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

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

DIANE and ROGER PESKIN and
MAUREEN EBEL,

Plaintiffs,

v.

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

Defendant.

SIPA LIQUIDATION

No. 08-01789 (BRL)

Adv. Pro. No. 09-1272 (BRL)

**DECLARATION OF HELEN DAVIS CHAITMAN, ESQ.
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT,
OR, IN THE ALTERNATIVE, TO STRIKE**

I, Helen Davis Chaitman, hereby declare, under penalty of perjury pursuant to 28 U.S.C. §1746, as follows:

1. I am a partner in Phillips Nizer LLP, counsel to Maureen Ebel, Diane Peskin and Roger Peskin (together, the "Plaintiffs") in this action. I am a member of the bars of New York and of this Court. I submit this declaration in opposition to the motion of Defendant Irving H. Picard, trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("Madoff")

(the “Trustee”) to dismiss the Complaint or, in the alternative, to strike certain portions of the Complaint.

2. On June 23, 2009, I received a letter from David Sheehan, counsel to the Trustee, stating that “[s]hould a final order overrule the use of the money in/money out approach [of determining a customer’s “net equity”], we will be bound by that order and will apply it retroactively to all previously determined allowed customer claims.” A copy of David Sheehan’s June 23, 2009 letter is attached hereto as Exhibit A.

3. On June 30, 2009, I filed an objection on behalf of Donald A. Benjamin, a copy of which is attached hereto as Exhibit B. The Trustee has not yet scheduled a hearing on Mr. Benjamin’s objection.

4. On July 14, 2009, SEC Commissioner Mary Schapiro testified before the House of Representatives Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprise. A copy of the transcript of her testimony is attached hereto as Exhibit C.

5. On June 26, 2009, I received a letter from David Sheehan, counsel to the Trustee, advising me that the Peskins:

received no preferential payment in the 90 days preceding the filing date of this action. Thus, we will promptly determine their customer claim for the full amount. Upon their receipt of the Trustee’s determination letter, please have them execute the Partial Assignment and Release and return it to the Trustee. Once they have done so, the Trustee will promptly send them \$500,000 advanced by SIPC.

A copy of Mr. Sheehan’s June 26, 2009 letter is attached hereto as Exhibit D.

6. The Trustee sent the Peskins a determination letter with a proposed partial assignment and release on July 16, 2009, 20 days after his counsel stated that he would “promptly” determine their claim. A copy of the July 16, 2009 determination letter is attached hereto as Exhibit E.

7. On July 21, 2009, I wrote to the Trustee's counsel to inform him that the form of partial assignment and release enclosed in the July 16, 2009 determination letter to the Peskins was unacceptable. A copy of my July 21, 2009 letter is attached hereto as Exhibit F.

8. By letter dated July 22, 2009, the Trustee's counsel sent a revised partial assignment and release that was acceptable. A copy of the July 22, 2009 letter and revised partial assignment and release is attached hereto as Exhibit G.

9. A true copy of the relevant pages from the transcript of a hearing transcript in *In re New Times Sec. Services, Inc.* is attached hereto as Exhibit H.

10. A true copy of the 1973 Securities Investor Protection Corporation Annual Report is attached hereto as Exhibit I.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2009

/s/ Helen Davis Chaitman