UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,	:	Dkt. No. 09-1025-cr
Appellee,	:	
- v. -	:	
BERNARD L. MADOFF,	:	AFFIRMATION IN OPPOSITION TO MADOFF'S MOTION FOR A STAY AND REINSTATEMENT OF BAIL PENDING SENTENCING PURSUANT TO 18 U.S.C. § 3143(a)
Defendant-Appellant.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LISA A. BARONI, pursuant to Title 28, United States Code, Section 1746, hereby affirms under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Lev L. Dassin, Acting United States Attorney for the Southern District of New York, and am one of the Assistant United States Attorneys responsible for this matter. Together with Assistant United States Attorney Marc Litt, I represented the Government during the proceedings in the District Court. I submit this affirmation in opposition to Bernard L. Madoff's motion for a stay and reinstatement of bail pending sentencing pursuant to 18 U.S.C. § 3143(a) ("Madoff Mot."), and request leave from the Court to file an affirmation in excess of 20 pages.

Preliminary Statement

2. Bernard L. Madoff appeals from an order of detention pending sentencing entered on March 12, 2009, in the United States District Court for the Southern District of New York, following Madoff's plea of guilty to each of eleven counts contained in a Criminal Information before the Honorable Denny Chin, United States District Judge.

3. Madoff's motion should be denied. As explained below, the District Court's finding that Madoff had failed to satisfy his burden of demonstrating, by clear and convincing evidence, that he did not pose a risk of flight, did not constitute clear error. In issuing its detention order, the District Court acted well within its wide discretion to adjudicate bail matters, and its findings were supported by the facts that Madoff: (i) faces the probability of spending the rest of his life in jail given his age (70), the magnitude of his crimes, and his exposure under the applicable statutes and the United States Sentencing Guidelines ("Guidelines" or "U.S.S.G.") for those crimes (150 years); (ii) has been shunned by the community of New York, to which he once had substantial ties; (iii) has experience living abroad, as demonstrated by his ownership of a home in France; and (iv) has acknowledged his decades-long history of repeatedly lying to both clients (to whom he owed a fiduciary duty) and regulators (to whom he had sworn to

tell the truth). Accordingly, the District Court's order of detention should be upheld, and Madoff's motion denied.

The Information And The Plea

4. Criminal Information 09 Cr. 213 (DC) (attached as Exhibit K to the March 13, 2009 Declaration of Ira Lee Sorkin, Esq. ("Sorkin Decl.")) was filed on March 10, 2009, in eleven counts, and charged Madoff with: (a) securities fraud; (b) investment adviser fraud; (c) mail fraud; (d) wire fraud; (e) international money laundering to promote fraud in the sale of securities, mail fraud, wire fraud, and theft from an employee benefit plan; (f) international money laundering to conceal the proceeds of fraud in the sale of securities, mail fraud, wire fraud, and theft from an employee benefit plan; (g) money laundering; (h) making false statements; (i) perjury; (j) making a false filing with the Securities and Exchange Commission ("SEC"); and (k) theft from an employee benefit plan; in violation of: Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2 (Count One); Title 15, United States Code, Sections 80b-6 and 80b-17, and Title 18 United States Code, Section 2 (Count Two); Title 18, United States Code, Sections 1341 and 2 (Count Three); Title 18, United States Code, Sections 1343 and 2 (Count Four); Title 18, United States Code, Sections 1956(a)(2)(A) and 2 (Count Five); Title 18,

United States Code, Sections 1956(a)(2)(B)(i) & (f) and 2 (Count Six); Title 18, United States Code, Sections 1957 and 2 (Count Seven); Title 18, United States Code, Section 1001 (Count Eight); Title 18, United States Code, Section 1621 (Count Nine); Title 15, Sections 78q and 78ff; Title 17, Code of Federal Regulations, Sections 240.17a-5, 240.17a-13 and 210.2-01, and Title 18, United States Code, Section 2 (Count Ten); and Title 18, United States Code, Section 664 (Count Eleven).

5. Madoff waived indictment on March 10, 2009, at which time the Criminal Information was filed. On March 12, 2009, Madoff pleaded guilty to all eleven counts.

Statement Of Facts

A. The Offense Conduct

6. From at least as early as the 1980s through on or about December 11, 2008, the day he was arrested, Madoff perpetrated a scheme to defraud the clients of Bernard L. Madoff Investment Securities ("BLMIS") 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. (*See* Information ¶¶ 4-14, attached as Exhibit K to Sorkin Decl.; *see also* Plea Transcript, dated March 12, 2009, at 23-30, attached as Exhibit M to Sorkin Decl.).

7. To execute the scheme, Madoff solicited and caused others to solicit prospective clients to open trading accounts with BLMIS, based upon, among other things, his promise to use investor funds to purchase shares of common stock, options and other securities of large, well-known corporations, and representations that he would achieve high rates of return for clients, with limited risk. As Madoff well knew, however, these representations were false. Madoff failed to honor his promises to BLMIS clients by, among other things, failing to invest the BLMIS investment advisory clients' funds in securities as he had promised. Instead, notwithstanding his promises to the contrary, and notwithstanding representations on tens of thousands of account statements and other documents sent to BLMIS clients throughout the operation of this scheme, Madoff operated a massive Ponzi scheme, described below, in which client funds were misappropriated and converted to the use of Madoff, BLMIS, and others. (*See* Information ¶ 5, attached as Exhibit K to Sorkin Decl.; *see also* Plea Transcript, dated March 12, 2009, at 23-25), attached as Exhibit M to Sorkin Decl.).

8. Contrary to his promises to his clients that he would use their funds to purchase securities on their behalf, and would invest client funds pursuant to the strategies he had marketed, Madoff used most of the investors' funds to meet the periodic redemption requests of other investors. In addition,

Madoff took some of these clients' investment funds as "commissions," which he used to support the market-making and proprietary trading businesses of BLMIS, and from which he and others received millions of dollars in benefits. (*See* Information ¶ 9, attached as Exhibit K to Sorkin Decl.).

9. Madoff created a broad infrastructure at BLMIS to generate the impression and support the appearance that BLMIS was operating a legitimate investment advisory business in which client funds were actively traded as he had promised, and to conceal the fact that no such business was actually being conducted. (*See Id.* ¶ 10; *see also* Transcript, dated March 12, 2009, at 25-26, 28-30, attached as Exhibit M to Sorkin Decl.).

10. To conceal his scheme, Madoff, among other things, withheld information from regulators and repeatedly lied to the SEC in written submissions and in sworn testimony. Madoff also caused false and fraudulent certified financial statements for BLMIS, including balance sheets, statements of income, statements of cash flows, and reports on internal control, to be created, filed with the SEC and sent to clients. (*See* Information ¶ 12, attached as Exhibit K to Sorkin Decl.; *see also* Transcript, dated March 12, 2009, at 26-28, attached as Exhibit M to Sorkin Decl.).

11. As of on or about November 30, 2008, BLMIS had approximately 4,800 client accounts. On or about December 1, 2008, BLMIS issued account statements for the calendar month of

November 2008 reporting that those client accounts held a total balance of approximately $64.8 billion. In fact, BLMIS held only a small fraction of that balance on behalf of its clients. (*See Id.* ¶ 14).

B. The Post-Arrest Bail Proceedings

12. On December 11, 2008, Madoff was arrested and charged in a criminal complaint. (*See* Complaint, attached as Exhibit A to Sorkin Decl.). At presentment before United States Magistrate Judge Douglas F. Eaton, the Government sought, with the consent of defendant: (1) a $10 million personal recognizance bond to be secured by the defendant's Manhattan apartment (valued at approximately $7 million), and to be co-signed by four financially responsible persons, including Madoff's wife; (2) surrender of the defendant's passport; (3) travel restricted to the Southern and Eastern Districts of New York and the District of Connecticut; and (4) release upon the signature of the defendant and his wife, with the remaining conditions to be fulfilled by December 16 at 2:00 p.m. The Court rejected the Government's additional requests that Madoff be required to report to the Pretrial Services Office daily by telephone and once per week in person.

13. On December 17, 2008, when Madoff failed to obtain two of the required four cosigners on his bond, the Government, with the consent of the defendant, requested that Madoff's bail

conditions be modified to include: (a) home detention at Madoff's Manhattan apartment, with electronic monitoring; (b) the entry of confessions of judgment with respect to the defendant's wife's properties in Montauk, New York, and Palm Beach, Florida, by December 22; (c) surrender of the defendant's wife's passport by noon on December 18; (d) imposition on the defendant of a curfew of 7:00 p.m. through 9:00 a.m.; and (e) reduction of the number of required cosigners on the bond from four to two. Magistrate Judge Gabriel W. Gorenstein approved the requested modifications. (*See* Order, attached as Exhibit C to Sorkin Decl.).

14. On December 19, 2008, the Government, with the consent of the defendant, requested that Madoff's bail conditions again be stiffened, pursuant to Title 18, United States Code, Section 3142. Magistrate Judge Theodore H. Katz approved the proposed changes to Madoff's bail conditions, which: (a) required Madoff to be subject to home detention at his Manhattan apartment, 24 hours per day, with electronic monitoring, other than for scheduled court appearances; and (b) required the defendant to employ by December 20, 2008, at his wife's expense, a security firm acceptable to the Government, to provide the following services to prevent harm or flight: (i) round-the-clock monitoring at the defendant's building, 24 hours per day, including video monitoring of the defendant's apartment door(s),

and communications devices and services permitting it to send a direct signal from an observation post to the Federal Bureau of Investigation in the event of the appearance of harm or flight; and (ii) additional guards on request if necessary to prevent harm or flight. (*See* Order, attached as Exhibit D to Sorkin Decl.).

15. In a parallel civil proceeding, *SEC* v. *Bernard L. Madoff, et. al.*, 08 Civ. 10791 (LLS), United States District Judge Louis L. Stanton issued an order, on December 18, 2008, barring the defendant from, among other things, dissipating, concealing, or disposing of any money, real or personal property in the defendant's direct or indirect control. The defendant consented to the entry of that order. (*See* Order, attached as Exhibit E to Sorkin Decl.).

16. Notwithstanding his undertakings before Judge Stanton, Madoff attempted to transfer significant assets to his friends and family while out on bail. Specifically, on December 24, 2008, Madoff and his wife, Ruth Madoff, mailed several packages to family and to friends. The defendant sent one package containing a total of approximately 13 watches, one diamond necklace, an emerald ring, and two sets of cufflinks, to relatives and friends. The Government was informed that the value of the contents of that package alone could exceed $1 million. Two other packages -- containing a diamond bracelet, a

gold watch, a diamond Cartier watch, a diamond Tiffany watch, four diamond brooches, a jade necklace, and other assorted jewelry -- also were sent to relatives. In addition, the defendant and/or his wife sent at least two additional packages containing valuables to the defendant's brother and to an unidentified couple in Florida.

17. On January 5, 2009, the Government moved for detention pursuant 18 U.S.C. § 3142(f)(2), on the grounds that (a) the defendant's actions demonstrated that he could not be trusted to abide by Court orders, and (b) the transfer of valuable assets reflected that the bail conditions were insufficient to prevent against harm to the community from the defendant's attempts to dissipate assets that otherwise could otherwise be used to recompense his victims. Following a hearing on the Government's application, the Court requested additional briefing on the issues raised. On January 12, 2009, Magistrate Judge Ronald L. Ellis issued an Order denying the Government's motion. (*See* Opinion and Order, attached as Exhibit G to Sorkin Decl.).

18. On January 13, 2009, the Government appealed Magistrate Judge Ellis's Order to the District Court. The Government argued that the defendant's continued release represented a danger to the community of further obstruction of justice and economic harm. Specifically, given the defendant's

demonstrated willingness to disobey a Court order designed to protect his victims, and the fact that he had little to lose given the lengthy term of incarceration that he likely faced, there were no conditions short of detention that would adequately assure the safety of the community.

19. On January 14, 2009, the Honorable Lawrence M. McKenna, sitting in Part I, denied the Government's appeal. (*See* Transcript at 28-29, attached as Exhibit I to Sorkin Decl.).

C. The Post-Plea Bail Proceedings

20. On March 12, 2009, immediately following Madoff's guilty plea to the eleven-count felony Information, the Government moved for detention, pursuant to 18 U.S.C. § 3143(a). Judge Chin ordered the defendant detained. The District Court found that the defendant had failed to show by clear and convincing evidence that he was not a risk of flight. The Court noted that the defendant was "no longer entitled to the presumption of innocence," and cited the fact that the defendant was facing 150 years in prison for his crimes, the defendant's age (70), as well as the defendant's "incentive to flee" and his "means to flee." (*See* Transcript at 49-50, attached as Exhibit M to Sorkin Decl.). The Court denied Madoff's request for a stay pending appeal to this Court. (*Id.* at 50).

21. On March 13, 2009, Madoff filed the instant motion for bail pending sentencing.

22. Madoff is presently in custody.

ARGUMENT

The Court Should Deny Madoff's Motion For Bail Pending Sentencing Because Madoff Does Not Meet The Standards Set Forth In 18 U.S.C. § 3143(a)

23. Because Madoff has identified no clear error in the District Court's factual findings or procedure relating to his remand, the Government respectfully submits that his motion for bail pending sentencing should be denied.

A. Applicable Law

24. Although no judgment of conviction has yet been entered in this case, the District Court's order of detention, under 18 U.S.C. § 3143(a), qualifies as a final order that may be appealed directly to this court. *See* 18 U.S.C. § 3145(c); 28 U.S.C. § 1291; *see also United States* v. *Abuhamra*, 389 F.3d 309, 317 (2d Cir. 2004); *United States* v. *Berrios*, 791 F.2d 246, 247 (2d Cir. 1986).

25. Title 18, United States Code, Section 3143(a) provides for mandatory detention of a defendant who is awaiting imposition or execution of sentence unless the Court finds "by clear and convincing evidence that the person is not likely to flee or pose a danger to the community if released under section 3142(b) or (c)." 18 U.S.C. § 3143(a).

26. In reviewing a detention challenge, this Court reviews a district court's factual determinations for clear

error. *See United States* v. *Abuhamra*, 389 F.3d at 317; *United States* v. *El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000). This clear error standard applies not only to the court's specific predicate factual findings but also to its overall assessment, based on those predicate facts, as to the risk of flight or danger presented by defendant's release. *See United States* v. *Berrios*, 791 F.2d at 250. Such determinations are essentially factual and require little, if any, legal interpretation. *See United States* v. *Melendez-Carrion*, 790 F.2d 984, 994 (2d Cir. 1986). This Court "defer[s] to the district court on such matters because of its unique insights into the defendant as an individual and into his personal, professional, and financial circumstances." *Abuhamra*, 389 F.3d at 317.

27. Following conviction, there is a presumption of detention and it is the defendant who bears the burden of demonstrating, by clear and convincing evidence, that he is neither a flight risk nor a danger to the community. *See* 18 U.S.C. 3143(a). This Court has held that a criminal defendant, having been convicted of felony crimes, has no substantive constitutional right to bail pending sentencing. *See Abuhamra*, 389 F.3d at 317-18 (citing *Williamson* v. *United States*, 184 F.2d 280, 281 (2d Cir. 1950) (Jackson, Circuit Justice) ("To remain at large, under bond, after conviction and until the courts complete the process of settling substantial questions which underlie the

determination of guilt cannot be demanded as a matter of right.")). Indeed, present federal law disfavors release on bail under those circumstances. *Compare* Bail Reform Act of 1984, Pub.L. No. 98-473, 203a, 98 Stat. 1976, 1981-82 (codified as amended at 18 U.S.C. § 3143(a) (2000)) (presuming court should order detention of defendant pending sentencing unless the court "finds by clear and convincing evidence" that the defendant will be neither a flight risk nor a danger to any person or to the community) *with* Bail Reform Act of 1966, Pub.L. No. 89-465, 3(a), 80 Stat. 214, 215-16 (repealed 1984) (presuming court should grant bail unless it reasonably believed that defendant would flee or pose a danger to society); *see also Abuhamra*, 389 F.3d at 319-20.

28. District Judges in the Southern District of New York routinely remand white collar defendants following their convictions in cases where the defendants had been released prior to conviction. For example, in *United States* v. *Alberto Vilar and Gary Alan Tanaka*, S3 05 Cr. 621 (RJS), on December 18, 2008, United States District Judge Richard J. Sullivan remanded Vilar after his conviction on twelve counts of conspiracy, securities fraud, investment adviser fraud, mail fraud, wire fraud, money laundering and false statements.[1] Vilar, who was 68 years old,

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[1] The transcript of the December 18, 2008 proceeding in *United States* v. *Vilar* is attached as Exhibit A.

had been released on home detention and electronic monitoring, for approximately three and one-half years pending trial, and had been fully compliant. Vilar appeared for the approximately nine-week trial without fail, and appeared for two bail arguments following his conviction. By the Government's estimation, Vilar faced a Guidelines sentence of 324 to 405 months' incarceration.

29. In *Vilar*, Judge Sullivan found that the defendant had the "wherewithal to live abroad" and that "there is ample incentive for Mr. Vilar to flee on the basis of the facts that are in the record." (Exh. A at 5). The District Court also acknowledged "the history of Mr. Vilar's false statements . . . to clients, . . . to government officials and agencies" and others. (Exh. A at 4). Given these facts, the District Court reasoned that "there's ample evidence that there is an incentive to flee and the ability to flee if Mr. Vilar were so inclined." (Exh. A at 6). The Court further stated:

> [T]here is ample proof in this case of Mr. Vilar disregarding the truth and making false statements to clients, to government agencies, even courts, and I don't flatter myself into thinking that Mr. Vilar is going to honor his commitments to me any more than he has to these other persons. I don't know that for sure. I think Mr. Vilar has been respectful and certainly has been present throughout this case as long as I have been involved. I do this without malice. I just think the standard requires the defense to rebut the presumption and I don't think it has been done here . . . I'm not going to roll the dice as to whether Mr. Vilar is going to appear for sentencing.

30. On February 18, 2009, this Court summarily denied Vilar's motion for bail pending sentencing following briefing and oral argument on an appeal from the remand decision. *United States* v. *Vilar*, No. 08-6195-cr, slip op. at 1 (2d Cir. Feb. 18, 2009) (summary order).

31. Similarly, in *United States* v. *Kevin O. Kelley*, S2 05 Cr. 254 (KMW), the Honorable Kimba M. Wood remanded the defendant following his conviction on four counts of securities fraud and three counts of wire fraud (for defrauding victims out of $4.2 million), despite the fact that the defendant had been fully compliant with his bail conditions for a year and a half prior to his conviction at trial on June 8, 2006.

32. There are numerous other cases in which the District Court remanded defendants after conviction in fraud cases despite the fact that they had been released on bail for significant periods of time prior to their conviction. *See, e.g.*, *United States* v. *Yehezkel Elia*, 07 Cr. 543 (KMK) (Judge Kenneth M. Karas remanded the defendant following his conviction on 24 charged tax offenses); *United States* v. *Sergei Kapirulja*, 05 Cr. 1246 (RO) (Judge Richard Owen remanded the defendant following his conviction on one count of mail fraud following the verdict); *United States* v. *Daniel Ojeikere*, 03 Cr. 581 (JGK) (Judge John G. Koetl remanded the defendant following his conviction on conspiracy and wire fraud); *United States* v.

Michael O'Donnell, 02 Cr. 411 (CM) (Judge Colleen McMahon remanded the defendant following his conviction on seven tax charges); *United States* v. *Mayzar Gavidel*, et al., 01 Cr. 417 (TPG) (Judge Thomas P. Griesa remanded the defendant following his conviction on money laundering and structuring related charges).

B. Discussion

33. Madoff's motion for bail pending sentencing should be denied because, as the District Court found, Madoff has failed to meet his burden of demonstrating, by clear and convincing evidence, that he is not likely to flee.

1. Madoff Failed To Show That He Can Be Trusted To Appear Given His Demonstrated Ability To Mislead And Deceive

34. Madoff has a well-established history of lying to advance his interests. He lied repeatedly to his clients over a period of decades about every aspect of his business. He deceived thousands of clients, sending them phony account statements and trade confirmations, month after month, in order to conceal the fact that no business was actually being conducted at BLMIS.

35. Madoff also has shown no compunction about lying to Government officials. He made false statements to the SEC in connection with his registration as an investment adviser (Count Eight); lied repeatedly in an SEC deposition in connection with an investigation of BLMIS (Count Nine); and made a false filing

with the SEC by causing false and fraudulent certified BLMIS financial statements to be filed with the SEC and to be sent to investors (Count Ten).

36. Madoff also ignored a clear order of Judge Stanton in December 2008 when he attempted to dissipate approximately $1 million in assets in violation of the Court-ordered asset freeze.

37. Madoff's demonstrated ability to lie, mislead and deceive is staggering. Given his history of deception, the District Court did not err in its decision to remand Madoff.

2. Madoff's Changed Circumstances, Post-Conviction, Have Substantially Increased The Risk Of Flight

38. As the District Court found, Madoff faces a lengthy term of imprisonment. Under the advisory Guidelines, Madoff faces a Guidelines range of life imprisonment, based on an offense level of 54 and a Criminal History Category of I; given the relevant statutory maximum terms of imprisonment, Madoff faces a sentence of up to 150 years' imprisonment:

Base Offense Level (§ 2B1.1 (a)(1)):	7
Loss > $400 million (§ 2B1.1 (b)(1)(P)):	30
250 or more victims (§ 2B1.1(b)(2)(C)):	6
Scheme outside the U.S. (§ 2B1.1(b)(9)):	2
Inv. Adv./Sec. Fraud (§ 2B1.1(b)(16)(A)):	4
Endangered Financial Security (§ 2B1.1(b)(14)(B)):	4
Organizer/Leader (§ 3B1.1(a)):	4
Plea/Acceptance (§§ 3E1.1 (a), (b)):	-3
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Moreover, as the District Court recognized "[t]he exposure is great, 150 years in prison. In light of Mr. Madoff's age, he has an incentive to flee . . . ." (Plea Transcript, dated March 12,

2009, at 49-50, attached as Exhibit M to Sorkin Decl.). Certainly, the length of the sentence Madoff faces creates a tremendous motive to flee, particularly given the likelihood that he will be incarcerated for much, if not all, of the remainder of his life.

39. Madoff argues that he is not a flight risk and points also to his pre-conviction history of appearing at Court appearances. (Madoff Mot. at 13). That record is not persuasive. Now that he has pleaded guilty and is facing 150 years' imprisonment, the possibility of a life term in prison (given his age and Guidelines exposure) has become a near-certainty. As a result, the defendant's motivation to flee has changed completely.

40. Madoff also argues that he does not have the ability to flee because his bank accounts are frozen, his real property is pledged, his business is in receivership and he and his wife have "started to turn over assets to the [Court-appointed] receiver and trustee" for BLMIS. (Madoff Mot. at 16-17). Madoff cites to Judge McKenna's conclusion that his "access to assets . . . was not enough to constitute either a risk of flight or ability to flee." (Madoff Mot. at 16). This argument is baseless. Madoff and his wife, Ruth Madoff, have substantial financial resources. The Madoffs' Statement of Financial Condition, filed in connection with *Securities and Exchange*

Commission v. *Bernard L. Madoff*, 08 Civ. 10791 (LLS), reflects that, as of December 31, 2008, Mrs. Madoff had an account at Wachovia Bank that had $17 million in cash, an account at Cohmad Securities Corp. that had $45 million in securities, $2.6 million in jewelry, in addition to numerous other valuable tangible assets and household items. (*See* Statement of Financial Condition, at 4-6, attached as Exhibit F to Sorkin Decl.). Although Mrs. Madoff has entered into a voluntary restraint agreement with the Government, that agreement allows for monthly living expenses and also does not physically restrain her from transferring valuable assets, such as jewelry and household items. Therefore, the Madoffs have resources more than sufficient to facilitate the defendant's flight from the jurisdiction. Moreover, until the defendant was remanded, his wife had been paying substantial sums for the services of a security firm for around-the-clock monitoring of the defendant's building, 24 hours per day. The cost of these services far exceeded the amount of money that would be needed to fund Madoff's flight from the jurisdiction. Accordingly, the argument that Madoff does not have the means to flee is without merit.

41. On March 15, 2009, following Madoff's publication of his assets in connection with this appeal, the Government filed in the District Court a Notice of Intent to Seek Forfeiture of Certain Assets, including numerous assets belonging to the

defendant and his wife. (Government's Notice of Intent to Seek Forfeiture of Certain Assets, dated March 15, 2009, attached as Exhibit B). As reflected in these notices, the Government will seek to forfeit, among other assets, the defendant's and his wife's residences (in Manhattan, Montauk, New York, and Palm Beach, Florida)[2], Ruth Madoff's Wachovia Bank account and her Cohmad brokerage account. The Government also announced its intent to seek to forfeit many of Ruth Madoff's personal tangible assets, including $2.6 million in jewelry. (Government's Supplemental Notice of Intent to Seek Forfeiture of Certain Assets, dated March 17, 2009, attached as Exhibit C). These forfeiture notices were filed after Judge Chin made his bail decision and, the Government submits, should have no affect on this appeal. As an initial matter, the forfeiture notices are just that - notices - and do not restrain the assets of the defendant or his wife. In any event, any restraints filed by the Government would be inadequate to ensure against the risk of flight, given the Madoffs' access to assets in far-flung locations. To the extent that the Government's forfeiture notices, or any forfeiture proceedings, have any relevance to the issues implicated by the instant appeal, the defense can raise

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[2] On March 16, 2006, lis pendens were filed with respect to the properties in Montauk, New York, and Palm Beach, Florida, and a UCC-1 was filed with respect to defendant's and his wife's shares in the Manhattan cooperative apartment.

those issues in the District Court in the first instance. There simply is no basis for this Court to disturb Judge Chin's findings and ultimate conclusion.

42. Madoff also contends that the District Court's remand order constituted clear error because, in light of the restrictive bail conditions that had been imposed on him, he is not a risk of flight. (Madoff Mot. at 12-15). Specifically, he argues that he was subject to home detention with electronic monitoring, as well as video and electronic surveillance of his building by the security firm, and that he could not flee without notice. The defendant managed to perpetrate an enormous fraud, over the course of decades; his ingenuity should not be underestimated. The Government submits that, in light of the combination of the prospect of a virtual life sentence and the defendant's and his wife's enormous resources, the District Court's decision not to "roll the dice," as Judge Sullivan put it in the *Vilar* case, on Madoff's appearance at sentencing was not clearly erroneous.

43. In addition, Madoff's history of extensive foreign travel and his substantial connection to, and assets in, France further increase the risk of flight. Specifically, Madoff owns a home in France valued at $1 million and household items in France valued at $900,000. (*See* Statement of Financial Condition, at 1, attached as Exhibit F to Sorkin Decl.). As reflected in Madoff's

passport, which was surrendered upon his arrest, Madoff made approximately numerous trips to France as well as several trips to other countries over the last five years.

44. In light of these facts, in combination with the extensive resources of the defendant and his wife, the extremely lengthy sentence he now faces, the fact that he has been shunned by the New York community and his inability to salvage his reputation, the District Court did not commit clear error in concluding that Madoff had failed to demonstrate by clear and convincing evidence that he did not pose a risk of flight.

3. Detention Of Madoff Pending Sentencing Will Not Interfere With His Defense

45. Madoff claims that detention will interfere with his defense and that "his contribution [to assist his lawyers with respect to sentencing issues] will be severely hampered, if not altogether eliminated, if he is remanded." (Madoff Mot. at 17). This argument, if accepted, would preclude detention in any document-intensive case. Scores of defendants participate fully in their defense while detained. Madoff's lawyers will be able to visit him as frequently as necessary and will be able to bring documents for Madoff's review. Although it may be less convenient for Madoff's counsel to visit him in a detention center, this is not a compelling reason not to detain him.

4. District Courts Routinely Remand Defendants In White-Collar Cases Post-Conviction

46. Madoff claims that "other high-profile white-collar defendants [were] afforded release pending sentencing" in cases that "involved billion dollar frauds and substantial jail sentences." (Madoff Mot. at 18). Accordingly, Madoff claims that he deserves "the same treatment" and should be released pending sentencing. (*Id.* at 18-19). This claim is without merit.

47. While it is true that certain white-collar defendants are released on bail post-conviction, there are numerous instances, as discussed above, in which such white-collar defendants are remanded. Indeed, Madoff's case bears striking parallels to the *Vilar* case in which this Court summarily affirmed a post-conviction remand. Both Madoff and Vilar were convicted of many of the same crimes, are about the same age, had a history of lying to clients and regulators, and face the prospect of incarceration for the rest of their lives. Given this precedent, Madoff cannot credibly claim that the District Court's remand order was clearly erroneous.

48. In light of the foregoing, Madoff has failed to meet his burden of showing that the District Court committed any error, let alone clear error. Consequently, his motion should be

denied.[3]

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

Dated: New York, New York
March 17, 2009

Lisa A. Baroni

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[3] Pursuant to the Local Rules of the Second Circuit and the Federal Rules of Appellate Procedure, a response to a motion may exceed twenty pages upon permission of the Court. Responding to Madoff's brief has required an extensive discussion of the bail proceedings. In order to respond adequately to the issues raised by Madoff and adequately set forth the factual and legal background necessary to decide Madoff's motion, it is respectfully submitted that the length of the Government's responsive affirmation should not be limited to twenty pages.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion for Leave to File Oversize Affirmation and the Affirmation in Opposition to Madoff's Motion for a Stay and Reinstatement of Bail Pending Sentencing Pursuant to 18 U.S.C. § 3143(a) were served this 17th day of March, 2009, on counsel for the defendant-appellant by electronic mail as follows:

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Lisa A. Baroni

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 05 CR 621 (RJS)

ALBERTO VILAR,

Defendant.

----------x

New York, N.Y.
December 18, 2008
3:00 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

LEV L. DASSIN
United States Attorney for the
Southern District of New York
MARC O. LITT
JOSHUA KLEIN
Assistant United States Attorney

FAHRINGER & DUBNO, PLLC
120 East 56h Street, Suite 1150
New York, NY 10022
Attorneys for Defendant Vilar
HERALD PRICE FAHRINGER
ERICA DUBNO

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(In open court; case called)
THE DEPUTY CLERK: If the parties could state their appearances, please.
MR. LITT: Mark Litt and Joshua Klein for the United States. Good afternoon.
THE COURT: Mr. Litt, Mr. Klein, good afternoon.
MR. FAHRINGER: Harold Fahringer and Erica Dubno for Mr. Vilar.
THE COURT: Mr. Fahringer, Ms. Dubno, Mr. Vilar, good afternoon.
MR. FAHRINGER: Thank you, your Honor.
THE COURT: We are here for, I guess, in essence the

continuation on the bail revocation hearing with respect to Mr. Vilar. I just want to state for the record what I have received, and you should tell me if there is something else that I haven't mentioned.

In addition to what I had last time we met, which was the day before Thanksgiving, I have the government's submission dated December 3, which is a 24-page submission double-spaced with exhibits of case authority, newspaper articles, documents that are referenced in the submission, passport, photocopy of a passport, a portion of a deposition transcript, some correspondence. That's all part of the record. I

I have as well the December 8 response or memorandum of law in opposition to the government's application to remand

Alberto Vilar. That is a 22-page submission double-spaced.

In addition, I have a report from the pretrial services office that was dated November 29, which I believe all counsel were cc'd on. Do you see that? Have you seen that?

MR. LITT: Yes.

THE COURT: All right.

MS. DUBNO: Your Honor, I would just like to add that our 22-page submission did include exhibits as well.

THE COURT: It did. It did include exhibits, including letters from various persons. I've read those letters. Some of those are persons who are already on the bond. Others are persons who have known Mr. Vilar for a long period of time. So I have read those letters very carefully. Is there anything else that anybody thinks is part of the record that I have not referenced?

MR. LITT: Not from the government's perspective.

THE COURT: Mr. Fahringer?

MR. FAHRINGER: Not from the defense, your Honor.

THE COURT: Is there anything else that anyone wants to add in addition to what's already been said or put into the record in writing?

MR. LITT: Your Honor, the government set forth its position as best it could in its submission and would rest on that.

THE COURT: Mr. Fahringer?

MR. FAHRINGER: The defense as well, your Honor.

THE COURT: All right. Well, I don't think there is any mystery as to what the standard is. Mr. Vilar was convicted after trial on 12 counts, all 12 counts of the indictment. As a result of the change in circumstances, i.e, that he has been convicted, the burden now shifts with respect to whether or not he should be on bail pending sentencing.

Whereas before it was the government's burden to demonstrate that he posed a risk of flight and/or posed a risk of danger to the community, there is now a presumption that goes the other way. It's a presumption that the defense must rebut by clear and convincing evidence that he's not likely to flee.

The government makes a point appropriately that Mr. Vilar is facing a very serious sentence. I have not done a guidelines calculation, and I won't for some time, but I think it's fair to say based on the jury's verdict that the

guidelines are likely to be quite high in terms of months. Given Mr. Vilar's age - he is in his Sixties it is certainly conceivable that he would spend a significant portion of the remainder of his life in custody, in prison.

In addition, the government points out that Mr. Vilar has lived abroad before, albeit somewhat remote in time. They also indicate, however, that he has traveled extensively. He is, I believe, bilingual. He has, it would appear, the

wherewithal to live abroad, particularly in light of the sentence that is likely to follow from the conviction in this case. So there is ample incentive for Mr. Vilar to flee on the basis of the facts that are in the record.

The government also then points out to the history of Mr. Vilar's false statements, and that includes false statements in the context of the case; that is, false statements to clients, false statements to government officials and agencies, false statements to organizations that Mr. Vilar had pledged money to. The record is replete, I think, with letters that reflect Mr. Vilar's willingness, at almost no provocation, to concoct and fabricate stories that are demonstrably false. That, I think, was borne out by the trial.

In addition, we have some additional facts that came out after the trial that relate to Mr. Vilar's failure to provide truthful information in connection with jury service where he falsely advised New York Supreme Court in Manhattan that he was not a resident of this county; that he was, in fact, a resident of London, and that that was a basis for his not serving on a jury. He also in a deposition indicated that he was not a resident of New York or a full-time resident of New York, and that his primary residence was in London, which is false. So, those are all points that are made my the government.

The government also points to authority and precedent

in other cases involving white-collar defendants in which a defendant was in fact detained or remanded pending sentencing and appeal. I don't think there is any dispute that there are such cases. There are many cases, of course, where such remand has not been ordered. It is the defendant's burden, and the defense points to the fact that, first of all, Mr. Vilar has appeared as ordered on virtually every occasion that there has been a court conference or proceeding, including trial, up until today for the last three years, and that is significant, to be sure.

They also point out that there is a relatively significant or high bond in place, although I think the government disputes the deterring effect of that bond and notes that the bond security is property that is not really Mr. Vilar's; that it's property that belongs to third parties, and the government notes that Mr. Vilar has a history of leaving third parties in the lurch. Those points are on the record, to be sure.

I guess what it boils down to, to me, is that it is the defense's burden. I think there's ample evidence that there is an incentive to flee and the ability to flee if Mr. Vilar were so inclined. He is currently on home

confinement with a curfew and electronic monitoring system, a bracelet, or ankle bracelet, that would give some notice to pretrial if Mr. Vilar were to flee the jurisdiction, but those

are certainly not foolproof, and at the end of the day, I am unpersuaded that the defense has met its burden.

I will say there is ample proof in this case of Mr. Vilar disregarding the truth and making false statements to clients, to government agencies, even courts, and I don't flatter myself into thinking that Mr. Vilar is going to honor his commitments to me any more than he has to these other persons. I don't know that for sure. I think Mr. Vilar has been respectful and certainly has been present throughout this case as long as I have been involved. I do this without malice. I just think the standard requires the defense to rebut the presumption, and I don't think it has been done here. Basically I'm risk adverse. I don't invest aggressively, and I don't gamble, and I'm not going to roll the dice as to whether Mr. Vilar is going to appear for sentencing.

Now, Mr. Fahringer and Ms. Dubno make the point that Mr. Tanaka is still on bail, and they indicate that there is no reasonable basis to distinguish between the two. I disagree with that. I think the record reflects a pattern of misstatements and false statements by Mr. Vilar in dealings with clients, in dealings with government agencies, and others that is absent, or at least is not present to the same degree as Mr. Tanaka.

I also find that Mr. Tanaka has ironically -- his wife and child live in London -- but ironically I think he has more

ties to this community than Mr. Vilar does at the present moment. So I think there is a distinction to be made between the two, but that's my ruling.

So, Mr. Vilar, I know you're not happy about that, but I tried to call this one the way I saw it. So I am going to order that you be remanded pending sentencing which will be in March.

Mr. Fahringer?

MR. FAHRINGER: Yes, your Honor, I would most respectfully object, and, in particular, your Honor, it seems to me inappropriate in terms of what happened during the trial, any false statements made there, obviously is a part of what we are going to challenge on appeal. I think, your Honor, it is inappropriate to refer to those, obviously.

In terms of the statements that were made before, and I recognize, your Honor, that I have made these arguments, and I am only re-emphasizing them here today, that things that occurred back in 2003 and 2002, it seems to me, your Honor, before he was ever placed on bail, is irrelevant in terms of his performance.

That's what I think speaks the loudest here. A man who for three and a half years has met his commitments remarkably well. There's a hierarchy of assurances here to make certain that he meets all of his bail obligations, your Honor, and he's complied with every one of those in the letter.

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When the pretrial services officer comes in and says -- and uses the word recommend -- I would recommend that he be released on bail, it seems to me that he's a person that I attach an awful lot of importance to and I thought the Court did too when the Court asked Mr. Farrier (ph) whether or not he could be released on bail.

For those reasons, your Honor, and for the objections we've registered, we certainly would ask you to reconsider. And one of the offers I would make to the Court is that if you wanted to impose the most stringent requirements, that certainly would be an alternative here. There was a time when Mr. Vilar was on house arrest, and it seems to me that if you had some concerns in that regard, that would satisfy them. But you're talking about a man that has had a perfect record on bail, and there has been no indication, your Honor, that that is going to change.

THE COURT: Much of what you said is factually accurate. I agree with many of the assertions you've just made. I think what has changed, of course, is that the conviction changes the standard and the burden. On the one hand, it is difficult to sort of prove a negative; to prove that he is not going to flee. Mr. Vilar has appeared as directed. I've's made that clear, and I think there's no dispute about that, but I think the incentives to flee are greater and different today than they were before trial; and

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given the length of sentence that is likely in this case, and given the history of the false statements that I indicated, I just don't have the confidence that I do in Mr. Tanaka or in other defendants who appeared before me post verdict.

So, I understand what you're saying, Mr. Fahringer. I guess I just come out differently. I don't have the confidence that Mr. Vilar is going to appear for sentencing in light of all these facts.

MR. FAHRINGER: Your Honor, I know you've made up your mind, and I certainly don't want to prolong this any further. All I would say is just that I think that an alternative, a middle ground that I know you're a reasonable judge and that you might consider more stringent precautions that could be taken if that is what is a matter of concern where if at one time he was on house arrest, and that would seem to me to satisfy your concerns, and I'd like you to consider that, most respectfully.

THE COURT: Well, I certainly have considered that. Obviously, my thinking included whether the current conditions are sufficient or whether additional conditions could be added that would assuage my concerns, and I've concluded that they really don't. I think that the incentives to flee and the concerns I have about whether Mr. Vilar would honor his obligations under the bond remain. I don't think the additional conditions that you suggested -- some of which

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you've suggested; there may be others that you could suggest -- get me over the hump. I mean, I just think that ultimately I'm being asked to gamble on Mr. Vilar, and I don't think I have to

do that unless I'm reasonably sure that it's a good bet, and I'm not confident in that. I think the history of statements made by Mr. Vilar gives me great pause.

MR. FAHRINGER: Your Honor has rendered your decision, and I appreciate that.

THE COURT: Yes.

MR. FAHRINGER: What just occurred to me, even the statements that were reported during the trial, of course went back some time ago, but, in any event, your Honor, what we would like to do is if we could have an order, we would, of course, seek to appeal this to the Second Circuit, and I'm just wondering if you could accommodate us in that sense. If we prepared an order, you could sign that order, and then we'd have something to --

THE COURT: Sure, I'm happy to issue you an order today, but I'll remand Mr. Vilar today. If you want to move quickly to the Court of Appeals, I could get an order down there in a few moments.

MR. FAHRINGER: May I just --

THE COURT: Yes, certainly.

MR. FAHRINGER: Your Honor, if you will just indulge me a little bit. Your Honor, Ms. Dubno, of course, has

mentioned to me, and I thought of it too, that the one thing that is terribly remarkable here is that the verdict was returned over, I think it's a month ago or so, that he's met all of his obligations and he knows he's been convicted, and you made a point of that yourself at one point, that he has come back even conviction.

THE COURT: Yes, my concern was not that he wouldn't show up today while this motion was pending. My concern is that he would not show up for sentencing. I think that continues or that would continue up until the date of sentencing. I think it's a gamble that I'm not prepared to take, but I understand the point. I have no doubt you're disappointed, and I thought that what you submitted was very well-argued and thoughtful, and I don't think you could have argued it any better. At the end of the day, it's your burden, and in light of all the facts I've mentioned, I just wasn't prepared to make the finding that would be necessary to continue bail in this case.

The government have anything you want to add?

MR. LITT: No, your Honor.

THE COURT: All right. That's the order of the Court. Thank you very much.

(Adjourned)

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	GOVERNMENT'S NOTICE OF INTENT TO SEEK FORFEITURE OF CERTAIN ASSETS
- v. -	:	
BERNARD L. MADOFF,	:	09 Cr. 213 (DC)
Defendant.	:	

In accordance with its letter pursuant to *United States* v. *Pimentel*, 932 F.2d 1029, 1034 (2d Cir. 1991), the Government gives notice that the property subject to forfeiture as a result of the offenses charged in Counts One, Three through Seven, and Eleven of the Information, as alleged in the Forfeiture Allegations with respect to the said Counts, includes, but is not limited to, all right, title and interest of the defendant in the following:

1. All shares of 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 the real property and appurtenances, improvements and fixtures known as and located at 133 East 64th Street, Apartments 11 and 12A (also known as "Apartment 11-A/PH," also known as "Apartment 12A"), New York, New York, 11954, and all insured and readily salable personal property contained therein;

2. 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, and all insured and readily salable personal property contained therein;

3. 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, and all insured and readily salable personal property contained therein;

4. 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 readily salable personal property contained therein;

5. One Leopard 23M Sport Yacht known as *Bull*, Hull No. 27, HIN IT ARNA 2327 K 202, approximately 23 meters long, 5.35 meters wide and 1.5 meters draft, and registered in the name of Yacht Bull Corp., George Town, Grand Cayman, Cayman Islands, Docked in Mooring No. 25, Port Gallice, Pointe du Crouton, Boulevard Baudoin, 06160, Juan-les-Pins, Cap d'Antibes, France;

6. Any and all interest held in the name of Yacht Bull Corp., George Town, Grand Cayman, Cayman Islands, in Mooring Number 25, Port Gallice, Pointe du Crouton, Boulevard Baudoin, 06160, Juan-les-Pins, Cap d'Antibes, France;

7. One 40 foot Shelter Island Runabout sport fishing boat known as "Sitting Bull," Hull No. 33, purchased on or about July 23, 2003 in the name of Ruth Madoff, for approximately $430,812;

8. One 1969 Rybovich 56 foot sport fishing boat, USCG #522159, call sign WY7449, Hull No. 71, owned in the name of Ruth Madoff;

9. One 25 foot Pathfinder boat known as "Little Bull," and trailer, owned in the name of Ruth Madoff;

10. One 2007 BMW 530i, vehicle identification number WBANB53547CP06964, Florida registration number W426DY;

11. One 1999 Mercedes Benz CLK Class, vehicle identification number WDBLK65G9XT012137, Florida registration number K556WB;

12. One 2004 Volkswagen Touareg, vehicle identification number WVGEM77L34D077975, New York registration number CYC6394;

13. One 2001 Mercedes Benz E Class, vehicle identification number WDBJH82J71X043517, New York registration number BAR8009;

14. One Steinway piano owned in the name of Ruth Madoff and located at 133 East 64th Street, Apartment 12A, New York, New York (valued at approximately $39,000);

15. Silverware set owned in the name of Ruth Madoff and located at 133 East 64th Street, Apartment 12A, New York, New York (valued at approximately $65,000);

16. All funds on deposit in any and all accounts at Wachovia Bank, N.A., including but not limited to Account No. 1010146337325 in the name of Ruth Madoff, and any accounts to which said funds have been transferred, and all funds traceable thereto (approximately $17,010,000);

17. Any and all interest in COHMAD Securities Corporation, 885 Third Avenue, New York, New York, 10022, held in the name of Bernard Madoff, and all property traceable thereto; and

18. Any and all securities, funds and other property 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 $45,000,000, and all property traceable thereto.

Dated: New York, New York
March 15, 2009

Respectfully submitted,

LEV L. DASSIN
Acting United States Attorney

By: /s/
Barbara A. Ward
Sharon E. Frase
Assistant United States Attorneys
Telephone: (212) 637-1048/2329

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	GOVERNMENT'S SECOND NOTICE OF INTENT TO SEEK FORFEITURE OF CERTAIN ASSETS
- v. -	:	
BERNARD L. MADOFF,	:	09 Cr. 213 (DC)
Defendant.	:	

In accordance with its letter pursuant to *United States* v. *Pimentel*, 932 F.2d 1029, 1034 (2d Cir. 1991), the Government gives further notice that the property subject to forfeiture as a result of the offenses charged in Counts One, Three through Seven, and Eleven of the Information, as alleged in the Forfeiture Allegations with respect to the said Counts, includes, but is not limited to, all right, title and interest of the defendant in the following:

1. Any and all ownership interest held in the name of Ruth Madoff and/or Bernard Madoff in the following entities, and/or their subsidiaries, affiliates and joint ventures:

   a. Sterling Equity Partners;

   b. Sterling American Property III LP;

   c. Sterling American Property IV LP;

   d. Sterling American Property V LP;

   e. Sterling Acquisitions LLC;

   f. US SBA Receiver for Sterling LLC;

   g. Realty Associates Madoff II;

h. Hoboken Radiology LLC;

i. Delivery Concepts LLC;

j. The Clarke's Group LLC;

k. PJ Clarke's on the Hudson LLC;

l. FINARF Germantown LLC;

m. Delta Ventures (Israel) and/or Delta Fund 1 LP;

n. Viager II LLC;

o. Bacar LP;

p. 4th and Forty LLC;

q. Duhl & Mayer et al.;

r. Laguardia Corporate Center Association LLC;

s. W.D.I. LLC; and

t. Madoff La Brea LLC.

2. Any and all promissory notes executed by Andrew Madoff and/or Mark Madoff, as borrowers, in favor of Bernard L. Madoff and/or Ruth Madoff, as lender(s) and/or assignee(s), including but not limited to the following:

a. An October 6, 2008 unsecured promissory note for $4,300,000.00, executed by Andrew Madoff in favor of Bernard L. Madoff, due September 30, 2012;

b. A September 21, 2008 unsecured promissory note for $250,000.00, executed by Andrew Madoff in favor of Bernard L. Madoff, due August 31, 2012;

c. A December 31, 2005 unsecured promissory note for $5,000,000, executed by Mark Madoff in favor of Bernard L. Madoff, due December 31, 2010 ;

d. A June 17, 2005 unsecured promissory note for $6,000,000.00, executed by Mark Madoff in favor of Bernard L. Madoff, due May 31, 2010;

e. A March 1, 2004, unsecured promissory note for $6,000,000.00, executed by Mark Madoff in favor of Bernard L. Madoff, due May 31, 2010;

f. A December 31, 2005 unsecured promissory note for $5,000,000.00, executed by Andrew Madoff in favor of Bernard L. Madoff, due December 31, 2010; and

g. A December 31, 2005 unsecured promissory note for $5,000,000.00, dated December 31, 2001, executed by Mark Madoff in favor of Bernard L. Madoff, due December 31, 2010.

3. Various pieces of jewelry owned or held in the name of Ruth Madoff valued at approximately $2,624,340;

4. Approximately 35 sets of watches and cufflinks owned by Bernard Madoff, currently in the custody of Dickstein Shapiro LLC.

Dated: New York, New York
March 17, 2009

Respectfully submitted,

LEV L. DASSIN
Acting United States Attorney

By: /s/
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