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

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UNITED STATES OF AMERICA,

v.

10 Cr. 228 (LTS)

DANIEL BONVENTRE, ANNETTE
BONGIORNO, JOANN CRUPI, a/k/a "Jodi,"
JEROME O'HARA, GEORGE PEREZ,
ERIC S. LIPKIN, DAVID L. KUGEL,
ENRICA COTELLESA-PITZ, CRAIG
KUGEL, PETER MADOFF, IRWIN LIPKIN,

Defendants.

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UNITED STATES OF AMERICA,

v.

09 Cr. 700 (LTS)

DAVID G. FRIEHLING,

Defendant.

-----x
UNITED STATES OF AMERICA,

v.

09 Cr. 764 (RJS)

FRANK DIPASCALI, JR.,

Defendant.

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DECLARATION OF MATTHEW L. SCHWARTZ

MATTHEW L. SCHWARTZ, pursuant to 28 U.S.C. § 1746, declares the following under penalty of perjury:

1. I am an Assistant United States Attorney in the office of Preet Bharara, United States Attorney for the Southern District of New York, attorney for the United States of America (the “Government”) in the above-captioned actions. I am one of the Assistant United States Attorneys assigned to prosecute these actions, and am familiar with the proceedings herein. I submit this declaration in further support of the Government’s motions, dated December 14 and 17, 2012, for orders finding that, pursuant to 18 U.S.C. § 3663A(c)(3), the determination of restitution is impracticable in these cases and that the Government may proceed through the process of remission as authorized under the forfeiture statutes, 21 U.S.C. § 853(i) and C.F.R. Part 9 (together, the “Motions”).

2. By order dated December 21, 2012, the Court set a briefing schedule on the Motions and required the Government to post copies of its Motions, any responses, and any reply on its public website for these cases, http://www.justice.gov/usao/nys/vw_cases/madoff.html (the “Website”). The Court further ordered the Government to collect and electronically file any objections or responses from filers who do not have access to the Court’s ECF system.

3. The Government’s December 14, 2012 motion (in the *Bonventre* case) was posted to the Website on December 17, 2012. The Government’s December 17,

2012 motions (in the *Friehling* and *DiPascali* cases) was posted to the Website on December 19, 2012. A copy of the Court's December 21, 2012 Order was posted to the Website on December 21, 2012. And on December 27, 2012, at approximately 12:00 PM, the Government published the following "Update" on the Website:

In connection with the victim compensation process, on December 14 and 17, 2012, the Government filed motions requesting that the Court find restitution to be impracticable, thereby permitting the Government to distribute to victims the more than \$2.35 billion forfeited to date as part of its investigation through the remission process, in accordance with Department of Justice regulations. A similar motion was granted by United States Circuit Judge Denny Chin, who as a United States District Judge sentenced Bernard L. Madoff in 2009. The Department of Justice intends to return the assets forfeited as a result of the Madoff fraud to victims through the remission process.

In December 2012, Richard C. Breeden was retained to serve as Special Master on behalf of the Department of Justice to administer the process of compensating the victims of the Madoff fraud with the forfeited funds. A former chairman of the SEC, Mr. Breeden is Chairman of Richard C. Breeden & Co., which has been involved in (among other things) the administration and distribution of securities fraud claims since 1996. Mr. Breeden has served as Corporate Monitor of WorldCom, Inc., Hollinger, and FannieMae. Mr. Breeden also served as remission special master in connection with the fraud committed through Adelphia Communications Corporation. In April 2012, more than \$728 million forfeited in connection with this Office's investigation and prosecution of the Adelphia fraud was distributed to approximately 8,500 victims, the largest single distribution of forfeited assets to victims in Department of Justice history.

Now that a new Special Master has been retained, and given the pledge of SIPC Trustee Irving Picard and his counsel to lend their support and resources to the new Special Master for the benefit of the fraud victims, we expect the victim claims process to begin shortly. It is anticipated that victims who filed claims in the SIPA proceeding will not have to refile their claims to be eligible for remission. New information about the remission Special Master,

and information about the victim claims process, will be posted on the Office's Madoff website as soon as it becomes available, along with a link to a dedicated website Mr. Breeden's firm will establish in connection with the remission proceedings. We remain strongly committed to facilitating the remission of funds to the victims of Madoff's fraud at the earliest possible date.

All of this information — the narrative, the Motions, and the Court's order — remain on the Website today.

4. According to the Court's order, any objections or responses to the Motions were due by Monday, January 14, 2013. As of approximately noon on January 17, 2013 — allowing time for mailings — the Government had not received any responses or objections, either formally or informally, by mail or e-mail. In addition, only two parties — defendants Enrica Cotellessa-Pitz and David Kugel — filed a response with the Court; their responses (attached hereto as Exhibit A) confirm that they each have “no objection” to the Motions.¹

5. In light of the foregoing, there is no opposition to the Motions, which

¹ As has been the case since Bernard Madoff's arrest in December 2008, the Government does periodically receive correspondence from victims and other interested parties on a variety of topics. Since December 20, 2012 (that date of Peter Madoff's sentencing), the Government has received a number of Madoff-related letters, many of which appear to be belated victim impact statements in connection with Peter Madoff's sentencing. The Government does not believe that any of these submissions can be read in any sense as an objection or response to the Motions, but in an abundance of caution is providing the Court, under separate cover, all Madoff-related correspondence received by the United States Attorney's Office Victim & Witness Services since December 20, 2012. Because this correspondence is not relevant to the Motions, the Government is not attaching the correspondence to the publicly-filed version of this Declaration. If the Court directs it, the Government will of course file and respond to any correspondence the Court believes may be relevant.

should be granted, just as Judge Chin granted a similar motion in the *Madoff* case. Should the Court have any questions, the Government is of course available to appear at the scheduled February 4, 2013 hearing; otherwise, the Government respectfully requests that the Court enter the proposed order attached as Exhibit B hereto, without a hearing.²

6. I have directed that a copy of this Declaration, with its attached exhibits, be posted on the Website as of today.

Dated: New York, New York
January 17, 2013


MATTHEW L. SCHWARTZ

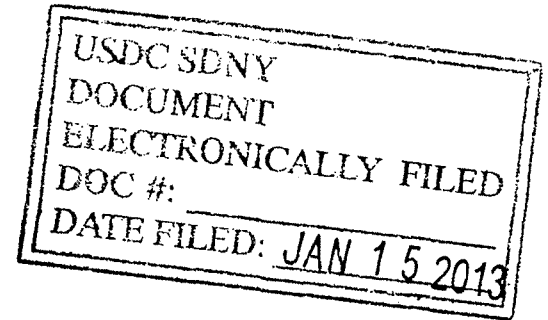
² The proposed order attached hereto is identical to the proposed orders originally attached as Exhibit B to each of the Motions, except that it bears the triple-caption of the *Bonventre*, *Friehling*, and *DiPascali* cases.

Exhibit A

January 14, 2013

VIA FAX TO 212-805-0426

The Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 755
New York, New York 10007



Re: United States v. Cotellessa-Pitz, S5 10 CR 228 (LTS)

Dear Judge Swain:

We represent defendant Enrica Cotellessa-Pitz in the above-referenced matter. We write to inform the Court that Ms. Cotellessa-Pitz has no objection to the government's motion pursuant to Title 18, United States Code Section 3663A(c)(3) to forego restitution and proceed via forfeiture and remission.

Respectfully submitted,

Michael P. Morrissey

cc: Lisa A. Baroni, AUSA (via e-mail)

January 15, 2013

Hon. Laura Taylor Swain
United States district Judge
United States District Court
Southern district of New York

By fax: (212) 805 – 0426

Re: United States v. David Kugel
S-4 10 Cr. 228 (LTS)

Dear Judge Swain,

I represent defendant David Kugel in the above cited case.

I write to state that Mr. Kugel has no objection to the Government's motion, under 19 U.S.C. § 3663(A)(3) to forgo restitution and instead utilize forfeiture and remission

Respectfully,

Martin B. Adelman
Attorney for David Kugel

Cc: AUSA Lisa A. Baroni
By e-mail

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

v.

10 Cr. 228 (LTS)

DANIEL BONVENTRE, ANNETTE
BONGIORNO, JOANN CRUPI, a/k/a "Jodi,"
JEROME O'HARA, GEORGE PEREZ,
ERIC S. LIPKIN, DAVID L. KUGEL,
ENRICA COTELLESSA-PITZ, CRAIG
KUGEL, PETER MADOFF, IRWIN LIPKIN,

Defendants.

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UNITED STATES OF AMERICA,

v.

09 Cr. 700 (LTS)

DAVID G. FRIEHLING,

Defendant.

-----x
UNITED STATES OF AMERICA,

v.

09 Cr. 764 (RJS)

FRANK DIPASCALI, JR.,

Defendant.

-----x

Upon the motion of the United States of America, dated December 14, 2012, pursuant to Title 18, United States Code, Section 3663A(c)(3), it is found that the number of identifiable victims is so large as to make restitution impracticable, and it is further found 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.

It is hereby ORDERED that:

1. The Government's motion for a finding that restitution is impracticable is granted; and
2. The Government may proceed through the process of remission as authorized under the forfeiture statutes. 21 U.S.C. § 853(i); 28 C.F.R. Part 9.

Dated: New York, New York
January __, 2013

SO ORDERED:

HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE