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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- :

BERNARD L. MADOFF, :

Defendant. :

**GOVERNMENT'S APPLICATION
FOR A SECOND FINAL ORDER
OF FORFEITURE**

(1st Pub. Group-Selected Assets;
2nd Pub. Group)

09 Cr. 213 (DC)

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The United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, Barbara A. Ward and Matthew L. Schwartz, Assistant United States Attorneys, of counsel, respectfully moves this Court for a Second Final Order of Forfeiture as to certain assets listed in the Preliminary Order of Forfeiture entered June 26, 2009. As explained below, the Government has complied with the notice requirements set forth in the Preliminary Order of Forfeiture, no third parties have filed a claim contesting the forfeiture, and the requisite time periods for doing so have expired. The United States is therefore entitled to entry of a Final Order of Forfeiture.

BACKGROUND

The Criminal Proceedings

1. Information 09 Cr. 213 (DC) (“Information”) was filed March 10, 2009, and charged BERNARD L. MADOFF, the defendant (“MADOFF” or the “defendant”), with eleven felony counts in connection with a scheme to defraud clients of his firm, Bernard L. Madoff Investment Securities (“BLMIS”), from at least as early as 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 own benefit and the benefit of others without the knowledge or authorization of the investors.

2. The Information sought 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 Counts One, Three, Four, and Eleven of the Information, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property traceable to such property, and substitute assets, pursuant to 21 U.S.C. § 853(p) (the “First Forfeiture Allegation”).

3. The Information also sought criminal forfeiture to the United States of all property involved in the money laundering offenses charged in Counts Five through Seven of the Information, pursuant to 18 U.S.C. § 982(a)(1), all property traceable to such property, and substitute assets, pursuant to 21 U.S.C. § 853(p) (the “Second Forfeiture Allegation”).

4. On March 12, 2009, MADOFF pleaded guilty to the eleven-count Information.

5. On June 24, 2009, pursuant to 18 U.S.C. § 3664(d)(5), the Court entered an order deferring for 90 days from the date of sentencing (i) the determination whether statutory restitution is practicable and, if so, (ii) the calculation of victims' losses.

6. On June 29, 2009, the defendant was sentenced to, *inter alia*, 150 years' imprisonment and criminal forfeiture in accordance with the terms of the Preliminary Order of Forfeiture (Final as to the Defendant) entered by the Court on June 26, 2009 (the "Preliminary Order"), which is attached hereto as Annex 1 and incorporated herein by reference as if set out in full.

The Preliminary Order of Forfeiture

6. In the Preliminary Order, the Court imposed an aggregate money judgment upon the defendant in the amount of \$170.799 billion (\$170 billion as to the First Forfeiture Allegation and \$799 million as to the Second Forfeiture Allegation), and ordered the defendant to forfeit all of his right, title and interest in any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, and all property traceable to such property, including, but not limited to, all right, title and interest of the defendant in the property listed in Exhibit A to the Preliminary Order (the "Specific Property").

7. The Specific Property included the following:

- a. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as 216 Old Montauk Highway, Montauk, New York, 11954, held in the name of BERNARD L. MADOFF and Ruth Madoff as tenants by the entireties, and all insured and salable personal property contained therein;
- b. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as 410 North Lake Way, Palm Beach, Florida, 33480, held in the name of Ruth Madoff, and all insured and salable personal property contained therein;
- c. \$1,480,636.69 on deposit in the U.S. Marshals Service Seized Asset Fund, representing the net proceeds from the sale of all that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as Chateau des Pins Villa 2, 279 Chemin de la Garoupe, Cap d'Antibes, France, 06600, and all insured and salable personal property contained therein;

- d. One 2003 CH Marine Shelter Island Runabout Known as *Sitting Bull*, Hull Identification No. CQI38032F303, approximately 38 feet in length, and all electronics, equipment, appliances, and fixtures and all valuable, insured or salable personal property contained thereon;
- e. One 1969 Rybovich Custom Motor Yacht Known as *Bull*, Hull Identification No. 522159, approximately 55 feet in length, and all electronics, equipment, appliances, and fixtures and all valuable, insured or salable personal property contained thereon;
- f. One Pathfinder Open Motorboat Known as *Little Bull*, Hull Identification No. MVIPH016C000, approximately 24 feet in length, and all electronics, equipment, appliances, and fixtures and all valuable, insured or salable personal property contained thereon, and one 2003 EZLO Trailer, VIN IZEDAE5G03A003546, Florida License No. J521CF;
- g. One 1999 Mercedes Benz CLK Class, VIN WDBLK65G9XT012137, Florida Reg. No. K556WB, and all electronics, equipment, fixtures and valuable, insured or salable personal property contained therein;
- h. One 2004 Volkswagen Touareg, VIN WVGEM77L34D077975, New York Reg. No. CYC6394, and all electronics, equipment, fixtures and valuable, insured or salable personal property contained therein;
- i. One 2001 Mercedes Benz E Class, VIN WDBJH82J71X043517, New York Reg. No. BAR8009, and all electronics, equipment, fixtures and valuable, insured or salable personal property contained therein; and
- j. Any and all securities, funds and other property on deposit in Account No. 126-01070 in the name of Ruth Madoff at COHMAD Securities Corp., 885 Third Avenue, New York, New York, 10022, including but not limited to, municipal bonds valued at approximately \$46,665,673, and all property traceable thereto,

(hereinafter referred to collectively as the “Subject Property”).

8. On September 24, 2009, on the Government’s application pursuant to 18 U.S.C. § 3663A(c)(3), the Court found that the number of identifiable victims of the defendant’s fraud is so large as to make restitution impracticable, and that determining complex issues of fact related to the cause or amount of the victims’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to the victims was outweighed by the

burden on the sentencing process. The Court, accordingly, found that restitution was impracticable and thereby allowed 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 applicable Department of Justice regulations,¹ a mechanism the Government has employed in other large-scale fraud cases.

The Stipulation and Order as to Ruth Madoff

9. On June 26, 2009, the Court endorsed a Stipulation and Order between the United States Attorney's Office for the Southern District of New York and the defendant's wife, Ruth Madoff, the terms of which included Ruth Madoff's consent to the forfeiture and relinquishment of all claims to the Specific Property, including the Subject Property.

The Interlocutory Orders of Sale

10. On June 26, 2009, the Court endorsed Stipulation and Orders of Interlocutory Sale authorizing the United States Marshals Service (the "USMS") to sell the following property and to hold the net sale proceeds in the USMS Seized Assets Deposit Account as a substitute *res* for the property pending entry of a final order of forfeiture:

- a. All shares of capital stock held in the name of MADOFF and/or Ruth Madoff in 133 East 64th Street Corp. and the proprietary lease for Apartment 11A/12, 133 East 64th Street, New York, New York, 10021, together with their appurtenances, improvements and fixtures and all insured and readily salable personal property contained therein;
- b. The real property and appurtenances located at 216 Old Montauk Highway, Montauk, New York, 11954; and at 410 North Lake Way, Palm Beach, Florida, 33480, and all insured and salable personal property contained therein; and

¹ See 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9.

- c. The vehicles and vessels listed in subparagraphs 7(d) through (i) above (the “U.S. Vehicles and Vessels”).

11. On September 30, 2009, the Court endorsed an Order of Interlocutory Sale authorizing the USMS to liquidate the contents of Account No. 126-01070 at COHMAD Securities Corp. (the “Cohmad Account”) and to hold the net sale proceeds in the USMS Seized Assets Deposit Account as a substitute *res* for the property.

12. On November 13, 2009, the Court endorsed an Order of Interlocutory Sale authorizing the USMS to sell various items of personal property that were seized from MADOFF’s homes in New York City and Montauk at a live auction held in New York on November 14, 2009, and to hold the net sale proceeds in the USMS Seized Assets Deposit Account as a substitute *res* for the property.

13. Pursuant to the interlocutory orders of sale described above, the USMS has liquidated and is holding on deposit in the USMS Seized Assets Deposit Account, pending entry of a final order of forfeiture, approximately \$58.98 million in net proceeds from the sale of the Montauk home, the U.S. Vehicles and Vessels, the Cohmad Account and the personal property seized from the Madoffs’s homes in New York City and Montauk that was auctioned on November 14, 2009.

