UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (LGB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. FAIRFIELD INVESTMENT FUND LIMITED, STABLE FUND, FAIRFIELD GREENWICH LIMITED, FAIRFIELD GREENWICH (BERMUDA), LTD., FAIRFIELD GREENWICH ADVISORS LLC, FAIRFIELD INTERNATIONAL MANAGERS, INC., THE ESTATE OF WALTER M. NOEL, JR., MONICA NOEL, in her capacity as Executor of the Estate of Walter M. Noel, Jr., JEFFREY TUCKER, ANDRES PIEDRAHITA, AMIT VIJAYVERGIYA, PHILIP TOUB, CORINA NOEL PIEDRAHITA, FAIRFIELD GREENWICH CAPITAL PARTNERS and SHARE MANAGEMENT LLC, Defendants.	Adv. Pro. No. 09-01239 (LGB)

TRUSTEE'S RESPONSES TO DEFENDANTS'
STATEMENT OF MATERIAL FACTS

Pursuant to Federal Rule of Civil Procedure 56 and Local Bankruptcy Rule 7056-1, the plaintiff, Irving H. Picard, trustee ("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa–*lll*, and the Chapter 7 estate of Bernard L. Madoff ("Madoff"), respectfully responds to the Defendants' Statement of Material Facts (ECF No. 424) as follows:

1. Statement: Walter M. Noel, Jr. was an individual who served as a director and shareholder of FGL (and FGA, as FGL's wholly-owned subsidiary), principal and shareholder of FGBL, director of FIFL, officer and director of FIM, director of FGCP, director of Sentry, and director of GS until December 31, 2001. Mr. Noel passed on or about December 16, 2023.

Response: Disputed as incomplete. The statement presents an incomplete picture of Walter M. Noel Jr.'s ("Noel") relationships, positions and ownership roles with respect to the Defendants. See Exs. 1[1], 2; Ex. 3; Ex. 4; Ex. 5; Ex. 6; Ex. 7; Ex. 9. The statement that Noel is deceased is undisputed.

2. Statement: Jeffrey Tucker is an individual who served as a principal and shareholder of FGL (and FGA, as FGL's wholly-owned subsidiary), principal and shareholder of FGBL, director of FIFL, director of FIM, director and shareholder of FGCP, director of Sentry, and director of GS until December 31, 2001.

Response: Disputed as incomplete. The statement presents an incomplete picture of Jeffrey Tucker's ("Tucker") relationships, positions and ownership roles with respect to the Defendants. Ex. 1; Ex. 4; Ex. 5; Ex. 6; Ex. 10; Ex. 11.

3. Statement: Andrés Piedrahita is an individual who served as a director and

[1] References to "Ex." refer to exhibits to the Declaration of Erika Thomas in this Response to Defendants' Statement of Material Facts, the Trustee's Counter-Statement of Material Facts, and the Trustee's Memorandum of Law in Support of the Opposition to Defendants' Motion for Partial Summary Judgment.

shareholder of FGL (and FGA, as FGL's wholly-owned subsidiary) and FGBL.

Response: Disputed as incomplete. The statement presents an incomplete picture of Andrés Piedrahita's ("Piedrahita") relationships, positions and ownership roles with respect to the Defendants. Ex. 1; Ex. 7.

4. Statement: Amit Vijayvergiya is an individual who served various roles in his employment at FGBL, including Managing Director and Chief Risk Officer, and was a shareholder of FGL and FGBL.

Response: Disputed as incomplete. The statement presents an incomplete picture of Amit Vijayvergiya's ("Vijayvergiya") relationships, positions and ownership roles with respect to the Defendants. Ex. 1; Ex. 2; Ex. 12.

5. Statement: Philip Toub is an individual who served as a shareholder of FGL and FGBL.

Response: Disputed as incomplete. The statement presents an incomplete picture of Philip Toub's ("Toub") relationships, positions and ownership roles with respect to the Defendants. Ex. 1; Ex. 13; Ex. 91; Ex. 113; Ex. 131.

6. Statement: Corina Noel Piedrahita is an individual who was a shareholder of FGL and FGBL through her entity Share Management LLC.

Response: Disputed as incomplete. The statement presents an incomplete picture of Corina Noel Piedrahita's relationships, positions and ownership roles with respect to the Defendants. Ex. 1; Ex. 14; Ex. 142 at FG-03984153-4154; Ex. 237; Ex. 7.

7. Statement: FIFL is a British Virgin Island investment fund incorporated in 2000, which is governed by a board of directors made up of Noel, Tucker, and a corporate director affiliated with the Administrator of FIFL.

Response: Disputed as incomplete and misleading. It is undisputed that FIFL was created in 2000 in the British Virgin Islands and that Tucker and Noel served as directors. The statement is disputed to the extent that it presents an incomplete picture of FIFL's relationship with respect to the Defendants. Ex. 15; Ex. 16; Ex. 17.

8. Statement: FIFL invested in the Sentry fund.

Response: Disputed as incomplete to the extent it implies that FIFL invested its own funds. The funds FIFL invested in BLMIS belonged to investors in FIFL. Ex. 18.

9. Statement: The Trustee alleges the knowledge of Noel and Tucker is imputed to FIFL.

Response: Undisputed.

10. Statement: Stable is a Delaware limited partnership formed in 2003.

Response: Undisputed.

11. Statement: Stable invested in the GS fund.

Response: Disputed as incomplete to the extent it implies that Stable invested its own funds. The funds Stable invested in GS belonged to investors in Stable.

12. Statement: The Trustee alleges that the knowledge of Tucker is imputed to Stable.

Response: Undisputed.

13. Statement: FGL is a Cayman Islands corporation incorporated in 2001 which served as the Fairfield Funds' investment manager until 2003 and their placement agent. FGL was owned by a number of shareholders over time, including Noel, Tucker, Andrés Piedrahita, Corina Noel Piedrahita, and others.

Response: Disputed as incorrect and incomplete. Fairfield International

Managers ("FIM") was investment manager of Fairfield Sentry Ltd. ("Sentry") from November 15, 1990 to December 31, 1997. Exs. 357–58. Fairfield Greenwich Limited ("FGL") was incorporated in Ireland on October 23, 1997. Ex. 359. From January 1, 1998 to December 31, 2001, FGL Ireland served as the investment manager to Sentry, Fairfield Sigma Ltd. ("Sigma"), and Fairfield Lambda Ltd. ("Lambda"). Ex. 346; Ex. 158; Ex. 345 at -6002; Ex. 329; Ex. 127 at -830. From January 1, 2002 to June 30, 2003, FGL Cayman served as the investment manager to Sentry, Sigma, and Lambda. Ex. 346; Ex. 158; Ex. 370 at -991, -997; Ex. 110; Ex. 329; Ex. 345; Ex. 343 at ANWAR-CFSE-00387180 - 183; Ex. 127; Ex. 353. Prior to 2002, FGL was owned by Noel, Tucker, and Piedrahita, and after 2002, ownership of FGL was expanded to include other employee partners. Ex. 259 at FG-01928205; Hirsch Declaration Ex. A (the "Hirsch Rept.") Figure 5; Ex. 133.

14. Statement: The Trustee alleges the knowledge of Noel, Tucker, Andrés Piedrahita, Daniel Lipton, Mark McKeefry, Robert Blum, and Toub is imputed to FGL. SAC ¶ 123.

Response: Undisputed.

15. Statement: FGBL is a Bermuda corporation incorporated in June 2003, which served as the Fairfield Funds' investment manager from 2003 through the relevant time period.

Response: Disputed as incomplete and misleading. On July 1, 2003, FGBL replaced FGL Cayman as the investment manager to Sentry, Sigma, and Lambda through December 2008. Ex. 285; Ex. 289; Ex. 110; Ex. 343 at -180–183; Ex. 349; Ex. 352; Ex. 353; Ex. 354; Ex. 355.

16. Statement: FGBL was a wholly owned subsidiary of FGL until January 1, 2008, at which point it became owned by shareholders.

Response: Disputed as misleading and incomplete because the shareholders who owned FGBL after January 1, 2008 were FGG partners. *See* Ex. 356.

17. Statement: The Trustee alleges the knowledge of Noel, Tucker, Andrés Piedrahita, Lipton, McKeefry, Blum, Vijayvergiya, Gordon McKenzie, and Andrew Smith is imputed to FGBL.

Response: Undisputed.

18. Statement: FGA is a Delaware limited liability company formed in 2001 as a wholly-owned subsidiary of FGL.

Response: Undisputed.

19. Statement: FGA is a registered investment advisor which provided administrative and back-office support to the Fairfield Funds.

Response: Undisputed.

20. Statement: The Trustee alleges the knowledge of Noel, Tucker, Andrés Piedrahita, Lipton, McKeefry, Blum, Vijayvergiya, McKenzie, and Gregory Bowes is imputed to FGA.

Response: Undisputed.

21. Statement: FIM was a Delaware S-corp, which served as investment manager for Sentry and GS prior to 1997.

Response: Disputed, except that FIM was a Delaware S-corp that served as Sentry's investment manager from November 1990 to December 31, 1997. Ex. 357; Ex. 358.

22. Statement: FIM was owned in equal part by Noel and Tucker and held a portion of their ownership interests in FGL and FGBL.

Response: Undisputed.

23. Statement: The Trustee alleges that the knowledge of Noel and Tucker is imputed to FIM.

Response: Undisputed.

24. Statement: FGCP was a Delaware S-corp through which Noel and Tucker held a portion of their ownership interest in FGL and FGBL.

Response: Undisputed.

25. Statement: The Trustee alleges that the knowledge of Noel and Tucker is imputed to FGCP.

Response: Undisputed.

26. Statement: Share Management LLC was a Delaware limited liability company through which Corina Noel Piedrahita held her ownership interest in FGL and FGBL.

Response: Undisputed.

27. Statement: The Trustee alleges that the knowledge of Corina Noel Piedrahita is imputed to Share Management LLC.

Response: Undisputed.

28. Statement: Sentry is a BVI company that was incorporated on October 30, 1990.

Response: Undisputed.

29. Statement: Sentry solicited investments from non-U.S. investors and was invested in BLMIS.

Response: Undisputed.

30. Statement: Sentry had no employees and was governed by its board of directors: Noel, Jan Naess, and Peter Schmid.

Response: Disputed as incomplete and misleading. Undisputed that Sentry had

no employees. Disputed that Sentry was controlled by its board of directors because Sentry was controlled by the Defendants, in particular Tucker, Noel and Piedrahita. *See*, *e.g.*, Ex. 24; Ex. 25; Ex. 26; Ex. 28 at 95:22–96:1; 98:7 – 99:1.

31. Statement: The Trustee alleges the knowledge of Noel, Tucker, FIM, FGL, and FGBL is imputed to Sentry.

Response: Undisputed.

32. Statement: GS is a Delaware limited partnership formed on December 27, 1990.

Response: Undisputed.

