf of BLMIS, Madoff, and/or the consolidated BLMIS/Madoff estate, against Transferees based on, arising out of, or relating in any way to the BLMIS Accounts or the Avoidable Transfers.

(b) Other Limitations on Release

(i) Trustee releases only Transferees pursuant to the terms of this Agreement and does not release any others including, but not limited to immediate, mediate or subsequent transferees of the Avoidable Transfers.

(ii) The foregoing release in Section 3(a) is made by Trustee exclusively in his capacity as trustee for the Liquidation Proceeding and the substantively consolidated Chapter 7 case of Bernard L. Madoff, and shall not constitute a release by any other party in any other capacity.

(c) Notwithstanding the foregoing release contained in Section 3(a), Transferees are not released from liability for any subsequent transfers of transfers initially made by BLMIS and/or Madoff that Transferees may have received and that are not specified herein or that they

may receive after the date of this Agreement which are recoverable under SIPA, including SIPA sections 78fff(b), 78fff-1(a), and 78fff-2(c)(3), sections 105(a), 541, 544, 548, 550(a), and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 et seq. (McKinney 2001) and other applicable laws.

4. Release by Transferees. Transferees, on behalf of themselves and their executors, administrators, heirs and assigns, hereby release, remise, and forever discharge: (a) Trustee; (b) all of Trustee's attorneys, professionals, agents and consultants; and (c) Madoff and BLMIS and its consolidated estate, from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown (including Unknown Claims), now existing or arising in the future, arising out of or in any way related to BLMIS, Madoff, the Madoff Estate, BLMIS Accounts, or the Avoidable Transfers (the "Released Claims").

5. Dismissal of Adversary Proceeding. As soon as practicable after the Effective Date, counsel for Trustee and counsel for Transferees shall respectively execute, and Trustee shall subsequently file, a Stipulation of Dismissal dismissing the Adversary Proceeding with prejudice and without costs to either Trustee or Transferees.

6. Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon, the District Court's entry of the Consent

Forfeiture Order and the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding by an order that is no longer subject to appeal, review, or rehearing ("Effective Date"). The Trustee shall use his reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding as promptly as practicable after the date of this Agreement. If this Agreement has not become effective as provided in this paragraph within 90 days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void; (b) all of the statements, concessions, consents, and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor the Defendants may use or rely on any such statement, concession, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, or any case or proceeding relating to BLMIS, or Madoff.

7. Representations and Warranties of Trustee. Subject to the approval of the Bankruptcy Court, Trustee hereby represents and warrants to Transferees that he has the full power, authority and legal right to execute and deliver this Agreement and to perform his obligations hereunder.

8. Representations and Warranties by Transferees

(a) Transferees hereby represent and warrant to Trustee that: (i) he or she has the full power, authority, legal right and capacity to execute and deliver this Agreement and to perform his or her obligations hereunder; (ii) this Agreement has been duly executed and delivered by each Transferee and constitutes the valid and binding agreement of each Transferee, enforceable against each Transferee in accordance with its terms; (iii) in executing this Agreement, each Transferee has done so with the full knowledge of any and all rights that each Transferee may have with respect to the controversies herein compromised, and each Transferee has received or has had the opportunity to obtain independent legal advice from his or her attorneys with regard

to the facts relating to said controversies and with respect to the rights arising out of said facts; and (iv) no other person or entity, other than those specifically identified herein, has any interest in the matters that each Transferee releases herein, and each Transferee has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that each Transferee releases herein.

(b) Transferees represent and warrant, to the best of his or her knowledge, information and belief, that: (1) other than the Transfers as referenced on the schedules attached as Exhibit B to the Complaint filed in the Adversary Proceeding and – with respect to Ms. Bongiorno, the salary, bonuses, commissions, employment benefits, and other forms of compensation which she received in connection with her employment at BLMIS (the “Employment Compensation”) – he or she has not received any other money, funds, loans, transfers, assets, financial assistance or financial accommodation from Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS; (2) he or she is not an immediate, mediate or subsequent transferee of any transfers initially made by BLMIS and/or Madoff, other than as set forth in schedules attached as Exhibit B to the Complaint filed in the Adversary Proceeding and the Employment Compensation; and (3) he or she is not aware of any other potential claims against him or her by Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS.

9. Termination of Agreements with BLMIS. Any and all prior agreements between Transferees, or either Transferee, on the one hand, and BLMIS and/or Madoff on the other hand, are hereby terminated as of the date of this Agreement.

10. Further Assurances. Each Party shall execute and deliver any document or instrument reasonably requested by the other Party after the date of this Agreement to effectuate the intent of this Agreement.
11. Amendment; Waiver. This Agreement may not be terminated, amended or modified in any way except by written instrument signed by all Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.
12. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.
13. Successors. This Agreement shall be binding upon and inure to the benefit of each Party and its respective successors and permitted assigns.
14. Negotiated Agreement. This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Agreement.
15. Counterparts; Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. Each Party may evidence its execution of this Agreement by delivery to the other Party of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.
16. Governing Law. This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principles of conflicts of law thereof), the Bankruptcy Code and

SIPA. Each Party hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of New York law provision is or has become unreasonable in any legal proceeding.

17. JURISDICTION; WAIVER OF JURY TRIAL.

(a) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN THE EVENT THE BLMIS PROCEEDING IS CLOSED BY A FINAL DECREE AND NOT REOPENED, THE PARTIES AGREE THAT ANY DISPUTE ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK IN NEW YORK COUNTY.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. Expenses. Each Party shall bear its respective expenses relating to or arising out of this Agreement, including, but not limited to, fees for attorneys, accountants and other advisors.

19. Notices. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, by overnight mail with confirmation, by facsimile (receipt confirmed) or by electronic means (receipt confirmed), in each case addressed and copied as set forth on the applicable signature page hereto. A Party may change its address

for receiving notice by giving notice of a new address in the manner provided herein. All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), as the case may be, and addressed as aforesaid.

20. No Third Party Beneficiaries. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

21. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a section is to a section of this Agreement. "Including" is not intended to be a limiting term.

[Signature pages follow]

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed
and delivered as of the date set forth above.

TRUSTEE

**IRVING H. PICARD, THE TRUSTEE FOR THE
LIQUIDATION PROCEEDINGS OF BERNARD L.
MADOFF INVESTMENT SECURITIES LLC AND
THE SUBSTANTIVELY CONSOLIDATED
BANKRUPTCY CASE OF BERNARD L. MADOFF**

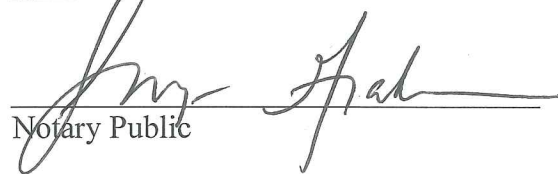
Address:
Irving H. Picard
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Facsimile: (212) 589-4201

By: _____


IRVING PICARD, TRUSTEE

With copies to:
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Attention: Fernando A. Bohorquez, Jr.
Facsimile: (212) 589-4201

Sworn and subscribed before me this
5th day of July, 2016.


Notary Public

[TRUSTEE SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2017

TRANSFeree

Address:

Annette Bongiorno
Federal Correction Institution
Coleman Medium
846 NE 54th Terrace
Sumterville, FL 33521



ANNETTE BONGIORNO

With copies to:

Roland Riopelle, Esq.
Sercarz & Riopelle, LLP
810 Seventh Avenue, Suite 620
New York, NY 10019

Sworn and subscribed before me this

7th day of ~~June~~, 2016 July, 2016


Notary Public

ROLAND G. RIOPELLE
Notary Public, State of New York
No. 02816115684
Qualified in New York County
Commission Expires Sept. 20, 2016

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

Address:

Rudy Bongiorno

[INSERT ADDRESS]

[INSERT ADDRESS]


RUDY BONGIORNO

With copies to:

James Druker, Esq.

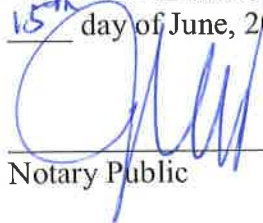
Kase & Druker

1325 Franklin Avenue, Suite 225

Garden City, NY 11530

Sworn and subscribed before me this

15th day of June, 2016.



Notary Public

JAMES O. DRUKER
NOTARY PUBLIC, State of New York
No. 02DR5070488
Qualified in Westchester County
Commission Expires Dec. 23, 2017

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

EXHIBIT B

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

ANNETTE BONGIORNO and RUDY
BONGIORNO,

Defendants.

Adv. Pro. No. 10-04215 (SMB)

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND
RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING SETTLEMENT AGREEMENTS BY AND AMONG THE TRUSTEE,
ANNETTE BONGIORNO AND RUDY BONGIORNO**

Upon the motion (the “Motion”)¹ of Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated Chapter 7 estate of

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Bernard L. Madoff, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreements by and between the Trustee on the one hand, and Annette Bongiorno (“Ms. Bongiorno”) and Rudy Bongiorno (“Mr. Bongiorno”) (collectively, “Transferees”), on the other hand, and as more particularly set forth in the agreement annexed as Exhibit A to the Motion (the “Agreement”); and it appearing that due and sufficient notice has been given to all parties in interest as required by Rule 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving H. Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Agreement between the Trustee and the Transferees is hereby approved and authorized; and it is further

ORDERED, that each of the Trustee and the Transferees shall comply with and carry out the terms of the Agreement; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: September ___, 2016
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

ANNETTE BONGIORNO and RUDY
BONGIORNO,

Defendants.

Adv. Pro. No. 10-04215 (SMB)

**AFFIDAVIT OF IRVING H. PICARD, TRUSTEE, IN SUPPORT OF MOTION FOR
ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE APPROVING SETTLEMENT AGREEMENT BY AND AMONG
THE TRUSTEE, ANNETTE BONGIORNO AND RUDY BONGIORNO**

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Irving H. Picard, being duly sworn, hereby attests as follows:

1. I am the trustee (“Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (together with BLMIS, the “Debtors”). I am familiar with the affairs of the Debtors. I respectfully submit this Affidavit in support of the motion (the “Motion”) seeking entry of an order, pursuant to 11 U.S.C. § 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the settlement agreement (the “Agreement”) by and among the Trustee, on the one hand, and Annette Bongiorno (“Ms. Bongiorno”) and Rudy Bongiorno (“Mr. Bongiorno”) (collectively, “Transferees”), on the other hand.

2. I make this Affidavit based upon my own personal knowledge or upon information I believe to be true.

3. All capitalized terms not defined herein have the meaning ascribed to them in the Agreement submitted as Exhibit A to the Motion.

4. I believe that the terms of the Agreement fall well above the lowest point in the range of reasonableness and, accordingly, the Agreement should be approved by this Court. The Agreement furthers the interest of BLMIS customers by recovering approximately all two-year BLMIS fraudulent transfers to Transferees and adding \$3,931,878 to the customer property fund. The Agreement also resolves the claims raised by the Trustee against the Transferees as to this adversary proceeding and avoids likely lengthy, burdensome, and expensive litigation regarding the claims and defenses in this matter.

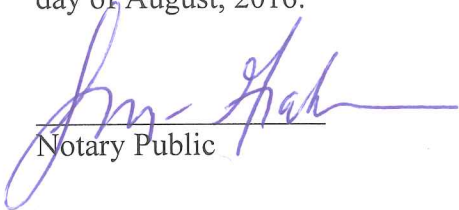
5. Moreover, Ms. Bongiorno’s agreement to cooperate in my ongoing investigation of the BLMIS fraud, including providing truthful and complete testimony as necessary, will greatly assist in my continuing efforts to recover Customer Property.

6. Given the complexities involved in proceeding with further litigation, I have determined, in my business judgment, that the Agreement represents a fair compromise of the claims against the Transferees.



IRVING H. PICARD

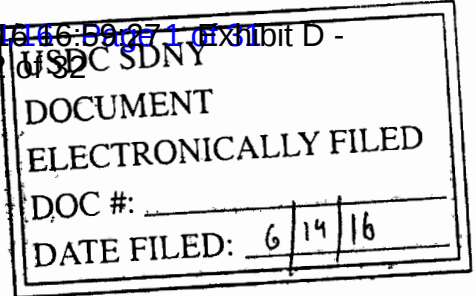
Sworn to before me this 23rd
day of August, 2016.



Notary Public

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2017

EXHIBIT D



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA : AMENDED CONSENT
:
-v.- : PRELIMINARY
:
ANNETTE BONGIORNO, : ORDER OF FORFEITURE
:
Defendant. : AS TO SPECIFIC
:
: PROPERTY/MONEY
:
: JUDGMENT
:
: S10 10 CR. 228 (LTS)
-----X

WHEREAS, on or about July 29, 2013, ANNETTE BONGIORNO (the "defendant"), among others, was charged in a thirty-three-count Superseding Indictment, S10 10 CR. 228 (LTS) (the "Indictment"), with conspiracy to defraud Madoff Securities investment advisory clients, in violation 18 U.S.C. § 371 (Count One); securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. § 240.240.10b-5; 18 U.S.C. § 2 (Count Six); falsifying records of a broker dealer in violation of 15 U.S.C. §§ 78q(a) and 78ff; 17 C.F.R. §§ 240.17a-3; 18 U.S.C. § 2 (Count Nine); falsifying records of an investment adviser in violation of 15 U.S.C. §§ 80b-4 and 80b-17; 17 C.F.R. §§ 275.204-2; and 18 U.S.C. § 2 (Count Twelve); five counts of tax evasion in violation of 26 U.S.C. § 7201 (Counts Twenty-Five through Twenty Nine); and obstructing and impeding the Due Administration of the Internal Revenue Laws in violation of 26 U.S.C. § 7212(a) (Count Thirty);

WHEREAS, the Indictment included a forfeiture allegation, seeking forfeiture to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, of all property, real and personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offenses charged in Counts One, Six and Nine of the Indictment, including, but not limited to, a sum of money representing the amount of proceeds obtained as a result of the said offenses, to wit, approximately \$170 billion, and all property traceable thereto, for which the defendants are jointly and severally liable;

WHEREAS, on or about March 24, 2014, the jury returned a guilty verdict against the defendant as to Counts One, Six, Nine, Twelve and Twenty Five through Thirty of the Indictment;

WHEREAS, in a separate civil action, *United States v. All Funds on Deposit in Account Nos. 94660869, 9948199297, 80007487, 9115606297, 9116151903, and 9931127481 in the Names of Annette Bongiorno and/or Rudy Bongiorno at Citibank, N.A., et al.*, 10 Civ. 4858 (LTS) (JCF) (S.D.N.Y.) (the "Civil Forfeiture Action"), the United States is seeking forfeiture in rem of certain items of real and personal property identified in the Second Amended Verified Complaint filed in the Civil Forfeiture

Action on February 2, 2011, 10 Civ. 4858 (LAP) (JCF) (ECF No. 11);

WHEREAS, on or about December 9, 2014, the Court entered a Preliminary Order of Forfeiture as to Specific Property/Money Judgment (the "First Preliminary Order") (Docket Entry 1216) ordering (i) a forfeiture money judgment against the defendant in the amount of \$155,158,703,200 in United States currency, representing the proceeds obtained as a result of the offenses charged in Counts One, Six, and Nine of the Indictment pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (ii) the forfeiture of the following assets of the defendant which were found to constitute or be derived from proceeds traceable to the commission of the offenses charged in Counts One, Six, and Nine of the Indictment, provided such assets were acquired on or after January 1, 1992 with funds transferred by Madoff Securities or for the benefit of the defendant on or after January 1, 1992:

- a) ALL FUNDS ON DEPOSIT IN ACCOUNT NOS. 94660869, 9948199297, 80007487, 9115606297, 9116151903, AND 9931127481 IN THE NAMES OF ANNETTE BONGIORNO AND/OR RUDY BONGIORNO AT CITIBANK, N.A. (the "Citibank Accounts");
- b) ALL FUNDS AND OTHER PROPERTY ON DEPOSIT IN ACCOUNT NOS. 50C24673 AND 10M02603 IN THE NAMES OF ANNETTE BONGIORNO AND RUDY BONGIORNO AT MORGAN STANLEY SMITH BARNEY (the "Smith Barney Accounts");

- c) ALL FUNDS AND OTHER PROPERTY HELD IN BROKERAGE ACCOUNT NO. 63172236 AND SAVINGS ACCOUNT NO. 202 437 6648 IN THE NAME OF RUDY BONGIORNO AT E*TRADE FINANCIAL CORP. (the "E*Trade Account");
- d) APPROXIMATELY \$175,701.38 FORMERLY ON DEPOSIT IN ACCOUNT NOS. 7923290063 AND 7927832373 IN THE NAME OF ANNETTE BONGIORNO AT TDBANK, N.A. (the "TDBank Accounts");
- e) APPROXIMATELY \$11,740.29 FORMERLY ON DEPOSIT IN UTMA ACCOUNT NOS. 109357067, 8919650948, AND 109282913 AT TDBANK, IN THE NAME OF JOHN D'ALLESANDRO, UTMA, ANNETTE BONGIORNO AS CUSTODIAN (the "TDBank UTMA Accounts");
- f) ALL FUNDS AND OTHER PROPERTY HELD ON DEPOSIT IN ACCOUNT NOS. 795710250 AND 2912426000, IN THE NAME OF ANNETTE BONGIORNO, AND ACCOUNT NOS. 805221058 AND 2917246932, IN THE NAME OF RUDY J. BONGIORNO AND ANNETTE BONGIORNO, AT JPMORGAN CHASE & CO. BANK (the "JPMorgan Chase Accounts");
- g) ALL FUNDS AND OTHER PROPERTY HELD ON DEPOSIT IN ACCOUNT NOS. 43010030641 AND 43010030658 AT NEW YORK COMMUNITY BANK/ROSLYN SAVINGS BANK, IN THE NAME OF BONGIORNO AND RUDY BONGIORNO (the "New York Community Bank Accounts");
- h) ALL FUNDS HELD ON DEPOSIT IN ACCOUNT NO. 8310856078 AT ASTORIA FEDERAL SAVINGS AND LOAN, IN THE NAME OF ANNETTE BONGIORNO (the "Astoria Federal Account");
- i) ALL FUNDS HELD ON DEPOSIT IN ACCOUNT NOS. 1505040947 AND 1500003111 AT DIME SAVINGS BANK, IN THE NAME OF ANNETTE BONGIORNO (the "Dime Savings Bank Accounts");
- j) APPROXIMATELY \$951,267.90 FORMERLY HELD IN FIDELITY INVESTMENTS / FMR LLC ROLLOVER IRA ACCOUNT NO. 142 991465 IN THE NAME OF ANNETTE BONGIORNO; ACCOUNT NO. Z70 691860 IN THE NAME OF ANNETTE BONGIORNO; AND BROKERAGE ACCOUNT NO. X45

