

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

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UNITED STATES OF AMERICA

- v. -

09 Cr. 764 (RJS)

FRANK DIPASCALI, JR.,

Defendant.

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**THE UNITED STATES OF AMERICA’S APPLICATION FOR A
PRELIMINARY ORDER OF FORFEITURE (FINAL AS TO THE DEFENDANT)
AND FOR APPROVAL OF STIPULATION AND ORDERS AS TO DEFENDANT’S
WIFE, CHILDREN, AND SISTER**

The United States of America (the “Government”) respectfully moves the Court for the entry of three orders, which collectively will resolve the Government’s forfeiture claims against the defendant, FRANK DIPASCALI, JR., as well as any claims that the DiPascali family might make to the forfeited assets, and return assets transferred by DIPASCALI to third parties to the Government:

1. A Preliminary Order of Forfeiture (Final as to the Defendant) as to DIPASCALI, which is attached hereto as Appendix 1;
2. A Stipulation and Order between the United States Attorney’s Office for the Southern District of New York (the “Office”) and the defendant’s wife, Joanne T. DiPascali, which is attached hereto as Appendix 2; and
3. A Stipulation and Order between this Office and the defendant’s sister, also named Joanne DiPascali, which is attached hereto as Appendix 3.

The Government intends to request that the assets forfeited by the defendant and his family pursuant to these agreements be distributed to the victims of his crimes, in accordance with the process of remission set out in Department of Justice regulations. By approving the agreements, the Court will allow the parties to forego expensive and time-consuming litigation and further the Government's goal of distributing to victims, as soon as practicable, the net proceeds from the sale or other disposition of the forfeited assets.

PROCEDURAL BACKGROUND

1. Information 09 Cr. 764 (RJS) (the "Information"), filed August 11, 2009, charged FRANK DIPASCALI, JR. ("DIPASCALI" or the "defendant"), in ten counts, in connection with a scheme to defraud clients of Bernard L. Madoff Investment Securities ("BLMIS"), from at least as early as in or about the 1980s through on or about December 11, 2008, by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff's and DIPASCALI's own benefit and the benefit of others without the knowledge or authorization of the investors.

2. The Information also contains two forfeiture allegations, the first of which concerns the offenses charged in Counts One, Two, Six, and Seven of the Information, which constitute "specified unlawful activity" as that term is defined in 18 U.S.C. § 1956(c)(7) (the "SUA Offenses"), and which seeks criminal forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, of all property constituting or derived from proceeds traceable to the commission of the SUA Offenses, including a money judgment in the amount of \$170 billion, representing the amount of proceeds traceable to the commission of the SUA Offenses, all property constituting or derived from proceeds traceable to the commission of the SUA Offenses,

and all property traceable to such property, pursuant to 21 U.S.C. § 853(p) (the “SUA Proceeds Forfeiture Allegation”).

3. The second forfeiture allegation, concerning the money laundering offense charged in Count Eight of the Information (the “Money Laundering Offense”), seeks criminal forfeiture, pursuant to 18 U.S.C. § 982(a)(1), of all property involved in the Money Laundering Offense, including a money judgment in the amount of \$250 million, representing the property involved in the Money Laundering Offense, all property traceable to such property, and substitute assets, pursuant to 21 U.S.C. § 853(p) (the “Money Laundering Forfeiture Allegation”).

4. On August 11, 2009, pursuant to the terms of a cooperation agreement with this Office, DIPASCALI pleaded guilty to all ten counts in the Information, admitted the forfeiture allegations, and agreed to forfeit to the United States: (i) pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, a sum of money equal to \$170 billion, representing the amount of proceeds traceable to the commission of the SUA Offenses charged in Counts One, Two, Six, and Seven of the Information, and property traceable to such property; and (ii) pursuant to 18 U.S.C. § 982, a sum of money equal to \$250 million, representing the property involved in the Money Laundering Offense charged in Count Eight of the Information, and all property traceable to such property, for a total money judgment in the amount of \$170.25 billion.

The Related Civil Forfeiture Action

5. On August 24, 2009, within two weeks of the defendant’s guilty plea, the Government filed a separate civil action seeking forfeiture of the defendant’s luxury sportfishing yacht and three cars, *United States v. One 2003 Viking 61' Convertible Motor Yacht Known as Dorothy Jo, et al.*, No. 09 Civ. 7434 (RMB). The United States Marshals Service (“USMS”)

took custody of the *Dorothy Jo* in April 2009 pursuant to a seizure warrant issued by Magistrate Judge Katz. The DiPascali family voluntarily turned over the three cars to the USMS in or about August 2009.

6. The defendant and his wife promptly resolved the civil action by agreeing to forfeit their interests in the assets and agreeing to their sale for the benefit of victims. The parties stipulated that the net sale proceeds would be applied to any forfeiture money judgment to be imposed upon DIPASCALI as part of his sentence in the above-captioned case.

7. The USMS subsequently sold the *Dorothy Jo* and the three cars — a 2009 Audi S5 Quattro Coupe, a 2007 Mercedes Benz E350 4M AWD 4DR, and a 2006 Mercedes Benz ML500 — along with some of Madoff's assets at well-publicized auctions held in October and November 2009. The sale of the yacht and three cars netted approximately \$960,500 for victims.¹

The Interlocutory Orders of Sale

8. On or about January 29, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Bridgewater Property), in which the defendant and his wife, Joanne T. DiPascali, agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of their residence located at 1400 Mountain Top Road, Bridgewater, New Jersey, 08807, and all the valuable, insured, or readily salable personal property located at such property, including furniture, paintings, televisions, appliances, games

¹ During the same time period, the USMS sold over 100 items of Madoff jewelry, furs, and household items at a live auction at the Sheraton New York. With many items fetching three or more times their appraised value, over \$720,000 was raised for the benefit of the fraud victims.

and recreational equipment, home gym and exercise equipment, patio furniture, and lawn, garden, and pool equipment (collectively, the “Bridgewater Property”).

9. Immediately thereafter, on or about February 1, 2010, the Bridgewater Property was surrendered to the USMS. The property, which remains in USMS custody, is being marketed for sale.

10. On or about February 2, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Conveyances, Monmouth County, NJ), in which the defendant and his wife agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture, of a 2005 17' Boston Whaler Montauk center console runabout, a jetski, and a trailer for the boat.

11. On or about February 3, 2010, the USMS seized the Boston Whaler, the jetski, and a trailer for each of them. The property is in the custody and control of the USMS pending an interlocutory sale.²

12. On or about April 7, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Additional Vehicles), in which the defendant and his wife agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture, of a 2007 Dodge Ram 1500 pickup truck, a 2004 Nissan Pathfinder LE Platinum Edition, a 2006 Load Rite Trailer (for the jetski), two 2005 Yamaha Raptor ATVs, a 2001 Yamaha off-road motorcycle, a 2008 Honda motocross off-road motorcycle, two mini bikes, a motorized scooter, and a snow blower.

² The USMS is planning to sell the Boston Whaler on Friday, April 23, 2010, at 10:00 AM at a public auction in East Brunswick, New Jersey. *See* www.cwsmarketing.com/usmscars.cfm (lot 44).

13. Joanne DiPascali had previously surrendered to the USMS, in or about February and March 2010, the 2004 Nissan Pathfinder, the 2007 Dodge Ram, and the 2008 Honda off-road motorcycle, as well as watches and jewelry.

14. The defendant has pleaded guilty to counts as to which the Government is seeking the penalty of criminal forfeiture and has admitted the forfeiture allegations. He has agreed to the entry of money judgments in the amounts alleged in the Information and to relinquish all of his interest in any forfeitable specific property. He has already surrendered and entered into agreements with this Office that permit the sale of much of that property. Entry of a preliminary order of forfeiture is therefore appropriate pursuant to Rule 32.2(b) of the Federal Rules of Criminal Procedure.

STATUTORY BACKGROUND

15. The SUA Proceeds Forfeiture Allegation is made pursuant to 18 U.S.C. § 981, which provides that “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . any offense constituting ‘specified unlawful activity’ (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense” is “subject to forfeiture to the United States.” 18 U.S.C. § 981(a)(1)(C).³ Section 1956(c)(7) then incorporates

³ By its own terms, 18 U.S.C. § 981 is a civil forfeiture provision. But:

[w]hile § 981 authorizes only civil forfeitures, the forfeitable property it describes is made subject to criminal forfeiture by the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”), Pub. L. No. 106-185, § 16, codified at 28 U.S.C. § 2461(c) (providing for the criminal forfeiture of any property for which forfeiture “is authorized in connection with a violation of an Act of Congress . . . but no specific statutory provision is made for *criminal* forfeiture upon conviction” (emphasis added)).

United States v. Capoccia, 503 F.3d 103, 115-16 (2d Cir. 2007). See also *United States v. Day*,

“any act or activity constituting an offense listed in section 1961(1) of this title,” which contains a list of predicate acts under RICO, and which, in turn, explicitly includes mail, wire and securities fraud, *see* 18 U.S.C. § 1961(1) (defining “racketeering activity” to include any act indictable under 18 U.S.C. §§ 1341 (relating to mail fraud), 1343 (relating to wire fraud), and “any offense involving . . . fraud in the sale of securities”).

16. The Money Laundering Forfeiture Allegation, meanwhile, is made pursuant to 18 U.S.C. § 982(a)(1), which provides that “[t]he court, in imposing sentence on a person convicted of an offense in violation of section 1956 [or] 1957 . . . of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.”

17. In other words, any property, of any kind, that constitutes or is derived from proceeds traceable to a violation of mail fraud, wire fraud, securities fraud, or conspiracy to commit mail, wire, or securities fraud “is subject to forfeiture to the United States,” as is any property, of any kind, involved in a money laundering offense. When the criminal defendant is convicted of the underlying offenses, “the court *shall* order the forfeiture of the property as part of the sentence in the criminal case.” 28 U.S.C. § 2416(c) (emphasis supplied). The forfeiture order may take the form of a personal money judgment imposed upon the defendant, *see United States v. Awad*, ___ F.3d ___, No. 07-4883-cr, 2010 WL 840243 (2d Cir. Mar. 11, 2010) (per curiam); *United States v. Vampire Nation*, 451 F.3d 189, 201-02 (3d Cir. 2006); forfeiture of specific property with the requisite nexus to the offense, *see* Fed. R. Crim. P. 32.2(b)(1)(A); or

524 F.3d 1361, 1376 (D.C. Cir. 2008); *United States v. Vampire Nation*, 451 F.3d 189, 199 (3d Cir. 2006).

forfeiture of substitute assets, *see* 21 U.S.C. § 853(p); Fed. R. Crim. P. 32.2(e)(1)(B). *See generally* Fed. R. Crim. P. 32.2(b)(2)(A).