33. Statement: GS's general partners during the relevant time period were FGL, FGBL, Noel, and Tucker. From December 23, 2004 through March 1, 2006, GS's general partner was Greenwich Bermuda Limited, a Bermuda corporation with the same principals as FGBL.

Response: Disputed as inaccurate. The documents produced by Defendants are conflicting as to the identification of GS's general partners and the time during which they served in the role. *See, e.g.*, Ex. 163 at -656, -657; Ex. 321 at -258.

34. Statement: GS solicited investments from U.S. investors and was invested in BLMIS.

Response: Undisputed.

35. Statement: The Trustee alleges the knowledge of Noel, Tucker, FGL, FGBL, and FGA is imputed to GS.

Response: Undisputed.

36. Statement: In April 2006, GSP was formed as a Delaware limited partnership.

Response: Undisputed.

37. Statement: GSP's general partner was FGBL.

Response: Undisputed.

38. Statement: GSP served as an additional fund for U.S. investors.

Response: Disputed as incomplete and misleading because the phrase "an additional fund for U.S. investors" is ambiguous.

39. Statement: The Trustee alleges the knowledge of FGBL and FGA is imputed to GSP.

Response: Undisputed.

40. Statement: Bernard Madoff founded BLMIS in 1960 and registered it as a broker-dealer with the Securities and Exchange Commission ("SEC").

Response: Undisputed.

41. Statement: BLMIS consisted of two components: a market making and proprietary trading business, and an investment advisory ("IA") business.

Response: Undisputed.

42. Statement: Madoff claimed to follow a trading strategy known as a "split-strike conversion" ("SSC") in managing most customer accounts.

Response: Disputed as incomplete. The split-strike conversion strategy ("SSC strategy") was among the strategies that were purportedly implemented at BLMIS during various time periods. *See* Dubinsky Declaration Ex. A ("Dubinsky Global Rept.") ¶¶ 41–44,180 and n.92. BLMIS never engaged in the split-strike conversion securities trades reported on customer statements between the 1990s and 2008. *Id.* ¶¶ 127–53. Through the early 1990's Madoff purported to follow a convertible arbitrage investment strategy. *See* Dubinsky Global Rept. ¶¶ 19–20.

43. Statement: The SSC strategy entailed purchasing a basket of common stocks from within the Standard & Poor's ("S&P") 100 Index, buying puts and selling calls of an

equivalent underlying value of the basket of stocks.

Response: Disputed as incorrect and misleading. The split-strike conversion strategy "purported to employ a strategy which invested in a basket of common stocks within the Standard & Poor's ("S&P") 100 Index. "These baskets were hedged by call and put options to limit customer gains and losses. Madoff would purportedly decide when to unwind positions upon which the stocks were sold, and the investments were moved into US Treasuries and/or money market funds and cash reserves." Dubinsky Global Rept. ¶44. Although Madoff made public representation that he employed the SSC strategy, and that the strategy entailed the purchase and sale of securities, there is no evidence that BLMIS purchased or sold any securities pursuant to the SSC strategy, or that it ever employed the SSC strategy. *See* Dubinsky Global Rept. ¶¶ 19, 22; section VI. A and B.

44. Statement: This strategy would reduce a portfolio's volatility (and risk) by limiting possible gains and losses.

Response: Disputed as incomplete because it implies that Madoff engaged in trading. If BLMIS had implemented the SSC strategy, claims about the performance of the SSC strategy would have been true. BLMIS did not purchase or sell any securities pursuant to the SSC strategy. *See* Dubinsky Global Rept. section VI. A and B. An SSC strategy cannot eliminate risk. A properly designed and executed SSC strategy would trade with the same or very similar volatility as the S&P 100 Index (or other market index) anytime the market value of the equity portfolio falls between the exercise prices of the options. *See* Dubinsky Global Rept. ¶¶ 158, 175; Hirsch Rept. ¶¶ 95-98.

45. Statement: BLMIS' SSC strategy was marketed by Madoff as a "hedged" strategy whereby Madoff would put a "collar" of puts and calls around the stocks he traded, which

would protect the portfolio in the event of a loss.

Response: Disputed as incomplete and misleading. It is undisputed that Madoff marketed the SSC strategy as a hedged strategy. The reliance on Tucker's deposition testimony is disputed because the issues of Tucker's credibility and whether he believed Madoff was trading securities are disputed fact issues for trial. Moreover, the statement is disputed because it omits the Defendants' role in characterizing BLMIS's SSC strategy in marketing settings.

46. Statement: Positive returns were to be obtained by deploying the strategy (putting it "on") when market conditions were deemed favorable, and otherwise keeping the funds in U.S. Treasury Bills while awaiting the next opportunity to implement the strategy.

Response: Disputed as incorrect. Disputed that Madoff's SSC strategy entailed the purchase or sale of any stocks. *See* Dubinsky Global Rept. section VI. A and B. Disputed that the strategy was only "deployed" when the market conditions were deemed favorable. *See* Hirsch Rept. ¶¶ 95-98. The reliance on Vijayvergiya's deposition testimony is disputed because the issues of Vijayvergiya's credibility and whether he believed Madoff was trading securities are material disputed issues for trial.

47. Statement: In reality, the IA business was a sham, the SSC strategy was not being executed, and every dollar invested in BLMIS for trading securities was instead deposited directly into bank accounts and held either as cash or to purchase U.S. Treasury Bills for Madoff's personal benefit.

Response: Disputed as misleading. Undisputed that Madoff was not executing the SSC strategy. Hirsch Rept. § 7. Disputed that Madoff purchased U.S. Treasury Bills that were "used as part of his scheme."

48. Statement: BLMIS used sophisticated software that was created and built in-

house to facilitate the fraud.

Response: Disputed as incomplete and misleading. The IA Business relied on an AS/400 computer along with a local area network of personal computers to generate the documentation necessary to support the fictitious trading activity. Dubinsky Global Rept. ¶ 271. The software used by IA Business employees was not "sophisticated." It was primarily built in-house but supported partially by commercially available, off-the-shelf software, and utilized code developed in the late 1970s through the early-to-mid 1980s. *Id.* ¶¶ 272, 275. Further, the IA Business's Report Program Generator software, the software used to maintain the information related to customer accounts, did not communicate with any of the standard platforms typically found in a trading and / or investment environment. *Id.* ¶¶ 81, 273, Table 1.

49. Statement: The software "mimicked and backfilled the output that normally would be the result of trades actually being executed by a system using trading algorithms" and provided customers with hundreds of thousands of falsified customer statements and trade confirmations in furtherance of the fraudulent scheme.

Response: Undisputed.

50. Statement: Madoff's IT staff also created a program enabling them to simulate Depository Trust Company ("DTC") records on-screen at BLMIS' office purporting to show that BLMIS held actual securities on behalf of clients when in reality the BLMIS IA business held nothing but cash or U.S. Treasury Bills for Madoff's benefit.

Response: Disputed as misleading and incomplete. The claim that BLMIS had an IT program with the capacity to simulate DTC screens on-demand is unsupported by the evidence. Other than FGG employee statements and deposition testimony, there is no evidence supporting the claim that BLMIS's computer system created or had the capacity to create a

simulated live DTC screen on-demand. *See* Dubinsky Global Rept. ¶¶ 197–206; *Id.* ¶ 205, and n.198. The statement is further unsupported by the evidence, as the portion of Frank DiPascali's ("DiPascali") testimony that is cited does not support the statement. The testimony describes the creation of the fake DTC screens in hard copy form and Madoff's review of those documents. *See* Fletcher Decl. Ex. 30, 4769:9–15 (Q. And did there come a time that these fabricated DTC reports were perfected? A. Close to perfect. Q. And do you recall how you -- Well, did you observe anything in connection with sort of the finalization of this process? A. There had to be a high-speed, continuous-feed laser printer purchased.); *id.* 4769: 19–22 (Q. And did there come a time that you observed Mr. Madoff looking at the results of this process and comparing a real DTC report with a fabricated DTC report? A. Yes.).

51. Statement: At times, Madoff closed BLMIS to new investments entirely, giving feeder funds like the Fairfield Funds only a limited "capacity" to add additional funds to their BLMIS accounts.

Response: Undisputed.

52. Statement: On December 31, 2007, BLMIS had approximately 4,900 customer accounts and purported assets under management of approximately $74 billion.

Response: Undisputed.

53. Statement: Madoff's second-in-command was Frank DiPascali, BLMIS' CFO. DiPascali played a key role in fabricating client account statements and pleaded guilty to federal charges including conspiracy, securities fraud, money laundering, and falsifying books and records. DiPascali, who is now deceased, also cooperated with the government and became an essential prosecution witness in criminal proceedings against other co-conspirators.

Response: Disputed as incorrect and misleading. DiPascali, a BLMIS

employee since 1975 and Madoff's right-hand man, pleaded guilty to a ten-count criminal action charging him with participating in and conspiring to perpetuate the Ponzi scheme at BLMIS. (Plea Allocution Transcript of Frank DiPascali Jr., *United States v. DiPascali*, No. 09-CR-764 (RJS), ECF No. 12, hereinafter "DiPascali Plea") at 44:25–25, 65:6-8. At a plea hearing on August 11, 2009, in the case captioned *United States v. DiPascali*, No. 09-CR-764 (RJS), DiPascali admitted that no purchases or sales of securities took place in connection with the IA Business customer accounts. *Id.* at 52:2–5 ("I knew no trades were happening. I knew I was participating in a fraudulent scheme. I knew what was happening was criminal and I did it anyway."). DiPascali gave testimony at a criminal trial of five former BLMIS employees in which he confirmed that the securities transactions on the IA Business customer statements were fake. *Id.* at 4517:14–24.

54. Statement: Other BLMIS co-conspirators who pleaded guilty or were convicted by juries included computer programmers Jerome O'Hara and George Perez, account managers Annette Bongiorno and JoAnn Crupi, BLMIS trader David Kugel, Director of Operations Daniel Bonventre, controllers Enrica Cotellessa-Pitz and Irwin Lipkin, and Madoff's brother and Chief Compliance Officer Peter Madoff.

Response: Disputed as incomplete. The United States Attorney brought charges against Madoff, Peter Madoff, Frank DiPascali, David Kugel, Craig Kugel, Enrica Cotellessa-Pitz, Irwin Lipkin, Eric Lipkin, David Friehling, and Paul J. Kongisberg, who all pleaded guilty. Dubinsky Global Rept. ¶¶ 48–50, 54–60, 65–70, 75–76; Transcript at 34, *United States v. Paul J. Konigsberg*, No. S11 10-CR-228 (LTS) (S.D.N.Y. June 24, 2014), ECF No. 1090. The United States Attorney also brought indictments against Annette Bongiorno, Daniel Bonventre, Joann "Jodi" Crupi, Jerome O'Hara, and George Perez, who were tried to conviction on multiple counts of the respective indictments. Dubinsky Global Rept. ¶¶ 61–64, 71–74; Jury Verdicts as to Annette

Bongiorno, Daniel Bonventre, Joann "Jodi" Crupi, Jerome O'Hara, and George Perez, *United States v. O'Hara*, No. 10-CR-228 (LTS) (S.D.N.Y. Mar. 24, 2014).

