

Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Marc E. Hirschfield
Deborah H. Renner
Tracy L. Cole
Ferve E. Ozturk

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

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

DOUGLAS HALL; STEVEN HEIMOFF;
BOTTLEBRUSH INVESTMENTS, L.P.;
LEGHORN INVESTMENTS LTD.; and KAMALA
D. HARRIS, solely in her capacity as Attorney
General for the State of California,

Defendants.

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. _____

COMPLAINT

Irving H. Picard, as trustee (the “Trustee”) for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the estate of Bernard L. Madoff (“Madoff”), by and through his undersigned counsel, for his Complaint, alleges as follows:

NATURE OF THE ACTION

1. The Trustee commences this adversary proceeding to prevent certain third party plaintiffs, whose names appear in the caption above as defendants herein (collectively, the “Third Party Plaintiffs”), from undermining this Court’s continuing jurisdiction over the estate of BLMIS and its customers’ property. By commencing actions against the Estate of Stanley Chais (“Chais”)¹ and related entities and individuals (the “Chais Defendants”) in California (the “Third Party Actions”), the Third Party Plaintiffs threaten the orderly administration of the BLMIS estate and seek to diminish the pool of assets from which the Trustee can make equitable and *pro rata* distributions to the victims of Madoff’s fraud.

2. By protecting this Court’s jurisdiction over the administration of the BLMIS estate, the Trustee seeks to ensure that customer property² is recovered and distributed to the victims of Madoff’s massive Ponzi scheme in a fair and efficient manner consistent with SIPA and the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).

¹ Stanley Chais passed away in 2010. On October 19, 2010, his counsel filed a notification of his death with the court. (Suggestion of Death, *Picard v. Chais*, Adv. Pro. No. 09-01172 (Bankr. S.D.N.Y. May 1, 2009), ECF No. 85.) On January 3, 2011, the Estate of Stanley Chais and its executor, Pamela Chais, were substituted for Stanley Chais as a defendant in this action. (*Id.* ECF No. 88.)

² Under section 7811(4) of SIPA, “customer property” is defined as “cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.”

3. In early December 2008, BLMIS generated statements for its approximately 4,900 customer accounts. When added together, these statements purported to show that clients of BLMIS had approximately \$64.8 billion invested with BLMIS. In reality, BLMIS only had assets on hand worth a small fraction of that amount. On March 12, 2009, Madoff admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS]” (Plea Hr’g Tr. at 23:14-17) and pled guilty to an eleven-count criminal information filed against him. On June 29, 2009, Madoff was sentenced to serve 150 years in federal prison for his crimes.

4. The Trustee, pursuant to his duties under SIPA, is working to locate, marshal and preserve customer property to maximize recovery for all of BLMIS’s defrauded customers. Part of this recovery process involves identifying those individuals and entities who received avoidable transfers from BLMIS and attempting to recover these funds for the statutory *pro rata* distribution to all customers.

5. The Trustee has commenced an adversary proceeding against the Chais Defendants in this Court, *Picard v. Chais*, Adv. Pro. No. 09-01172 (Bankr. S.D.N.Y.) (the “Trustee’s Chais Action”), seeking to recover the more than \$1.3 billion that the Chais Defendants received in fraudulent and unauthorized transfers from BLMIS, which money belongs to BLMIS and its defrauded customers and creditors.

6. The Third Party Actions threaten to thwart the Trustee’s efforts, as the Third Party Plaintiffs seek to recover fictitious profits and unauthorized transfers for themselves directly from the Chais Defendants. To allow the Third Party Actions to proceed would usurp the Trustee’s authority and divest him of his power to marshal customer property for equitable distribution.

7. Even as to those Third Party Plaintiffs' causes of action that may not belong to the Trustee, the Third Party Actions nonetheless violate the automatic stay. Based on the Trustee's investigation to date, substantially all of the assets held by the Chais Funds and Chais Trusts ultimately emanate from BLMIS. Likewise, based on the Trustee's investigation to date, assets held by Chais other than his interests in accounts at BLMIS or funds related to BLMIS, including interests in certain real estate, appear to have been purchased or otherwise procured with funds transferred from BLMIS. Hence, by seeking to recover (or recover from) the Chais Defendants' assets, the Third Party Plaintiffs seek to control or interfere with property of the estate, or to collect on claims against BLMIS and/or Madoff, in violation of section 362(a).