The Final Order of Forfeiture (New York City Co-op)

14. On April 14, 2010, on the Government’s application, the Court entered a Final Order of Forfeiture as to all shares of capital stock held in the name of BERNARD L. MADOFF and/or Ruth Madoff in 133 East 64th Street Corporation, a cooperative housing corporation, and the proprietary lease for Apartment 11A/12 in the building located at 133 East 64th Street, New

York, New York, 10021, together with its appurtenances, improvements and fixtures and all insured and readily salable personal property contained therein (the “New York City Co-op”).

15. The New York City Co-op was sold by the USMS, and the net proceeds (approximately \$7.3 million) are being held on deposit in the Department of Justice Assets Forfeiture Fund for eventual remission to the defendant’s victims.

The Ancillary Proceedings as to the Subject Property

16. The provisions of 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(b) require publication and notice to third parties known to have alleged an interest in forfeited property and the disposition of any petitions filed under Section 853(n) before the United States may have clear title to such property.

17. The Preliminary Order directed the United States to publish and provide notice to third parties known to have alleged an interest in the forfeited property, including the Specific Property, pursuant to 21 U.S.C. § 853(n)(1), 18 U.S.C. § 982(b)(1), and Fed. R. Crim. P. 32.2(b).

18. Notice of the Preliminary Order as to some of the Specific Property, including the Subject Property, was published on the government internet site www.forfeiture.gov for at least thirty (30) consecutive days, beginning on August 20, 2009, and ending on September 18, 2009 (and, as to the personal property sold at the November 14, 2009 auction, beginning on January 23, 2010, and ending on February 21, 2010), as permitted by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (the “Supplemental Rules”). Proof of publication was filed with the Court on September 24, 2009, and April 22, 2010. Copies of the proofs of publication are attached hereto as Annexes 2 and 3.

19. Each published notice explained that any person asserting a legal interest in the property was required to file a petition with the Court within sixty (60) days from the first day of

publication of the notice on the government internet site, and that if no such petitions were filed, following the expiration of the period for the filing of such petitions, the United States would have clear title to the property. *See* Supp. R. Rule G(5)(a)(ii)(B).

20. The defendant and Ruth Madoff are the only persons or entities known to the Government to have or to have asserted a potential interest in the Subject Property.

21. Pursuant to 21 U.S.C. § 853(n)(7), the United States shall have clear title to any forfeited property where no direct notice to potential claimants was required and no petitions for a hearing to contest the forfeiture have been filed within sixty (60) days after the first day of publication on an official internet government forfeiture site, in accordance with the procedures prescribed in Supplemental Rule G(5)(a)(ii)(B).

22. No claims or answers have been filed or made in this action, no other parties have appeared to contest the action to date, and the requisite time periods for doing so have expired. *See* Supp. R. G(5)(a)(ii)(B).

23. Pursuant to 21 U.S.C. § 853(n)(7), the United States is therefore entitled to have clear title to the Subject Property and to warrant good title to any subsequent purchaser or transferee.

24. Accordingly, the Government's forfeiture efforts in the above-captioned case have, thus far, resulted in the realization of approximately \$7.3 million from the sale of the New York City Co-op; approximately \$58.98 million from the interlocutory sale of the Montauk home, the U.S. Vehicles and Vessels, the Cohmad Account and the auctioned personal property; and \$1,480,636.69 from the sale of the Cap d'Antibes apartment – for a total of approximately \$67.79 million that will be available for distribution to victims of MADOFF's fraud in accordance with the process of remission set out in Department of Justice regulations.

REQUEST FOR RELIEF

25. For the foregoing reasons, the Government respectfully requests that the Court enter the proposed Final Order of Forfeiture attached hereto as Annex 4.

26. No previous application for the relief requested herein has been sought.

Dated: New York, New York
September 21, 2010

Respectfully submitted,

PREET BHARARA
United States Attorney

By: _____/s/
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