55. Statement: Madoff also enlisted Friehling & Horowitz, C.P.A., P.C. ("F&H") to provide tax and auditing services to BLMIS and issue fraudulent audit reports.

Response: Undisputed.

56. Statement: David Friehling pleaded guilty to securities fraud and other charges in March 2009.

Response: Disputed as incorrect. David Friehling pleaded guilty on November 3, 2009. *See* Strong Decl. Ex. 35 at 2:13–17.

57. Statement: By the mid-1980s, Madoff had become "a prominent and respected member of the investing community, and had served as a member of the NASDAQ stock market's Board of Governors and as the vice-chairman of the National Association of Securities Dealers" as well as vice-chairman of the Securities Industry Association, and head of its Trading Committee, and as chairman of NASDAQ. *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 377 (S.D.N.Y. 2010); ABA, *The Bernie Madoff I Knew: How He Gained the Confidence of Regulators and Legislators* (July 2021), https://www.americanbar.org/groups/business_law/resources/business-law- today/2021-july/the-bernie-madoff-iknew/.

Response: Disputed as misleading and immaterial. Further disputed as it relies upon inadmissible evidence (*In re Beacon Assocs. Litig.*) and irrelevant evidence in that it was published after the fraud was revealed (*The Bernie Madoff I Knew*). Furthermore, other individuals' opinions about Madoff are immaterial to the Defendants' knowledge of the Ponzi scheme.

58. Statement: Madoff had been retained by the SEC as an informal expert

advisor on modernizing the financial market's structure and associated trading issues. ABA, *The Bernie Madoff I Knew: How He Gained the Confidence of Regulators and Legislators* (July 2021), https://www.americanbar.org/groups/business_law/resources/business-law-today/2021-july/the- bernie-madoff-iknew/.

Response: Disputed as misleading and immaterial. Disputed as the evidence cited does not support that Defendants' knew that Madoff "had been retained by the SEC as an informal advisor." Furthermore, Madoff's retention by the SEC on the issues listed above is immaterial to the Defendants' knowledge of the Ponzi scheme.

59. Statement: Through the 1970s, 1980s, and 1990s, Madoff held numerous leadership positions, committee seats, and advisory board seats throughout the financial industry.

Response: Disputed as misleading and immaterial. Madoff's positions in the financial industry are immaterial to the Defendants' knowledge of the Ponzi scheme. Further disputed as the evidence cited does not support that Defendants' knew that Madoff "held numerous leadership positions, committee seats, and advisory board seats throughout the financial industry."

60. Statement: Madoff privately pitched his strategy to close friends and business affiliates, connections in Jewish communities in New York and elsewhere, and a limited network of institutional investors.

Response: Disputed as a misleading and incomplete description of the means by which Madoff marketed his strategy, which included the cooperation of feeder funds such as FGG to attract a continuing stream of new investments. *See* Dubinsky Global Rept. ¶¶ 346–47.

61. Statement: BLMIS was subject to oversight by the SEC, which conducted investigations into BLMIS throughout its tenure.

Response: Undisputed that BLMIS was subject to SEC oversight. Disputed as

immaterial to Defendants' knowledge of the Ponzi Scheme. Further disputed as there is no evidence that Defendants' were aware of the SEC's oversight or examinations, nature of the examinations, and/or the findings of the examinations.

62. Statement: Prior to December 11, 2008, the SEC never alleged that BLMIS was a Ponzi scheme.

Response: Disputed as immaterial to Defendants' knowledge of the Ponzi scheme.

63. Statement: As a registered broker-dealer, BLMIS also was subject to oversight by the NASD until 2007, when the NASD was succeeded by FINRA, and Madoff became subject to oversight by that organization.

Response: Disputed as incomplete and misleading. The Proprietary Trading Business of BLMIS operated as a securities broker-dealer. As a broker-dealer, the Proprietary Trading Business was registered with the SEC and was a member of FINRA (formerly NASD). Dubinsky Global Rept. ¶ 46.

64. Statement: Throughout 2007 and 2008, the financial crisis induced many investors to redeem their investments, which caused a liquidity crisis at BLMIS.

Response: Disputed as incomplete. The Ponzi scheme collapsed in December 2008, when BLMIS customers' requests for redemptions overwhelmed the flow of new investments.

65. Statement: In December 2008, Madoff confessed to his sons, Mark Madoff and Andrew Madoff that BLMIS did not have sufficient funds to meet investor withdrawals and revealed that BLMIS' IA business was a Ponzi scheme.

Response: Disputed as immaterial.

66. Statement: Madoff's sons contacted legal counsel and federal authorities.

Response: Disputed as immaterial.

67. Statement: On December 11, 2008, Madoff was arrested by the Federal Bureau of Investigation.

Response: Undisputed.

68. Statement: Noel and Tucker were introduced to Madoff in the late 1980s by Tucker's father- in-law, who had an account at BLMIS and recommended that they meet with Madoff.

Response: Undisputed.

69. Statement: Noel had experience in the banking and investment consulting industries, and Tucker served as an attorney with the SEC's enforcement division and later as a general partner of a successful broker-dealer.

Response: Disputed as incomplete and misleading. In 1983, Noel, a private bank executive, established a consulting firm, Walter Noel Associates, to advise offshore clients in connection with their investments in U.S. based alternative assets. Ex. 183 at FAIRFIELD_00147960–961; Ex. 91; Ex. 260 at FAIRFIELD_00041031; Ex. 92 at 17:7-17. Walter Noel Associates "eventually became Fairfield Greenwich Group." In 1987, Tucker, a former SEC attorney, who had been practicing law since the 1970s, became a minority partner of Fred Kolber & Co., a fund management business that leased office space from Noel. Ex. 260 at FAIRFIELD_00041031; Ex. 183 at FAIRFIELD_00147962.

70. Statement: Tucker met with Madoff and DiPascali at BLMIS' office to discuss his business, his trading strategy, and information on his performance history and returns.

Response: Disputed as incomplete, misleading, and vague. These statements

are disputed because they are unsupported by anything in the record except the Defendants' statements, including sworn deposition testimony. Tucker's credibility is a disputed issue to be weighed and determined at trial.

71. Statement: Noel and Tucker reviewed BLMIS' Form BD, which disclosed that the firm had never been subject to disciplinary action.

Response: Disputed as incomplete, misleading, and vague. These statements are disputed because they are unsupported by anything in the record except the Defendants' statements, including sworn deposition testimony. Tucker's and Noel's credibility are disputed issues to be weighed and determined at trial.

72. Statement: Following their evaluation of Madoff and his returns, Noel and Tucker made an initial "test" investment in BLMIS.

Response: Disputed as incomplete. FGG's first investment was through an entity called Fairfield Strategies LTD. by way of a "test" investment in July 1989 of $1.5 million in the SSC strategy run by BLMIS via a deposit in BLMIS Account 1FN011 held in the name of Fairfield Strategies LTD. Hirsch Rept. ¶ 43, n. 41. *See* Ex. 90 at 61:17-24; Ex. 220 at 27:6-17; Ex. 40 at 159:23 - 160:2.2. The evaluation, if any, conducted prior to their investment is a disputed fact issue for trial.

73. Statement: When the test investment provided satisfactory returns, Tucker and Noel expanded their investment in BLMIS through certain funds, including Sentry, GS, and GSP.

Response: Undisputed.

74. Statement: BLMIS entered into several agreements with the Fairfield Funds that governed BLMIS' trading on the Fairfield Funds' behalf: a Customer Agreement authorizing BLMIS to open the account(s); a Trading Authorization authorizing BLMIS to trade securities on

the customer's behalf; an Option Agreement similarly authorizing BLMIS to trade options; a Master Agreement for OTC Options governing BLMIS' options trading; and a Terms and Conditions for Option Hedging Transactions agreement.

Response: Undisputed that BLMIS entered into the stated agreements with Sentry. Disputed as unsupported by the evidence cited that BLMIS entered into agreements with GS or GSP. The statement that the agreements governed BLMIS' trading on the Fairfield Funds' behalf or any aspect of the Defendants' relationship is disputed. *See, e.g.*, Ex. 31 (account opening documents); Ex. 221 (SEC prep call where Madoff states that he's been trading for several years under new guidelines that FGG did not have).

75. Statement: BLMIS sent hard-copy trade confirmation statements (also referred to as trade tickets) to the Fairfield Funds' investment managers, which purported to show the trades that BLMIS made on behalf of the investor's account a few days before receipt of the statement.

Response: Undisputed that BLMIS sent hard-copy trade confirmation statements which purported to show trades. The statements (i) concerning the timing or consistency of the Defendants' receipt of trade confirmation statements and (ii) characterizing certain Defendants as "the Fairfield Funds' investment managers" are disputed. *See* Ex. 32 at FAIRFIELD_01636479; Ex. 33 at FG-00003892–FG-00003893; Ex. 277 at 68:4–69:24. The credibility of Tucker's and Vijayvergiya's deposition testimony is a fact issue to be determined at trial.

76. Statement: BLMIS also sent monthly account statements to investors which purported to show all transactions made on behalf of the account and the market value of securities held on its behalf.

Response: Undisputed that BLMIS sent monthly account statements which

purported to show securities transactions made in the prior month is undisputed. The credibility of Tucker's and Vijayvergiya's deposition testimony concerning the account statements is a material issue to be determined at trial.

77. Statement: Initially, as Sentry was a growing operation, Tucker analyzed the trade information sent by BLMIS, which included selecting a number of equity trades to confirm their prices were within the high-low range for that day and analyzing the collection of stocks to ensure that they fell within the agreed-upon trading guidelines between Sentry and BLMIS.

Response: Disputed because the credibility of Tucker's deposition testimony is a material issue to be determined at trial.

The question of whether FGG conducted any review or diligence with regard to purported trading by BLMIS until later years when it became necessary to do so for marketing purposes, i.e., to satisfy the requirements of potential investors, is also a disputed fact issue to be determined at trial. *See* Trustee's Memorandum of Law in Opposition to Defendants' Motion for Partial Summary Judgment.

78. Statement: In or around January 1995, Tucker hired Gil Berman, a former options trader, as an independent consultant to analyze the statements received from BLMIS.

Response: Disputed as incomplete and misleading. Undisputed that Gil Berman ("Berman") was hired by FGG in or around 1995. Disputed that Tucker hired Berman to analyze the statements received from BLMIS because Berman was hired to provide monthly reports on the trading activity of Sentry and GS. Ex. 34; Ex. 87 at 41:3–41:9; 43:16–44:6; Ex. 88 at 40:23–41:4. On the rare occasion that Berman communicated his analysis concerning anomalies that were consistent with no securities were being traded, FGG did not accept it. *See* Ex. 35 at FG-00134832; Ex 34.

79. Statement: Berman was a securities trader who previously worked at Fred Kolber & Co.

Response: Undisputed.

80. Statement: Berman reviewed the monthly statements that BLMIS provided for the Sentry and GS funds every month from 1995 to November 2008 and provided analysis in a written report, including a review of the purported securities trades, profits, losses, and overall activity of the Sentry and GS accounts.

Response: Disputed as incomplete and misleading. Not disputed that Berman prepared a monthly report based on his review of the BLMIS statements. *See, e.g.*, Hirsch Rept. ¶¶ 195, 362. Disputed that Berman "provided analysis" of the "overall activity of the Sentry and GS accounts." Berman was hired to provide monthly reports on the trading activity of Sentry and GS. Ex. 88 at 40:23-41:4. Nonetheless, the Berman Reports did sometimes include anomalies in the purported trading records. *See, e.g.*, Hirsch Rept. Figure 121. FGG took no action in response. Ex. 35 at FG-00134832; Ex 88 at 116:20–117:21; Ex. 88 at 142:10–144:23; Ex 34; Ex. 222; Ex. 87 at 88:11-90:2; Ex. 87 at 63:11-24; Ex. 87 at 60:12-23.

81. Statement: Berman initially addressed his monthly analysis to Tucker at FIM, but in August 2004 began sending his analysis to Vijayvergiya at FGBL.

Response: Undisputed that the addressee of Berman's reports changed from Tucker to Vijayvergiya. Disputed that Berman provided "monthly analysis" of FGG accounts, because Berman was hired provide monthly reports on the trading activity of Sentry and GS. Ex. 88 at 40:23-41:4.

82. Statement: FGBL was established as a wholly-owned subsidiary of FGL in 2003.

Response: Undisputed.

83. Statement: Prior to July 2003, Sentry's investment manager was FGL. The relationship between Sentry and the investment manager was governed by investment management agreements.

Response: Disputed as incorrect. FIM was investment manager of Sentry from November 15, 1990 to December 31, 1997. Exs. 357–58. The statement is further disputed as incomplete because the original investment management agreement between FGL and Sentry was dated December 31, 2001 and Defendants did not produce an investment management agreement with FGL prior to that date that would govern the relationship with Sentry. The statement is also disputed insofar as the question of whether the fees FGL received were made up of BLMIS customer property is a material factual dispute to be determined at trial.

84. Statement: In July 2003, after the establishment of FGBL, Sentry's investment manager switched from FGL to FGBL.

Response: Disputed as incomplete and misleading. FGBL was established specifically at Madoff's request in order to avoid scrutiny by U.S. regulators. *See* Exs. 21–22, 36–39. Undisputed that on July 1, 2003, FGBL replaced FGL Cayman as the investment manager to Sentry, Sigma, and Lambda. Hirsch Rept. ¶ 60.

85. Statement: FGBL replaced FGL as general partner of GS and provided investment management services to GS through a limited partnership agreement.

Response: Disputed as incomplete. The documents produced by Defendants are conflicting as to the identification of GS's general partners and the time during which they served in the role. *See, e.g.*, Ex. 389 at -836; Ex. 324 at -22; Ex. 363; Ex. 321 at -258.

86. Statement: After formation in 2006, FGBL served as investment manager for

GSP through the parties' limited partnership agreement.

Response: Undisputed that FGBL entered into a limited partnership agreement with GSP.

87. Statement: FGBL employed Vijayvergiya, Gordon McKenzie, Charles Oddy, Bjorn Axelsson, and others.

Response: Undisputed.

88. Statement: Professionals at FGBL engaged in quantitative analysis of the Fairfield Funds' investments. This included quantitative and market risk analytics on the accounts holding the Fairfield Funds' investments, which involved analyzing the trade tickets and monthly confirmation statements received from BLMIS for the Fairfield Funds' BLMIS accounts.

Response: The extent to which FGBL employees engaged in legitimate analysis of the Fairfield Funds investment for risk management and due diligence, as opposed to marketing, purposes, is a disputed material issue of fact to be determined at trial. Vijayvergiya Decl.[2] Ex. 3 at FG-06600706; Ex. 41; Ex. 42; Ex. 43.

89. Statement: At FGBL, Vijayvergiya oversaw the expansion of the risk monitoring operations for the Fairfield Funds, including by implementing the RiskMetrics platform, a third-party risk analytics engine that produced risk reports analyzing the account statements sent by BLMIS.

Response: Disputed as incorrect and misleading. Undisputed that FGG utilized RiskMetrics for risk monitoring. Disputed that FGG took any action based on any RiskMetrics report. It is further disputed because it omits that the purpose of FGBL's risk monitoring operation was to further the marketing of the Fairfield Funds, which is a disputed material issue of fact to be

[2] References to "Vijayvergiya Decl." refer to exhibits annexed to the December 5, 2025 Declaration of Amit Vijayvergiya, submitted in support of Defendants' Motion for Partial Summary Judgment.

determined at trial. Vijayvergiya Decl. Ex 3 at -0706; Ex. 41; Ex. 42; Ex. 43; Ex. 44; Ex. 45 at 1066:11–17; Ex. 46.

90. Statement: Before the implementation of RiskMetrics, FGBL and FGL used Bear Measurisk and another third-party compliance product created by GlobeOp to analyze the Fairfield Funds' reports.

Response: Undisputed that FGBL and FGL used RiskMetrics, Bear MeasureRisk and GlobeOp. Disputed that FGBL and FGL used those products to evaluate fraud risk, as opposed to further the marketing of the Fairfield Funds. Those are disputed material issues of fact to be determined at trial. Hirsch Rept. ¶ 132, Hirsch Declaration Ex. B (the "Hirsch Rebuttal Rept.") ¶¶ 52-54, Funkhouser Report ¶ 67; Ex. 223.

91. Statement: Vijayvergiya worked with Robert Blum to develop FGL's and FGBL's risk analysis operations as technology and the industry advanced.

Response: Disputed as incomplete and misleading. Disputed that FGG engaged in "risk analysis operations." *See, e.g.*, Hirsch Rept. ¶ 156. Vijayvergiya's testimony is a disputed issue to be weighed and determined at trial.

92. Statement: Blum was a shareholder of FGL and held a management role until June 2005.

Response: Undisputed.

93. Statement: In an email dated May 12, 2004, Blum highlighted the evolving regulatory environment in which the burgeoning hedge fund industry operated and insisted that everything be run cleanly with "reasonable procedures" so as to comply with the evolving regulations, encouraging employees to "improve our practices from a regulatory and compliance standpoint."

Response: Undisputed that Blum drafted an email dated May 12, 2004, but disputed, as the document speaks for itself.

94. Statement: Nearly every day of his employment at FGBL before December 11, 2008, Vijayvergiya maintained handwritten notebooks documenting his notes regarding efforts to (i) analyze the trades reported to them by BLMIS and (ii) communicate the operations of the Fairfield Funds.

Response: Disputed as incomplete and misleading. Dispute that Vijayvergiya's intent was either to (i) analyze trades reported to FGG by BLMIS; or (2) to communicate the operations of the Fairfield Funds. The statements grossly overgeneralize the substance of the handwritten notebooks, the purpose and credibility of his entries. The question of whether the journal entries reflect due diligence efforts or were created to protect Vijayvergiya from blame once the Ponzi was inevitably detected, are disputed material issues of fact for trial. Conclusions can be drawn from journal entries not cited by the Defendants, as well as other conduct and communications, that Vijayvergiya was aware of the fraud at BLMIS. *See*, *e.g.*, Vijayvergiya Decl., Ex. 11 at FG-06606394.

95. Statement: Vijayvergiya's notebooks totaled over 4,000 handwritten pages.

Response: Disputed as immaterial.

96. Statement: Vijayvergiya and other FGBL employees checked reported trades against public sources to verify that they were within the high-low range for the reported trade date.

Response: Disputed as incomplete and misleading. It is not disputed that the Berman Reports identified whether transactions took place within the daily high/low range. Hirsch Rept. n.275, ¶ 195. Further disputed that Vijayvergiya "checked reported trades against public sources."

97. Statement: Tucker visited BLMIS' office on his own initiative or to accompany potential investors in the Fairfield Funds as they met with Madoff and/or DiPascali at various times.

Response: Disputed as incorrect and misleading. Undisputed that Tucker visited BLMIS at least once. The reliance on Tucker's deposition testimony is disputed because Tucker's credibility is a disputed issue to be weighed and determined at trial.

98. Statement: In 2001, two articles published by financial industry newspapers Barron's and MAR/Hedge discussed BLMIS and the relative secrecy Madoff kept around his IA business.

Response: Disputed as misleading. The statement that Barron's and MAR/Hedge published articles in 2001 concerning BLMIS is undisputed. The characterization of the articles as discussing only "BLMIS' relative secrecy" is disputed because it is misleading and incomplete. *See* Strong Decl., Exs. 52, 53.

99. Statement: Soon after those articles were published in May 2001, Tucker had a telephone call with Madoff to discuss the articles, and Tucker arranged to visit BLMIS' office to meet with Madoff and DiPascali and perform due diligence on the Fairfield Funds' investments.

Response: Disputed as incomplete, vague, and ambiguous. Disputed because "those articles" is vague and ambiguous. Further disputed because the statement mischaracterizes Tucker's testimony as a material fact. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

100. Statement: In response to Tucker's concerns, Madoff and DiPascali presented Tucker with what was purported to be a purchase and sale blotter and invited Tucker to "thumb through the pages."

Response: Disputed as immaterial. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

101. Statement: Madoff and DiPascali then invited Tucker to select a stock and trade date at random from the blotter, and he chose AOL/Time Warner.

Response: Disputed as immaterial. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

102. Statement: Madoff and DiPascali then showed Tucker a hard-copy stock record for AOL/Time Warner on the date he selected.

Response: Disputed as immaterial. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

103. Statement: The stock record noted all of the BLMIS customer accounts and their AOL share balances, including the purported number of AOL shares held by Sentry.

Response: Disputed as immaterial. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

104. Statement: Madoff then switched on a computer screen that reflected a purported DTC screen for AOL/Time Warner, displaying the purported shares of AOL held in the name of BLMIS, which tied exactly to the total number of AOL shares carried in the stock record, to confirm that the AOL shares were purportedly being held for the benefit of the Fairfield Funds.

Response: Disputed. Other than statements by FGG employees, including

sworn deposition testimony, the claim that BLMIS's computer system created or had the capacity to create a simulated live DTC screen on-demand is not supported by the record. *See* Dubinsky Global Rept. ¶ 197; *Id.* ¶ 205, n. 198. The statement is further unsupported by the evidence, as the portion of DiPascali's testimony that is cited does not support the statement. The testimony describes the creation of the fake DTC screens in hard copy form and Madoff's review of those documents. Strong Decl. Ex. 30, 4769:9-15 (Q. And did there come a time that these fabricated DTC reports were perfected? A. Close to perfect. Q. And do you recall how you -- Well, did you observe anything in connection with sort of the finalization of this process? A. There had to be a high-speed, continuous-feed laser printer purchased.); *id.* 4769: 19-22 (Q. And did there come a time that you observed Mr. Madoff looking at the results of this process and comparing a real DTC report with a fabricated DTC report."? A. Yes.). Further disputed because the credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial.

105. Statement: Tucker informed other Defendants and the Fairfield Funds' custodian and administrator that he had confirmed the existence of the assets through the DTC screen at BLMIS' office.

Response: Undisputed that Tucker informed others he confirmed the existence of Sentry's assets through the DTC screen at BLMIS' office. This statement is disputed to the extent it implies that this event actually happened as described, as Tucker's credibility is a disputed issue to be weighed and determined at trial. A factfinder could reasonably conclude that the process BLMIS employed to create fake DTC screenshots and could not be accomplished as described by Tucker. *See* Dubinsky Global Rept. ¶¶ 197-206; *Id.* ¶ 205, n.198. The statement is further unsupported by the evidence, as the portion of DiPascali's testimony that is cited does not support

the statement. The testimony describes the creation of the fake DTC screens in hard copy form and Madoff's review of those documents. Strong Decl. Ex. 30, 4769:9-15 (Q. And did there come a time that these fabricated DTC reports were perfected? A. Close to perfect. Q. And do you recall how you -- Well, did you observe anything in connection with sort of the finalization of this process? A. There had to be a high-speed, continuous-feed laser printer purchased.); *id.* 4769: 19-22 (Q. And did there come a time that you observed Mr. Madoff looking at the results of this process and comparing a real DTC report with a fabricated DTC report? A. Yes.).

106. Statement: In reality, the DTC screen and books shown to Tucker were forgeries designed specifically to fool inquiring victims such as Tucker.

Response: Disputed because there is no basis other than Tucker's statements, including sworn deposition testimony, for a factfinder to conclude that the events happened as Tucker has described. The credibility of Tucker's testimony about his visit to BLMIS's offices following the publication of the Barron's and MAR/Hedge articles is a disputed issue to be weighed and determined at trial. A factfinder could reasonably conclude that the process BLMIS employed to create fake DTC screenshots required multiple steps and could not be accomplished as described by Tucker. *See* Dubinsky Global Rept. ¶¶ 197 – 206 (describing documents found in BLMIS records that contained "typed-in text that appears to replicate certain DTC system screens"); *Id.* ¶ 205, n.198. The statement is further unsupported by the evidence, as the portion of DiPascali's testimony that is cited does not support the statement. The testimony describes the creation of the fake DTC screens in hard copy form and Madoff's review of those documents. Strong Decl. Ex. 30, 4769:9-15 (Q. And did there come a time that these fabricated DTC reports were perfected? A. Close to perfect. Q. And do you recall how you -- Well, did you observe anything in connection with sort of the finalization of this process? A. There had to be a high-

speed, continuous-feed laser printer purchased.); *id.* 4769: 19-22 (Q. And did there come a time that you observed Mr. Madoff looking at the results of this process and comparing a real DTC report with a fabricated DTC report? A. Yes.).

107. Statement: PricewaterhouseCoopers Accountants N.V. and its affiliate PricewaterhouseCoopers LLP (or its predecessor Coopers & Lybrand) (collectively, "PwC") were retained to audit each of the Fairfield Funds.

Response: Undisputed.

108. Statement: Prior to 1993, Sentry was audited by Berkow, Schechter & Co.

Response: Undisputed.

109. Statement: Prior to 2005, GS was also audited by Berkow, Schechter & Co.

Response: Undisputed.

110. Statement: PwC conducted periodic site visits to BLMIS' office as part of its audit of the Fairfield Funds.

Response: Disputed as incorrect, misleading, and vague. It is undisputed that PwC visited BLMIS two times, in December 2002 and December 2004. *See* Ex. 47 at 34:22-35:10. It is disputed that "PwC conducted periodic site visits to BLMIS" because it is inaccurate, misleading and vague. The statement that these visits constituted audits of the Fairfield Funds are disputed. The December 2002 visit was in connection with PwC's audit of Kingate, another BLMIS feeder fund, and PwC did not issue a report on that visit. *See* Ex. 48. During the December 2002 visit, PwC did not perform any procedures other than making some trade reconciliations between the records of Kingate and BLMIS. *See id.* The December 2004 visit was limited to an interview with Madoff. Following the December 2004 visit, PwC issued a report stating

The procedures performed by PwC Bermuda were only directed

> *towards obtaining an understanding of certain procedures and organisation [sic] aspects of BLM for the purpose of gaining comfort thereon for the audits by several PwC offices of a number of funds having moneys managed by BLM...the procedures performed are not directed to the providing of assurance in respect of internal control, nor to the detection of fraud, errors or illegal acts. The procedures performed do not constitute an audit nor an investigation of the internal controls of/at BLM. The procedures consisted of gathering factual information through an interview with Mr. Madoff... No testing of controls and procedures was performed.*

See Ex. 49.

111. Statement: On at least one occasion, FGL's CFO Daniel Lipton accompanied PwC to BLMIS' office and observed the audit procedures, including what he believed to be completeness and existence testing specifically designed to confirm, among other things, the existence of BLMIS' assets.

Response: Disputed as incorrect and misleading. It is undisputed that Daniel Lipton ("Lipton") accompanied PwC to BLMIS's office on at least one occasion. The statements that Lipton observed audit procedures including what he believed to be completeness and existence testing are disputed because Lipton's credibility is a disputed issue to be weighed and determined at trial and because the statement misrepresents the record. Lipton testified "I thought that I witnessed a completeness in existence testing done by PricewaterhouseCoopers in the 2002 visit" but when asked if he had "an opinion as to whether PwC should have performed additional procedures to confirm the existence of the assets held at BLMIS" he responded "I don't know what procedures they performed, so I can't form an opinion." *See* Ex. 50 at 127:3-129:5. Nothing in the cited documents states that what Lipton thought he observed was "specifically designed to confirm, among other things, the existence of BLMIS's assets." Further disputed as it mischaracterizes Lipton's opinion and testimony as a material fact.

When PwC visited BLMIS in December 2002, Dan Lipton and Albert van Nijen ("van

Nijen"), a representative of Citco, were also present. After the meeting, van Nijen reported to Citco that "[t]he agreed upon procedures (e.g. walkthrough tests) I received from PwC Amsterdam (Chris Meijinders) were not performed. During the meeting just some of the issues were discussed and PwC made some trade reconciliation's [sic] between the books of Kingsgate [sic] and Madoff's records. No other substantive audit procedures/ test of controls were performed." Ex. 48. Van Nijen also understood from Lipton following the visit that it "was only a desk review, so no additional procedures." Ex. 51 at 97:13-25. After the visit, van Nijen also reported to Ger Jan Meijer, his supervisor, that he believed that Lipton was the reason the planned due diligence was a failure. *See* Ex. 52 at 440:23–441:23; Ex 216.

112. Statement: PwC's audits of the Fairfield Funds were always clean and never identified any indicia of fraud at BLMIS.

Response: Disputed as incomplete and misleading to the extent that (i) it is not qualified by the restrictions/limitations FGG placed on PwC's audit activities with regarding to BLMIS, (ii) FGG was aware of the limited scope of PwC's activities and representations concerning BLMIS and (iii) FGG lied to, withheld information from and provided false and/or incomplete information to PwC. *See*, *e.g.*, Ex. 53 at -0011823; Ex. 54 at -9084; Ex. 55.

PwC's audits of the Fairfield Funds never identified any indicia of fraud at BLMIS because PwC did not audit BLMIS. Hirsch Rebuttal Rept. ¶ 7. PwC's audit was limited to an audit of Fairfield Funds' financial statements. *See* Hirsch Rebuttal Rept. n.7. The PwC audits of the Fairfield Funds did not include an audit of the investments of the Fairfield Funds or their performance. Ex. 56; Ex. 57. In fact, PwC's engagement letters specifically state that "[o]ur audit will not include a detailed audit of transactions, such as would be necessary to disclose errors or fraud that did not cause a material misstatement of the financial statements." *See e.g.* Ex. 58.

FGG also acknowledged this in internal communications. For example, Lipton explained to Lakshmi Chaudhuri in an email that "PwC doesn't audit the 'performance' of any of our funds. They audit the financial statements. No public accounting firm attests to the performance of a fund unless it is an extra engagement we direct them to do." Ex. 56. Lipton later testified that there was no extra engagement with PwC to audit the fund's performance. Ex. 50 at 123:2–124:2.

113. Statement: In September 2008, Defendants provided Madoff with a list of over 40 questions regarding BLMIS' practices and scheduled an in-person meeting at BLMIS' offices to discuss market conditions, BLMIS' trading strategy, and questions investors had raised.

Response: Disputed as incomplete and misleading. Further disputed as it mischaracterizes Mark McKeefry's ("McKeefry") opinion and testimony as a material fact. Citco sent a due diligence questionnaire to FGG for BLMIS in February 2008, subsequently contacted Dan Lipton and others at FGG more than ten times over the next 10 months requesting an update on the questionnaire, and made repeated requests for a direct contact at BLMIS, which FGG ignored. *See* Ex. 69; Ex. 70; Ex 71 at 243:5-245:4.

114. Statement: In advance of the meeting, Tucker, Vijayvergiya, FGA general counsel Mark McKeefry, and others emailed internally to prepare:

> **[Richard Landsberger (9-24-2008 at 6:13 a.m.)**:] i don't want to beat a dead horse, but this illiquidity exists in the bund, jgb and ust bond markets as well (the most liquid markets after fx)
>
> does anyone on this e-mail not think we should speak to blm asap to get some color from him on how we are getting option liquidity in s+p 100 from his counter parties?
>
> **[Andrew Smith (9-24-2008 at 6:30 a.m.)**:] We were speaking about this last night and this morning amit mentioned you guys were seeing bernie next week in times like these would be great if we could get some clarity on who the 20 non us options counterparties

> are and the liquidity in the mktplace just for our comfort not to tell the clients so we can tell them we know/monitor. I refuse to believe this illiquidity is permanent. Maybe he's in cash until dec 31??
>
> **[Amit Vijayvergiya (9-24-2008 at 7:20 a.m.)**:] We have a number of questions for BLM relating to the derivatives c/p's -- including his views on the willingness of the options c/p's that have been historically used to continue trading with BLM, as Agent, in this environment. These are in addition to several other important questions we have for BLM relating to their operations and trading (Bernie has already been sent a fax of our questions).
>
> Frank DiPascali stated last week that they use 20 derivatives dealers and international banks, primarily European, for the options, but we expect that some of these c/p's will either not trade or curtail their liquidity in the near term. The impact on SSC may be, as Andy suggests below, that we remain in cash for a period of time until the situation settles.
>
> The SSC strategy is entirely in cash now and I think it is very unlikely that BLM will activate again before the end of Sep.
>
> **[Mark McKeefry (9-24-2008 at 6:01 p.m.)**:] Arranged for Jeffrey, Amit (in person or via telephone) and I to visit Bernie in his office on Thursday, October 2nd at 3pm. Bernie's waiting until Congress passes the bailout package before going back into the market. However, he said the proposed rule changes have no effect on the strategy. The short selling restriction doesn't effect him directly (doesn't short equities, no restrictions on options) or indirectly (i.e., option counterparties can hedge with indices and futures). He noted that the price of the put option premiums are higher, but so is the premium on the call options - - so it's offsetting. In sum, he can go into the market if he wants, but he doesn't plan to until the bill passes and the markets are more stable. . . . .

Response: Disputed as incomplete and misleading. Characterizes opinions of participants as material facts.

115. Statement: On October 2, 2008, Noel, Tucker, and McKeefry went to BLMIS' office for the meeting with Madoff and DiPascali, with Vijayvergiya joining by phone from Bermuda.

Response: This statement that a meeting at BLMIS occurred on October 2, 2008

is undisputed. The credibility of Noel, Tucker, McKeefry, and Vijayvergiya, the topics of discussion, and whether any of these individuals believed BLMIS was trading securities are disputed issues to be determined at trial.

116. Statement: Madoff and DiPascali provided answers to the list of due diligence questions, including questions about BLMIS' trading process, counterparties, and segregation of assets.

Response: Disputed as incomplete and misleading. Characterizes Noel's, Tucker's, McKeefry's, and Vijayvergiya's opinions as material fact. The credibility of Noel, Tucker, McKeefry, and Vijayvergiya, the topics of discussion, and whether any of these individuals believed BLMIS was trading securities are disputed issues to be determined at trial.

117. Statement: Noel, Tucker, and McKeefry memorialized the meeting in a memorandum with the subject heading of "BLM Operational Due Diligence," including notes regarding what Madoff and DiPascali told them regarding recent BLMIS trades, recounting stories Madoff told about confusion in the marketplace regarding BLMIS' trading strategy, and Madoff's thoughts about the causes of the liquidity crisis.

Response: Disputed as incorrect. The document was drafted by Vijayvergiya. Ex. 393 at 584:16-585:17. Characterizes Noel's, Tucker's, and McKeefry's opinions as material fact.

118. Statement: On October 3, 2008, Vijayvergiya sent an internal email about the meeting with Madoff and DiPascali the day before to Tucker, Noel, McKeefry, and others who were not present with the subject "Diligence of Madoff":

> This was as informative as I've seen Bernie and Frank in the last six years. We prepared a list of questions which we faxed Bernie a couple of weeks ago -- this was helpful in drawing out new details about his team, business lines, profitability, stock and options

> trading, cash controls, trading systems, derivatives counterparties, segregation of assets among others.
>
> An interesting factoid: last Monday BLM did more than 600,000 trades in a single day, more than twice his regular volume; he is seeing an increase in profitability of his 'low cost/high volume' market making business.

Response: Disputed as incomplete and misleading. Undisputed that Vijayvergiya sent an email on October 3, 2008 at 12:55PM with the subject line "FW: Diligence of Madoff." Strong Decl. Ex. 73. The credibility of McKeefry, Vijayvergiya, and Richard Landsberger ("Landsberger"), the topics of discussion, and whether any of these individuals believed BLMIS was trading securities are disputed issues to be determined at trial. Further disputed as it mischaracterizes Vijayvergiya, Landsberger, and McKeefry's opinions as material facts.

119. Statement: In 2005, the SEC served formal voluntary document requests on FGA relating to "Certain Hedge Fund Trading Practices."

Response: Undisputed.

120. Statement: In response to the SEC's document requests, FGA provided eleven binders of requested documents to the SEC, and Tucker gave sworn testimony to the SEC.

Response: Undisputed.

121. Statement: In 2005, the SEC also requested an interview with Vijayvergiya to discuss the Fairfield Funds' investment practices and relationship with BLMIS.

Response: Undisputed.

122. Statement: Ahead of the interview with the SEC, McKeefry and Vijayvergiya spoke with Madoff about BLMIS' trading practices and the SEC's investigation into BLMIS.

Response: Undisputed.

123. Statement: McKeefry and Vijayvergiya specifically informed the SEC both before and after the call with Madoff that they were speaking with Madoff regarding the investigation.

Response: Disputed as incomplete and misleading. Ex. 159; Ex. 224 at 106:6-19; 106:20-109:6.

124. Statement: On December 21, 2005, McKeefry and Vijayvergiya spoke with representatives of the SEC. *See* Ex. 68 at 103-110; Ex. 77.

Response: Undisputed.

125. Statement: At the close of the SEC's investigation into BLMIS, Defendants were informed by the SEC that the SEC had not recommended any enforcement action against them.

Response: Undisputed.

126. Statement: Defendants learned that the focus of the SEC's investigation was whether BLMIS was operating as an unregistered investment advisor; when the investigation closed, Madoff agreed to register with the SEC as an investment advisor.

Response: Undisputed.

127. Statement: The SEC's internal memorandum officially closing the BLMIS investigation stated that the SEC investigators found "no evidence of fraud" at BLMIS over the course of its two-year investigation, and the SEC was satisfied to have BLMIS register as an investment advisor.

Response: Disputed as immaterial. Undisputed that the SEC's internal memorandum stated that the SEC investigators found no evidence of fraud. However, it is disputed as immaterial to Defendants' knowledge of Madoff's fraud because they did not learn of this SEC

memorandum until after Madoff's arrest. Ex. 59 at 150:2–151:8.

128. Statement: Following Madoff's arrest in December 2008, the SEC's Office of Inspector General ("OIG") investigated the SEC's practices and found that documents and information provided to the SEC by Tucker and other Defendants contradicted information provided to the SEC by BLMIS and that if the SEC had properly followed up, the fraud might have been uncovered.

Response: Disputed as misleading and incomplete as to the SEC's conclusions.

129. Statement: DiPascali later testified as to the "significance" of Tucker voluntarily turning over BLMIS account statements, which generated concern within BLMIS because it was "unhealthy for the SEC to have two separate versions of the same document."

Response: Disputed as incomplete and immaterial. Further disputed because it mischaracterizes DiPascali's opinion as a material fact.

130. Statement: Citco Bank Nederland N.V. (together with its affiliated entities, "Citco") served as Custodian for the Fairfield Funds and was responsible for "ongoing appropriate level of monitoring" of BLMIS, the sub-custodian.

Response: Disputed. The custodial relationship with Citco was designed from the outset to mislead investors and the Irish Stock Exchange and facilitate the marketing of BLMIS. Citco personnel were aware of the reason Citco was retained as nominal custodian. Ex. 60 at ANWAR-C-ESI-00357179; Ex. 61.

This statement is also disputed because Citco expressed concerns about its nominal custodial role to FGG and internally from the beginning of their relationship in 1994, and continued to do so through December 2008. Citco entered a custody agreement with Sentry dated September 20, 1994. Ex. 62. Within less than a year, Citco expressed concerns to FGG about the risk

associated with the sub-custody arrangement with BLMIS and the fact that FGG (not Citco) had selected BLMIS as sub-custodian, and requested that Sentry execute a waiver and indemnity agreement absolving Citco of responsibility for BLMIS as subcustodian. Ex. 63; *id.* at ANWAR-CBND-00059680. The waiver and indemnity provided in relevant part:

> 2.2 In consideration of the Custodian and the Bank agreeing to accept and appoint the Subcustodian as a subcustodian (as referred to in section 3 of CITCO's GENERAL RULES FOR THE CUSTODY OF SECURITIES, the "Rules") at the Client's specific instruction and request in connection with the Client's portfolio subject to the Rules. [T]he parties hereto agree that neither the Custodian nor the Bank shall be liable for any loss, liability and cost (with the exception of ordinary costs and charges in connection with the performance by the Subcustodian of his duties) which the Client may incur arising out of;
>
> 2.2.1 the appointment of the Subcustodian as a subcustodian; or
>
> 2.2.2 an act done, concurred in, or omitted to be done, by the Custodian and/or Subcustodian in connection with the Subcustodian's performance of his functions as a Subcustodian; or
>
> 2.2.3 any threatening or actual default or shortcomings by the Subcustodian….

There is no legitimate reason to hold Citco out as the custodian when it was not performing the duties of a custodian. Hirsch Rept. ¶ 397.

131. Statement: Citco (through Citco Fund Services (Europe) B.V.) served as Administrator for the Fairfield Funds and was responsible for, among other things, "independent reconciliation of [Sentry's] portfolio holdings" and "calculation of the Net Asset Value and the Net Asset Value per Share on a monthly basis."

Response: Undisputed that Citco Fund Services (CFS) was administrator for the Fairfield Funds. The statements concerning the scope of CFS's role and responsibilities are disputed issues of fact to be determined at trial. *See* Ex. 64 at ANWAR-C-ESI-00365830; *id.* at

ANWAR-C-ESI-00365832; *see also* Ex. 65 at FG-00013771. To the extent this statement implies that "independent reconciliation" of Sentry's portfolio holdings involved the comparison or verification of Fairfield's trade records against data from an external, independent source, this is disputed because the Defendants and Citco were aware that all trade information came from directly from BLMIS or from BLMIS via FGG. Citco requested an electronic interface with BLMIS as early as 2000. *See, e.g.*, Ex. 250 at 21:3–23:18. Pursuant to the Administration Agreement, Citco calculated Fairfield Sentry's Net Asset Value and the Net Asset Value per Share on a monthly basis based solely on trade information provided by the broker, BLMIS. Ex. 66 at 128:5-130:12; 139:3-140:24.

132. Statement: In its roles as Custodian and Administrator for the Fairfield Funds, Citco had direct communications with BLMIS.

Response: Disputed as misleading and incomplete. While Citco may have infrequently communicated with BLMIS, FGG restricted Citco's ability to communicate with or visit BLMIS in connection with due diligence. Ex. 64 at ANWAR-C-ESI-00365830. FGG controlled the flow of information between Citco and BLMIS, and meetings between Citco and BLMIS were also attended by FGG. *See, e.g.*, Ex. 67; Ex. 68. Citco did not otherwise have a relationship with BLMIS. Ex. 51 at 86:10–13. Nor did Citco have a direct contact at BLMIS. As late as 2008, Citco made repeated requests to FGG for a contact at BLMIS in order to complete its due diligence on BLMIS for the year. Ex. 69; Ex. 70. Citco was unable to obtain answers to its due diligence requests because it did not have a direct contact at BLMIS and FGG ignored Citco's requests to communicate with BLMIS directly.

133. Statement: Citco also conducted annual due diligence on BLMIS that included sending and receiving answers to a due diligence questionnaire.

Response: Disputed as misleading and incomplete because (i) Citco did not send due diligence requests to BLMIS until 2005 – 2006, *see* Ex. 71 at 52:2–16, and (ii) to the extent it implies that Citco communicated directly with BLMIS concerning due diligence. FGG acted as the middle-man for Citco's due diligence requests to BLMIS. *See* Ex. 64 at -65830; Ex. 67; Ex. 68; Ex. 51 at 86:10-13; Ex. 69; Ex. 70; Ex. 72; Ex. 73.

This statement is also disputed because Citco's attempts to perform due diligence on BLMIS were repeatedly restricted or thwarted by FGG. In 2002, when van Nijen of Citco accompanied FGG and PwC on a visit to BLMIS, van Nijen reported to Ger Jan Meijer, his supervisor, that Lipton "was the reason" certain walkthrough procedures were not completed during the visit. *See* Ex. 52 at 440:23–441:23. Citco's attempts to reconcile treasury bill statements to Madoff's books during the visit were "palmed off." Ex. 48. During a previous visit to BLMIS, Michel van Zanten and Anushka Cova of Citco were similarly "fobbed off without anything." Ex. 74; Ex. 51 at 68:13–70:17.

FGG carefully controlled the written due diligence that Citco could perform on BLMIS. Citco's due diligence processes concerning BLMIS were first cleared with Lipton. *See e.g.* Ex. 75. Lipton also reviewed Citco's due diligence questionnaires before they were sent to BLMIS. Ex. 76. Lipton continued to liaise between Citco and BLMIS during the due diligence process. Ex. 77; Ex. 78.

In 2008, FGG prevented Citco from performing due diligence on BLMIS altogether. Paul Kavanaugh ("Kavanaugh") of Citco reached out to Lipton on February 29, 2008, writing "[w]e are undertaking our annual due diligence of Bernard L. Madoff Investment Services, LLC. I am aware that you assisted us with this process last year and I wonder if I can call upon your services again." Lipton responded the same day writing, "[w]e are forwarding on the request to

Madoff Securities and will revert back with their timing." Ex. 69. Kavanaugh subsequently contacted Lipton and others at FGG more than ten times over the next year requesting an update on the due diligence questionnaire purportedly provided to BLMIS, and made repeated requests for a direct contact at BLMIS, which FGG ignored. Ex. 69; Ex. 70; Ex. 71 at 243:5–245:4. Citco last attempted to obtain answers to its due diligence questionnaire on December 8, 2008, three days before Madoff was arrested. *Id*.

134. Statement: Citco's fund administration business was launched in 1968.

Response: Disputed as immaterial.

135. Statement: Andrés and Corina Piedrahita had over $10 million invested in the Fairfield Funds or structured products that were invested by Sentry in December 2008.

Response: Disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by Andrés and Corina Piedrahita were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch Rebuttal Rept. ¶ 103; Second Am. Compl. Exs. 17, 20, 23.

136. Statement: The fraud claims against Andrés Piedrahita were dismissed at the motion to dismiss stage in the *Anwar* litigation. *See Anwar*, 728 F. Supp. 3d 372, 414 (S.D.N.Y. 2010).

Response: Disputed as immaterial.

137. Statement: Vijayvergiya had over 40% of his net worth, including 100% of his pension, invested in BLMIS when Madoff was arrested.

Response: Disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by Vijayvergiya were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch

Rebuttal Rept. ¶ 103. *See* also SAC Ex. 21. The statement is further disputed as incomplete and misleading. Sentry was the only investment option for the FGBL employees' pensions. In December 2008, Vijayvergiya sought to reallocate the assets in his pension plan by selling his shares of Sentry. Ex. 364.

138. Statement: Toub deferred a portion of his compensation for his investment in Sentry.

Response: Disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by Toub were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch Rebuttal Rept. ¶ 103. *See also* SAC Ex. 22.

139. Statement: McKeefry, McKenzie, Blum, and FGL shareholder Richard Landsberger all had substantial investments in BLMIS through the Fairfield Funds or Emerald Funds when Madoff was arrested and lost their investments.

Response: Disputed. The question of whether the Defendants and certain Fairfield affiliates invested money with BLMIS or knowingly provided Madoff with funds for the purpose of (i) replacing redemptions and (ii) aiding Madoff's desperate efforts to prop up the Ponzi scheme for an additional period of time, are genuine issues of fact for trial. *See* Ex. 79 at FG-01358366. This statement is further disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by FGG principals and shareholders were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch Rebuttal Rept. ¶ 103.

140. Statement: In Fall 2008, Madoff attempted to raise more funds for BLMIS with a supposed leveraged SSC strategy and induced Defendants to launch BBHF Emerald Ltd. and

Greenwich Emerald LLC (collectively, the "Emerald Funds") to solicit investments.

Response: Undisputed.

141. Statement: Both Noel and Tucker invested their own money into the Emerald Funds.

Response: Undisputed that Noel and Tucker invested in Emerald. Whether Tucker and Noel invested in the Emerald Funds using customer property transferred to them from BLMIS is a disputed fact to be determined at trial.

142. Statement: Tucker and his wife invested $8.0 million and $1.0 million of their respective personal funds in Greenwich Emerald LLC, and by December 2008, Tucker's mother had nearly a million dollars in her account in GS.

Response: Disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by Tucker were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch Rebuttal Rept. ¶ 103. These statements are further disputed because the question of whether Tucker, his wife and mother invested in Greenwich Emerald and GS using customer property transferred to them from BLMIS are disputed facts to be determined at trial.

143. Statement: Noel and his family held investments of at least $15 million in GS and Greenwich Emerald LLC by December 2008, including approximately $5 million in additional funds invested in late 2008.

Response: Disputed to the extent it is without any independent evidentiary basis. Further, any purported losses suffered by Noel and his family were offset by the more than $800 million in fees from Sentry alone, which benefited the principals and shareholders of FGG. Hirsch Rebuttal Rept. ¶ 103. These statements are further disputed because the question of whether Noel and his family invested in Greenwich Emerald and GS using customer

property transferred to them from BLMIS are disputed facts to be determined at trial.

144. Statement: There are numerous examples of internal communications among Defendants and principals of the Defendant entities and Fairfield Funds which on their face reflect a genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds.

Response: Disputed as incorrect, incomplete, and misleading. There are numerous examples of internal communications among Defendants and external communications among Defendants and third-parties which reflect knowledge that (i) Madoff was operating a fraudulent scheme, (ii) no securities were being traded and/or (iii) Defendants' lies to investors and third-parties to conceal these facts. Ex. 80; Ex. 81; Ex. 82; Ex. 83; Ex. 84; Ex. 85.

145. Statement: For example, on April 26, 2002, Gregory Bowes emailed Lipton, Tucker, and others stating that he was "skeptical" that Madoff was "short" U.S. Treasury Bills and speculated that "the [BLMIS] statement reflects bills purchases and then sold in the when issued market, all prior to settlement." On April 28, 2002, Tucker responded that BLMIS' reported trade was "atypical" and that he "would like to see the statements when they come through," after which he would "call [Madoff] and inquire."

Response: Disputed to the extent that the statements suggest that Gregory Bowes ("Bowes") and Tucker had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Lipton, Tucker and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

146. Statement: On July 30, 2002, Blum emailed Lipton, Toub, and others asking if there was "any chance of arranging to send a runner over to madoff daily for [trade] confirms in

the future." On July 31, 2002, Lipton responded that "Frank can be a little abrasive at times, but I can try. . . ."

Response: Undisputed that Robert Blum ("Blum") sent the referenced email. Disputed to the extent that the statements suggest that Blum had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Blum and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

147. Statement: On September 2, 2003, Harold Greisman emailed Vijayvergiya in response to queries by a potential Sentry investor regarding Sentry's investment strategy, which in turn led to a number of internal emails regarding the investor queries. In Greisman's top email to Vijayvergiya in the email string, he stated, in relevant part:

> 1-I have not seen him [Madoff] overweight the puts in years. . . .
>
> . . .
>
> 3-This is a market timing methodology. She does not fully grasp this. She makes the mistake other "sophisticated" analysts do of looking for an options strategy where there isn't one. He's [Madoff] either in the market with full protection and short calls or he is out of the market. He [Madoff] can play with calls on occasion (like earlier this summer) to enhance returns.
>
> Her analysis is theoretically sound but does not reflect the actual facts.

Response: Undisputed that Harold Greisman ("Greisman") sent the referenced email. Disputed to the extent that the statements suggest that Greisman had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Greisman and/or other FGG partners/employees believed that Madoff was trading securities is a disputed

issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

148. Statement: On October 31, 2003, Vijayvergiya emailed Daniel Lipton, copying Gordon McKenzie, Nancy Ng, and Robert Blum with the subject "Madoff's Numbers Oct 31, 2003," stating in relevant part as follows:

> Dan,
>
> Eric at Madoff indicated that the roughly $30MM decline in the value of the estimates from last week to this week (or a decline of 72 bps) was attributable in large part to the decline in value of Bank of America after the merger announcement with FleetBoston Financial.
>
> I have prepared a short attribution analysis of our holding of BAC in the portfolio and have concluded that 20% of the decline in the value of the portfolio can be attributed to BAC.
>
> There has been an apparent decoupling of the correlation of the basket of equities to the <> S&P 100 Index from when the equities were originally purchased Oct 7 and 8th. . . . .

On November 3, 2003, Lipton then forwarded Vijayvergiya's email to Jeffrey Tucker and Harold Greisman, stating "Some analysis from Amit regarding the drop in Sentry's returns this past week."

Response: Undisputed that Vijayvergiya and Lipton sent the referenced emails. Disputed to the extent that the statements suggest that Vijayvergiya and Lipton had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Vijayvergiya, Lipton, McKenzie, Ng, Blum, Tucker, Greisman and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

149. Statement: On December 4, 2003, Toub emailed Vijayvergiya with the subject line: "interesting to see if Madoiff [sic] breaks the patterns and gets into market in dec??" In response, Vijayvergiya provided his views:

> True - while it hasn't happened in the last few years, I wouldn't be surprised if we saw a quick two week trade in Dec. If the OEX breaks through and closes above it's 525/526 resistance level on volume, I would think that many of the momentum, volume and order flow patterns that Madoff and company inspect would be signaling "buy" (pure speculation on my part though).
>
> Add the fact that volatility is at historically low levels right now (ie. the put hedge is relatively cheap), and we may very well see another kick at the can.
>
> Madoff has never had a sub-9.00% month, and without any trading in December there is a very real chance that we could post a return around 8.00% (or, gulp, slightly below it). I'm not sure if that's a pill that Madoff is willing to swallow (again, pure speculation on my part).
>
> Toub responded that he "heard that for some of [Madoff's] domestic accounts there is a reason [for] wanting to be in Cash in [December]."

Response: Undisputed that Vijayvergiya and Toub sent the referenced emails. Disputed to the extent that the statements suggest that Vijayvergiya and Toub had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Vijayvergiya, Toub and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves. Ex. 86. BLMIS did not have any reason to be in cash at year-end, because BLMIS was compensated by commissions, not by profit and loss, and there was no directive to do so. In fact, you would expect that BLMIS would be trading *more* if compensated based on commissions, not *less*. Hirsch Rept. ¶ 233.

150. Statement: On April 3, 2004, Jeffrey Tucker emailed Corina Piedrahita, Walter Noel, Mark McKeefry, and Rob Blum with the subject line "conversation with Bernie" as follows:

> Bernie Madoff lit into me pretty good earlier today. He has seen our semi- annual Sentry letter and objects to the inclusion of information regarding the timing of the strategy, the time required to invest the fund(three to four days) and anything regarding the strike prices, etc. He also raised with me the question of whether the account guidelines have been distributed to our clients. He feels all this information is for us but any further dissemination poses some risk that traders and other market players could make use of the info, impacting negatively on our returns. . . . .

On April 5, 2004, Walter Noel responded to Tucker's email, stating in part that "I presume after he is fully in and out of a trade, we could pass on the information." On April 6, 2004, Rob Blum further responded, "We never give info in these letters about a trade he is currently in."

Response: Undisputed that Tucker and Noel sent the referenced emails. Disputed to the extent that the statements suggest that Tucker and Noel had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Tucker, Corina Noel Piedrahita, Noel, McKeefry, Blum and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

151. Statement: On October 16, 2004, Lipton emailed Toub, Corina Piedrahita, and others with the subject "MADOFF TRADES" as follows:

> Just received confirms from Madoff. I can't tell how much he invested, but he is in the 410-420 collar which he put on trade date Friday 10/11/02. So far he's invested about 10% of the portfolio. I should be getting more confirms this week and will let you know more.
>
> The S&P 100 closed yesterday at 447 and is now trading at 439 (as of 12pm Wednesday) still 4.5% above the call strike.
>
> Just gotta have faith.

Response: Undisputed that Lipton sent the referenced email. Disputed to the extent that the statements suggest that Lipton, Toub, and Corina Noel Piedrahita had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Lipton, Toub, Corina Noel Piedrahita and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

152. Statement: On September 24, 2008, Andrés Piedrahita sent an email to all of his work colleagues by emailing the "Global Employees" email list serv with the email subject "Our New Reality," discussing the tumultuous market events arising from the ongoing financial crisis.

In his email, Andrés Piedrahita commented on BLMIS' market performance during these conditions, stating that Madoff had "once again managed to perform under the most trying circumstances of the last 100 years. So a large percentage of our business is in great shape."

Response: Undisputed that Piedrahita sent the referenced email. Disputed to the extent that the statements suggest that Piedrahita had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Piedrahita and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

153. Statement: In an email chain from September 2008, FGL, FGBL, and FGA personnel including Richard Landsberger, Andrew Smith, Amit Vijayvergiya, and Mark McKeefry discussed BLMIS' trading activity and their efforts to learn more about it by scheduling a meeting at BLMIS to perform additional due diligence, including efforts to identify BLMIS' trade

counterparties and BLMIS' ability to execute its trading strategy given the illiquidity in the marketplace.

Response: Undisputed that the referenced email chain occurred among FGG personnel. Disputed to the extent that the statements suggest that Landsberger, Lipton, Andrew Smith ("Smith"), Vijayvergiya, and McKeefry had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether Landsberger, Lipton, Smith, Vijayvergiya, McKeefry and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

154. Statement: On November 3, 2008, Gordon McKenzie emailed Lipton stating "Frank [DiPascali] just called me and said [BLMIS] have their buying hats on."

Response: Undisputed that McKenzie sent the referenced email to Lipton. Disputed to the extent that the statements suggest that McKenzie and Lipton had a "genuine belief that BLMIS was trading securities on behalf of the Fairfield Funds." The question of whether McKenzie, Lipton and/or other FGG partners/employees believed that Madoff was trading securities is a disputed issue of fact to be determined at trial. The Trustee refers the Court and parties to the referenced emails which speak for themselves.

155. Statement: When BLMIS was revealed to be a fraud, Sentry was a "net loser" of over a billion dollars, meaning that Sentry invested in excess of one billion dollars more into BLMIS than it took out in withdrawals at the time of Madoff's arrest in December 2008.

Response: Disputed as incomplete and misleading. Sentry deposited $ 4,252,104,499 and withdrew $ 3,201,461,761 prior to December 11, 2008. Second Am. Compl. Ex. 2. This statement is disputed to the extent it implies that Sentry invested its own funds. The

funds Sentry invested and lost in BLMIS belonged to investors.

156. Statement: GS and GSP were also "net losers" to BLMIS.

Response: Disputed as incomplete and misleading. GS deposited $ 420,596,968 and withdrew $281,122,629 prior to December 11, 2008 and GSP deposited $9,475,000 and withdrew $5,985,000 prior to December 11, 2008. Second Am. Compl. Exs. 3–4. This statement is disputed to the extent it implies that GS and GSP invested their own funds. The funds GS and GSP invested and lost in BLMIS belonged to investors.

157. Statement: Federal prosecutors brought criminal charges against Madoff, his brother Peter Madoff, DiPascali, Bongiorno, Crupi, Perez, O'Hara, Kugel, Bonventre, Cotellessa-Pitz, Lipkin, and Friehling for their participation in the BLMIS fraud. All were convicted, either on their own guilty pleas or jury verdicts.

Response: Undisputed.

158. Statement: Madoff and DiPascali pled guilty to the criminal charges against them.

Response: Undisputed.

159. Statement: Both Madoff and DiPascali admitted having intentionally concealed from regulators and investors the fact that no securities trading activity occurred at BLMIS.

Response: This statements are undisputed. Whether the Defendants intentionally assisted Madoff in concealing from regulators and investors the fact that no securities trading activity occurred at BLMIS is a disputed material issue of fact to be determined at trial.

160. Statement: Madoff was sentenced to 150 years in prison in 2009.

Response: Disputed as immaterial.

161. Madoff died in prison in 2021.

Response: Disputed as immaterial.

162. Statement: DiPascali died in 2015 while awaiting sentencing.

Response: Disputed as immaterial.

163. Statement: On December 10, 2013, at the criminal trial of five BLMIS co-conspirators, DiPascali testified as follows:

Q: When you say the hedge funds, why did you have particular concern over the hedge funds looking at that information?

> A: They are professionals. They have to answer questions to their clients. They are typically, as in the case with Fairfield, organized by very smart attorneys. The guys that are running the funds in the industry – the guys who are running the largest funds of funds that we were dealing with were not even traders themselves.
>
> . . .
>
> These people were nobody you could fool around with, in plain English. … So they had a lot of free time to dig through the Madoff paperwork. And he was aware of that. These guys had nothing better to do than to scrutinize what we do; therefore, we had better do it right, was his philosophy.
>
> Q: You had conversations with Mr. Madoff about that?
>
> A: All the time.

Response: Disputed as incomplete and misleading. It is undisputed that this is a portion of DiPascali's testimony in the criminal trial against Daniel Bonventre, Jerome O'Hara, George Perez, Annette Bongiorno, and Joann Crupi in *United States v. Bonventre, et al.*, No. 10 Cr. 228 (LTS) (S.D.N.Y. 2013). This statement is disputed to the extent it purports to reflect Defendants' knowledge or state of mind.

164. Statement: On cross-examination, DiPascali explained that BLMIS categorized Tucker as a "pro" ("professional") client, requiring BLMIS to concoct more detailed returns to fool him, and that as far as he could tell, BLMIS fooled investors like Defendants.

Response: Disputed as incomplete and misleading. It is undisputed that this is DiPascali's testimony on cross-examination. These statements are disputed to the extent they purport to reflect Tucker's knowledge or state of mind.

165. Statement: DiPascali was asked "would it be fair to say that for many years you and Mr. Madoff outfoxed even the smartest attorneys at Fairfield Greenwich, correct, and other hedge funds? True?" He responded, "Yes."

Response: Disputed as incomplete. It is undisputed that this is DiPascali's testimony. This statement is disputed to the extent it purports to reflect Defendants' knowledge or state of mind.

166. Statement: Following extensive criminal and regulatory investigations, certain investors and associates of BLMIS were charged with marketing BLMIS investments with knowledge of the fraud and other knowing involvement with BLMIS' scheme, including Cohmad Securities Corporation and its principals Maurice Cohn, Marcia Cohn, and Robert Jaffe; Stanley Chais, the operator of several BLMIS feeder funds who died in 2010; and Paul Konigsberg.

Response: Disputed as immaterial.

167. Statement: Stanley Chais, Carl Shapiro, Jeffrey Picower, and Norman Levy (who died in 2005) were known as Madoff's "big four" investors who had special accounts at BLMIS that received a "promised" 17 percent return on their accounts and special benefits.

Response: Disputed as immaterial.

168. Statement: These "big four" investors were linked to the underlying fraud through direct manipulation of supposed trading documents, coordination with BLMIS on generating fictional trades to support the investors' preferred returns, and similar activity.

Response: Disputed as immaterial and incorrect.

169. Statement: Shapiro ultimately agreed to forfeit $625 million to the United States to resolve potential civil claims against him.

Response: Disputed as immaterial.

170. Statement: Picower's estate paid out approximately $7.2 billion to the United States and the Trustee to settle similar claims for the receipt of proceeds of the BLMIS fraud after his death in 2010.

Response: Disputed as immaterial.

171. Statement: The SEC led an investigation titled *In the Matter of Entities and Individuals Related to Bernard L. Madoff Investment Securities, LLC*, File No. NY-8052, in which Defendants in this action, including Vijayvergiya, gave sworn testimony and produced documents. The SEC has not filed any action, civil or criminal, against any Defendant arising from the BLMIS fraud.

Response: Disputed as immaterial.

172. Statement: In 2009, the Massachusetts Regulator filed an Administrative Complaint against FGA and FGBL related to purportedly inadequate due diligence in *In the Matter of Fairfield Greenwich Advisors LLC et al.*, Docket No. 2009-0028. The Administrative Complaint did not contain any allegations that FGA or FGBL had knowledge of the fraud.

Response: Disputed as immaterial.

173. Statement: In September 2009, FGA and FGBL settled the matter in its early stages with no admission of wrongdoing.

Response: Disputed as immaterial.

Date: January 26, 2026
New York, New York

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