8. Further, should the Third Party Plaintiffs succeed, they would undoubtedly be subsequent transferees of avoidable transfers to Chais and the Trustee would to commence actions against each recipient of funds from the Chais Defendants, which would be grossly inefficient and a waste of judicial resources. The Third Party Actions must be enjoined, as the Third Party Plaintiffs' conduct is an affront to this Court's jurisdiction and willfully disregards the automatic stay provisions of the Bankruptcy Code and the Stay Orders (defined herein).

9. Accordingly, the Trustee respectfully requests that the Court: (i) declare that, as against the Chais Defendants, the Third Party Actions violate the automatic stay and the Stay Orders and are void *ab initio*; and (ii) preliminarily enjoin the Third Party Plaintiffs from litigating the Third Party Actions or any other actions as against the Chais Defendants, pending the completion of the Trustee's Chais Action.

JURISDICTION AND VENUE

10. This is an adversary proceeding brought in this Court—the Court in which the main underlying SIPA proceeding, Adv. Pro. No. 08-01789 (BRL) (Substantively Consolidated) is pending. The SIPA proceeding is a combined proceeding with the Securities and Exchange

Commission (the “SEC”) and was originally brought in the United States District Court for the Southern District of New York (the “District Court”) as *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 prior to its removal to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and sections 78eee(b)(2)(A) and (b)(4) of SIPA.

11. An action for a declaratory judgment is properly commenced as an adversary proceeding pursuant to Rules 7001(2) and 7001(9) of the Federal Rules of Bankruptcy Procedure.

12. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

13. Venue in this district is proper under 28 U.S.C. § 1409.

14. This court has personal jurisdiction over the Third Party Plaintiffs pursuant to Bankruptcy Rule 7004(f).

BACKGROUND, THE TRUSTEE AND STANDING

15. The facts and procedural history relevant to the Madoff Ponzi scheme have been set forth numerous times and need not be repeated here.³

16. On December 15, 2008, the District Court entered an order declaring that “all persons and entities are stayed, enjoined and restrained from directly or indirectly . . . interfering with any assets or property owned, controlled or in the possession of [BLMIS].” *SEC v. Bernard L. Madoff*, 08-CIV-10791 (LLS), ECF No. 4 ¶ IV (reinforcing automatic stay); *see also* Order on Consent Imposing Preliminary Injunction Freezing Assets and Granting Other Relief Against Defendants, Dec. 18, 2008, ECF No. 8 ¶ IX (“no creditor or claimant against [BLMIS], or any

³ *See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Bernard L. Madoff Inv. Sec. LLC)*, 424 B.R. 122, 125-33 (Bankr. S.D.N.Y. 2010), *aff’d* 654 F.3d 229 (2d Cir. 2011); *Picard v. Fox*, 429 B.R. 423, 426 (Bankr. S.D.N.Y. 2010).

person acting on behalf of such creditor or claimant, shall take any action to interfere with the control, possession or management of the assets subject to the receivership.”); Partial Judgment on Consent Imposing Permanent Injunction and Continuing Other Relief, Feb. 9, 2009, ECF No. 18 ¶ IV (incorporating and making the December 18, 2008 stay order permanent). (These orders are collectively referred to as the Stay Orders.)

17. Appointed under SIPA, the Trustee is charged with recovering and distributing customer property to BLMIS’s customers, assessing claims, and liquidating any other assets of the firm for the benefit of the estate and its creditors. Consistent with his duties, the Trustee is marshalling BLMIS’s assets, and is well underway in that process.

18. The assets recovered, however, will not be sufficient to reimburse the customers of BLMIS for the billions of dollars that they invested with BLMIS over the years. Consequently, the Trustee must use his authority under SIPA and the Bankruptcy Code to pursue avoidable transfers and other recovery actions. Absent these recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of 15 U.S.C. § 78fff-2(c)(1).

19. Pursuant to section 78fff-1(a) of SIPA, the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code. Chapters 1, 3, 5 and subchapters I and II of chapter 7 of the Bankruptcy Code are applicable to this case, to the extent consistent with SIPA.

20. In addition to the powers of a bankruptcy trustee, the Trustee has broader powers granted by SIPA pursuant to 15 U.S.C. §§ 78aaa *et seq.*

21. The Trustee is a real party in interest and has standing to bring these claims pursuant to 15 U.S.C. § 78fff-1 and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

a. The Third Party Plaintiffs request relief that will affect “customer property” as defined in 15 U.S.C. § 78lll(4).

b. The Third Party Plaintiffs request relief that may affect the distribution of customer property and the orderly administration of the estate.

c. BLMIS’s customers could be injured in the absence of the Trustee’s filing of this Complaint.

d. The Trustee will not be able to fully satisfy all claims through SIPC advances.

THE COURT-ORDERED CLAIMS ADMINISTRATION PROCESS

22. The Trustee sought and obtained a Court order to implement a customer claims process in accordance with SIPA.

23. Pursuant to an application of the Trustee dated December 21, 2008 (ECF No. 8), this Court entered the Claims Procedures Order (ECF No. 12), which directed, among other things, that on or before January 9, 2009: (a) a notice of the commencement of this SIPA Proceeding be published; (b) a notice of the liquidation proceeding and claims procedure be given to persons who appear to have been customers of BLMIS; and (c) notice of the liquidation proceeding and a claim form be mailed to all known general creditors of BLMIS.

24. More than 16,000 potential customers, general creditor and broker-dealer claimants were included in the mailing of the notice.

25. Under the Claims Procedures Order, claimants were directed to mail their claims to the Trustee. All customers and creditors were notified of the mandatory, statutory bar date for

filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the “Bar Date”).
The Trustee also provided several reminder notices.⁴

26. By the Bar Date, the Trustee had received 16,239 customer claim forms.

THE TRUSTEE’S ACTIONS AGAINST THE CHAIS DEFENDANTS

(1) The Trustee’s Chais Action

27. On May 1, 2009, the Trustee commenced an action against the Chais Defendants, *Picard v. Chais*, Adv. Pro. No. 09-01172 (Bankr. S.D.N.Y.). In his complaint (the “Trustee’s Complaint” or the “Tr. Compl.”), the Trustee seeks the return of more than \$1.3 billion under SIPA §§ 78fff(b) and 78fff-2(c)(3), sections 105(a), 542, 544, 547, 548(a) and 551 of the Bankruptcy Code, N.Y. Debt. & Cred. § 270 *et seq.*, and other applicable law, for turnover,⁵ accounting, preferences, fraudulent conveyances, damages, and objection to claim in connection with certain transfers of property by BLMIS to or for the benefit of the defendants. By his action, the Trustee seeks to set aside the transfers to the Chais Defendants and preserve the property for the benefit of the defrauded customers of BLMIS. (Tr. Compl. ¶ 4.) (Adv. Pro. No. 09-01172, ECF No. 1.)

28. In his complaint, the Trustee alleges that Chais was a beneficiary of the BLMIS Ponzi scheme for at least thirty years. (Tr. Compl. ¶ 2.) The Trustee alleges that Chais began investing with BLMIS in the 1970s and that the Chais Defendants have collectively profited from the Ponzi scheme by withdrawing more than \$1 billion in fictitious profits, or other customers’ money. (Tr. Compl. ¶¶ 2, 99.) Among the named defendants are three limited

⁴ On May 21, 2009, the Trustee mailed a reminder notice to customers who had not yet filed a claim that the statutory bar date was July 2, 2009. On June 22, 2009, the Trustee mailed a final bar date reminder notice (the “Final Reminder Notice”) to 7,766 known past and present customers of BLMIS from whom a claim had not yet been received. In addition, the Trustee posted the Final Reminder Notice on the Trustee’s website.

⁵ The turnover count was dismissed. (Adv. Pro. No. 09-01172, ECF No. 90 (February 24, 2011).)

partnerships, the Brighton Company (“Brighton”), the Lambeth Company (“Lambeth”), and the Popham Company (“Popham”) (collectively, as defined above, the “Chais Funds”) for which Chais acted as general partner and which were investment funds that purportedly engaged in “arbitrage transactions.” (Tr. Compl. ¶¶ 42-45.) The Trustee alleges that Chais dominated the Chais Funds, which functioned as his alter egos, and used them merely as an instrument to advance his personal interests. (*Id.* ¶ 45.) The Trustee further alleges that, as general partner of the Chais Funds, Chais is personally responsible for all preferential and fraudulent transfers made from BLMIS to the Chais Funds. (*Id.*)

29. The Chais Funds had no purpose other than to invest in BLMIS, and were virtually entirely invested in BLMIS from their formation until the Ponzi scheme was exposed. Based on the Trustee’s investigation, during the period in which they were invested in BLMIS, virtually every cent invested directly or indirectly in the Chais Funds was routed to BLMIS, and virtually every cent distributed by the Chais Funds to their limited partners derived from BLMIS.

30. Also named as defendants in the Trustee’s Chais Action are certain of Chais’s family members, and various entities, including a large number of trusts (the “Chais Trusts”), which had accounts with BLMIS (collectively, the “Chais Family Accounts”). The Trustee alleges that the Chais Family Accounts, like the Chais Funds, have been dominated and used merely as an instrument of Chais to benefit the interests of Chais and those of his family. (Tr. Compl. ¶ 92; *id.* Ex. A.)

