

STEARNS WEAVER MILLER, P.A.
150 West Flagler Street
Museum Tower, Suite 2200
Miami, Florida 33131
Telephone: (305) 789-3200
Facsimile: (305) 789-3395
Eugene E. Stearns
Carlos J. Canino
Matthew M. Graham

Hearing Date: June 9, 2021, at 9:00 a.m.
Response Deadline: May 4, 2021

Attorneys for Defendant David Mayer

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

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (CGM) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff, Plaintiff, v. RAFAEL MAYER, <i>et al.</i> , Defendants.	Adv. Pro. No. 20-01316 (CGM)

**DAVID MAYER'S NOTICE OF
MOTION TO DISMISS THE COMPLAINT
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 7012(b)
AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

**TO: THE HONORABLE CECILIA G. MORRIS,
UNITED STATES BANKRUPTCY JUDGE:**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law in Support of Motion to Dismiss the Complaint (and the attached Declaration of Alexander Potts QC in Support of Individual Defendants' Motions to Dismiss the Complaint, dated March 1, 2021), and upon all prior proceedings had herein and in the SIPA Liquidation No. 08-01789 (Substantively Consolidated), Defendant David Mayer, by and through his undersigned counsel, moves this Court for an Order pursuant to Federal Rule of Bankruptcy Procedure 7012(b) and Federal Rule of Civil Procedure 12(b)(6) dismissing with prejudice the Complaint filed by Plaintiff Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff, on November 11, 2021, ECF No. 1, and for such other and further relief as the Court deems just and proper (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **June 9, 2021, at 9:00 a.m.**, before the Honorable Cecelia G. Morris, United States Bankruptcy Judge.

PLEASE TAKE FURTHER NOTICE that in light of the public health emergency caused by the COVID-19 virus, the Hearing will be conducted telephonically using Court Solutions LLC in accordance with General Order M-543, Court Operations Under the Exigent Circumstances Created by COVID-19 (which can be found at www.nysb.uscourts.gov).

PLEASE TAKE FURTHER NOTICE that pursuant to Stipulation and Consent Order dated January 22, 2021, ECF No. 5, any responses or objections to the Motion must be made in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, and (b) by all other parties in interest, on a CD-ROM or 3.5

inch disk, in text-searchable portable document format (PDF), with a hard copy delivered directly to Chambers, in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and on Stearns Weaver Miller, P.A., Attorneys for David Mayer, Museum Tower, Suite 2200, 150 West Flagler Street, Miami, Florida (Attn: Carlos J. Canino, Esq.), so as to be received no later than **May 4, 2021** (the “**Response Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, David Mayer may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed hereto as Exhibit A, which order may be signed and entered with no further notice or opportunity to be heard.

Dated: March 2, 2021

By: /s/ Matthew M. Graham
Eugene E. Stearns
(admitted *pro hac vice*)
estearns@stearnsweaver.com
Carlos J. Canino
(admitted *pro hac vice*)
ccanino@stearnsweaver.com
Matthew M. Graham
(admitted *pro hac vice*)
mgraham@stearnsweaver.com
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

Attorneys for Defendant David Mayer

Exhibit A

Proposed Order

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

<p>SECURITIES INVESTOR PROTECTION CORPORATION,</p> <p style="text-align: center;">Plaintiff-Applicant,</p> <p style="text-align: center;">v.</p> <p>BERNARD L. MADOFF INVESTMENT SECURITIES LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Adv. Pro. No. 08-01789 (CGM)</p> <p>SIPA Liquidation</p> <p>(Substantively Consolidated)</p>
<p>In re: BERNARD L. MADOFF,</p> <p style="text-align: center;">Debtor.</p>	
<p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RAFAEL MAYER, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Adv. Pro. No. 20-01316 (CGM)</p>

**ORDER GRANTING DAVID MAYER’S MOTION TO DISMISS THE COMPLAINT
UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 7012(b)
AND FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

This matter coming before the Court on *David Mayer’s Motion to Dismiss the Complaint Under Federal Rule of Bankruptcy Procedure 7012(b) and Federal Rule of Civil Procedure 12(b)(6)* (the “**Motion**”); and the Court having considered the Motion, the Complaint, and the statements of counsel at a hearing before the Court on _____ (the “**Hearing**”); and the Court having found that notice of the Motion and the Hearing was sufficient under the

circumstances; and the Court having determined the legal bases set forth in the Motion and at the hearing established just cause for the relief granted herein; it is accordingly

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED, that Count One of the Complaint is dismissed with prejudice as against David Mayer; and it is further

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

Dated: New York, New York

_____, 2021

United States Bankruptcy Judge