301264 IN THE NAME OF ANNETTE AND RUDY BONGIORNO
(the "Fidelity Accounts");

- k) CERTIFICATE OF DEPOSIT NO. 0630304007 HELD AT
APPLE BANK FOR SAVINGS, IN THE NAME OF ANNETTE
BONGIORNO AND/OR RUDY BONGIORNO (the "Apple Bank
CD");
- l) ALL FUNDS HELD ON ACCOUNT FOR ANNETTE BONGIORNO
BY SERCARZ & RIOPELLE, LLP, 152 W. 57th STREET,
SUITE 24C, NEW YORK, NY 10019 EXCEPT FOR THOSE
FUNDS EARNED BUT NOT DRAWN AS OF DECEMBER 21,
2010 (the "Sercarz & Riopelle Funds");
- m) THE REAL PROPERTY AND APPURTENANCES KNOWN AS 5854
WINDSOR COURT, BOCA RATON, PALM BEACH COUNTY,
FLORIDA 33496 2763, FURTHER DESCRIBED AS LOT 15,
PLAT OF ST. JAMES PARK, PART OF WOODFIELD COUNTRY
CLUB P.U.D., ACCORDING TO THE PLAT THEREOF, AS
RECORDED IN PLAT BOOK 66, PAGE 69, OF THE PUBLIC
RECORDS OF PALM BEACH COUNTY, FLORIDA, AND KNOWN
AND DESIGNATED ON THE PALM BEACH COUNTY TAX ROLL
AS PARCEL I.D. 06 42 47 04 08 000 0150 (the "Boca
Raton Property");
- n) THE REAL PROPERTY AND APPURTENANCES KNOWN AS 78
STONE HILL DRIVE EAST, MANHASSET, NASSAU COUNTY,
NEW YORK 11030 4440, LYING AND BEING IN THE
VILLAGE OF NORTH HILLS, TOWN OF NORTH HEMPSTEAD,
NASSAU COUNTY, NEW YORK, AND KNOWN AND DESIGNATED
AS SECTION 3, BLOCK 239, LOT 3, ON THE NASSAU
COUNTY TAX MAP (the "Manhasset Property");
- o) ONE 2005 BENTLEY CONTINENTAL, VIN
SCBCR63W15C025200 (the "2005 Bentley");
- p) ONE 2007 MERCEDES BENZ ML63, VIN
4JGBB77E27A183561 (the "Mercedes ML63");
- q) ONE 2007 MERCEDES BENZ E550 SEDAN, VIN
WDBUF72X77B077335 (the "Mercedes E550");
- r) APPROXIMATELY \$1.3 MILLION FORMERLY HELD ON
DEPOSIT IN CHICAGO TITLE INSURANCE CO. CUSTODIAL
ESCROW DEPOSIT ACCOUNT 12330 22482 AT BANK OF

AMERICA, N.A., ACCOUNT No. 510000859, ON ACCOUNT FOR ANNETTE BONGIORNO AND/OR RUDY BONGIORNO, REF No. 300697902 001, UNIT 607 (the "Chicago Title Escrow Funds");

- s) PROCEEDS OF HSBC OFFICIAL CHECK NO. 100097767 IN THE AMOUNT OF \$505,023.49 DATED JULY 17, 2009, ANNETTE BONGIORNO, PAYEE AND REMITTER (the "HSBC Check");
- t) ALL FUNDS AND OTHER PROPERTY ON DEPOSIT IN TD AMERITRADE ACCOUNT NUMBER 757-337160 HELD IN THE NAME OF ANNETTE BONGIORNO (the "TD Ameritrade Funds");
- u) ALL FUNDS AND OTHER PROPERTY ON DEPOSIT IN ACCOUNT NUMBER C491936641 IN THE NAME OF ANNETTE BONGIORNO AT CITIBANK, N.A., FORMERLY PERSHING BANK (the "Pershing Assets");
- v) ALL FUNDS AND OTHER PROPERTY HELD IN ACCOUNT NUMBER F9R276351 AT SUNTRUST BANK, HELD IN THE NAME RUDY BONGIORNO (the "SunTrust Account");
- w) ALL OWNERSHIP AND EQUITY INTEREST IN CASTLE ARCH REAL ESTATE INVESTMENT CO. HELD IN THE NAME OF ANNETTE OR RUDY BONGIORNO (the "Castle Arch Interest");
- x) ALL FUNDS OR VALUE IN METROPOLITAN LIFE INSURANCE POLICY NUMBER 880667460 HELD IN THE NAME OF ANNETTE BONGIORNO (the "Metropolitan Life Insurance Policy");
- y) ALL ITEMS OF JEWELRY IN SAFE DEPOSIT BOX NUMBER 5098 LOCATED AT ROSLYN SAVINGS BANK, 1400 OLD NORTHERN BOULEVARD, ROSLYN, NY, HELD IN THE NAME OF ANNETTE AND RUDY BONGIORNO (the "Roslyn Savings Bank Jewelry");
- z) ALL ITEMS OF JEWELRY HELD IN A SAFE DEPOSIT BOX AT TD BANK, 540 JERICHO TURNPIKE, MINEOLA, NY, IN THE NAME OF ANNETTE OR RUDY BONGIORNO (the "TD Bank Jewelry"); and

aa) ONE LADIES' ROLEX WATCH AND ONE TANK AMERICAINE
CARTIER LADIES' WATCH IN THE POSSESSION OF
ANNETTE BONGIORNO AND THREE MENS' ROLEX WATCHES
AND TWO BRIETLING WATCHES IN THE POSSESSION OF
RUDY BONGIORNO (the "Watches");