18. The determination of whether property is subject to forfeiture is made by the district court as part of the sentencing process, applying a preponderance-of-the-evidence standard. *See United States v. Fruchter*, 411 F.3d 377, 383 (2d Cir. 2005). Importantly, the forfeiture court may determine that property is forfeitable regardless of whether it is held by the criminal defendant or a third party. If the Government can establish that property derived from or used to commit a criminal offense belongs to the defendant but is held by a nominee, the Government can forfeit the property. *See United States v. Totaro*, 345 F.3d 989, 995-96 (8th Cir. 2003) (if claimant were a straw owner, she could not contest the forfeiture notwithstanding her legal title); *United States v. Houlihan*, 92 F.3d 1271, 1289-1300 (1st Cir. 1996) (house forfeited from defendant based on evidence establishing that defendant's uncle, whose name appeared on the deed, was a mere straw man); *United States v. Ida*, 14 F. Supp. 2d 454, 460-61 (S.D.N.Y. 1998) (person who ostensibly used his own money to buy property and titled it in his own name was nevertheless a straw owner; evidence showed that property was purchased for use of the defendant), *aff'd*, 181 F.3d 83 (2d Cir. 1999) (unpublished). Indeed, the purpose of the relation back doctrine of 21 U.S.C. § 853(c) is to “prevent defendants from escaping the impact of forfeiture by transferring assets to third parties.” *United States v. Reckmeyer*, 836 F.2d 200, 203 (4th Cir. 1987).⁴

⁴ The relation back doctrine, as codified in 21 U.S.C. § 853(c), is a well-established principle of forfeiture law. *See Caplin & Drysdale*, 491 U.S. at 627 (citing *United States v. Stowell*, 133 U.S. 1 (1890); S. Rep. No. 98-225, p. 200 & n.27 (1983)); *United States v. Monsanto*, 491 U.S. 600, 613 (1989). Under the relation back doctrine, the Government's interest in forfeitable property vests at the time of the offense giving rise to the forfeiture. *See* 21 U.S.C. § 853(c) (“All right, title, and interest in [forfeitable] property . . . vests in the United States upon

The Criminal Forfeiture Procedure

19. Criminal forfeiture proceedings are governed by 21 U.S.C. § 853 (other than section 853(d)) and Federal Rule of Criminal Procedure 32.2. *See* 28 U.S.C. § 2461(c). Pursuant to Rule 32.2, once a criminal defendant is convicted of the offenses giving rising to the forfeiture allegations — either by trial or plea — the district court must enter a preliminary order of forfeiture. The preliminary order divests the criminal defendant of all rights he has — if any — in the property subject to forfeiture, and transfers those rights to the Government, “without regard to any third party’s interest in the property.” Fed. R. Crim. P. 32.2(b)(2). This is so because criminal forfeiture is a penalty imposed on the defendant, *see Awad*, 2010 WL 840243, at *2 (“the statutory text [of section 853] makes it ‘clear that Congress conceived of forfeiture as a punishment for the commission of various . . . crimes’” (quoting *United States v. Casey*, 444 F.3d 1071, 1073 (9th Cir. 2006))); as a result, the defendant can only be made to forfeit his own interest in property, *see Pacheco v. Serendensky*, 393 F.3d 348, 355 (2d Cir. 2004) (“Although partial forfeitures may occasionally make for strange bedfellows — such as making the government co-owners of real property with the spouse of a criminal defendant — the alternative could give the government an undeserved windfall and deny an innocent third party her valid property interest.”). *See also United States v. Gilbert*, 244 F.3d 888, 919 (11th Cir. 2001) (“Because it seeks to penalize the defendant for his illegal activities, *in personam* forfeiture reaches only that property, or portion thereof, owned by the defendant.”).

the commission of the act giving rise to forfeiture under this section.”); *United States v. United States Currency*, 895 F.2d 908, 916 (2d Cir. 1990) (because “the forfeiture occurs when the crime is committed,” a defendant has no interest in the forfeited property “as of that moment”).

20. Thus, although the preliminary order is final *as to the defendant*, it is merely *preliminary* as to potential third parties. *See* Fed. R. Crim. P. 32.2(b)(2). Following entry of a preliminary order of forfeiture, the forfeiture laws then require notice to potential third-party claimants, an opportunity for their claims to be heard, and standards by which their claims must be adjudicated. These procedures, set forth in section 853(n), “provide the exclusive means by which a third party may lay claim to forfeited assets” after the preliminary forfeiture order has been entered. *DSI Assocs. LLC v. United States*, 496 F.3d 175, 183 (2d Cir. 2007); *see also De Almeida v. United States*, 459 F.3d 377, 381 (2d Cir. 2006). *See generally Libretti v. United States*, 516 U.S. 29, 44 (1995) (“Once the government has secured a stipulation as to forfeitability, third-party claimants can establish their entitlement to a return of the assets only by means of the hearing afforded under 21 U.S.C. § 853(n).”).

21. The requirements for providing notice of the forfeiture action and the Government’s intent to forfeit the property are set out in Rule 32.2(b)(6) and recited in the preliminary order. The Government is required to serve notice of its intent to finally forfeit the property on any potentially interested third parties, either by publication or, where individuals who reasonably appear to be potential claimants are identifiable, by individual notice. *See* 21 U.S.C. § 853(n)(1); Fed. R. Crim. P. 32.2(b)(6)(A). If no petitions asserting an interest in the property are filed, following the expiration of the period for the filing of such petitions, the United States is entitled to clear title. *See* Rule G(5)(a)(ii)(B) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (each, a “Supplemental Rule”); *see also DSI Assocs.*, 496 F.3d at 182 n.8 (quoting Advisory Committee Notes to Rule 32.2 to say

“[i]f a third party has notice of the forfeiture but fails to file a timely claim, his or her interests are extinguished, and may not be recognized when the court enters the final order of forfeiture”).

22. Under the criminal forfeiture statute, a third party may petition for a hearing to adjudicate its alleged interest in property to be forfeited in a so-called “ancillary proceeding,” conducted after the court enters its preliminary order of forfeiture. *See* 21 U.S.C. § 853(n). Such petitions must be filed within a statutorily-prescribed time frame, *see* 21 U.S.C. § 853(n)(1) & (2); *see also* Supplemental Rule G(5)(a)(ii), and meet certain other requirements, *see id.* § 853(n)(3) (“The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner’s right, title, or interest in the property, the time and circumstances of the petitioner’s acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner’s claim, and the relief sought.”).

23. As the Second Circuit made clear in *Pacheco*, a court resolving a third-party petition does not necessarily need to conduct a hearing, but rather, such ancillary proceedings resemble civil actions, may involve discovery, and may be resolved by motion to dismiss or for summary judgment. *See* 393 F.3d at 351-52; *see also* Fed. R. Crim. P. 32.2(c)(1)(B).

24. The Government is also authorized to compromise third party petitions — for example, by releasing property subject to forfeiture as part of a settlement. *See* 21 U.S.C. § 853(i)(2); *see also In re W.R. Huff Asset Mgmt. Co.*, 409 F.3d 555 (2d Cir. 2005) (affirming Government’s compromise of forfeiture claims). Indeed, courts will approve the Government’s compromise of weak third party petitions, which “might ultimately prove defective, [because] they are not so frivolous that their resolution would not result in protracted, costly, internecine litigation that would, at a minimum, have the effect of delaying and diminishing the victims’

recoveries.” *United States v. Dreier*, ___ F. Supp. 2d ___, No. 09 Cr. 85 (JSR), 2010 WL 424706, at *3 (S.D.N.Y. Feb. 5, 2010).

25. If the court does conduct a hearing, both the petitioner and the government are entitled to present evidence, and the court may also consider relevant portions of the criminal trial transcript, if any. *See* 21 U.S.C. § 853(n)(5). The burden is ultimately on the petitioner to prove his claim by a preponderance of the evidence. *See id.* § 853(n)(6).

26. Importantly, there are *only* two ways that a third party can show a valid interest in property subject to forfeiture under section 853(n): The petitioner “must either (a) have an interest in the property that is superior to the criminal defendant’s because it arose prior to ‘the time of the commission of the acts [that] gave rise to the forfeiture,’ 21 U.S.C. § 853(n)(6)(A), or (b) be a ‘bona fide purchaser for value’ of the property who was ‘reasonably without cause to believe that the property was subject to forfeiture’ at the time of purchase, *id.* § 853(n)(6)(B).” *Pacheco*, 393 F.3d at 353.

27. A third party comes under paragraph 6(A) if he had an interest in the property *at the time of the offense*, and he comes under 6(B) if he acquired his interest *after the offense*. If the third party comes under 6(A), he only has to show an interest in the property superior to the defendant’s interest — for example, a secured creditor — whereas if he comes under 6(B), he has to be a bona fide purchaser for value.

28. In either case, the third party petitioner must have an interest in specific property; general creditors and even victims lack standing to assert a claim in an ancillary proceeding or otherwise intervene in the criminal case. *See DSI Assocs.*, 496 F.3d 175 (general creditor may not intervene, under section 853 or Federal Rule of Civil Procedure 24, in criminal forfeiture

proceeding); *United States v. Ribadeneira*, 105 F.3d 833, 835-36 (2d Cir. 1997) (per curiam) (general creditors have no standing in ancillary proceeding because they have no interest “in” specific forfeited property; section 853(n) requires petitioners to demonstrate “an interest in a particular, specific asset, as opposed to a general interest in an entire forfeited estate or account”); *see also United States v. Speed Joyeros, S.A.*, 420 F. Supp. 2d 121, 125 (E.D.N.Y. 2006); *accord United States v. Watkins*, 320 F.3d 1279, 1283-84 (11th Cir. 2003); *United States v. Campos*, 859 F.2d 1233, 1239 (6th Cir. 1988).