31. The Trustee alleges that the Chais Defendants knew or should have known that they were benefitting from manipulated returns and that BLMIS was engaged in fraud based on a number of indicia of fraud, including impossible transactions and the patterns of returns in various accounts. (*Id.* ¶¶ 2, 3, 98, 101, 103, 104.) Among other things, BLMIS reported

implausibly consistent, and consistently high, rates of return for the Chais Fund accounts—during the 12-year period from 1996 to 2007, the purported rate of return remained between 20% and 24% for each account for each year in which trading activity took place over the entire year. (*Id.* ¶ 103.) Yet at the same time, BLMIS reported fantastical and wildly varying rates of return for the Chais Family Accounts. (*Id.*) It was not plausible that a single investment firm could simultaneously achieve such different results, results which permitted the Chais Defendants to collectively withdraw more than \$1 billion in fictitious profits from BLMIS. (*Id.*)

32. The Trustee has alleged that BLMIS used the funds deposited from investors or new investments to, among other things, pay redemptions to or on behalf of other investors and to make other transfers, and that the Chais Defendants were among the primary beneficiaries of this scheme. (*Id.* ¶¶ 26-27.) The Trustee extensively outlined the transfers from BLMIS to each of the relevant Chais Defendants' accounts in Exhibit B to his complaint and has alleged that the transfers are subject to recovery by the Trustee. (*Id.* ¶¶ 106-110, Ex. B.) The Trustee's Complaint alleges that the source of funds in many of the Chais Family Accounts were fictitious profits received by Chais for his participation in the Ponzi scheme. (*Id.* ¶ 102.) The Trustee has further alleged that Chais collected management fees of 25% of each Chais Fund's entire net profit for every calendar year in which profits exceeded 10% (which occurred since at least 1996). (*Id.* ¶ 99.) Based on the Trustee's investigation to date, as to the Chais Funds, Chais took management fees out of "profits" withdrawn from BLMIS accounts before those "profits" were distributed to the relevant Fund or investor.

33. Based on the Trustee's investigation to date, the Chais Defendants' collective assets will be insufficient to satisfy the Trustee's claims in the Trustee's Chais Action.

34. Certain of the Chais-related entities filed motions to dismiss the Trustee's complaint. (Adv. Pro. No. 09-01172, ECF Nos. 11, 36, 40.) Stanley and Pamela Chais, and certain entities they control, answered the Trustee's complaint and filed counterclaims against the Trustee in connection with a letter that the Trustee wrote to Goldman Sachs in 2009 directing Goldman Sachs to cease moving any funds in an account held by Stanley and Pamela Chais.⁶ (*Id.* ECF No. 45.) The Trustee moved to dismiss the counterclaims and opposed the motions to dismiss. (*Id.* ECF Nos. 62-69.) A hearing on these motions was held on May 5, 2010. On November 30, 2010, this Court dismissed Stanley and Pamela Chais' counterclaims against the Trustee. (*Id.* ECF No. 86.) On November 30, 2010, this Court denied one of the Chais-related motions to dismiss (*id.* ECF No. 87); another such motion was resolved by stipulation on January 13, 2011 (*id.* ECF No. 89). On February 24, 2011, the court issued a written decision dismissing the Trustee's turnover claim but otherwise denying the final remaining Chais-related motion to dismiss. (*Id.* ECF No. 90.) On April 15, 2011, various Chais-related entities filed answers. (*Id.* ECF Nos. 95-116.)

**THE THIRD PARTY ACTIONS VIOLATE THE EXISTING STAYS AS THEY SEEK
CUSTOMER PROPERTY**

35. There are currently five Third Party Actions pending against the Chais Defendants that the Trustee in his action seeks to enjoin.

36. Each of the Third Party Actions seeks customer property in the guise of damages.

37. One of the Third Party Actions is against Chais only, while the remaining four name other defendants as well. At this time, the Trustee seeks an injunction only as to the Chais

⁶ The Chais Defendants and the Trustee have entered into a stipulation which freezes the assets of the Chais Defendants at Goldman Sachs.

Defendants, not other defendants. The Trustee's investigation is ongoing, and he reserves the right to seek injunctive and other relief with respect to other defendants.

THE THIRD PARTY ACTIONS

Hall v. Chais, Case No. BC413820 (Ca. Super. Ct.); Heimoff v. Chais, Case No. BC413821 (Ca. Super. Ct.)

38. Douglas Hall ("Hall") and Steven Heimoff ("Heimoff") have brought claims based on the Chais Funds' investment in BLMIS. On or about May 13, 2009, Hall commenced a derivative action in the Superior Court of California (the "California Superior Court") against Chais, Lambeth, Francis X. Mantovani ("Mantovani"), Halpern & Mantovani ("H&M") and Does 1-20 (the "*Hall* Action"). Crescent Securities ("Crescent"), a sub-entity that invested into Chais Fund Lambeth, was named as a nominal defendant. The complaint was amended on December 18, 2009, after the Trustee's Complaint was filed, to add as defendants additional defendants named in the Trustee's Complaint, and to designate Lambeth as a nominal defendant only. The complaint was further amended on or about June 18, 2010 and Albert Angel ("Angel") was removed as a defendant.

39. On or about May 13, 2009, Heimoff (collectively with Hall, the "*Hall* Plaintiffs")⁷ commenced a derivative action in the California Superior Court against Chais, Popham, Mantovani, H&M, Does 1-20, and nominal defendant Marloma Securities ("Marloma"), a sub-entity that invested in Chais Fund Popham (the "*Heimoff* Action"). As with the *Hall* Action, the complaint in the *Heimoff* Action was amended on December 18, 2009 to add as defendants additional defendants named in the Trustee's Complaint, and to designate Popham as a nominal defendant only. The complaint was further amended on or about June 18, 2010 and Angel was

⁷ Hall and Heimoff are both represented by the same counsel in these actions.

removed as a defendant. On or about August 6, 2010, the *Hall* and *Heimoff* Actions were consolidated.

40. The *Hall* Plaintiffs filed a Third Amended Complaint on January 13, 2011 (the “*Hall* Complaint”), and now name the Chais Defendants (except Brighton), Mantovani, H&M, Does 1-100 and nominal defendants Popham, Marloma, Lambeth and Crescent. Per the Third Amended Complaint, Hall is the son of Vivian H. Hall (“Vivian Hall”) and co-trustee of the Vivian H. Hall IRA (the “Hall IRA”). (*Hall* Complaint ¶ 1.) Vivian Hall, and, upon her death, her estate, was a limited partner in Crescent, a purported limited partnership that allegedly was invested wholly in Lambeth and that was formed solely for the purpose of investing in Lambeth. (*Id.* ¶¶ 1, 13-14.) Theodor Halpern (“Halpern”) served as Crescent’s general partner from its formation until his retirement in 2004, after which Mantovani assumed the role of general partner. (*Id.* ¶¶ 13, 16.) The Third Amended Complaint further alleges that from 1978 until the exposure of the Ponzi scheme, Vivian Hall and the Hall IRA invested funds with Crescent. (*Id.* ¶ 15.) Hall brings the action directly in his capacity as a co-trustee of the Hall IRA and as a limited partner of Crescent, and also derivatively on behalf of Crescent and Lambeth. (*Id.* ¶¶ 7-8.)

41. Per the Third Amended Complaint, Heimoff was a limited partner in Marloma Securities, a purported limited partnership that was invested wholly in Chais Fund Popham and that was formed solely for the purpose of investing in Popham. (*Id.* ¶¶ 2, 16-17.) As with Crescent, Halpern served as Marloma’s general partner from its formation until his retirement in 2004, after which Mantovani assumed the role of general partner. (*Id.* ¶¶ 13, 16.) The Third Amended Complaint further alleges that from 1991 until the exposure of the Ponzi scheme, Heimoff invested funds with Marloma. (*Id.* ¶ 18.) Heimoff brings the action directly in his

capacity as a co-trustee of the Steven Heimoff IRA and as a limited partner of Marloma, and also derivatively on behalf of Marloma and Popham. (*Id.* ¶¶ 7-8.) As with Crescent, Halpern served as Marloma's general partner from its formation until his retirement in 2004, after which Mantovani assumed the role of general partner. (*Id.* ¶¶ 13, 16.)

42. As against the Chais Defendants, the *Hall* Complaint asserts claims for grossly negligent, willful and/or reckless breach of fiduciary duty (count 2), aiding and abetting breaches of fiduciary duty (count 3), unjust enrichment and constructive trust (count 5), breach of contract (count 7), fraud (count 9), and fraudulent conveyance (count 10). (*Id.* at 31-40.) As against the Chais Defendants, the *Hall* Complaint seek a judgment awarding damages, punitive damages, a constructive trust and restitution, set-aside of fraudulent conveyances, and a constructive trust over all fraudulently transferred assets. (*Id.* at 40-41.)

43. The *Hall* Plaintiffs' own allegations make clear that the funds they seek to recover consist of BLMIS customer property, and the unjust enrichment and constructive trust claims seek funds that were fraudulently transferred from BLMIS. The *Hall* Plaintiffs seek, among other things, reimbursement for their investment in BLMIS. (*See, e.g., id.* ¶ 21 (“Unbeknownst to the Sub-Partners [Hall and Heimoff], the Partnerships [Lambeth and Popham], in turn, invested all of their capital with B[L]MIS. Accordingly, Plaintiffs believe that all of the Sub-Partnerships' [Crescent and Marloma] assets have been lost.”); *see also* ¶¶ 12, 20, 97, 100, 105, 108, 113, 118, 123, 144, 194, 195(c), 202.) The *Hall* Plaintiffs' allegations also make clear that certain management fees they seek to recover consist of customer property transferred from BLMIS to the Chais Defendants. (*See, e.g., id.* ¶ 24 (Chais' management fees “consisted of fees subtracted from the purported profits of the Partnerships' limited partners such as the Sub-Partnerships”); *id.* ¶ 25 (“Chais distributed part or all of the [management fees] to Chais-related

Individuals and Chais Entities.”); *see also id.* ¶¶ 94-96, 103, 125, 153(c), 158(c), 166, 171, 185(c), 190(c).) This is the same property that was fraudulently transferred to the Chais Defendants from BLMIS, and that the Trustee seeks to recover in the Trustee’s Chais Action, property that should be returned to the estate for equitable distribution to BLMIS creditors under the distribution scheme established by SIPA.

Bottlebrush Investments LP v. The Lambeth Company, Case No. BC407967 (Ca. Super. Ct.); Leghorn Investments LTD v. Brighton Investments, Case No. BC408661 (Ca. Super. Ct.)

44. On or about February 13, 2009, Bottlebrush Investments, L.P. (“Bottlebrush”), commenced an action in the California Superior Court against Chais, Lambeth, and Does 1-100. On or about February 27, 2009, Leghorn Investments, Ltd (“Leghorn,” collectively with Bottlebrush, the “*Bottlebrush* Plaintiffs”), commenced an action in the California Superior Court against Brighton Investments,⁸ Chais, and Does 1-100.⁹ The complaints were subsequently amended twice.¹⁰ On or about August 6, 2010, the actions were consolidated (as consolidated, the “*Bottlebrush* Action”) and the plaintiffs filed a consolidated third amended complaint. On or about January 13, 2011, Bottlebrush and Leghorn filed a Fourth Amended Complaint (the “*Bottlebrush* Complaint”), which names the Chais Defendants (except Popham), Does 1-250 and nominal defendants Lambeth and Brighton. Brighton filed a cross-complaint against Leghorn and Lambeth filed a cross-complaint against Bottlebrush.

45. Bottlebrush is purportedly a limited partnership that was formed for the purpose of serving as a limited partner of Lambeth. (*Bottlebrush* Complaint ¶ 1.) Similarly, Leghorn

⁸ Plaintiff appears to be referring to Brighton.

⁹ Bottlebrush and Leghorn are both represented by the same counsel in these actions.

was a limited partnership that was formed purportedly for the purpose of serving as a limited partner of Brighton. (*Id.*)

46. The *Bottlebrush* Plaintiffs currently assert claims for breach of fiduciary duty (count 1), negligence (count 2), breach of contract (count 3), fraud (count 4), unjust enrichment (count 5), and fraudulent conveyance (count 6). (*Bottlebrush* Complaint at 19-27.) The plaintiffs seek a judgment, *inter alia*, awarding damages, setting aside conveyances from Chais's personal estate to the Chais Trusts, and imposing a constructive trust on all fraudulently transferred assets. (*Id.* at 27.)

47. As discussed below, the *Bottlebrush* Plaintiffs have amended their complaint to omit factual allegations that demonstrated that their claims were nothing more than fraudulent transfer claims belonging to the Trustee. Even from the face of their current complaint, however, the *Bottlebrush* Plaintiffs plainly assert fraudulent conveyance claims and seek to recover BLMIS customer property. The Plaintiffs seek recovery of the funds known to have been wholly invested into BLMIS through the Chais Funds. (*See, e.g., Bottlebrush* Complaint ¶ 73 (“Chais . . . breached his duty of care by negligently funneling of [sic] the entirety of the partnerships’ [Lambeth and Brighton] capital to BLMIS. As a result, all or substantially all of the partnerships’ capital investment was lost in Madoff’s Ponzi scheme.”); *see also* ¶¶ 63, 68(b)-(d), 83-84, 95.) The management fees sought by the *Bottlebrush* Plaintiffs also explicitly consist of customer property that was withdrawn from BLMIS by Chais and his family. (*See, e.g., id.* ¶ 62 (“Chais led these investors to believe that he was actively managing their investments and

¹⁰ The complaints filed by Bottlebrush and Leghorn were each first amended on May 5, 2009 and were second amended on November 19, 2009. The Bottlebrush and Leghorn second amended complaints restate the claims as derivative claims on behalf of Lambeth and Brighton, respectively. For purposes of the instant Complaint, references to the *Bottlebrush Plaintiffs* concern the plaintiffs in their derivative capacities on behalf of the funds they purport to represent.

extracted fees equal to 25% of annual profits for his services.”); *see also* ¶¶ 63, 68(a)-(b), 76, 89.) The Trustee’s Chais Action seeks return of the same customer property that was fraudulently transferred to the Chais Defendants from BLMIS, in order to make equitable distribution of this customer property to BLMIS creditors under the distribution scheme established by SIPA.

People of the State of California v. Pamela Chais, et al., Case No. BC422257 (Ca. Super. Ct.)

48. On or about September 22, 2009, Kamala D. Harris, solely in her capacity as the California Attorney General (“CAAG”), commenced an action against Pamela Chais, as personal representative and executor of the estate of Stanley Chais (as defined above, “Chais”), and Does 1 through 100, inclusive, on behalf of investors in the Chais Funds, in the California Superior Court (the “CAAG Action”). The complaint in the CAAG Action was amended on September 9, 2011 (as amended, the “CAAG Complaint”). The CAAG seeks restitution, disgorgement and civil penalties on behalf of the Chais Funds’ investors, and costs. (CAAG Complaint at 15–16.) The CAAG also seeks an injunction prohibiting Chais from engaging in the conduct alleged in the CAAG Complaint to violate California state securities and business law. (*Id.*)¹¹ On October 27, 2011, Chais filed an answer to the CAAG Complaint.

49. The CAAG seeks “disgorge[ment of] all profits and compensation” and “full restitution” of money and property acquired by Chais by means of the complained-of acts. (CAAG Complaint at 15.) Per the CAAG Complaint, compensation earned by Chais in the form of fees totaled approximately \$270 million. (*Id.* ¶ 36.) By seeking disgorgement of the fees received by Chais, the CAAG seeks funds that allegedly were transferred by BLMIS to Chais and the Chais Funds—the very same funds that the Trustee seeks to recover in his Action for the

benefit of all BLMIS customers and other creditors. In addition, although the CAAG Complaint does not specify the amount of restitution sought, based the Trustee's investigation, a reasonable estimate of the Chais Funds' *principal* investments is over \$219 million. Thus, it appears that the CAAG seeks at least \$489 million (the sum of \$270 million and \$219 million) in disgorgement of fees and restitution of principal investment alone, in addition to costs. Importantly, the recovery of these amounts by the CAAG, without more, would exhaust all of the Chais Defendants' assets.

50. Just as the Trustee sets forth in the Trustee's Chais Action, the CAAG alleges that Chais knew or should have known of the Ponzi scheme. (CAAG Complaint ¶¶ 33–35.) Notably, the CAAG alleges that “[f]rom the early 1970s to December 2008, Chais served as one of the largest feeder funds to Madoff, funneling hundreds of millions of dollars into Madoff's Ponzi scheme.” (CAAG Complaint ¶¶ 16–20, 29.) The CAAG further alleges that the management fees earned by Chais were calculated based upon the amount of “profits” purportedly earned by the Chais Funds. (*Id.* ¶ 21.) As discussed above, the Trustee's investigation to date has demonstrated that Chais took these management fees out of “profits” withdrawn from BLMIS accounts before those “profits” were distributed to the relevant Fund or investor. Thus, the CAAG seeks the same hundreds of millions of dollars that were fraudulently transferred by BLMIS to Chais and that are sought by the Trustee.

**THE THIRD PARTY ACTIONS THREATEN THIS COURT'S JURISDICTION AND
THE ADMINISTRATION OF THE ESTATE AND AN INJUNCTION IS NECESSARY
TO PRESERVE AND PROTECT THE ESTATE**

51. The Third Party Actions are each active and pending in the California Superior Court.

¹¹ The Trustee does not seek to enjoin the CAAG from pursuing or obtaining this injunctive and regulatory relief,
(continued . . .)

52. The Third Party Plaintiffs seek to take for themselves funds that otherwise would be recoverable by the Trustee and equitably distributed to customers of BLMIS in accordance with this Court's March 1, 2010 Net Equity Decision and March 8, 2010 Net Equity Order.

53. The Third Party Actions all seek to tap into the same pool of money as the Trustee, and the "damages" sought by the Third Party Plaintiffs are nothing more than what they seek as purported customers or creditors of the estate.

54. The California Superior Court stated that it would proceed to a determination of the applicability of the automatic stay, and indicated an inclination to permit certain of the Third Party Plaintiffs' claims against the Chais Defendants to go forward.

COUNT ONE
DECLARATORY RELIEF

55. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully alleged herein.

56. The Trustee seeks a declaration that the Third Party Actions violate the automatic stay provisions under 11 U.S.C. § 362(a), 15 U.S.C. § 78eee(b)(2)(B) and the Stay Orders and are therefore void *ab initio*. This declaratory relief is warranted for, without limitation, the following reasons:

a. By seeking to recover damages from the Chais Defendants, the Third Party Actions improperly contravene the claims administration process in the SIPA proceeding and side-step the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

which does not infringe on the Trustee's ability to recover and distribute customer property.

b. Additionally, the Third Party Actions improperly seek to recover on a claim against BLMIS and/or Madoff in violation of 11 U.S.C. § 362(a)(1) and seek to obtain possession of property of BLMIS and/or Madoff in direct violation of 11 U.S.C. § 362(a)(3), 15 U.S.C. § 78eee(b)(2)(B) and the Stay Orders.

57. The Court has authority pursuant to sections 105(a) and 362(a) of the Bankruptcy Code to issue declaratory relief because this controversy is actual and justiciable, and the Court has jurisdiction over matters affecting BLMIS property and the effective and equitable administration of the estate of BLMIS and/or Madoff.

COUNT TWO
PRELIMINARY INJUNCTIVE RELIEF

58. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully alleged herein.

59. The Trustee seeks an Order that any further prosecution of the Third Party Actions be enjoined pursuant to section 105(a) of the Bankruptcy Code, made relevant to these proceedings by section 78fff(b) of SIPA, pending the completion of the Trustee's Chais Action. Specifically, the Trustee requests that this Court enjoin the prosecution of the Chais Third Party Actions for, without limitation, the following reasons:

a. The Third Party Actions improperly infringe on the jurisdiction of this Court. Any funds recovered in the Third Party Actions have a strong likelihood of consisting of customer property, recoverable by the Trustee pursuant to section 78fff-2(c)(3) of SIPA. As such, further prosecution of these actions could ultimately result in another court's determining how potential customer property is distributed among certain BLMIS customers and creditors.

b. There is an inadequate remedy at law to protect and preserve the assets that constitute customer property. The Third Party Actions threaten the administration of the

liquidation and an injunction is necessary to preserve and protect customer property and the Trustee's efforts to gather and collect customer property for the benefit of the victims who have filed claims.

c. An injunction will prevent the substantial confusion of other investors and potential plaintiffs with respect to whether they must file separate actions to protect their interests.

d. An injunction will avoid the possibility of inconsistent decisions and will ensure preservation of uniformity of decision.

e. An injunction will allow the Trustee to avoid appearing in the Third Party Actions, which are being litigated in California, and thus prevent the Trustee from incurring needless litigation costs.

f. The injunction will not harm the public interest, and, in fact, is in the best interest of BLMIS customers and the orderly administration of the claims administration process.

60. The Trustee believes that the injunction requested herein is necessary and appropriate to carry out his duties in accordance with the provisions of SIPA and the Bankruptcy Code and that any further prosecution of the Third Party Actions, prior to the completion of the Trustee's Chais Action, would seriously impair and potentially defeat this Court's ability to administer the BLMIS proceedings.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Third Party Plaintiffs:

i. declaring that the Third Party Actions violate the automatic stay provisions under 11 U.S.C. § 362(a) and section 78eee(b)(2)(B)(i) of SIPA and the Stay Orders and are therefore void *ab initio*;

ii. preliminarily enjoining, pursuant to section 105(a) of the Bankruptcy Code, the Third Party Plaintiffs, and those acting in concert or participation with them or on their behalf, from further pursuing the Third Party Actions as against the Chais Defendants, or any other actions as against the Chais Defendants, until such time as the Trustee has completed the Trustee's Chais Action; and

iii. granting the Trustee such other relief as the Court deems just and proper.

Dated: New York, New York
January 4, 2012

/s/ Marc E. Hirschfield
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Marc E. Hirschfield
Email: mhirschfield@bakerlaw.com
Tracy L. Cole
Email: tcole@bakerlaw.com
Deborah H. Renner
Email: drenner@bakerlaw.com
Ferve E. Ozturk
Email: fozturk@bakerlaw.com

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