(collectively, the "Forfeitable Property")

WHEREAS, the Office of the United States Attorney for
the Southern District of New York (the "Government") has also
identified the real property and appurtenances thereto known
generally as 2233 NE 15th Street, Cape Coral, Florida and more
particularly described as Cape Coral Unit 47, Part 2, Blk 3514,
PB 23, PG 125, Lots 34 & 35 (the "Cape Coral Property");

WHEREAS, Rudy Bongiorno represents that he intends to
file a petition asserting his interest in the E*Trade Account
and the SunTrust Account, and, to the extent forfeiture was
sought, the Cape Coral Property;

WHEREAS, on or about December 15, 2008, Honorable
Louis L. Stanton, District Court Judge for the United States
District Court for the Southern District of New York, appointed
Irving H. Picard, Esq., (the "Trustee") as trustee for the
liquidation of the business of Bernard L. Madoff Investment
Securities LLC ("BLMIS") under the Securities Investor
Protection Act, Title 15, United States Code, Sections 78aaa, et
seq. ("SIPA"), subsequently substantively consolidated with the
Chapter 7 estate of Bernard L. Madoff;

WHEREAS, the Trustee is obligated to recover and liquidate assets of BLMIS for the benefit of the creditors and customers of BLMIS and victims of the Madoff criminal conspiracy;

WHEREAS, on November 12, 2010, the Trustee commenced an adversary proceeding in the Bankruptcy Court against the defendant and Rudy Bongiorno in an action captioned *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Annette Bongiorno*, Adv. Pro. No. 10-04215 (SMB) (the "Adversary Proceeding");

WHEREAS, the Trustee alleges that the defendant and Rudy Bongiorno are liable to the BLMIS Estate for the receipt of avoidable and recoverable transfers in the aggregate amount of \$22,909,868, consisting at minimum, during the six year period under SIPA, the Bankruptcy Code and the New York Debtor and Creditor Law, of \$9,337,682 in the form of account withdrawals from an account held jointly in the name of the defendant and Rudy Bongiorno, \$1,823,228 in salary and bonuses paid to defendant, and \$35,916 in credit card charges and, during the two year period under SIPA and the Bankruptcy Code, \$3,939,764 in the form of account withdrawals from an account held jointly in the name of defendant and Rudy Bongiorno, \$990,088 in salary

and bonuses paid to defendant, and \$11,669 in credit card charges (collectively, the "Avoidable Transfers");

WHEREAS, the Trustee represents that he has a potential claim to the Forfeitable Property;

WHEREAS, the parties to this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, the Government, the defendant, Annette Bongiorno, by counsel, Roland Riopelle, Esq. and Rudy Bongiorno, by counsel, James Druker, Esq., and Irving H. Picard, Esq., by counsel, Fernando Bohorquez, Jr. Esq., wish to consensually resolve the matters regarding the forfeitability of the Forfeitable Property on the terms set forth herein;

WHEREAS, the defendant, Rudy Bongiorno, and the Trustee agree that this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment will resolve claims that were or could have been asserted by the Trustee against the defendant and Rudy Bongiorno in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") and in the ancillary proceeding in this action;

WHEREAS, for purposes of this settlement, the parties agree that, upon entry of a Final Order of Forfeiture, the E*Trade Account and SunTrust Account shall be subdivided as

follows: (i) Rudy Bongiorno shall retain the shares of stock set forth in Schedule A, attached hereto (the "Released Stocks"); the remaining stocks in the E*Trade Account and SunTrust Account, which are set forth in Schedule B (the "Recovered Stocks"), shall be recovered for the victims of the Madoff fraud, as follows: (a) shares of stock worth a total of \$3,931,878 (the "Trustee Recovered Stocks") shall be transferred from the Recovered Stocks in the E*Trade Account to the Trustee, and (b) the remainder of the Recovered Stocks after subtraction of the Trustee Recovered Stocks (the "Forfeited Stocks") shall be forfeited to the Government; (ii) the Released Stocks shall be transferred to a new account at E*Trade (the "New E*Trade Account") and a new account at SunTrust (the "New SunTrust Account"), both in the name of Rudy Bongiorno; (iii) 25% of the existing margin debt in the E*Trade Account (the "Retained Margin Debt") shall be transferred to the New E*Trade Account and remain an obligation of Rudy Bongiorno; (iv) the rest of the margin debt in the E*Trade Account shall be paid using proceeds from the liquidation of the Forfeited Stocks;

WHEREAS, for purposes of this settlement, the Government agrees not to seek the forfeiture of the Cape Coral Property as proceeds of the offenses or as a substitute asset to satisfy the defendant's outstanding Money Judgment;

WHEREAS, for the purposes of this settlement, the Trustee agrees not to seek the liquidation of the Cape Coral Property in the Adversary Proceeding;

WHEREAS, the defendant and Rudy Bongiorno consent to the forfeiture to the Government of the following assets:

- a) the Citibank Accounts;
- b) the Smith Barney Accounts;
- c) the Forfeited Stocks;
- d) the TD Bank Accounts;
- e) the TD Bank UTMA Accounts;
- f) the JPMorgan Chase Accounts;
- g) the New York Community Bank Accounts;
- h) the Astoria Federal Account;
- i) the Dime Savings Bank Accounts;
- j) the Fidelity Accounts;
- k) the Apple Bank CD;
- l) the Sercarz & Riopelle Funds;
- m) the Boca Raton Property;
- n) the Manhasset Property;
- o) the 2005 Bentley;
- p) the Mercedes ML63;
- q) the Mercedes E550;
- r) the Chicago Title Escrow Funds;