29. If the petitioner cannot meet the requirement of either paragraph 6(A) or 6(B) of section 853(n), he simply cannot demonstrate an interest in property subject to forfeiture. *See United States v. BCCI Holdings (Luxembourg) S.A. (Final Order of Forfeiture and Disbursement)*, 69 F. Supp. 2d 36, 60 (D.D.C. 1999) (“The only grounds on which a third party can prevail in the ancillary proceeding are those set forth in §§ 1963(1)(6)(A) & (B). . . . If the claimant fails to establish facts supporting his claim under one or the other of these theories, he is not entitled to any relief in the ancillary proceeding.”); *see also United States v. Hooper*, 229 F.3d 818, 822-23 (9th Cir. 2000); *United States v. Kennedy*, 201 F.3d 1324, 1335 (11th Cir. 2000).

30. Following the forfeiture court’s disposition of all petitions filed in the ancillary proceedings, or if no petitions are filed following the expiration of the requisite time periods, the court must enter a final order of forfeiture, thereby giving the United States clear title to the property. *See* 21 U.S.C. § 853(n)(7); Fed. R. Crim. P. 32.2(c)(2). The order may be amended at any time to include subsequently located property or property qualifying as substitute assets. *See* Fed. R. Crim. P. 32.2(e). Indeed, recent amendments to Rule 32.2 provide that while the

forfeiture court should ordinarily enter a preliminary order of forfeiture sufficiently in advance of sentencing so that a final order (as to the defendant) can be entered at the time of sentencing, *see* Fed. R. Crim. P. 32.2(b)(2)(B),⁵ it may in appropriate cases enter a forfeiture order at sentencing that lists any then-identified property and describes other property in general terms only, *see* Fed. R. Crim. P. 32.2(b)(2)(C). The court may then later amend that order when additional specific property is identified or when the amount of the money judgment has been calculated. *See id.*

THE PROPOSED ORDERS

31. Taken together, the three agreements for which the Government now seeks the Court's approval will (a) set forth the amount of the personal money judgment for which the defendant is liable to the United States (\$170.25 billion); (b) divest the defendant of all right, title, or interest in all of his property, wherever located, known or unknown, including certain specified property that the Government estimates to be valued in excess of \$6.1 million; (c) extinguish any claim to those assets that the defendant's wife or children might have made in excess of \$285,000 (less approximately \$100,000 in offsets); and (d) extinguish claims by the defendant, his wife, and his children to any assets transferred to third parties without consideration. Two such transfers, in the combined principal amount of \$470,757, have already been recovered from the defendant's sister, with interest.

The Proposed Preliminary Order of Forfeiture (Final as to the Defendant)

32. The proposed Preliminary Order, to which the defendant has consented, extends to the full reach of property in which the defendant has or may have an interest. In order words, the

⁵ Although a criminal forfeiture order is imposed upon the defendant as part of his sentence, a final order of forfeiture may be entered "at any time before sentencing if the defendant consents." Fed. R. Crim. P. 32.2(b)(4)(A).

proposed Preliminary Order is not a concession or compromise, but applies the forfeiture laws to the defendant to the fullest extent authorized by federal law.

33. First, the defendant has agreed to the imposition of money judgments totaling \$170.25 billion, representing the full amount of proceeds of the securities fraud, conspiracy, mail fraud, and wire fraud offenses to which he has pleaded guilty, plus the amount of money involved in the international money laundering offense charged in Count Eight. The defendant, by his own admission, was a participant in the conspiracy and was aware of the scope of the fraud. By virtue of his plea and admission to the money judgment amounts, therefore, the defendant has acknowledged that the full extent of the massive conspiracy was known or at least reasonably foreseeable to him, making him jointly and severally liable for the full amount of the massive fraud, regardless of whether he personally received such proceeds. *See, e.g., Fruchter*, 411 F.3d at 384 (conspirator is jointly and severally liable for *all* proceeds foreseeably derived from the criminal activity giving rise to the forfeiture); *United States v. Edwards*, 303 F.3d 606, 643-44 (5th Cir. 2002).⁶

34. The proposed Preliminary Order also divests the defendant of any and all of his right, title and interest in the specific property listed in Exhibit A. The Government presently estimates that the specific property will yield at least \$6.1 million in net proceeds after liquidation.

⁶ The money judgments may be satisfied out of directly forfeitable property, property traceable thereto, or substitute assets. *See United States v. Saccoccia*, 898 F. Supp. 53, 56 (D.R.I. 1995) (“The forfeiture order constitutes a money judgment against the defendants and may be satisfied either from the proceeds of their racketeering activity, property derived from those proceeds or, if such proceeds or property have been concealed, from any other property belonging to the defendants”).

35. DiPascali has also, as explained above, already surrendered to the USMS and allowed to be sold considerable personal property, including the *Dorothy Jo*, DIPASCALI's sportfisherman yacht, and three cars. In total, the sale of these assets has already netted \$960,505.29 for victims.

36. The other assets to be forfeited include DIPASCALI's residence in Bridgewater, New Jersey; a condominium in Haverford, Pennsylvania, that DiPascali purchased and put in the name of one of his sons; cars, all-terrain vehicles and water craft; and all financial institution accounts, loans and transfers of funds (including the principal sum of approximately \$470,757 that was transferred to his sister, discussed further below). Most of this property has already been turned over to the USMS for sale.

37. The Preliminary Order, moreover, is not limited to the specific property set forth on Exhibit A, but extends to any other property in which the defendant has or may have an interest. That is, although the Government has undertaken an extensive and, we believe, comprehensive search for DIPASCALI's assets, the Preliminary Order fully protects the Government (and thus victims) by forfeiting the defendant's interest in absolutely *any* property. Regardless of whether the property is specified in the proposed Order, or whether the property even exists now, the defendant has relinquished any claim he may have to it and has consented to its forfeiture to the United States.

38. The proposed Preliminary Order complies with the requirements of Rule 32.2 and 21 U.S.C. § 853(n) in all respects, including insofar as it requires the Government to serve notice of its intent to finally forfeit the property subject to the Preliminary Order on any potentially interested third parties and provides a procedure for those third parties to file claims against the

assets.

The Stipulation and Order Between the Office and the Defendant's Wife

39. The Government has also entered into an agreement resolving all claims to the forfeited property by DIPASCALI'S wife, who will under the terms of that agreement receive a net sum of \$177,982.

40. Joanne T. DiPascali has been married to the defendant for twenty-five years. The couple has four children: Dorothy (age 23), Frank (21), Gregory, (18), and Michael (15). The proposed Stipulation and Order resolves all claims that any of them have asserted or could assert to the property subject to the Preliminary Order. Absent the Court's approval of the settlement, each of them could make third-party claims to the property, resulting in prolonged litigation.

41. In consideration of Joanne DiPascali and the DiPascali children⁷ relinquishing any and all claims against the assets subject to the Preliminary Order of Forfeiture, and in compromise of any claims that she could have asserted, this Office has agreed not to contest her claim to \$285,000, reduced by certain offsets to the net amount of \$177,982.

42. As part of the proposed agreement and previously, the DiPascali family has cooperated extensively in turning over most specific property to the USMS. Significantly, the family vacated their home and surrendered it to the USMS; turned over vehicles, water craft, watches, jewelry and other personal property; and agreed to surrender a condominium in Haverford, Pennsylvania, held in the name of DIPASCALI's son Frank M. DiPascali (the

⁷ The three adult DiPascali children have executed or will execute the proposed Stipulation and Order; DIPASCALI and Joanne DiPascali have signed or will sign on behalf of their minor child, Michael.

“Pennsylvania Condo”) by May 31st.⁸ The defendant’s wife and children have also agreed to forego any claims they may have, not only with respect to the specific property, but also as to any other property in which they might have an interest, including property that has not yet been discovered.

43. Absent the Court’s approval of the proposed agreement, all of these assets would potentially be the subject of litigation with the DiPascali family.

44. In particular, absent the Court’s approval of the Stipulation and Order, Joanne DiPascali would file a petition pursuant to 21 U.S.C. § 853(n) asserting an interest in the property subject to forfeiture in the Preliminary Order, including, but not limited to, a one-half ownership interest in certain real property, including the Bridgewater Property and the Pennsylvania Condo. Absent a settlement, at a hearing on the forfeitability of a portion of the Bridgewater Property, Joanne DiPascali would attempt to show, for example, that in or about 1982 or 1983, she received from her mother (just prior to her mother’s death in February 1983) an undivided interest in Apartment 2E in the Lindenwood Village Cooperative, located at 89-40 151st Avenue, Howard Beach, New York 11414. She would further contend that that interest was sold on or about April 21, 1987 for \$97,000, and that those proceeds were used to fund the purchase on or about April 22, 1987, of real property located at 1041 Rector Road, Bridgewater, New Jersey 08807 (the “Rector Road Property”). The purchase price for the Rector Road Property was \$222,500, of which \$142,600 was financed.

45. Joanne DiPascali would further contend that she and DIPASCALI owned the Rector Road Property jointly, and subsequently sold it on or about December 12, 2001, for

⁸ The Government is submitting a proposed order permitting the interlocutory sale of the Pennsylvania Condo simultaneously with this application.

\$400,000, which was in turn invested in the real property and appurtenances located at 1400 Mountain Top Road, Bridgewater, New Jersey (*i.e.*, the Bridgewater Property). The Bridgewater Property was purchased in or about June 2001 and is titled in the name of Joanne T. DiPascali.

46. The Bridgewater Property is among the specific property subject to forfeiture in the proposed Preliminary Order. Although the property has been appraised in excess of \$1.38 million and is not encumbered by a mortgage or any other security interest, the extent of Joanne DiPascali's alleged interest in the property cannot be readily valued because, among other reasons, the Bridgewater Property was being renovated at the time that the Government took custody of it.⁹

47. Joanne DiPascali would, therefore, claim that she is entitled to a portion of the equity in the Bridgewater Property that is attributable to her ownership interest in at least half of the proceeds from the sale of the Rector Road Property, or \$200,000. Moreover, because her alleged interest in the Bridgewater Property is allegedly traceable to her inheritance and not to the Madoff fraud, Joanne DiPascali would further assert that her interest lacks the requisite nexus to the SUA Offenses charged in Counts One, Two, Six, and Seven of the Information, and is therefore not forfeitable.¹⁰

⁹ In addition to the ongoing renovations, DIPASCALI made other significant improvements to the Bridgewater Property since its purchase. This Office anticipates that the sale price of the Bridgewater Property will be significantly higher than the appraised value.

