JUDGE McMAHON 09 CV 4471

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREA BARRON, on behalf of herself and all others similarly situated,

Plaintiff,

v.

ROMAN IGOLNIKOV, SHELDON S. GORDON, MATTHEW STADTMAUER, UNION BANCAIRE PRIVÉE, UNION BANCAIRE PRIVÉE ASSET MANAGEMENT LLC, UBPI HOLDINGS, INC., DANIEL DE PICCIOTTO, MICHAEL DE PICCIOTTO, GUY DE PICCIOTTO, and CHRISTOPHE BERNARD,

Defendants.

Civil Action No.

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff, Andrea Barron, through her attorneys, brings this class action on behalf of herself and all others similarly situated, on personal knowledge as to herself and her own acts, and on information and belief as to all other matters based on the investigation conducted by and through counsel, which investigation included the review of Plaintiff's records, documents filed by the United States Government and the Securities and Exchange Commission (the "SEC"), news reports and interviews published in the financial press, and other available information. Plaintiff also believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. Plaintiff and other members of the Class (defined below) are investors who purchased limited partnership interests in investment funds offered and managed by Swiss bank Union Bancaire Privée ("UBP") and certain of its subsidiaries (collectively the "UBP Funds," as defined below).

2. During the Class Period (defined below), Defendants caused a material amount of the investment capital of the UBP Funds to be invested with Bernard L. Madoff Investment Securities LLC ("BMIS"), an investment advisory service founded by Bernard L. Madoff ("Madoff"). Defendants were paid extensive fees in exchange for vetting suitable asset managers, following a professional investment strategy and conducting due diligence in order to avoid frauds and other unacceptable investment risks. Defendants, in breach of their fiduciary duties to Plaintiff and the rest of the Class, invested the Class's capital with Madoff and BMIS, who purportedly invested in an options trading strategy described as a "split strike conversion" strategy. Madoff and BMIS did not, however, invest the capital from the UBP Funds according to a split strike conversion strategy. In fact, they made no trades at all.

3. On December 11, 2008, Madoff was arrested by federal authorities for operating a $50 billion Ponzi scheme, in which Madoff used the principal investments of new clients to pay the fictitious "returns" of other clients. Madoff and BMIS were charged with securities fraud by the SEC. Madoff and BMIS were also criminally charged with securities fraud by the United States Attorney's Office for the Southern District of New York. Madoff pled guilty on March 13, 2009 to operating a $65 billion

Ponzi scheme for nearly twenty years. UBP has since announced that it invested and lost $700 million of the Class's capital in its discretionary portfolios and fund of hedge funds.

4. Defendants were grossly negligent and breached their fiduciary and professional duties by failing to perform adequate due diligence into Madoff and BMIS despite the existence of numerous red flags—including explicit warnings from UBP's own research team—and failing to monitor the UBP Funds' investments with Madoff and BMIS, leading to the loss of a material portion of the UBP Funds' assets. Had Defendants conducted a reasonable due diligence investigation of Madoff and BMIS, the UBP Funds would not have invested in Madoff and BMIS, and Plaintiff and the other members of the Class would not have lost their investment. As a result of Defendants' wrongful conduct, including the failure to conduct due diligence into the legitimacy of BMIS, the UBP Funds' investments in BMIS have been wiped out, thereby damaging Plaintiff and the other members of the Class.

5. To the extent that the UBP Funds were invested with Madoff and BMIS, their purported profits were inflated, and their assets were fictitious. Defendants nonetheless were paid management fees based on such illusory profits and assets, and were thereby unjustly enriched. Such fees should be returned.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A) & (C).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged wrongdoing and/or their effects have occurred within this District, and Defendant Union Bancaire Privée Asset Management LLC is a limited liability company organized under the laws of Delaware with headquarters in New York, New York.

8. In connection with the acts and omissions alleged in this Complaint, Defendants, directly or indirectly, used the mail and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

9. Plaintiff, Andrea Barron, is an individual investor who resides in the state of New York. Plaintiff made a series of investments in UBP Funds beginning in September 1, 2004 and has continuously owned such interests from such investments through the end of the Class Period. Plaintiff made no withdrawals from the UBP Funds during the Class Period.

10. Defendant Union Bancaire Privée Asset Management LLC ("UBPAM") is a Delaware limited liability company that was formed in July 1996 and is registered with the United States Securities and Exchange Commission ("SEC"). UBPAM is a subsidiary of Defendant UBP which conducts business in the United States and is majority owned by UBPI Holdings, Inc., also a subsidiary of Defendant UBP. UBPAM

has offices at 30 Rockefeller Plaza, Suite 2800, New York, New York 10112. As of September 2007, UBPAM had over $13 billion in assets under management or supervision. Upon Plaintiff's counsel's investigation, and upon information and belief, UBPAM was a managing/general partner of, and served as investment manager in, the following Funds: Selectinvest ARV LP (5.79% of its assets allocated to Madoff); Selectinvest ARV II (4.50% of its assets allocated to Madoff); Selectinvest ABF Ltd. (3.91% of its assets allocated to Madoff); and UBP Multi-Strategy Alpha Fund (direct and indirect) (6.92% of its assets allocated to Madoff) (collectively, the "UBPAM Funds").

11. Defendant UBP is one of Switzerland's largest privately owned banks, specializing in asset management for private individuals and institutions. UBP has an international presence in more than 20 locations throughout Europe, the Americas and Asia with over 1,300 employees and assets under management of 100.7 billion Swiss Francs ($94.8 billion USD) as of January 1, 2009. In Switzerland, UBP's headquarters are in Geneva, with branches in Zurich and Lugano. UBP, together with UBPAM, manages approximately $50 billion in hedge fund assets, making them one of the largest allocators of assets to the alternative investment industry. On December 17, 2008, UBP disclosed that investors in the UBP Funds were exposed to $700 million in losses through investments in Madoff and BMIS. UBP itself invested in Madoff and BMIS but, unlike the Class, did not lose any money.

12. UBP co-manages the UBP Funds with UBPAM and other related entities. UBP's investment group is responsible for the identification, selection and monitoring of fund managers for the UBP Funds. In addition to the UBPAM Funds identified above,

UBP also created, marketed and collectively manages the following funds that suffered losses through investments in Madoff and BMIS: DINVEST – Total Return (3.05% of its assets allocated to Madoff); DINVEST – Concentrated Opportunities (2.31% of its assets allocated to Madoff); DINVEST – Select I (6.51% of its assets allocated to Madoff); DINVEST – Select II (6.32% of its assets allocated to Madoff); DINVEST – Select III (6.35% of its assets allocated to Madoff); DINVEST – Concentrated Opportunities III Equity (4.46% of its assets allocated to Madoff); TrendSquare I (2.90% of its assets allocated to Madoff (collectively, with the UBPAM Funds, the "UBP Funds"). Upon information and belief, UBP transacted business in the United States related to the claims alleged herein.

13. Defendant UBPI Holdings, Inc. is a majority owner of UBPAM, and is the holding company for UBP's interests in the United States.

14. Defendant Roman Igolnikov has been with UBPAM since 2000 and is a Managing Partner, the Chief Investment Officer and Co-President of UBPAM. He is also a member of UBPAM's Board of Managers. Igolnikov is responsible for all investment activities of UBPAM and co-leads UBPAM's Management Committee.

15. Defendant Sheldon S. Gordon has been at all relevant times the Chairman of UBPAM. He also serves on the UBPAM Board of Managers, is Chairman of UBPI Holdings, Inc. and is a Member of UBP's Board of Directors. Gordon, formerly Vice Chairman of Shearson Lehman Brothers, has been involved in fund management directly and indirectly for over forty years.

16. Defendant Matthew Stadtmauer has been with UBPAM since 2002 and is a Managing Partner, the Chief Executive Officer and Co-President of UBPAM. He is

also a member of UBPAM's Board of Managers and co-leads UBPAM's Management Committee, which is responsible for governing UBPAM's day to day matters. Prior to becoming Managing Partner, Mr. Stadtmauer was UBPAM's Chief Marketing Officer and led the company's marketing and business development efforts for over five years.

17. Defendant Daniel de Picciotto is a Managing Director and Member of UBP's Executive Committee and is a member of UBPAM's Board of Managers. Daniel de Picciotto is also the Chairman of the Board of Directors of UBP's DINVEST Sicav, UBP's flagship fund of hedge funds and is also Chairman of the Board of the UBAM Sicav, UBP's range of traditional funds.

18. Defendant Guy de Picciotto is the Chief Executive Officer of UBP.

19. Defendant Michael de Picciotto is Head of Treasury at UBP. Michael de Picciotto played a key role in raising money that was eventually invested in Madoff and BMIS.

20. Defendant Christophe Bernard is UBP's Chief Investment Officer.

SUBSTANTIVE ALLEGATIONS

I. BACKGROUND OF THE MADOFF PONZI SCHEME

21. In the 1960s, Madoff founded BMIS, a broker-dealer and investment adviser registered with the SEC. BMIS handled all trades that were purportedly executed on behalf of the Class through their limited partnerships managed by UBPAM and other UBP subsidiaries. In recent years, a growing number of fund managers warned against investing with Madoff due to the lack of BMIS' operating and accounting transparency. Their concerns stemmed from the fact that appropriate due diligence showed that it was impossible to link Madoff's purported returns to actual securities transactions. A number

of individuals and firms investigated Madoff's operations over the years, and the red flags they observed are detailed within.

22. In fact, by 2007, UBP's own head of research began to investigate Madoff's operations. Among other things, he spoke to more than 100 funds that had invested with Madoff, but none of them could explain how Madoff's stated investment strategy could produce the consistent returns reported by Madoff and BMIS. In an internal email sent during the first quarter 2008 to top UBM executives including Michael de Picciotto and Christophe Bernard, he went on to note that "It all seems very opaque," and, as a result, he recommended that Madoff be taken off UBP's list of approved funds, a recommendation that was rejected.

23. Despite these red flags, Defendants channeled a substantial portion of the UBP Funds' assets to Madoff and BMIS, and collected substantial fees for doing so.

24. Madoff's house of cards came crashing down in December 2008. In early December 2008, BMIS claimed that it had between $8 billion and $15 billion under management. On or about December 10, 2008, Madoff's sons Andrew and Mark Madoff, who were also senior employees of BMIS, met with Madoff at his Manhattan apartment; during that meeting, Madoff confessed that his entire investment advisory business was a fraud, and that the business was "all just one big lie," and was "basically a giant Ponzi scheme." Madoff admitted that for years, he had been paying returns to certain investors out of the principal received from other investors. Madoff also declared that BMIS was insolvent, and had been insolvent for years. At that time, Madoff estimated that losses from his fraud were approximately $50 billion; this figure has now risen to $65 billion.

25. On December 11, 2008, the SEC filed an emergency action in the Southern District of New York (*SEC v. Madoff*, 08 Civ. 10791) (the "SEC Action") to halt the ongoing fraudulent securities offering and investment advisory fraud perpetrated by Madoff and BMIS. Upon his arrest, Madoff admitted to an FBI special agent that "there is no innocent explanation" for BMIS's losses and that he simply "paid investors with money that wasn't there." On that same day, Madoff and BMIS were criminally charged by the United States Attorney's Office of the Southern District of New York with securities fraud.

26. On March 13, 2009, Madoff pleaded guilty to eleven counts of fraud, money laundering, perjury and theft, and faces a maximum jail term of 150 years. Before the court, Madoff stated "Your honor, for many years up until my arrest on December 11, 2008, I operated a Ponzi scheme through the investment advisory side of my business, Bernard L. Madoff Securities L.L.C." Madoff stated that his fraud began in the early 1990s, although prosecutors have alleged that the fraud actually began in the 1980s. The SEC and U.S. Attorney's Offices are continuing their investigations of Madoff and BMIS, filing criminal charges against BMIS's accountant in March 2009 for aiding and abetting Madoff's fraud by failing to conduct proper audits.

27. On April 6, 2009, New York's attorney general brought civil fraud charges against hedge fund operator Ezra Merkin, alleging that Merkin ignored red flags about Madoff's investments in an effort to reap huge fees from clients, and betrayed his investors by steering $2.4 billion in client money into Madoff investments. Additionally, on April 1, 2009, Fairfield Greenwich Group, a "feeder fund" that channeled client

money to Madoff, was sued by Massachusetts' top securities regulator for misleading customers.

II. DEFENDANTS FAILED TO CONDUCT DUE DILIGENCE AND IGNORED RED FLAGS

28. During the Class Period, UBP marketed and sold limited partnership interests in its dozens of funds of hedge funds investment vehicles through several affiliates and subsidiaries. For example, UBPAM offered limited partnerships in the funds for which it serves as Investment Manager and General Partner to qualified investors through private placement memoranda ("PPMs"). While the PPMs were prepared, amended or revised from time to time, upon information and belief, they were the same in all material respects relevant hereto.

29. Defendants invested with Madoff via four different feeder funds, including one run by Fairfield Greenwich Group of New York ("Fairfield"), Ascot Fund Ltd. and M-Invest Ltd. According to a January 14, 2009 article in *The Wall Street Journal*, by early 2008, Madoff and BMIS were among UBP's top five holdings. According to this same article, UBP had close ties with Fairfield, providing advisory and other services to the management company of Fairfield's fund-of-funds division and three Fairfield funds invested in UBP's own Madoff feeder fund, called M-Invest Ltd., originally created by the de Picciotto family as a vehicle for Madoff investments.

30. Despite being entrusted with billions of dollars of the Class's capital, Defendants did not undertake the required basic due diligence before providing at least $700 million of this capital to Madoff. Defendants invested the Class's assets with Madoff despite numerous red flags that pointed to the existence of a Ponzi scheme. Such

due diligence was performed by others in the fund of hedge funds industry, and those companies that conducted adequate due diligence identified the red flags and, accordingly, refused to invest with Madoff or BMIS. Had Defendants conducted such reasonable due diligence, they would have learned of the red flags identified herein, and discovered that Madoff's purported investment strategy was nothing more than a fraud.

31. For years since the inception of Madoff's scheme, there have been myriad warnings meaningful to investment professionals that Madoff, BMIS, and/or Madoff-controlled entities were perpetrating a fraud on investors. While collecting substantial fees, the Defendants ignored, among others, the following red flags in violation of their duties to the limited partners:

(a) Madoff's claimed investment strategy was incapable of delivering the returns he was getting. The description of Madoff's split-strike strategy (an investment strategy that involves the simultaneous ownership of S&P 100 stocks, the sale of out of the money calls on the index and the purchase of out of the money puts on the index) was inconsistent with the pattern of returns in the track record, which showed only seven small monthly losses in a 14 year period. Additionally, the strategy's returns could never be replicated by quantitative analysts that attempted to do so. For example, in a December 17, 2008 article in *The New York Times* titled "In Fraud Case, Middlemen in Spotlight," Michael Markov, a hedge fund consultant, said that he was hired by a fund two years ago to look into one of the fund of funds returns and found that it was "statistically impossible to replicate them." Moreover, in May 1999, Harry Markopolos, a derivatives expert with experience managing the "split-strike conversion" strategy used by Madoff, sent a letter to the SEC describing how Madoff could not have generated the returns he reported using the split-strike conversion strategy. As reported in May 2001, in an

article titled, "Madoff Tops Charts; Skeptics Ask How," appearing in MAR/Hedge, a semi-monthly newsletter reporting on the hedge fund industry: "The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period."

(b) Account statements revealed a pattern of purchases at or close to daily lows and sales at or close to daily highs, which is virtually impossible to achieve with the consistency reflected in the documents.

(c) Trading volumes reflected in accounts were vastly in excess of actually reported trading volumes. In particular, the S&P 100 options that Madoff purported to trade could not handle the size of the combined fund of funds assets. A report from Bloomberg estimated that the strategy would have required at least 10 times the S&P 100 option contracts that traded on U.S. exchanges.

(d) Madoff operated through managed accounts, rather than by setting up a hedge fund of his own, where his fees would have been much higher than the brokerage commissions that Madoff was charging. Madoff's willingness to forego the lucrative fees a hedge fund structure would provide is particularly suspicious because, if he had organized a hedge fund, Madoff would have been subject to annual audits.

(e) BMIS liquidated its securities positions at the end of each quarter and went to 100% cash, presumably to avoid reporting large securities positions. Such unusual activity is a red flag for fraud.

(f) BMIS was audited by Friehling & Horowitz, a company that had three employees, of which one was 78 years old and living in Florida, one was a secretary, and the other was an active 47-year old accountant, whose office in Rockland County, New York was 13 feet by 18 feet. This operation was suspiciously miniscule given the scale and scope of Madoff's activities. Moreover, Madoff did not allow outside performance audits by investors.

(g) Former employees stated that a high degree of secrecy surrounded the accounts of the fund of funds.

(h) Madoff encouraged the secrecy in his public statements. As reported in the May 2001 article in MAR/Hedge, "[Madoff] won't reveal how much capital is required to be deployed at any given time to maintain the strategy's return characteristics, but does say that 'the goal is to be 100% invested.'" Additionally, "[a]s for specifics of how the firm manages risk and limits the market impact of moving so much capital in and out of positions, Madoff responds first by saying, 'I'm not interested in educating the world on our strategy, and I won't get into the nuances of how we manage risk.'" On May 7, 2001, Barron's published an article titled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum." In that article, author Erin E. Arvedlund wrote: "When Barron's asked Madoff how he accomplishes this, he says, 'It's a proprietary strategy. I can't go into it in great detail.'" "What Madoff told us was, 'If you invest with me, you must never tell anyone that you're invested with me. It's no one's business what goes on here,' says an investment manager who took over a pool of assets that included an investment in a Madoff fund. 'When he couldn't explain to my satisfaction how they were up or down in a particular month,' he added, 'I pulled the money out.'"

(i) Key positions at BMIS were controlled by Madoff family members (Madoff's brother, two sons, and niece). Madoff's was the only multi-billion dollar investment fund that did not have outside, non-family professionals involved in the investment process.

(j) BMIS was supposedly technologically advanced but investors had no electronic access to their accounts at BMIS. Paper documentations provided Madoff with the ability to manufacture trade tickets that confirm investment results, and to falsify supporting documentation.

32. In addition to the red flags described above, on November 7, 2005, Harry Markopolos followed up his 1999 letter to the SEC which stated that "Madoff Securities is the world's largest Ponzi Scheme" with a letter to the SEC, titled "The World's Largest Hedge Fund is a Fraud," in which he set forth in over 17 single-spaced pages and a two-page attachment, how, based upon publicly available information, Madoff's returns could not be real. Markopolos identified 29 red flags that were signs of highly suspicious activity in BMIS, including, among others:

(a) "Why would B M [Bernard Madoff] settle for charging only undisclosed commissions when he could earn standard hedge fund fees of 1 % management fee + 20% of the profits?"?

(b) "The third party hedge funds and fund of funds that market this hedge fund strategy that invests in BM don't name and aren't allowed to name Bernie Madoff as the actual manager in their performance summaries or marketing literature. ... Why the need for such secrecy? If I was the world's largest hedge fund and had great returns, I'd want all the publicity I could garner and would want to appear as the world's largest hedge fund in all the industry rankings."

(c) "It is mathematically impossible for a strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from. This makes no sense! ... However, BM's performance numbers show only 7 extremely small [monthly] losses during 14 years and these numbers are too good to be true. The largest one month loss was only -55 basis points (-0.55%) or just over one-half of one percent! And BM never had more than a one month losing streak!"

(d) "Madoff does not allow outside performance audits."

(e) "Madoff's returns are not consistent with the one publicly traded option income fund with a history as long as Madoff's."

(f) "Why is Bernie Madoff borrowing money at an average rate of 16.00% per annum and allowing these third party hedge fund, fund of funds to pocket their 1 % and 20% fees bases [sic] upon Bernie Madoff's hard work and brains? Does this make any sense at all?"

(g) "Typically FOF's [fund of funds] charge only 1% and 10%, yet BM allows them the extra 10%. Why? And why do these third parties fail to mention Bernie Madoff in their marketing literature? After all he's the manager, don't investors have a right to know who's managing their money?"

(h) "BM goes to 100% cash for every December 31st year-end according to one FOF invested with BM. This allows for 'cleaner financial statements' according to this source. Any unusual transfers or activity near a quarter-end or year-end is a red flag for fraud."

33. Markopolos concluded: "If I was the world's largest hedge fund and had great returns, I'd want all the publicity I could garner and would want to appear as the world's largest hedge fund in all of the industry rankings. Name one mutual fund company, Venture Capital firm, or LBO firm which doesn't brag about the size of their largest funds' assets under management. Then ask yourself, why would the world's largest hedge fund manager be so secretive that he didn't even want his investors to know that he was investing their money? Or is it that [Madoff] doesn't want the SEC and [the Financial Services Authority] to know that he exists?"

34. Markopolos was not alone in sounding the warning bells on Madoff.

35. In 2000, Credit Suisse warned its clients to pull their investments from Madoff due to suspicions concerning his operations.

36. In May 2001, Michael Ocrant, managing editor of Marhedge, a New York-based hedge fund publication, expressed skepticism over the unrealistic nature of

Madoff's returns and their consistency, noting that he was troubled by Madoff's refusal to justify or explain his firm's strategy or success.

37. In 2002, investment advisor Acorn Partners blacklisted Madoff as a result of the countless red flags uncovered during routine due diligence.

38. In early 2003, Société Générale similarly blacklisted Madoff after performing routine due diligence and strongly discouraged clients from investing with him because his fraud was so "obvious." As reported by *The New York Times* on December 17, 2008 in an article entitled, *European Banks Tally Losses Linked to Fraud*, Société Générale's due diligence "was conducted by three people who visited Mr. Madoff's headquarters in the red-granite skyscraper on Third Avenue in Manhattan" where the bankers concluded that "something wasn't right. . . . It's a strategy that can lose sometimes, but the monthly returns were almost all positive."

39. Drago Indjic, a project manager at the Hedge Fund Center of the London Business School, noted that "Madoff did not pass due diligence for many European hedge fund companies. Experienced people know there are many ways to provide the kind of return stream offered by Madoff, almost like a bank account, and one of them is a Ponzi scheme."

40. In 2007, Aksia, a firm that does due diligence on investment advisors, based upon the 2005 letter from Markopolos to the SEC, also warned clients not to do business with Madoff as a result of the red flags it uncovered during its investigation, concluding that its "judgment [concerning Madoff] was swift given the extensive list of red flags."

41. Incredibly, the research division of UBP discovered and questioned at least some of the red flags identified above. But, in a grossly negligent violation of the fiduciary duties they owed to the Class, Defendants then proceeded to ignore the results of their own findings. According to a January 14, 2009 *Wall Street Journal* article titled "Inside a Swiss Bank, Madoff Warnings:"

> By early 2007, though, UBP's research department had raised various concerns about Mr. Madoff's business, and later recommended that he be stricken from a list of fund managers approved for its clients' investments, according to people familiar with the matter and internal emails reviewed by *The Wall Street Journal.*
>
> The people say that some of the bank's most senior executives were aware of the concerns and discussed them. It is unclear how the matter was resolved, but UBP ultimately left hundreds of millions of dollars of its clients' money with Mr. Madoff.
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> *****
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> In an email exchange during February and March 2008 reviewed by the Journal, UBP's then-deputy head of research, Gideon Nieuwoudt, listed a number of worries, including the lack of even basic information such as how much Mr. Madoff had in assets, how many feeder funds there were, and how the investment strategy worked.
>
> In one email, Mr. Nieuwoudt said he had spoken to more than 100 funds that invest or had invested with Madoff, but none of them could explain how the strategy produced such consistent returns. "It all seems very opaque," wrote Mr. Nieuwoudt, who had previously worked for a hedge-fund consultant.
>
> Mr. Nieuwoudt recommended in the email that Mr. Madoff be taken off UBP's list of approved funds, which included more than 200 asset managers that had cleared UBP's screening process.
>
> Among those included in the email discussion were at least two members of UBP's executive committee: Christophe Bernard, who headed the asset-management business, and Michael de Picciotto, head of the bank's treasury. Mr. de

> Picciotto is a nephew of the bank's founder, who also plays an active role in the alternative-investment business.
>
> The concerns were also discussed during at least one investment-committee meeting, according to people familiar with the matter.

42. Had Defendants conducted proper and thorough due diligence into Madoff, BMIS, and/or Madoff-controlled entities, they would have identified at least some of the dozens of red flags identified herein. To the extent Defendants did uncover some of these red flags, they were grossly negligent in choosing to ignore rather than act on their investigation.

43. To the extent Defendants did perform due diligence, it was completely inadequate and did not fulfill Defendants' fiduciary and professional duties to the limited partners and other investors. Defendants acted with gross negligence and violated their duties by failing to ensure the performance of appropriate due diligence that would have revealed that the assets of the Fund were invested with Madoff, BMIS, and/or Madoff-controlled entities such that a portion of the Fund's losses were attributable to Madoff. Among other things, Defendants failed to:

(a) Safely manage the Class's capital;
(b) Perform adequate due diligence with regard to Madoff's investment strategies, daily activities, and unbelievable results;
(c) Investigate the various red flags as reported not only in the mainstream press but *by UBP's own research team* with regard to Madoff's illicit use of the Class's capital;
(d) Verify Madoff's financial statements;
(e) Monitor ongoing risks associated with Madoff's use of the Class's capital; and
(f) Safeguard the Class's investments from excessive risks of large losses.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a "Class" consisting of all persons and entities who acquired and/or held limited partnership interests or other investment interests in the UBP Funds as of December 11, 2008 (the "Class Period") and were damaged thereby. Excluded from the Class are Defendants, members of the immediate family of the Individual Defendants, any affiliate of UBP, and the executive officers of UBP and UBPAM, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

45. This action is properly maintainable as a class action because:

(a) The members of the Class are dispersed geographically and are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that Class members number in the hundreds or thousands;

(b) Plaintiff's claims are typical of those of all members of the Class because all have been similarly affected by Defendants' actionable conduct in violation of state law as alleged herein;

(c) Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic to, or in conflict with, the Class that Plaintiff seeks to represent;

(d) A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because joinder of all members is impracticable. Furthermore, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class

members to redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote;

(e) Plaintiff anticipates no unusual difficulties in the management of this action as a class action; and

(f) The questions of law and fact common to the members of the Class predominate over any questions affecting individual members of the Class.

46. Among the questions of law and fact common to the Class are:

(a) Whether Defendants breached their fiduciary duties to Plaintiff and the Class by failing to properly manage and monitor their investments, to perform necessary due diligence that would have uncovered the massive Ponzi scheme carried out by Madoff and prevented the wrongful dissipation of the assets of Plaintiff and the Class;

(b) Whether Defendants were grossly negligent in breaching their fiduciary and professional duties to Plaintiff and the Class by failing to properly manage and monitor their investments, to perform necessary due diligence that would have uncovered the massive Ponzi scheme carried out by Madoff and prevented the wrongful dissipation of the assets of Plaintiff and the Class;

(c) Whether and to what extent Plaintiff and the Class were damaged by the Defendants' breaches of fiduciary duties and gross negligence; and

(d) Whether Defendants were unjustly enriched at the expense of Plaintiff and members of the Class.

COUNT I

Breach of Fiduciary Duty
(Against All Defendants)

47. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

48. The Defendants assumed, and owed, fiduciary duties to the Class, both directly as Investment Managers and General Partners of the UBP Funds, executives of the Investment Managers and General Partners of the UBP Funds, and vicariously, as parent of UBPAM and other affiliates that served as Investment Managers and General Partners of the UBP Funds. The Defendants therefore assumed and owed the following fiduciary duties to the Class, among others:

(a) The duty to use reasonable care when performing due diligence and ensuring the legitimacy of opportunities for investing the Class's capital;
(b) The duty of reasonable care in managing, overseeing and safeguarding the Class's invested capital;
(c) The duty to use reasonable care in disseminating proper account statements;
(d) The duty to deal fairly and in good faith with the Class;
(e) The duty to avoid and disclose conflicts of interest with the Class; and
(f) The duty to warn the Class when their capital had been placed at an unacceptable risk of loss.

49. Defendants breached their fiduciary duties owed to the Class. Among other things:

(a) Defendants failed to take all reasonable steps to ensure that the investment of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;

(b) Defendants failed to perform proper due diligence;

(c) Defendants failed to manage the Plaintiff and the Class's investments and to preserve the value of the Plaintiff and the Class's investments;

(d) Defendants failed to use reasonable care to avoid the unlawful Ponzi scheme operated by Madoff;

(e) Defendants failed to use reasonable care when they abandoned management and oversight of the Plaintiff and the Class's invested capital in the face of numerous red flags, including those revealed internally by UBP's own research team;

(f) Defendants failed to use reasonable care insofar as they failed to provide proper account statements that accurately reflected the Plaintiff and the Class's account values;

(g) Defendants failed to deal fairly and in good faith with the Plaintiff and the Class;

(h) Defendants failed to avoid conflicts of interest while managing the Fund by engaging in transactions with Madoff in order to increase their own compensation; and

(i) Defendants failed to warn the Plaintiff and the Class that their capital was being subjected to an unacceptably high risk of loss from fraud.

50. As a direct and proximate result of Defendants' breaches of fiduciary duties, the Class lost a significant portion of their investment capital in the UBP Funds, and thereby suffered damages in an amount to be proven at trial.

COUNT II

Aiding and Abetting Breach of Fiduciary Duty
(Against UBP, Daniel de Picciotto, Guy de Picciotto, Michael de Picciotto, Christophe Bernard, Sheldon S. Gordon, Roman Igolnikov and Matthew Stadtmauer)

51. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

52. Defendants aided and abetted the other Defendants in breaching their fiduciary duties to the Class by, among other things, knowingly participating in the following breaches of fiduciary duties:

(a) Defendants failed to take all reasonable steps to ensure that the investment of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;
(b) Defendants failed to perform proper due diligence;
(c) Defendants failed to manage the Plaintiff and the Class's investments and to preserve the value of the Plaintiff and the Class's investments;
(d) Defendants failed to use reasonable care to avoid the unlawful Ponzi scheme operated by Madoff;
(e) Defendants failed to use reasonable care when they abandoned management and oversight of the Plaintiff and the Class's invested capital in the face of numerous red flags, including those revealed internally by UBP's own research team;
(f) Defendants failed to use reasonable care insofar as they failed to provide proper account statements that accurately reflected the Plaintiff and the Class's account values;
(g) Defendants failed to deal fairly and in good faith with the Plaintiff and the Class;

(h) Defendants failed to avoid conflicts of interest while managing the Fund by engaging in transactions with Madoff in order to increase their own compensation; and

(i) Defendants failed to warn the Plaintiff and the Class that their capital was being subjected to an unacceptably high risk of loss from fraud.

53. The breaches of fiduciary duty to the Class that Defendants aided and abetted have directly and proximately caused the Class to lose a significant portion of their investment capital in the UBP Funds, and thereby suffered damages in an amount to be proven at trial.

COUNT III

Gross Negligence
(Against All Defendants)

54. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

55. Defendants owed Plaintiff and the Class a duty to manage and monitor the investments of Plaintiff and the Class with reasonable care. Defendants breached this duty. Among other things:

(a) Defendants failed to take all reasonable steps to ensure that the investment of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;

(b) Defendants failed to perform proper due diligence;

(c) Defendants failed to manage the Plaintiff and the Class's investments and to preserve the value of the Plaintiff and the Class's investments;

(d) Defendants failed to exercise generally the degree of prudence, caution and good business practices that would be expected of any reasonable investment professional.

56. As a direct and proximate result of Defendants' gross negligence, Plaintiffs and the Class have suffered damages and are entitled to such damages from Defendants.

COUNT IV

Unjust Enrichment (Against UBP and UBPAM)

57. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

58. UBP reaped substantial fees and other pecuniary benefits at the expense of Plaintiff and the Class.

59. To the extent the UBP Funds' assets were invested with Madoff, such assets were worthless and fictitious, and any profits purportedly generated therefrom illusory. Thus, UBP and UBPAM were overpaid by the portion of the fees represented by the percentage of assets invested with, and profit generated by, Madoff.

60. Defendants have therefore been unjustly enriched. Equity, good conscience, and public policy require that Defendants rescind and disgorge back to the UBP Funds all such unjust enrichment.

WHEREFORE, Plaintiff and other Class members demand judgment as follows:

A. Declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff a proper Class representative;

B. Awarding monetary damages suffered by Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' acts and transactions complained of herein, including return of all fees taken by the Defendants, together with pre-judgment interest from the day of the wrongs to the day of judgment;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Granting such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 8, 2009

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