- s) the HSBC Check;
- t) the TD Ameritrade Funds;
- u) the Pershing Assets;
- v) the Castle Arch Interest;
- w) the Metropolitan Life Insurance Policy;
- x) the Roslyn Savings Bank Jewelry;
- y) the TD Bank Jewelry; and
- z) the Watches;

(collectively, the "Specific Property")

WHEREAS, the Trustee in his capacity as trustee in the SIPA Liquidation proceeding, has agreed to accept the Trustee Recovered Stocks to resolve any claims the Trustee has or could have asserted against the defendant or Rudy Bongiorno for the Avoidable Transfers in the Adversary Proceeding in Bankruptcy Court or against the Government in any ancillary proceeding in this matter regarding the Forfeitable Property;

WHEREAS, upon the entry of a Final Order of Forfeiture the Government agrees to apply the Trustee Recovered Stocks in partial satisfaction of the Money Judgment; and

WHEREAS, the defendant and Rudy Bongiorno understand that the Government seeks to forfeit the Specific Property and to distribute the proceeds to the victims of the fraud through

the process of remission, consistent with applicable Department of Justice Regulations;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT, by and between the United States, United States of America, by its attorney Preet Bharara, United States Attorney, Assistant United States Attorneys Niketh Velamoor and Jonathan Cohen, of counsel, the defendant, Annette Bongiorno, by counsel, Roland Riopelle, Esq. and Rudy Bongiorno, by counsel, James Druker, Esq., and Irving H. Picard, Esq., by counsel, Fernando Bohorquez, Esq., that:

1. As a result of committing the offenses charged in Counts One, Six, and Nine of the Indictment, of which the defendant was found guilty following a jury trial, a money judgment in the amount of \$155,158,703,200 in United States currency (the "Money Judgment") shall be entered against the defendant, for which she shall be jointly and severally liable as to any forfeiture money judgment entered against her codefendants in this case, DANIEL BONVENTRE, JOANN CRUPI a/k/a "Jodi," JEROME O'HARA, GEORGE PEREZ, ERIC S. LIPKIN, DAVID L. KUGEL, ENRICA COTELESSA-PITZ, CRAIG KUGEL, IRWIN LIPKIN, PETER MADOFF, and PAUL J. KONIGSBERG, as well as any forfeiture money judgment entered against BERNARD L. MADOFF in *United States v. Madoff*, 09 Cr. 213 (DC), and DAVID G. FRIEHLING in *United States*

v. *Friehling*, 09 Cr. 700 (AKH).

2. As a result of the offenses charged in Counts One, Six, and Nine of the Indictment, all of the defendant's right, title and interest in the Specific Property is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of Title 21, United States Code, Section 853.

3. The defendant and Rudy Bongiorno withdraw and relinquish any claim to the Specific Property and the Trustee Recovered Stocks and agree that they will not object to the entry of a Final Order of Forfeiture or otherwise contest the judicial forfeiture of such property under the U.S. forfeiture laws or assist a third party in doing so.

4. Upon entry of a Final Order of Forfeiture as to the Specific Property, the Government shall relinquish any claim to the Released Stocks, the Trustee Recovered Stocks and Cape Coral Property and shall not seek the forfeiture of same.

5. Upon entry of a Final Order of Forfeiture forfeiting the Specific Property to the United States, the Specific Property shall be applied in partial satisfaction of the Money Judgment.

6. Upon entry of a Final Order of Forfeiture as to the Specific Property, the Civil Forfeiture Action shall be

dismissed with prejudice as to the Specific Property, the Released Stocks and the Trustee Recovered Stocks, with each side bearing its own costs and attorney's fees.

7. Upon entry of a Final Order of Forfeiture, the Trustee shall relinquish any claim to the Specific Property, the Released Stocks and the Cape Coral Property and will not file a petition or claim or assist others in filing a petition or claim, or otherwise take any action to contest the forfeiture of any of the Specific Property, the Released Stocks and/or the Cape Coral Property.

8. Within 14 days of entry of a Final Order of Forfeiture as to the Specific Property, the Government shall direct E*Trade and SunTrust to cause the Released Stocks in their custody to be transferred to the New E*Trade Account and the New SunTrust Account, the Trustee Recovered Stocks to be transferred from the E*Trade Account to the Trustee through instructions to be provided by a representative of the Trustee employed by Baker & Hostetler LLP, and the Retained Margin Debt to be transferred from the E*Trade Account to the New E*Trade Account. The defendant and Rudy Bongiorno shall authorize such transfers and complete any necessary authorizations. These transfers shall be for the benefit of the Trustee, the defendant and Rudy Bongiorno and with the consent of the defendant and

Rudy Bongiorno.

9. Pursuant to the Federal Rules of Criminal Procedure, upon entry of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment is final as to the defendant, ANNETTE BONGIORNO, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

10. Upon entry of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, the United States Marshals Service is authorized to seize the Specific Property and hold the Specific Property in its secure custody and control.

11. Pursuant to Title 21, United States Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States shall publish for at least thirty (30) consecutive days on the official government internet forfeiture site, www.forfeiture.gov, notice of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment. Any person, other than the defendant

in this case, claiming an interest in the Specific Property must file a petition within sixty (60) days from the first day of publication of the notice on this official government internet site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

12. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title and interest in the Specific Property and any additional facts supporting the petitioner's claim and the relief sought, pursuant to Title 21, United States Code, Section 853(n).

13. Pursuant to Rule 32.2(b)(6)(A) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

14. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Specific Property pursuant to Title 21, United States Code, Section 853(n) and Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, in which all third-party interests will be

addressed. If finally forfeited to the United States, the Specific Property shall be applied in partial satisfaction of the Money Judgment.

15. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable, in this instance, to the United States Marshals Service, and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007, and shall indicate the defendant's name and case number.

16. Upon execution of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, and pursuant to Title 21, United States Code, Section 853, the United States Marshals Service shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such Specific Property.

17. As soon as practicable after the submission of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment to the District Court for approval, counsel for the Trustee, counsel for the defendant and counsel for Rudy Bongiorno shall seek approval by the Bankruptcy

Court overseeing the SIPA Liquidation of a settlement agreement incorporating the terms of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment as it relates to the claims brought by the Trustee against the defendant and Rudy Bongiorno (the "Bankruptcy Court Agreement"). Approval of the Bankruptcy Court Agreement shall be contingent upon the entry by the District Court of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment.

18. The defendant and Rudy Bongiorno are hereby barred from asserting any claim against the United States of America ("USA"), the Department of Justice ("DOJ"), the U.S. Attorney's Office for the Southern District of New York ("SDNY-USAO"), the USMS, the FBI, or any agents and employees of the USA, the DOJ, the SDNY-USAO, the USMS, and the FBI, as well as local and state agents, officers or employees, past and present, in connection with or arising out of the seizure, restraint, and/or constructive possession of the Specific Property, the Trustee Recovered Stocks or the Released Stocks, or the litigation of the Civil Forfeiture Action, including, but not limited to, any claim that there was no probable cause to seize and/or forfeit the Specific Property, the Trustee Recovered Stocks or the Released Stocks, that the defendant or

Rudy Bongiorno is a prevailing party, or that she or he is entitled to attorney's fees or any award of interest.

19. The Trustee is hereby barred from asserting any claim against the USA, the DOJ, the SDNY-USAO, the USMS, the FBI, or any agents and employees of the USA, the DOJ, the SDNY-USAO, the USMS, and the FBI, as well as local and state agents, officers or employees, past and present, in connection with or arising out of the seizure, restraint, and/or constructive possession of the Specific Property, the Trustee Recovered Stocks or the Released Stocks, including, but not limited to, any claim that there was no probable cause to seize and/or forfeit the Specific Property, the Trustee Recovered Stocks or the Released Stocks, that the Trustee is a prevailing party, or that the Trustee is entitled to attorney's fees or any award of interest.

20. The defendant and Rudy Bongiorno represent that they are the sole owners of the Specific Property, the Trustee Recovered Stocks and the Released Stocks and further agree to hold harmless the USA, the DOJ, the SDNY-USAO, the USMS, and the FBI, as well as any and all employees, officers, and agents of the USA, the DOJ, the SDNY-USAO, the USMS, and the FBI from any and all claims arising from any acts, incidents, or occurrences in connection with the seizure and/or possession of the Specific

Property, the Trustee Recovered Stocks or the Released Stocks, including but not limited to any third-party claims of ownership of the Specific Property or the Released Stocks.

21. This Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment does not constitute an admission of liability or fault on the part of Rudy Bongiorno with respect to the subject matter of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment.

22. Defendant and Rudy Bongiorno hereby agree to waive all rights to appeal or otherwise challenge or contest the validity of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment.

23. Defendant and Rudy Bongiorno hereby agree to release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, and BLMIS and its consolidated estate, from any and all past, present, or future claims or causes of action and from any and all allegations of liability or damages of whatever kind, nature, or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty,

or otherwise known or unknown, existing as of the date of the Closing that are, have been, could have been, or might in the future be asserted by the defendant and Rudy Bongiorno based on, arising out of, or in any way related to BLMIS or Madoff.

24. Defendant agrees to cooperate with Trustee and the Securities Investor Protection Corporation ("SIPC") in connection with any efforts to recover customer property from the principals or agents of BLMIS, the customers of BLMIS or anyone else. Defendant's cooperation shall include making herself reasonably available to Trustee, his counsel, his agents, and SIPC to assist in the Trustee's ongoing investigation of the BLMIS fraud and, among other things, to provide truthful and complete testimony by declaration, at deposition, or at trial.

25. During the period of defendant's incarceration, defendant's counsel shall assist as necessary to make defendant reasonably available to Trustee, SIPC her counsel, and her agents to assist in the Trustee's ongoing investigation.

26. If Trustee and/or SIPC request defendant's counsel to travel in connection with defendant's cooperation in any pending or future proceeding to recover Customer Property, Trustee and/or SIPC shall reimburse defendant's counsel for reasonable expenses.

27. Notwithstanding the release contained in Paragraph 7, in the event that defendant fails to cooperate as required in Paragraph 24, this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment shall operate as, and is, a tolling agreement which allows Trustee to re-assert any and all of the avoidance claims which Trustee asserted against defendant in the Adversary Proceeding, within one (1) year of the date of such failure to cooperate notwithstanding section 546(a) of the Bankruptcy Code, and defendant hereby waives, and agrees not to get the benefit of, any statute of limitations defense in connection with such re-asserted claims.

28. Defendant's obligation to cooperate, as provided in Paragraph 24, shall terminate upon the earlier of the date the BLMIS SIPA Liquidation Proceeding is closed pursuant to SIPA, or as otherwise provided by a final, non-appealable order closing the BLMIS SIPA Liquidation Proceeding.

29. Each party shall bear his/her/its own costs and attorneys' fees.

30. This Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either

written or oral, made by either party or agents of either party, that is not contained in this written Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment shall be enforceable.

31. Notwithstanding anything to the contrary herein, this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment is expressly subject to and contingent upon the approval of the Court. If this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, or any portion hereof, is not approved of by the Court or if it is overturned or modified on appeal, all funds transferred by the Government shall be returned, this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment shall be null and void.

32. Notwithstanding anything to the contrary herein, this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment is expressly subject to and contingent upon the conviction of defendant, Annette Bongiorno, and if her conviction is overturned on appeal, all funds transferred to the Trustee shall be transferred to the Government.

33. The Court shall have exclusive jurisdiction over the interpretation and enforcement of this Amended Consent

Preliminary Order of Forfeiture as to Specific Property/Money Judgment and shall retain jurisdiction to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

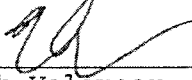
34. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

[SPACE INTENTIONALLY LEFT BLANK]

35. The Clerk of the Court shall forward three certified copies of this Amended Consent Preliminary Order of Forfeiture as to Specific Property/Money Judgment to Assistant United States Attorney Niketh Velamoor, Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York, 10007.