¹⁰ Because the Money Laundering Offense to which the defendant pleaded guilty was alleged to have commenced "at least as early as in or about 2002," the Government does not take the position that the \$200,000 may also be forfeitable as property involved in money laundering activity, or property traceable to such property, pursuant to 18 U.S.C. § 982.

48. Based upon the readily provable facts available at the present time, in consideration of the other facts and circumstances of this case, and in furtherance of the Government's intent to distribute, as soon as practicable, the net proceeds from the sale or other disposition of the forfeited property to victims of the offenses of which DIPASCALI was convicted, the Office concluded that this is an appropriate case in which to exercise its authority to compromise claims under 21 U.S.C. § 853(j)(2).¹¹

49. Because Joanne DiPascali's interest in the Bridgewater Property is not readily ascertainable, the Government used her \$200,000 interest in the proceeds of the sale of the Rector Road Property as the starting point for determining an appropriate compromise figure. Applying interest rates set by the Internal Revenue Service as the "[a]pplicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder of reversionary interest," that \$200,000 would have appreciated to \$284,867.37 as of January 1, 2010, or in excess of \$285,000 as of the date of this application.¹² The parties have therefore agreed, in furtherance of their desire to avoid protracted litigation and subject to the Court's approval, to permit Joanne DiPascali a claim of \$285,000.

50. The Government and Joanne DiPascali agreed to further reduce that sum by certain offsets for the following amounts already paid out or otherwise accounted for: (a) \$56,175

¹¹ As Judge Rakoff recently recognized in the context of another large-scale fraud, courts are justified in approving the Government's compromise of third party petitions even where the Government might ultimately prevail on the merits in the ancillary proceedings, because the risk of litigating such petitions can result in a delay or diminishment of recovery for victims. *See Dreier*, 2010 WL 424706, at *3.

¹² The Government applied this rate because the parties anticipate that the net recovery from Joanne DiPascali's allowed claim will be used to pay her living expenses, and will be her only significant asset or source of income for the foreseeable future.

was offset against money on deposit in five bank accounts in the names of Joanne T. DiPascoli and two of her children, Dorothy R. DiPascoli and Frank M. DiPascoli; (b) \$39,535 was further offset to account for the family's rent and health insurance expenses for calendar year 2010, prepaid in December 2009 and January 2010; and (c) \$11,308 was offset to account for various smaller payments made by Joanne DiPascoli between late 2009 and January 2010. Taken together, therefore, the parties agreed that \$107,018 should be set off against the \$285,000 claim, resulting in a net payment of \$177,982.

The Stipulation and Order Between the Office and the Defendant's Sister

51. Finally, the Government has entered into an agreement with DIPASCALI's sister to repay \$504,459.76 of fraud proceeds that she received before she learned about the fraud.

52. In the Preliminary Order, DIPASCALI has agreed to forfeit those funds, which will therefore be used to compensate victims, pending the Court's approval. Specifically, the forfeitable property pursuant to the Preliminary Order includes proceeds the defendant or his wife transferred to third parties (excluding bona fide purchasers who were reasonably without cause to believe that the property was subject to forfeiture). Two transfers to the defendant's sister — \$425,000 on or about May 18, 2007, and \$45,757.78 on or about August 28, 2007 — have already been recovered and repaid with interest.

53. In late December 2009, the defendant, his sister Joanne DiPascoli, and the Government executed a proposed Stipulation and Order embodying the repayment agreement, and the defendant's sister has since paid to the Government \$504,459.76, the entire principal and interest due. Those funds are on deposit in the USMS Seized Assets Deposit Fund pending entry of a Final Order of Forfeiture.

CONCLUSION

54. The Government intends that all of the forfeited property be sold, and the net proceeds distributed to the victims of DIPASCALI's fraud. Specifically, at the appropriate time, the Government intends to make an application pursuant to 18 U.S.C. § 3663A(c)(3) — as it did in the criminal case against Madoff — and ask the Court to find that the number of identifiable victims is so large as to make restitution impracticable, and that determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to the victims is outweighed by the burden on the sentencing process. The Government will therefore ask the Court to find that restitution is impracticable and therefore to allow the Government to proceed with its intention to distribute the net proceeds from the sale of the forfeited assets to victims through the process of remission, consistent with the applicable Department of Justice regulations. *See* 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9. Returning forfeited assets to victims through remission is a mechanism the Government has employed in other cases of large-scale fraud. *See, e.g., In Re W.R. Huff*, 409 F.3d at 563-64; *United States v. Ebbbers*, S3 02 Cr. 1144 (BSJ).

55. Before those assets can be liquidated and the proceeds distributed, however, the Government must obtain a final order of forfeiture. The three agreements for which the Government seeks approval in this application are the next step in that process — pursuant to the agreements, the defendant and his family's claims to the forfeited assets will be finally resolved, and the time for third parties to make claims against those assets will begin to run. Once the requisite time period for filing claims has expired, the Government will promptly resolve or seek adjudication of any third-party petitions and, ultimately, a final order that will make the forfeited

assets available for distribution to victims through the remission process.

56. For the foregoing reasons, the Government respectfully requests that the Court enter (a) the proposed Preliminary Order of Forfeiture (Final as to the Defendant) as to FRANK DIPASCALI, JR., the defendant, which is attached hereto as Appendix 1; (b) the proposed Stipulation and Order between the Office and the defendant's wife, Joanne T. DiPascali, which is attached hereto as Appendix 2; and (c) the proposed Stipulation and Order between the Office and the defendant's sister, Joanne DiPascali, which is attached hereto as Appendix 3.¹³

57. On February 23, 2010, this Court entered an order releasing the defendant from detention subject to certain stringent conditions, including the entry of orders resolving the forfeiture claims of the defendant and his wife. The Government respectfully requests that, pursuant to footnote 1 of that Order, the Court enter an order providing victims one week within which to comment on the proposed orders by sending an e-mail to usany.madoff@usdoj.gov. The Government will collect all such comments and will forward them to the Court.

58. Marc L. Mukasey, Esq., counsel for the defendant and for Joanne T. DiPascali, consents to the entry of the Preliminary Order of Forfeiture and asks the Court to endorse the Stipulation and Order.

59. No previous request for the relief sought has been made.

¹³ The proposed Preliminary Order and proposed Stipulation and Order attached as Appendixes 1 and 2 to this application are final, and are currently being circulated for signature by the parties. The Government will file a notice attaching the fully-executed documents once they are available, which should in any case be before the victim comment period expires. The proposed Stipulation and Order attached as Appendix 3 to this application is final and fully executed.

APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. -

PRELIMINARY ORDER
OF FORFEITURE
(FINAL AS TO THE DEFENDANT)

FRANK DIPASCALI JR., :

09 Cr. 764 (RJS)

Defendant. :

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Background

I. Information 09 Cr. 764 (RJS) (“Information”), filed August 11, 2009, charged FRANK DIPASCALI JR., the defendant (“DIPASCALI” or the “defendant”), in ten counts, in connection with a scheme to defraud clients of Bernard L. Madoff Investment Securities (“BLMIS”), from at least as early as in or about the 1980s through on or about December 11, 2008, by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff’s and DIPASCALI’s own benefit and the benefit of others without the knowledge or authorization of the investors.

II. The Information also contains two forfeiture allegations, the first of which concerns the offenses charged in Counts One, Two, Six and Seven of the Information, which constitute “specified unlawful activity” as that term is defined in 18 U.S.C. § 1956(c)(7) (the “SUA Offenses”), and which seeks criminal forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, of all property constituting or derived from proceeds traceable to the commission of the SUA Offenses, including a money judgment in the amount of \$170 billion, representing the amount of proceeds traceable to the commission of the SUA Offenses, all property constituting or derived from proceeds

traceable to the commission of the said offenses, all property traceable to such property, pursuant to 21 U.S.C. § 853(p) (the “SUA Proceeds Forfeiture Allegation”).

III. The second forfeiture allegation, concerning the money laundering offense charged in Count Eight of the Information (the “Money Laundering Offense”), seeks criminal forfeiture, pursuant to 18 U.S.C. § 982(a)(1), of all property involved in the Money Laundering Offense, including a money judgment in the amount of \$250 million, representing the property involved in the Money Laundering Offense, all property involved in the said offense, all property traceable to such property, and substitute assets, pursuant to 21 U.S.C. § 853(p) (the “Money Laundering Forfeiture Allegation”).

IV. On August 11, 2009, DIPASCALI pleaded guilty to all ten counts in the Information, admitted the forfeiture allegations, and agreed to forfeit to the United States: (i) pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, a sum of money equal to \$170 billion, representing the amount of proceeds traceable to the commission of the SUA Offenses charged in Counts One, Two, Six and Seven of the Information, and property traceable to such property; and (ii) pursuant to 18 U.S.C. § 982, a sum of money equal to \$250 million, representing the property involved in the Money Laundering Offense charged in Count Eight of the Information, and all property traceable to such property, for a total money judgment in the amount of \$170.25 billion.

The Interlocutory Orders of Sale

V. On or about January 29, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Bridgewater Property), in which the defendant and his wife, JOANNE T. DIPASCALI, agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of their residence located at 1400 Mountain Top Road,

Bridgewater, New Jersey, 08807, and all the valuable, insured or readily salable personal property located at such property (collectively, the “Bridgewater property”).

VI. On or about February 1, 2010, the Bridgewater property was surrendered to the United States Marshals Service (“USMS”), which has custody of the property and is preparing for its marketing and sale.

VII. On or about February 2, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Conveyances, Monmouth County, NJ), in which the defendant and his wife agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of a 2005 17' Boston Whaler Montauk center console runabout, a Kawasaki jetski, and a boat trailer.

VIII. On or about February 3, 2010, the USMS seized the Boston Whaler, the jetski, the boat trailer and a jetski trailer. The property is in the secure custody and control of the USMS pending an interlocutory sale.