STIPULATED TO:

PREET BHARARA
United States Attorney
Southern District of New York
United States of America


By: 
Niketh Velamoor
Jonathan Cohen
Assistant United States Attorneys
One Saint Andrews Plaza
New York, New York 10007
(212) 637-1076

June 1, 2016
Date

IRVING H. PICARD
TRUSTEE

By: 
Irving H. Picard, Esq.
As Trustee

May 31, 2016
Date

By: 
Fernando Bohorquez, Esq.
Keith Murphy, Esq.
David Sheehan, Esq.
Baker Hostetler, LLP
45 Rockefeller Plaza
New York, NY 10017
Tel: (212) 878-7960
Fax: (212) 692-0940

May 31, 2016
Date

ANNETTE BONGIORNO
DEFENDANT

By: 

Annette Bongiorno

6/8/16
Date

By: 

Roland Riopelle, Esq.
Attorney for Defendant

6/13/15
Date

RUDY BONGIORNO

By: _____

Rudy Bongiorno

Date

By: _____

James Drucker, Esq.
Attorney for Rudy Bongiorno

Date

SO ORDERED:


HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

DATE

ANNETTE BONGIORNO
DEFENDANT

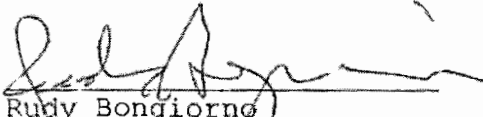
By: _____
Annette Bongiorno

Date

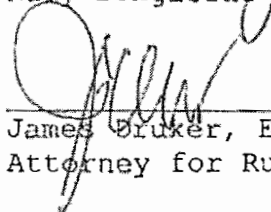
By: 
Roland Riopelle, Esq.
Attorney for Defendant

5/25/16
Date

RUDY BONGIORNO


By: 
Rudy Bongiorno

6/20/16
Date

By: 
James Bruker, Esq.
Attorney for Rudy Bongiorno

5/24/16
Date

SO ORDERED:



HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

6/14/16
DATE

SCHEDULE A

The Released Stocks consist of:

E*Trade Account

1. 8,000 shares of ProShares Ultra QQQ ETF stock (QLD);
2. 18,752 shares of Direxion Daily Real Estate Bull 3X Shares (DRN);
3. 26,129 shares of Direxion Daily Technology Bull 3X Shares (TYH/TECL);
4. 3000 shares of PowerShares QQQ Trust ETF (QQQ);
5. 666 shares of SPDR Barclays Capital High Yield Bond ETF (JNK);
6. 2000 shares of iShares Russell 2000 (IWM);
7. 330.021 shares of Fidelity Select Brokerage & Investment Management Fund (FSLBX);
8. 261.769 shares of Fidelity Select Communications Equipment Fund (FSDCX);
9. 305.733 shares of Fidelity Select Computers Portfolio Fund (FDCPX);
10. 342.937 shares of Fidelity Select Electronics Portfolio Fund (FSELX);
11. 135.777 shares of Fidelity Financial Services Portfolio Fund (FIDSX);
12. 119.511 shares of Fidelity Select Health Care Portfolio Fund (FSPHX);
13. 133.472 shares of Fidelity Select Leisure Portfolio Fund (FDLSX);
14. 219.511 shares of Fidelity Select Multimedia Portfolio Fund (FBMPX);

15. 321.493 shares of Fidelity Select Retailing Portfolio Fund (FSRPX);
16. 184.556 shares of Fidelity Select Software & IT Services Portfolio Fund (FSCSX);
17. 268.092 shares of Fidelity Select Technology Portfolio Fund (FSPTX);
18. 157.163 shares of Fidelity Select Telecommunications Fund (FSTCX)
19. 512.948 shares of The Hartford Mutual Funds Inc. Small Company Fund (IHSAX);
20. 686.664 shares of The Hartford Mutual Funds Inc. International Opportunities Fund (IHOAX);
21. 555.296 shares of The Hartford Mutual Funds Inc. MidCap Fund (HFMCX);
22. 100,000 shares of PIMCO Municipal Income Fund (PMF);

SunTrust Account

1. 600 shares of Pfizer Inc. (PFE);
2. 791.139 shares of Royce Opportunity Fund Investment Class (RYPNX);
3. 400 shares of iShares Russell 1000 Growth Index Fund (IWF);
4. 350 shares of iShares Russell 1000 Value Index Fund (IWD);
5. 225 shares of iShares Russell 2000 Growth Index Fund (IWO);
6. 75 shares of SPDR S & P MidCap 400 ETF (MDY);
7. 250 shares of Vanguard FTSE Emerging Markets ETF (VWO);
8. 295 shares of Vanguard FTSE Europe ETF (VGK);

9. 265 shares of Vanguard FTSE Pacific ETF (VPL);
10. 828.125 shares of ARMOUR Residential REIT, Inc. (ARR);
and
11. Cash in the amount of \$38,983.91.

SCHEDULE B

The Recovered Stocks consist of:

E*Trade Account

1. 22,390 shares of TICC Capital Corp. (TICC);
2. 23,206.095 shares of Franklin Income Fund (FKINX);
3. 2,307.137 shares of Franklin Mutual Shares Fund (TESIX);
4. 202,586.016 shares of Oppenheimer Rochester High Yield
Municipal Fund (ORNAX);
5. 2,504.321 shares of Templeton Growth Fund, Inc. (TEPLX);
6. 72,000 shares of ProShares Ultra QQQ (QLD);
7. 75,008 shares of Direxion Daily Real Estate Bull 3x
Shares (DRN); and
8. 104,515 shares of Direxion Daily Technology Bull 3X
Shares (TYH/TECL).

SunTrust Assets

1. 750 shares of iShares China Large-Cap ETF (FXI);
2. 3,000 shares of PowerShares International Dividend
Achievers Portfolio Fund (PID); and
3. 2,000 shares of SPDR Homebuilders ETF (XHB).