IX. In or about February and March, 2010, JOANNE T. DIPASCALI surrendered to the USMS a 2004 Nissan Pathfinder LE Platinum Edition, a 2007 Dodge Ram 1500 pickup truck, a 2008 Honda CRF250R8 motocross off-road motorcycle, watches, and jewelry.

X. On or about April 7, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Additional Vehicles), in which the defendant and JOANNE T. DIPASCALI agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture, of two cars, the trailer for the jet ski, two ATV's, two off-road motorcycles, two mini-bikes, a scooter and a snow blower.

XI. The defendant having pleaded guilty to counts as to which the Government is seeking the penalty of criminal forfeiture, and the Court having accepted the defendant's plea, entry of a

preliminary order of forfeiture is appropriate pursuant to Rule 32.2(b) of the Federal Rules of Criminal Procedure.

Property Subject To Forfeiture

Money Judgment

XII. The Government represents, and the defendant concedes, that if the Government were to apply for an order imposing a personal money judgment upon the defendant, the Government could prove the following by a preponderance of the evidence:

- (1) The defendant is liable for a personal money judgment in the amount of \$170 billion, a sum of money representing the amount of property constituting or derived from proceeds traceable to the commission of the SUA Offenses charged in Counts One, Two, Six and Seven of the Information, and property traceable to such property, as alleged in the SUA Proceeds Forfeiture Allegation.
- (2) The defendant is further liable for a personal money judgment in the amount of \$250 million, a sum of money representing the property involved in the Money Laundering Offense charged in Count Eight of the Information, and property traceable to such property, as alleged in the Money Laundering Forfeiture Allegation.

XIII. Accordingly, the Government and the defendant agree that a total money judgment in the amount of \$170.25 billion should be imposed upon the defendant.

Specific Property

XIV. The Government represents, and the defendant concedes, that if the Government were to apply for an order of criminal forfeiture as to specific property, the Government could prove the following by a preponderance of the evidence:

- (1) Any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of his wife or other individual, either jointly or solely by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable

right; and all property traceable to such property (the “Forfeited Property”), has the requisite nexus to the SUA Offenses charged in Counts One, Two, Six and Seven of the Information and/or the Money Laundering Offense charged in Count Eight of the Information.

- (2) Based upon the foregoing, the Forfeited Property is forfeitable to the United States of America as property constituting or derived from proceeds traceable to the commission of the SUA Offenses, and/or as property involved in the Money Laundering Offense, and property traceable to such property.
- (3) The Forfeited Property includes, but is not limited to, all right, title and interest of the defendant in the property listed in Exhibit A to this Order (the “Specific Property”).
- (4) Because all the Forfeited Property cannot be identified at this time, and may not be identified prior to sentencing, the preliminary order of forfeiture may be amended when additional specific property is identified, pursuant to Rule 32.2(b)(2)(C) of the Federal Rules of Criminal Procedure.
- (5) Based upon the foregoing, the Defendant agrees that he will not file a claim, statement of interest or petition (including but not limited to a petition for remission or mitigation) or otherwise contest any forfeiture proceeding involving the Specific Property on any ground, and will not cause or assist anyone else in doing so.

Substitute Assets Provision

XV. The Government represents, and the defendant concedes, that as a result of acts and omissions of the defendant, property subject to forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; and has been commingled with other property which cannot be divided without difficulty. Pursuant to 21 U.S.C. § 853(p) and 18 U.S.C. § 982(b), the Court may therefore order the forfeiture of any other property of the defendant to the extent necessary to satisfy the money judgment to be imposed upon the defendant.

Miscellaneous Provisions

XVI. The defendant consents to the entry of orders of interlocutory sale of the Forfeited Property pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

XVII. In the event the United States obtains a final order of forfeiture as to the Forfeited Property, the Department of Justice will authorize the distribution of the net sale proceeds to the victims of the fraud charged in the instant case and in *United States v. Bernard L. Madoff*, 09 Cr. 213 (DC), and *United States v. David G. Friehling*, 09 Cr. 700 (AKH), consistent with applicable Department of Justice regulations, pursuant to 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, and Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure, and based on the foregoing, the Court finds by a preponderance of the evidence that:

- (a) The defendant is liable for a personal money judgment in the amount of \$170 billion, a sum of money representing the amount of property constituting or derived from proceeds traceable to the commission of the SUA Offenses charged in Counts One, Two, Six and Seven of the Information, and property traceable to such property.
- (b) The defendant is further liable for a personal money judgment in the amount of \$250 million, a sum of money representing the property involved in the Money Laundering Offense charged in Count Eight of the Information, and property traceable to such property.

Accordingly, the defendant is liable for total money judgment in the amount of \$170.25 billion (the “Money Judgment”).

2. Pursuant to 18 U.S.C. § 981(a)(1)(A) and (a)(1)(C) and 28 U.S.C. § 2461, and Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure, and based on the foregoing, any and all

property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of his wife or other individual, either jointly or solely by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable right; and all property traceable to such property (the "Forfeited Property"), has the requisite nexus to the offenses giving rise to the forfeiture charged in the Information, and is therefore forfeitable and is hereby forfeited to the United States of America as property constituting or derived from proceeds traceable to the commission of the SUA Offenses charged in Counts One, Two, Six and Seven of the Information, and/or as property involved in the Money Laundering Offense charged in Count Eight of the Information.

3. The Forfeited Property includes, but is not limited to, all right, title and interest of the defendant in the Specific Property, and the same is hereby forfeited to the United States for disposition in accordance with law, subject to the provisions of 21 U.S.C. § 853(n)(1) and 18 U.S.C. § 982(b)(1).

4. The defendant having consented to the entry of orders of interlocutory sale of the Specific Property, upon application of the Government and pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the Court will enter orders of interlocutory sale in order to preserve and maximize the value of the Specific Property pending entry of a final order of forfeiture.

5. The net proceeds from the sale of the Forfeited Property shall be applied to the Money Judgment, in partial satisfaction thereof.

6. The net proceeds from the sale of the Defendants in rem in *United States v. One 2003 Viking 61' Convertible Motor Yacht Known as Dorothy Jo, et al.*, 09 Civ. 7434 (RMB), will be applied to the Money Judgment, in partial satisfaction thereof.

7. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Marshals Service (“USMS”) is hereby authorized to:

- (a) take possession of the Specific Property and to hold such property in its secure custody and control;
- (b) maintain existing insurance policies and, to the best of its ability, renew any other insurance policies, that the USMS, in its sole discretion, determines to be necessary to preserve the value of the Specific Property pending sale; and
- (c) solicit from among a limited number vendors to assist in the preservation or maintenance of Specific Property pending sale and the disposal of personal property.

8. The United States may, in its sole discretion, reject any offer to purchase the Specific Property where it determines that the offer is being made by, or on behalf of, a person involved in the criminal activity alleged as the basis for forfeiture, or who contributed to or benefitted from the offense underlying the forfeiture.

9. Pursuant to 21 U.S.C. § 853(g) and Rule 32.2(b)(3), the defendant, his attorneys, agents, spouse and other family members, and anyone acting on his behalf, and all persons or entities acting in concert or participation with any of the above, and all persons and entities having actual knowledge of this Order:

- (a) shall not directly or indirectly, transfer, sell, assign, pledge, distribute, hypothecate, encumber, or dispose of in any manner; cause to be transferred, sold, assigned, pledged, distributed, hypothecated, encumbered, or disposed of in any manner; or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the Specific Property;

- (b) shall not use or permit the Specific Property to be used for any illegal activity; and
- (c) shall not take any action that would depreciate, damage, or in any way diminish the value of the Specific Property without the prior written consent of the United States Attorney's Office.

10. Pursuant to Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, the United States shall publish notice of this Order for at least thirty (30) consecutive days on the government internet site www.forfeiture.gov. The United States shall also send notice of this Order to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

11. Any person, other than the defendant, claiming interest in the Specific Property must file a Petition within sixty (60) days from the first day of publication of notice on the government internet site, or no later than thirty-five (35) days from the mailing of direct notice, whichever is earlier, pursuant to Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure and Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

12. The notice of forfeiture must describe the forfeited property, state the times by which a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition. The notice shall also state that the petition (i) shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Property, (ii) shall be signed by the petitioner under penalty of perjury, and (iii) shall set forth the nature and extent of the petitioner's right, title or interest in the Specific Property, the time and circumstances of the petitioner's acquisition of the right, title and interest in the Specific Property, any additional facts supporting the petitioner's claim, and the relief sought, pursuant to 21 U.S.C. § 853(n).

13. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 U.S.C. § 853(n) and 18 U.S.C. § 982(b)(1), in which all interests will be addressed.

14. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, this Order of Forfeiture shall be final against the defendant FRANK DIPASCALI JR., shall be made part of the sentence of the defendant FRANK DIPASCALI JR., and shall be included in the judgment of conviction therewith.

15. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture the Office is authorized to conduct any discovery needed to identify, locate or dispose of property subject to forfeiture, including depositions, interrogatories, requests for production of documents and subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

16. As the statutory criteria for the forfeiture of substitute property have been satisfied, pursuant to 21 U.S.C. § 853(p) and 18 U.S.C. § 982(b), in the event the Government locates any other property of the defendant up to the value of the Specific Property, and that may be necessary to satisfy the Money Judgments, all right, title and interest of the defendant in such property is forfeitable as substitute property pursuant to 21 U.S.C. § 853(p) and 18 U.S.C. § 982(b). Accordingly, pursuant to Rule 32.2(e), on the Government's motion, the Court may at any time enter an order of forfeiture of such substitute property.

17. As the defendant has stipulated and the Court has found that the property subject to forfeiture includes any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, and is not limited to the Specific Property, pursuant to Rule

EXHIBIT A

1. The real property and appurtenances known as 1400 Mountain Top Road, Bridgewater, New Jersey, 08807, together with its appurtenances, improvements and fixtures (indoor and outdoor), more particularly described as Lot 11, Block 654, of the Tax Map of Somerset County, New Jersey, held in the name of Joanne T. DiPascali and/or Frank DiPascali Jr.
2. All valuable, insured or readily salable personal property (including indoor and outdoor appliances, electronics, fixtures and furnishings) located at 1400 Mountain Top Road, Bridgewater, New Jersey, 08807, more particularly described as follows:
 - a. Furniture, clocks, thermometers, lamps, lighting fixtures and wall sconces;
 - b. Washers, dryers, refrigerators and trash compactors;
 - c. Samsung LCD TV Series 7, Model No. LN52A750R1FXZA, Serial No. ALB73;
 - d. Sharp Aquos television, approximately 19";
 - e. Home theater and telephone systems, equipment, parts and accessories;
 - f. Stealth vacuum cleaners, and all their parts and accessories;
 - g. Indoor recreation games and leisure equipment located in basement, and all their parts and accessories;
 - h. Multi-station gym and circuit training equipment, exercise machines, mats, and exercise balls, and all their parts and accessories;
 - i. Outdoor recreational and sporting equipment, and all their parts, accessories and supplies, including tires for vehicles;
 - j. Pool, patio and all other outdoor furniture, equipment, and all their parts and accessories and supplies, including existing pool cover, pool slides, ladders and diving boards, pool toys and games; gas and/or propane grills, grilling and barbeque tools and equipment; Paragon Original 1911 Brand 4 ounce popcorn machine; sheds, storage, irrigation, and lawn maintenance equipment; wood; lighting features and all related equipment (indoor and outdoor); equipment, tools and accessories for or relating to ponds and water features; house markers, mailboxes and posts;

- k. Ariens Snow Blower, Model No. 1128, Serial No. 018395;
 - l. Fireplace and fire pit equipment and appurtenances, including, but not limited to, mantels, screens, grates, andirons, linings, inserts, logs, wood, blowers, remote controls and tools;
 - m. Floor and window coverings;
 - n. Wine, liquor, and spirits;
 - o. Paintings, prints, professional photographs, sculpture, and other purchased artwork; and
 - p. Indoor and outdoor decorative objects.
3. The real property and appurtenances known as Condominium Unit 302, 264 Montgomery Avenue, Haverford, Pennsylvania, 19041, together with its appurtenances, improvements, fixtures and accompanying rights and privileges (including, but not limited to, parking spaces), held in the name of Frank M. DiPascali, and any deposits, securities or escrowed funds held in connection with such property.
 4. One Sharp television mounted on the wall in the living room of Condominium Unit 302, 264 Montgomery Avenue, Haverford, Pennsylvania, 19041, and all its parts and accessories, including remote control(s).
 5. Desktop CPU, monitor, peripherals and accessories.
 6. Any and all jewelry and watches.
 7. One 2004 Nissan Pathfinder LE Platinum Edition, vehicle identification number (“VIN”) JN8DR09Y34W915819, together with its fixtures, electronics, equipment, parts and accessories.
 8. One 2007 Dodge Ram 1500 pickup truck, VIN 1D7HU18237J612898, New Jersey registration number VXF 95U, together with its fixtures, electronics, equipment, parts and accessories.

9. Any and all vessels and water craft, together with all their appurtenances, improvements and fixtures (including trailers, electronics and navigation equipment, accessories and supplies), including, but not limited to,
 - a. One 2005 17' Boston Whaler Montauk center console runabout, Hull Identification Number (“HIN”) BWCE9 672H4 05;
 - b. One 2005 Karavan Boat Trailer, Model No. BW-2350-74-ST, VIN 5KTBS19115F000821 (for 17' Boston Whaler Montauk);
 - c. One 2006 Kawasaki Jet Ski STX-15F, Model JT1500A6F, HIN US-KAW40480H506;
 - d. One 2006 Load Rite Trailer, Model No. WV1003W, VIN 5A4JVSJ1462019837 (for jetski);
 - e. One 1995 42' Egg Harbor Convertible Sportfisherman, HIN EGH42 230I4 95;
 - f. One white 2005 Yamaha Raptor 350 four-wheel ATV, Series YFM350RTW, VIN JY4AH12Y95C012304;
 - g. One white 2005 Yamaha Raptor 660 four-wheel ATV, Series YFM660RTW, VIN JY4AM01Y15C071791;
 - h. One 2001 blue Yamaha TT-R 125 off-road motorcycle, Series E809E-012618, VIN JYACE0Y314017442;
 - i. One 2008 Honda CRF250R8 motocross off-road motorcycle, VIN JH2ME10398M400640;
 - j. One Go-Ped motorized scooter, Serial No. BF-28851;
 - k. One red Lil Indian mini bike, Model No. HH60; and
 - l. One Razor Punk 360 mini bike, Serial No. K02I000119.
10. All funds and other property on deposit in any and all financial institution accounts held in the name(s) or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali, and any accounts to which said funds have been transferred, and all funds traceable thereto, including but not limited to:
 - a. All funds, financial instruments and other property on deposit in any and all accounts at [REDACTED] (approximately \$2.3 million);

- b. Any and all securities, shares, cash and other property on deposit in any and all accounts held at [REDACTED], including, but not limited to, [REDACTED] Account No. [REDACTED] (approximately \$320,000);
 - c. Approximately \$84,169 held by Bracewell & Giuliani LLP on account for Frank DiPascali Jr.;
 - d. The contents of any and all safe deposit boxes held in the name or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali.
- 11. Any and all ownership interest held in the name, on behalf or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali in the assets of any and all corporations, partnerships or other entities, and/or their subsidiaries, affiliates and joint ventures.
 - 12. Any and all security, note, debt, investment or other financial instrument or investment vehicle held in the name, on behalf or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali.
 - 13. Any and all interests in property held by, on behalf of, or legally or beneficially owned by Frank DiPascali Jr. and/or Joanne T. DiPascali.
 - 14. Any and all loans, promissory notes, receivables, security or financing arrangement, gift, donation or other contribution whether or not in writing, whether or not considered to be a loan, financing arrangement, gift, donation or other contribution, by or from, directly or indirectly, Frank DiPascali Jr. and/or Joanne T. DiPascali, including but not limited to the following:
 - a. The principal sum of \$425,000 transferred to or for the benefit of Joanne DiPascali (the sister of the defendant), with interest accruing from May 18, 2007; and
 - b. The principal sum of \$45,757.78 transferred to or for the benefit of Joanne DiPascali (the sister of the defendant), with interest accruing from August 28, 2007.
 - 15. Any and all Social Security payments made or to be made to Frank DiPascali Jr.
 - 16. Any and all tax refunds paid to Frank DiPascali Jr. and/or Joanne T. DiPascali attributable to assets and liabilities incurred through calendar year 2009;
 - 17. Any and all income, including but not limited to investment income or dividends, paid to Frank DiPascali Jr. and/or Joanne T. DiPascali.

18. Any and all insurance policies held by or for the benefit of Frank J. DiPascali Jr. and/or Joanne T. DiPascali, including, but not limited to, [REDACTED] Policy No. [REDACTED], Policy owner Frank J. DiPascali Jr., Frank J. DiPascali Jr. and Joanne T. DiPascali, insured.

19. Any and all transfers of funds or other property made by Frank DiPascali Jr. and/or Joanne DiPascali during the period beginning at least as early as the 1980s through and including April 21, 2010, whether or not considered to be a loan, financing arrangement, gift, donation or other contribution, unless the transferee is a bona fide purchaser for value of the right, title, or interest in the funds or other property and was at the time of the transfer reasonably without cause to believe that the property was subject to forfeiture.

APPENDIX 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA :

STIPULATION AND ORDER

- v. -

09 Cr. 764 (RJS)

FRANK DIPASCALI JR., :

Defendant. :

----- X

JOANNE T. DIPASCALI, :

Interested Party. :

----- X

Background

The Information

I. Information 09 Cr. 764 (RJS) (the “Information”) was filed August 11, 2009, and charged FRANK DIPASCALI JR., the defendant with ten felony counts in connection with a scheme to defraud clients of Bernard L. Madoff Investment Securities (“BLMIS”), from at least as early as in or about the 1980s through on or about December 11, 2008, by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff’s and DIPASCALI’s own benefit and the benefit of others without the knowledge or authorization of the investors.

II. The Information also seeks criminal forfeiture to the United States of all property constituting or derived from proceeds traceable to the conspiracy, securities fraud, mail fraud

and wire fraud offenses charged in the Information, and all property involved in the money laundering offense charged in the Information.

III. On August 11, 2009, the defendant pleaded guilty to the Information, admitted the forfeiture allegations, agreed to forfeit to the United States a sum of money representing the amount of proceeds traceable to the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information and the property involved in the money laundering offense charged in the Information, and consented to the imposition of a total forfeiture money judgment in the amount of \$170.25 billion.

The Interlocutory Orders of Sale

IV. On or about January 29, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Bridgewater Property), in which the defendant and his wife, JOANNE T. DIPASCALI, agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of their residence located at 1400 Mountain Top Road, Bridgewater, New Jersey, 08807, and all the valuable, insured or readily salable personal property located at such property (collectively, the “Bridgewater property”).

V. On or about February 1, 2010, the Bridgewater property was surrendered to the United States Marshals Service (“USMS”), which has custody of the property and is preparing for its marketing and sale.

VI. On or about February 2, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Conveyances, Monmouth County, NJ), in which the defendant and his wife agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of a 2005 17' Boston Whaler Montauk center console runabout, a Kawasaki jetski, and a boat trailer.

VII. On or about February 3, 2010, the USMS seized the Boston Whaler, the jetski, the boat trailer and a jetski trailer. The property is in the secure custody and control of the USMS pending an interlocutory sale.

VIII. In or about February and March, 2010, JOANNE T. DIPASCALI surrendered to the USMS a 2004 Nissan Pathfinder LE Platinum Edition, a 2007 Dodge Ram 1500 pickup truck, a 2008 Honda CRF250R8 motocross off-road motorcycle, watches, and jewelry.

IX. On or about April 7, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Additional Vehicles), in which the defendant and JOANNE T. DIPASCALI agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture, of two cars, the trailer for the jet ski, two ATV's, two off-road motorcycles, two mini-bikes, a scooter and a snow blower.

The Preliminary Order of Forfeiture as to Frank DiPascali Jr.

X. On or about _____, 2010, the Court entered a Preliminary Order of Forfeiture (Final as to the Defendant) as to the defendant, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference as if set out in full.

XI. In the Preliminary Order, the Government represented, and the defendant conceded, that if the Government were to apply for a preliminary order of forfeiture as to the defendant, the Government could prove the following by a preponderance of the evidence:

- (A) A total money judgment in the amount of \$170.25 billion should be imposed upon the defendant, a sum of money representing the amount of proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and the property involved in the money laundering offense charged in the Information;
- (B) Any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of his wife or other individual, either jointly or solely

by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable right; and all property traceable to such property (the "Forfeited Property"), has the requisite nexus to the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information and/or the money laundering offense charged in the Information;

- (C) Based upon the foregoing, the Forfeited Property is forfeitable to the United States of America as property constituting or derived from proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and/or as property involved in the money laundering offense charged in the Information, and property traceable to such property;
- (D) The Forfeited Property includes, but is not limited to, all right, title and interest of the defendant in the property listed in Exhibit A to the Preliminary Order (Exhibit 1(A) hereto) (the "Specific Property");
- (E) Because all the Forfeited Property could not be identified at the time of entry of the Preliminary Order, and may not be identified prior to the defendant's sentencing, the Preliminary Order may be amended when additional specific property is identified; and
- (F) As a result of acts and omissions of the defendant, property subject to forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; and has been commingled with other property which cannot be divided without difficulty. The Court may therefore order the forfeiture of any other property of the defendant to the extent necessary to satisfy the money judgment to be imposed upon the defendant.

XII. In the Preliminary Order, the defendant consented to the entry of orders of interlocutory sale of the Forfeited Property pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

XIII. The statutes and rules governing criminal forfeitures require publication and notice of the Preliminary Order and the Government's intent to forfeit property, and set forth the

exclusive means by which a third party may petition the court for a hearing to adjudicate the validity of his or her interest in the forfeited property, in accordance with 21 U.S.C. § 853(n).

XIV. JOANNE T. DIPASCALI, the wife of the defendant, would file a petition pursuant to 21 U.S.C. § 853(n) asserting an interest in the Specific Property, including, but not limited to, an ownership interest in the real property and appurtenances located at 1400 Mountain Top Road, Bridgewater, New Jersey, title to which is held in the name of JOANNE T. DIPASCALI.

XV. In consideration of the facts and circumstances of this case, including, among other factors, the readily provable facts available at the present time; in accordance with the Government's authority under 21 U.S.C. § 853(i)(2) to compromise claims arising under 21 U.S.C. § 853; and in furtherance of the intent of the Department of Justice to authorize the distribution of the net sale proceeds from the forfeited property to the victims of the fraud charged in the instant case and in *United States v. Bernard L. Madoff*, 09 Cr. 213 (DC), and *United States v. David G. Friehling*, 09 Cr. 700 (AKH), consistent with applicable Department of Justice regulations, pursuant to 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9, the parties to this Stipulation and Order, the Office of the United States Attorney for the Southern District of New York ("the Office"), and JOANNE T. DIPASCALI, have determined to resolve without litigation JOANNE T. DIPASCALI's potential claims to the property subject to forfeiture under the Preliminary Order of Forfeiture entered against the defendant.

THEREFORE, THE OFFICE AND JOANNE T. DIPASCALI HEREBY STIPULATE AND AGREE as follows:

1. Subject to the provisions of paragraphs 4 and 5 below, JOANNE T. DIPASCALI withdraws and relinquishes any claim under the U.S. asset forfeiture laws that she has or may have, on any legal, factual or other basis, in any manner or forum, to the Forfeited Property as defined in the Preliminary Order of Forfeiture entered against the defendant—that is, any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of JOANNE T. DIPASCALI or other individual, either jointly or solely by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable right; and all property traceable to such property—including, but not limited to, the Specific Property.

2. Subject to the provisions of paragraph 4 below, JOANNE T. DIPASCALI agrees that she will not object to the entry of the Preliminary Order of Forfeiture or file a petition in an ancillary proceeding as to the Forfeited Property; file a claim, statement of interest or petition (including but not limited to a petition for remission or mitigation); or otherwise contest the administrative or judicial forfeiture of the Forfeited Property in any proceeding under the U.S. asset forfeiture laws, nor will she assist a third party in doing so, including any relatives (by blood or marriage and of any degree) of the defendant and/or JOANNE T. DIPASCALI.

3. Subject to the provisions of paragraph 4 below, JOANNE T. DIPASCALI consents to the entry of orders of interlocutory sale of the Forfeited Property pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

4. In compromise of claims JOANNE T. DIPASCALI would have pursued, the Office will not contest JOANNE T. DIPASCALI's claim to a sum of money equal to \$285,000 (the "Funds"), in accordance with and subject to paragraph 5 below and the following terms:

- (a) On or before the third business day following the Court's endorsement of this Stipulation and Order, the Office shall take appropriate steps to cause Somerset Savings Bank and Peapack-Gladstone Bank to release to the USMS all funds, financial instruments and other property in any and all accounts held in the name(s) or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali in excess of \$100,000, and to release the remaining \$100,000 to JOANNE T. DIPASCALI.
- (b) Within ten (10) business days after all occupants vacate Condominium Unit 302, 264 Montgomery Avenue, Haverford, Pennsylvania, 19041, in compliance with the terms and conditions of a stipulation and order of interlocutory sale to be entered into as to such property, the Office shall take appropriate steps to direct the USMS to release the balance of the Funds (the "Balance") to JOANNE T. DIPASCALI, less \$56,175 on deposit in other bank accounts in the name of JOANNE T. DIPASCALI, FRANK M. DIPASCALI and DOROTHY R. DIPASCALI; \$39,535 to obtain rental housing and health insurance; and any and all expenditures made in the period beginning August 12, 2009 and ending the day of the release of \$100,000 to JOANNE T. DIPASCALI pursuant to paragraph 4(a) above other than those made for legitimate, necessary and reasonable living expenses (at least \$11,308). Accordingly, the net amount to be released to JOANNE DIPASCALI pursuant to paragraph 4 of this Stipulation and Order is approximately \$177,982.
- (c) JOANNE T. DIPASCALI understands and agrees that the Office does not have custody of the monies to be released to JOANNE T. DIPASCALI pursuant to paragraphs 4(a) and (b) above and that the Office cannot dictate or control when its requests for the release of funds will be acted upon by third party custodians.

5. JOANNE T. DIPASCALI understands and agrees that this Stipulation and Order binds only the Office and does not in any way preclude any other department or agency of the United States or any other person or entity, including, but not limited to, the United States Securities and Exchange Commission, Irving H. Picard, Esq. as trustee for the liquidation of the

business of defendant Bernard L. Madoff Investment Securities LLC, the Securities Investor Protection Corporation, or Alan Nisselson, Esq. as trustee for the personal assets of Bernard L. Madoff and Ruth Madoff from seeking to recover the Funds, any portion thereof from JOANNE T. DIPASCALI.

6. JOANNE T. DIPASCALI understands and agrees that the Preliminary Order authorizes the USMS to take possession of the Specific Property and to hold such property in its secure custody and control, except to the extent that any Order of the Court may explicitly provide otherwise.

7. Pursuant to 21 U.S.C. § 853(g) and Rule 32.2(b)(3), Frank DiPascali, JOANNE T. DIPASCALI, their attorneys, agents, and other family members, and anyone acting on his or her behalf, and all persons or entities acting in concert or participation with any of the above, and all persons and entities having actual knowledge of this Order:

- (a) shall not directly or indirectly, transfer, sell, assign, pledge, distribute, hypothecate, encumber, or dispose of in any manner; cause to be transferred, sold, assigned, pledged, distributed, hypothecated, encumbered, or disposed of in any manner; or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the Specific Property;
- (b) shall not use or permit the Specific Property to be used for any illegal activity; and
- (c) shall not take any action that would depreciate, damage, or in any way diminish the value of the Specific Property without the prior written consent of the United States Attorney's Office.

8. It is understood that the Office reserves the right to void this agreement and to recover money or property from JOANNE T. DIPASCALI, including the Funds or property traceable to the Funds, together with interest and such further relief as the Court may deem just

and proper, in the event the Office determines that JOANNE T. DIPASCALI or any of her minor or adult children have failed to fully disclose all financial information requested by the Office or the Federal Bureau of Investigation (“FBI”); have failed to disclose any material information about their finances or financial condition; have failed to fully comply with the terms and conditions of the Preliminary Order, this Stipulation and Order, or any orders of interlocutory sale that have or may be entered concerning the Specific Property; or have aided or assisted another in thwarting, delaying or otherwise interfering with the ability of the Office, the USMS or the FBI, their agents and employees, from effecting the terms of the Preliminary Order, this Stipulation and Order, or any orders of interlocutory sale that have or may be entered concerning the Specific Property.

9. JOANNE T. DIPASCALI will take all necessary steps to pass clear title to the Specific Property to the United States, its agent or designee, including, but not limited to, the execution of all documentation necessary to effect the forfeiture or transfer of the Specific Property as may be directed by the United States, its agent or designee.

10. JOANNE T. DIPASCALI represents that she is aware of no one, other than the defendant, herself, or Frank M. DiPascali, who might have or might assert a property interest in the Specific Property.

11. The Office shall have the sole discretion to appoint or seek judicial or other approval of manager(s) for the Specific Property.

12. JOANNE T. DIPASCALI further understands and agrees that, notwithstanding the foregoing, if any of the Specific Property, as a result of any act or omission of the defendant or JOANNE T. DIPASCALI, (a) cannot be located upon the exercise of due diligence; (b) has

been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, the Office will seek an order of forfeiture or will pursue collection by any other remedy available at law of a corresponding portion of the Funds or property traceable to such property as substitute property. JOANNE T. DIPASCALI specifically consents to the Office's right, upon demand and refusal, to pursue the remedy described in this paragraph, and will not argue, in any such proceeding, that such a remedy is available to the Government only against criminal defendants and may not be used to enforce the terms of this Stipulation and Order.

13. JOANNE T. DIPASCALI understands, as set forth in paragraphs 2, 16 and 17 of the Preliminary Order of Forfeiture, that the Court, as to FRANK DIPASCALI JR., has ordered the forfeiture, as property constituting or derived from proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and/or as property involved in the money laundering offense charged in the Information, and property traceable to such property, of any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR., and all property traceable to such property (excluding the Substitute Assets), including not only the Specific Property but also any and all property or other interests in which FRANK DIPASCALI JR. has or will acquire an interest (excluding the Substitute Assets), regardless of whether such property or interests are extant or known to the Government or the defendant at the time of the entry of the Preliminary Order of Forfeiture or the final order of forfeiture to be entered against the defendant. Subject to the provisions of paragraph 4 of this Stipulation and Order, above, JOANNE T. DIPASCALI

understands and agrees to be bound, for all purposes under the U.S. asset forfeiture laws, by the terms of paragraphs 2, 16, 17 and 18 of the Preliminary Order of Forfeiture as to FRANK DIPASCALI JR. not only with respect to the Specific Property but also with respect to any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR. and/or JOANNE T. DIPASCALI, and any and all property or other interests in which FRANK DIPASCALI JR. and/or JOANNE T. DIPASCALI may have or have, individually or jointly, an interest, regardless of whether such property or interests are extant or known to the Government, the defendant or JOANNE T. DIPASCALI at the time of the entry of the Preliminary Order of Forfeiture or this Stipulation and Order, and that the intent of this Stipulation and Order is to divest JOANNE T. DIPASCALI of, and to forfeit to the United States of America, any and all property and other interests belonging to, owed to or controlled in whole or in part by JOANNE T. DIPASCALI, and all property traceable to such property (subject to the terms of paragraphs 4 and 5 above). JOANNE T. DIPASCALI understands and agrees that she is hereby barred from challenging, or assisting a third party in challenging, the forfeiture of any such property pursuant to U.S. asset forfeiture laws, at any time, in any manner or forum. JOANNE T. DIPASCALI further understands and agrees that, subject to the terms of paragraph 4 above, she is giving up on a final basis any and all claims under the U.S. asset forfeiture laws to any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR., and all property traceable to such property, including not only the Specific Property but also any and all property or other interests in which FRANK DIPASCALI JR. has or may acquire an interest, it being understood that in compromise of claims she would have pursued, she will receive a sum of money in compromise of her

potential claims as set forth in paragraph 4 of this Stipulation and Order; and that she is precluded from retaining or seeking to retain or recover any other such property, including, but not limited to, any award of attorneys fees or interest in connection with the above-captioned case and any related proceedings that may be brought under the U.S. asset forfeiture laws to effectuate the terms of this Stipulation and Order.

14. JOANNE T. DIPASCALI is hereby barred from asserting any claim against the United States or any of its agents and employees, including, but not limited to, the FBI, the USMS, and the Office, in connection with, or arising out of, the United States' seizure or forfeiture of the Specific Property or the transfer of the Specific Property to the United States, its agents and designees.

15. JOANNE T. DIPASCALI further agrees to hold harmless the United States and any and all of the United States' agents and employees, including, but not limited to, the FBI, the USMS, and the Office, from all claims cognizable under the standards set forth in 21 U.S.C. § 853(n), i.e., claims asserting ownership in a particular, specific asset subject to forfeiture under the Preliminary Order of Forfeiture, including, but not limited to, any claim arising out of the United States' release of the Funds to JOANNE T. DIPASCALI, her agent or designee.

16. JOANNE T. DIPASCALI represents that she has been represented in connection with the matters contained in this Stipulation and Order by counsel of her choice, that she is satisfied with the representation she has received, and that she is entering into this Stipulation and Order of her own free will.

17. JOANNE T. DIPASCALI and her undersigned counsel acknowledge that they have fully discussed and understand every paragraph and clause in this Stipulation and Order and the consequences thereof.

18. The undersigned United States signatory represents that she is signing this Stipulation and Order in her official capacity and that she is authorized to execute this Stipulation and Order.

19. This Stipulation and Order may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, will be deemed the complete Agreement.

20. The Court will have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

21. This Stipulation and Order constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

JOANNE T. DIPASCALI, Individually and
on Behalf of Michael Dipascali, a Minor:

FOR THE OFFICE OF THE UNITED
STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK:

JOANNE T. DIPASCALI

PREET BHARARA
United States Attorney

Dated: April , 2010

By: _____
BARBARA A. WARD
Acting Chief, Asset Forfeiture Unit
MATTHEW L. SCHWARTZ
Assistant United States Attorney

FRANK DIPASCALI, JR., DEFENDANT,
On Behalf of Michael Dipascali, a Minor:

FRANK DIPASCALI JR.

Dated: April , 2010

Dated: April , 2010

BRACEWELL & GIULIANI LLP
COUNSEL TO JOANNE T. DIPASCALI
AND FRANK DIPASCALI, JR.

CONSENTED AND AGREED TO:

By: _____
MARC L. MUKASEY, ESQ.
CRAIG S. WARKOL, ESQ.

FRANK M. DIPASCALI
Dated: April , 2010

Dated: April , 2010

DOROTHY R. DIPASCALI
Dated: April , 2010

GREGORY DIPASCALI
Dated: April , 2010

Having reviewed the foregoing Stipulation and Order, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:
The Stipulation is So Ordered.

New York, New York
, 2010

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. -

FRANK DIPASCALI JR., :

Defendant. :

STIPULATION AND ORDER
(PAYMENT OF \$504,459.76,
INCLUDING INTEREST, OF
FUNDS TRANSFERRED
TO A THIRD PARTY)

09 Cr. 764 (RJS)

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WHEREAS, on August 11, 2009, the United States Attorney for the Southern District of New York filed Information 09 Cr. 764 (RJS) (the "Information") charging Frank DiPascali Jr., the defendant, with conspiracy, securities fraud, investment adviser fraud, falsifying records of a broker-dealer, falsifying records of an investment adviser, mail fraud, wire fraud, international money laundering, perjury, and attempting to evade federal income taxes, in connection with the defendant's employment at Bernard L. Madoff Investment Securities, Inc. ("BLMIS");

WHEREAS, the Information further seeks the imposition of criminal forfeiture money judgments upon the defendant totaling \$170.25 billion;

WHEREAS, on or about August 11, 2009, the defendant pleaded guilty to all counts in the Information pursuant to a cooperation agreement;

WHEREAS, in addition to substantial salary and bonus payments the defendant received in the course of his employment at BLMIS, the defendant received millions of dollars in funds from an account in the name of BLMIS that was used for the receipt and disbursement of client funds for the BLMIS investment advisory business (the "BLMIS IA Client Account");

WHEREAS, the funds received by the defendant from the BLMIS IA Client Account included the following sums of money that the defendant, in turn, transferred to a third party on or about the dates listed below:

Date	Amount
May 18, 2007	\$425,000
August 28, 2007	\$45,757.78
Total	\$470,757.78

WHEREAS, the Government seeks the return and forfeiture of the above-described funds, as property constituting proceeds obtained as a result of the offenses constituting specified unlawful activity as charged in Counts One, Two, Six, and Seven of the Information, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, and property involved in money laundering transactions as charged in Count Eight of the Information, pursuant to 18 U.S.C. § 982, and property traceable to such property, and demands repayment, with interest accruing thereon from the respective dates of transfer;

WHEREAS, Joanne DiPascali, the sister of the defendant, to whom such funds were transferred, admitting no liability thereunder, agrees to repay such funds, with interest, on or before December 31, 2009;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Office of the United States Attorney for the Southern District of New York, Preet Bharara, United States Attorney for the Southern District of New York, Barbara A. Ward and Sharon E. Frase, Assistant United States Attorneys, of counsel (the "Office"), and Joanne DiPascali, a third party to this proceeding, and with the consent of the defendant, FRANK DIPASCALI JR., by and through his attorneys, Bracewell & Giuliani LLP, as follows:

1. On or before December 31, 2009, Joanne DiPascali shall make payment of the following, by check payable to the United States Marshals Service and mailed or delivered to the United States Attorney's Office, Southern District of New York, One Saint Andrew's Plaza, New York, New York 10007, Attn: Asset Forfeiture Unit, Barbara A. Ward, AUSA:

- (i) The sum of \$455,054.70, consisting of the principal amount of \$425,000 and interest accruing at the applicable Federal rate from May 18, 2007 through December 31, 2009 (\$30,054.70), and
- (ii) The sum of \$49,405.06, consisting of the principal amount of \$45,757.78 and interest accruing at the applicable Federal rate from August 28, 2007 through December 31, 2009 (\$3,647.28),

for a total of \$504,459.76 (the "Payment").

2. The Payment shall be held by the United Marshals Service pending entry of a Final Order of Forfeiture.

3. Following the entry of a Final Order of Forfeiture as to the Payment, the Payment will be held on deposit in the Department of Justice Assets Forfeiture Fund and will be used to compensate victims of the fraud charged in the above-captioned case and *United States v. Bernard L. Madoff*, 09 Cr. 213 (DC), consistent with applicable Department of Justice regulations, pursuant to 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9.

4. The Payment will be applied to any forfeiture money judgment to be imposed upon the defendant herein as part of his sentence, in partial satisfaction thereof.

5. This Stipulation and Order may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, will be deemed the complete Stipulation and Order.

6. This Stipulation and Order constitutes the complete agreement between the Office and Joanne DiPascali as to the demand for and payment of the monies described herein and may not be amended except by written consent of the same.

7. The Court's endorsement of this Stipulation and Order shall constitute its retention of exclusive jurisdiction in this matter to take additional action and enter further orders as necessary to interpret, implement and enforce this Stipulation and Order.

Dated: New York, New York
December 30, 2009

PREET BHARARA
United States Attorney

By: *Bward*
BARBARA A. WARD
SHARON E. FRASE
Assistant United States Attorneys
One Saint Andrew's Plaza
New York, NY 10007
Tel. (212) 637-1048 / 2329

JOANNE DIPASCALI
Interested Party

Joanne DiPascali

Sworn to before me this
30th day of December, 2009:
Margo Dasilva
Notary Public

MARGO DASILVA
Notary Public, State of New York
No. 01DA6145603
Qualified in Nassau County
My Commission Expires May 8, 2010

AGREED AND CONSENTED TO:

FRANK DIPASCALI JR.
Defendant

By: *Frank DiPascali Jr.* / *APR*
BRACEWELL & GIULIANI LLP
Attorneys for Frank DiPascali Jr.
1177 Avenue of the Americas
New York, NY 10036-2714
Tel. (212) 508-6104/6150

SO ORDERED:

New York, New York
Date:

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE