

CONFORMED COPY

1 WEINTRAUB TOBIN CHEDIAK COLEMAN
2 GRODIN LAW CORPORATION
3 Marvin Gelfand (SBN 53586)
4 *mgelfand@weintraub.com*
5 10250 Constellation Blvd., Suite 2900
6 Los Angeles, CA 90067
7 Telephone: (310) 858-7888
8 Fax: (310) 550-7191

9 *Attorneys for Plaintiff and Cross Defendant*
10 *Bottlebrush Investments, L.P. and Leghorn*
11 *Investments, Ltd.*

12 MILBERG LLP
13 BARRY WEPRIN (*pro hac vice*)
14 *bweprin@milberg.com*
15 One Pennsylvania Plaza, 50th Floor
16 New York, NY 10119
17 Telephone: (212) 594-5300
18 Fax: (212) 868-1229

19 MILBERG LLP
20 2850 Ocean Park Blvd. Suite 300
21 Santa Monica, CA 90405
22 Telephone: (213) 617-1200
23 Fax: (212) 868-1229
24 *Attorneys for Plaintiffs Douglas Hall and*
25 *Steven Heimoff*

SEEGER WEISS LLP
STEPHEN A. WEISS (*pro hac vice*)
sweiss@seegerweiss.com
CHRISTOPHER M. VAN de KIEFT (*pro hac vice*)
cvandekieft@seegerweiss.com
One William Street
New York, NY 10004
Telephone: (212) 584-0700
Fax: (212) 584-0799

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 20 2017

Sherril R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BOTTLEBRUSH INVESTMENTS, L.P.,
a California limited partnership,

Plaintiff,

v.

THE LAMBETH COMPANY, a
California limited partnership, et al.,

Defendants.

CONSOLIDATED WITH:

LEGHORN INVESTMENTS, LTD., a
California limited partnership,

Plaintiff,

v.

CASE No. BC 407967

Assigned for All Purposes to the Honorable
Elizabeth Allen White, Department 48

Complaint Date: February 8, 2009

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF DERIVATIVE
SETTLEMENT AND FOR
PLAINTIFFS' ATTORNEYS' FEES
AND INCENTIVE AWARDS IN
CONNECTION WITH THE
DERIVATIVE SETTLEMENT**

CASE NO.: BC 408661

{00063010.DOCX;3}

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF DERIVATIVE SETTLEMENT AND FOR PLAINTIFFS' ATTORNEYS' FEES
AND INCENTIVE AWARDS IN CONNECTION WITH THE DERIVATIVE SETTLEMENT**

1 BRIGHTON INVESTMENTS, LTD., a
California limited partnership, et al,

2 Defendants.

[Related to Case Nos. BC 409658, BC
413821, BC 413820 BC 422257 and BC
456932]

3 AND RELATED CROSS-ACTIONS

March 1, 2017
Time: 8:30 a.m.
Department: 48

4
5
6 DOUGLAS HALL, as Co-Trustee of the
VIVIAN H. HALL IRA and Derivatively
on Behalf of CRESCENT SECURITIES,

7 Plaintiff,

8 v.

9
10 PAMELA CHAIS as executor of the
estate of STANLEY CHAIS, et al.

11 Defendants,

12 and

13 THE POPHAM COMPANY,

14 First Nominal Defendant,

15 and

16 MARLOMA SECURITIES,

17 Second Nominal Defendant.

18 Consolidated with

19 STEVEN HEIMOFF, as Trustee of the
STEVEN HEIMOFF IRA and
Derivatively on behalf of MARLOMA
SECURITIES,

20 Plaintiff,

21 v.

22
23
24 PAMELA CHAIS as executor of the
estate of STANLEY CHAIS, et al,

25 Defendants,

26 and

27
28 {00063010.DOCX:3}

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF DERIVATIVE SETTLEMENT AND FOR PLAINTIFFS' ATTORNEYS' FEES
AND INCENTIVE AWARDS IN CONNECTION WITH THE DERIVATIVE SETTLEMENT**

1 THE POPHAM COMPANY,
2 First Nominal Defendant,
3 and
4 MARLOMA SECURITIES,
5 Second Nominal Defendant.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

{00063010.DOCX;3}

TABLE OF CONTENTS

	<u>Page (s)</u>
1	
2	
3	I. INTRODUCTION 1
4	II. THE LITIGATION 4
5	A. The Plaintiffs’ Allegations 4
6	B. Defendants’ Deny the Allegations 5
7	C. Practice & Discovery 6
8	D. The AG Action 7
9	E. The Avoidance Action 7
10	F. The Trustee’s Injunction Action 7
11	III. SETTLEMENT DISCUSSIONS 8
12	IV. SUMMARY OF TERMS OF THE SETTLEMENT AGREEMENT 9
13	V. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT 10
14	A. Legal Standards for Granting Final Approval 10
15	VI. THE NOTICE AND THE NOTICE PLAN FAIRLY APPRISED THE LIMITED
16	PARTNERS OF THE SETTLEMENT TERMS AND THE RIGHT TO OBJECT
17	TO THE AGREEMENTS 15
18	VII. THE REQUESTED AWARD FOR ATTORNEYS’ FEES IS REASONABLE
19	AND SHOULD BE APPROVED 16
20	A. Standards Governing Attorneys’ Fees Awards 17
21	B. The Proposed Fee Awards Are Fractional Multipliers of Plaintiffs’
22	Counsel’s Lodestar 17
23	C. The Proposed Fee Award is Reasonable Under the Circumstances 19
24	i. Plaintiffs’ Counsel Obtained Excellent Results for the California
25	Limited Partners 20
26	ii. Plaintiffs’ Counsel Performed Their Work on a Contingent Basis and
27	Bore Risks that the Action Might be Unsuccessful 20
28	iii. Reaction of the California Limited Partners and Investors 21
	iv. Approval of the Requested Fees Encourages Consensual Resolution
	of Attorneys’ Fees Issues 21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

v. The Attorneys’ Work on this Case Precluded Their Employment on
Other Matters22

vi. Approval of the Requested Fees Encourages Consensual Resolution
of Attorneys’ Fees Issues22

VIII. EXPENSES INCURRED IN PURSUING THIS LITIGATION ARE
REASONABLE AND SHOULD BE AWARDED.....23

IX. THE INCENTIVE AWARDS TO PLAINTIFFS SHOULD BE
APPROVED24

X. CONCLUSION.....26

TABLE OF AUTHORITIES

Cases	<u>Page(s)</u>
<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , (2000) 85 Cal.App.4th 1135	12, 14
<i>Abid v. Grosvenor Bus Lines, Inc.</i> , CGC-03-424619 (San Francisco Sup. Ct. Dec. 6, 2006) (RJN, Ex. 2).....	19
<i>Armstrong v. Brown</i> , (N.D. Cal. 2011) 805 F.Supp. 2d 918	18
<i>Carta v. Superior Court</i> , (1975) 50 Cal.App.3d 960	16
<i>Casa De Valley View Owner’s Assoc., v. Stevenson</i> , (1985) 167 Cal.App.3d 1182	11
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43	15, 16
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794	11
<i>Ellis v. Naval Air Reworked Facility</i> , (N.D. Cal. 1980) 87 F.R.D. 15, <i>aff’d</i>	14
<i>Fischer & Porter Co. v. Tolson</i> , 1993 WI. 319622 (E.D.Pa. Aug. 18, 1993).....	11
<i>Gonzalez v. City of Maywood</i> , (9th Cir. 2013) 729 F.3d 1196	17
<i>Harris v. Marhoefer</i> , (9th Cir. 1994) 24 F.3d 16	23
<i>Harris v. Vector Marketing Corp.</i> , 2011 WL 1627973 (ND. Cal. Apr. 29, 2011)	15
<i>In re Amgen Sec. Litig.</i> , 2016 U.S. Dist. LEXIS 148577 (C.D. Cal. Oct. 25, 2016).....	23
<i>In re Animation Workers Antitrust Litig.</i> , 2016 U.S. Dist. LEXIS 156720 (N.D. Cal. Nov. 11, 2016).....	18
<i>In re Automotive Refinishing Paint Cases</i> , J.C.C.P. 4199 (Alameda Super. Ct. Oct. 23, 2007) (RJN, Ex. 4)	19

1	<i>In re California Indirect Purchaser X-Ray Film Antitrust Litigation,</i> No. 960886, 1998 WL 1031494 (Alameda Super. Ct. Oct. 22, 1998)	20
2	<i>In re Laminates Cases,</i>	
3	J.C.C.P. 4129 (Alameda Super. Ct. Apr. 12, 2007) (RJN, Ex. 5).....	20
4	<i>In re M.D.C. Holdings Sec. Litig.,</i>	
5	1990 WL 454747 (S.D. Cal. Aug. 30, 1990)	22
6	<i>In re Pac. Enters. Sec. Litig.,</i>	
7	(9th Cir. 1995) 47 F.3d 373	19
8	<i>In re Rainbus Inc. Derivative Litig.,</i>	
9	2009 WL 166689 (N.D. Cal. Jan. 20, 2009).....	17
10	<i>In re Telik Inc Securities Litig.,</i>	
11	(S.D.N.Y. 2008) 576 F.Supp.2d 570.....	11
12	<i>In re Warner Communications Sec. Litig.,</i>	
13	(S.D.N.Y. 1985) 618 F.Supp. 735, <i>affd</i> 798 F.2d 35	22
14	<i>Lealao v. Beneficial California, Inc.,</i>	
15	(2000) 82 Cal.App.4th 19	17, 19
16	<i>Maher v. Zapata,</i>	
17	(5th Cir. 1983) 714 F.2d 436	12
18	<i>Mills v. Elec. Auto-Lite Co.,</i>	
19	(1969) 396 U.S. 375.....	17
20	<i>Officers for Justice v. Civil Service Comm'n of the City and County of San Francisco,</i>	
21	(9th Cir. 1982) 688 F.2d 615	12
22	<i>Pincay Invs. Co. v. Covad Communs. Group, Inc.,</i>	
23	(9th Cir. 2004) 90 Fed.Appx. 510.....	19
24	<i>PLCM Group v. Drexler,</i>	
25	(2000).....	18
26	<i>Polk v. Good,</i>	
27	(Del. 1986) 507 A.2d 531	11
28	<i>Robbins v. Alibrandi,</i>	
	(2005).....	10
	<i>Serrano v. Priest,</i>	
	(1977) 20 Cal.3d 25	17, 22

1	<i>Stambaugh v. Superior Court,</i>	
	(1976) 62 Cal.App.3d 231	11
2	<i>Strougo v. Bassini,</i>	
3	(S.D.N.Y. 2003) 258 F.Supp.2d 254.....	13
4	<i>Thayer v. Wells Fargo Bank, N.A.,</i>	
5	(2001) 92 Cal.App.4th 819	17
6	<i>Valdivia v. Brown,</i>	
	2011 WL 4344145 (E.D. Cal. Sept. 14, 2011).....	18
7	<i>Wershba v. Apple Computer, Inc.,</i>	
8	(2001) 91 Cal.App.4th 224	passim
9	<i>Zimmerman v. Bell,</i>	
	(4th Cir. 1986) 800 F.2d 386	12
10		
11	OTHER AUTHORITIES	
12	California Limited Partnership. <i>Cara</i> at 974	16

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 Plaintiffs respectfully submit this memorandum of points and authorities in support of
2 plaintiffs' motion for final approval of derivative settlement and for plaintiffs' attorneys' fees
3 and incentive awards in connection with the derivative settlement.

4 **I. INTRODUCTION**

5 Plaintiffs Bottlebrush Investments, L.P., derivatively on behalf of The Lambeth
6 Company; Leghorn Investments, Ltd., derivatively on behalf of The Brighton Company; Douglas
7 Hall, as Co-Trustee of the Vivian Hall IRA, derivatively on behalf of both The Popham
8 Company and one of its limited partners, Marloma Securities; and Steven Heimoff, as Trustee of
9 the Steven Heimoff IRA, derivatively on behalf of both The Lambeth Company and one of its
10 limited partners, Crescent Securities¹ ("Plaintiffs") have entered into an agreement dated
11 October 19, 2016 (the "Settlement Agreement"),² with the Stanley Chais Defendants³ and the
12 Chais Related Defendants⁴ (collectively, the "Settling Defendants"); in conjunction with a

13 ¹ Marloma Securities and Crescent Securities are the "Sub-Partnerships."

14 ² A copy of the Settlement Agreement is attached as exhibit 1 to the declaration of Marvin Gelfand
15 submitted in support of plaintiffs' motion for final approval of derivative settlements the ("Gelfand
Decl.").

16 ³ The Stanley Chais Defendants are the Estate of Stanley Chais; Pamela Chais; Appleby Productions
17 Ltd.; Appleby Productions Ltd. Defined Contribution Plan; Appleby Productions Ltd. Money Purchase
Plan; Appleby Productions Ltd. Profit Sharing Plan; Chais Investments, Ltd.; Chais 1991 Family Trust;
18 and the Chais Family Foundation.

19 ⁴ The Chais Related Defendants are Emily Chasalow; Mark Chais; William Chais; Michael Chasalow;
20 Miri Chais, Wrenn Chais; 1994 Trust for the Children of Stanley and Pamela Chais; 1996 Trust for the
Children of Stanley and Pamela Chais, referred to in the Complaint as The 1996 Trust for the Children of
21 Pamela Chais And Stanley Chais; 1999 Trust For The Children Of Stanley And Pamela Chais; 1999 Trust
for the Grandchildren of Stanley and Pamela Chais; Emily Chais 1983 Trust; Emily Chais Trust No. 1,
22 Emily Chais Trust No. 2, and Emily Chais Trust No. 3, referred to collectively in the Complaint as The
Emily Chais Trust; Emily Chais Issue Trust No. 1 and Emily Chais Issue Trust No. 2, referred to
23 collectively in the Complaint as The Emily Chais Issue Trust; Mark Hugh Chais Trust No. 1, Mark Hugh
Chais Trust No. 2, and Mark Hugh Chais Trust No. 3, referred to collectively in the Complaint as The
24 Mark Hugh Chais Trust; Mark Hugh Chais Issue Trust No. 1 and Mark Hugh Chais Issue Trust No. 2,
referred to collectively in the Complaint as The Mark Hugh Chais Issue Trust; Mark Hugh Chais 1983
25 Trust; William Frederick Chais Trust No. 1, William Frederick Chais Trust No. 2, and William Frederick
Chais Trust No. 3, referred to collectively in the Complaint as The William Frederick Chais Trust;
26 William Frederick Chais Issue Trust No. 1 and William Frederick Chais Issue Trust No. 2, referred to
collectively in the Complaint as The William F. Chais Issue Trust; William Frederick Chais 1983 Trust;
27 The William and Wrenn Chais 1994 Family Trust; Ari Chais 1999 Trust; Ari Chais Transferee Trust No.
1, referred to in the Complaint as The Ari Chais Transferee #1 Trust; Benjamin Paul Chasalow 1999

1 related settlement by the Attorney General of California. The Settlement Agreement is subject to
2 the approval of the Court. Joint Declaration of Marvin Gelfand and Barry Weprin (“Plaintiffs’
3 Counsel Decl.”) at ¶ 18.

4 This case relates to the fraudulent Ponzi scheme orchestrated by Bernard L Madoff and
5 his associates through BLMIS. Plaintiffs’ Counsel Decl. ¶ 2. Brighton Investments, the
6 Lambeth Company, and the Popham Company (the “California Limited Partnerships”) were
7 “feeder funds” that were credited with having invested over \$1.3 billion with BLMIS from the
8 inception of the Ponzi scheme until Madoff’s fraud was exposed in December 2008. Plaintiffs’
9 Counsel Decl. ¶ 4. The California Limited Partnerships’ (and the Plaintiffs’) entire investments
10 were lost in the Ponzi scheme. *Id.* The California Limited Partnerships were created and
11 managed, as general partner, by the late Defendant Stanley Chais. Investments in the California
12 Limited Partnerships were unaware that they were investing with Madoff. Plaintiffs’ Counsel
13 Decl. ¶¶ 3-4. Chais represented that he was personally investing, managing, and overseeing their
14 capital through a tried-and-true, low risk method of “arbitrage trading” that earned consistent
15 returns regardless of market fluctuations. Plaintiffs’ Counsel Decl. ¶ 3. Instead, at the direction
16 of Chais, the California Limited Partnerships invested all of their monies with Madoff and
17 BLMIS. Plaintiffs’ Counsel Decl., ¶ 4.

18 _____
19 Trust; Benjamin Paul Chasalow Transferee Trust No. 1, referred to in the Complaint as The Benjamin
20 Paul Chasalow Transferee #1 Trust; Chloe Frances Chais 1994 Trust, referred to in the Complaint as The
21 Chloe Francis Chais 1994 Trust; Chloe Frances Chais Transferee Trust No. 1, referred to in the
22 Complaint as The Chloe Francis Chais Transferee #1 Trust; Jonathan Wolf Chais 1996 Trust, referred to
23 in the Complaint as The Jonathan Wolf Chais Trust; Jonathan Chais Transferee Trust No. 1, referred to
24 in the Complaint as The Jonathan Chais Transferee #1 Trust; Justin Robert Chasalow 1999 Trust; Justin
25 Robert Chasalow Transferee Trust No. 1, referred to in the Complaint as The Justin Robert Chasalow
26 Transferee #1 Trust; Madeline Celia Chais 1992 Trust; Madeline Chais Transferee Trust No. 1, referred
27 to in the Complaint as The Madeline Chais Transferee #1 Trust; Rachel Allison Chasalow 1999 Trust;
28 Rachel Allison Chasalow Transferee Trust, referred to in the Complaint as The Rachel Allison Chasalow
Transferee #1 Trust; Tali Chais 1997 Trust; Tali Chais Transferee Trust No. 1, referred to in the
Complaint as The Tali Chais Transferee #1 Trust; Unicycle Trading Company; Unicycle Corp.,
individually and as the General Partner of Unicycle Trading Company; Unicycle Corporation Money
Purchase Plan; Onondaga, Inc., individually and as General Partner of Chais Investments Ltd.; The
Onondaga, Inc. Money Purchase Plan; The Onondaga, Inc. Defined Benefit Pension Plan; Chais
Management, Inc., individually and as General Partner of Chais Management Ltd.; Chais Management
Ltd.; and Chais Venture Holdings.

1 In 2009, the Plaintiffs filed four separate derivative actions against Chais,⁵ among others,
2 in this Court seeking recovery of funds lost in the Madoff Ponzi scheme, and alleging, among
3 other things, breach of fiduciary duty, breach of contract, negligence, fraud, unjust enrichment
4 and fraudulent conveyance (the “Derivative Actions”). Plaintiffs’ Counsel Decl., ¶ 2. Later in
5 2009, the California Attorney General (the “AG”) also filed suit personally naming Chais alone
6 for wrongful conduct arising from the investments in the Madoff Ponzi scheme (the “AG
7 Action”). Plaintiffs’ Counsel Decl., ¶ 7. Unlike the Plaintiffs, the AG never asserted claims
8 against the other Defendants. *Id.* In addition, the Trustee, in 2009, as part of the BLMIS
9 liquidation proceeding pending in the United States Bankruptcy Court for the Southern District
10 of New York, filed an action against Chais, his family and family trusts and their related entities,
11 and the California Limited Partnerships (the “Avoidance Action”).⁶ Plaintiffs’ Counsel Decl., ¶
12 8. In the Avoidance Action, the Trustee sought to recover more than \$1.32 billion in alleged
13 fictitious profits and principal. *Id.*

14 The parties have collectively agreed to resolve this Litigation (the “Settlement”) in
15 accordance with the Settlement Agreement and two other related agreements, all negotiated and
16 dated simultaneously: (i) between the AG and Chais, and certain family members, family trusts
17 and their related entities (the “AG Agreement”); and (ii) between the Trustee and Chais, and
18 certain family members, family trusts and their related entities (the “Trustee Agreement”).⁷
19 Plaintiffs’ Counsel Decl., ¶ 18.

20 The Settlement Agreement, which is conditioned on and builds upon the AG Agreement,
21 provides significant benefits to the California Limited Partnerships and, ultimately, the investors.
22 Pursuant to the terms of the Settlement Agreement and the AG Agreement, a fund (the

23 _____
24 ⁵ Plaintiffs also filed amended complaints which, after Chais passed away named Pamela Chais as
25 executor of the Estate of Stanley Chais (the “Chais Estate”).

26 ⁶ The “Litigation” refers to the Derivative Actions, the AG Action, and the Avoidance Action
27 collectively.

28 ⁷ The “Settlement Agreement,” the “AG Agreement,” and the “Trustee Agreement” are referred to,
collectively, as the “Agreements.”

1 “Restitution Fund”) will be created to compensate investors in the California Limited
2 Partnerships and/or Sub-Partnerships. Plaintiffs’ Counsel Decl., ¶ 19. The Restitution Fund will
3 consist of a total of Twenty Million, Two Hundred Thousand Dollars (\$20,200,000.00), less any
4 amounts awarded by the Court for Plaintiffs’ counsels’ attorneys’ fees and reimbursement of
5 expenses, and any amounts awarded by the Court for incentive awards to the Plaintiffs’
6 Representatives.⁸ *Id.* In connection with the Court’s approval of the Settlement Agreement, all
7 claims asserted by any of the Plaintiffs will be dismissed with prejudice. Plaintiffs’ Counsel
8 Decl., ¶ 25. In addition, the Madoff Trustee will release all claim as against investors in the
9 California Partnerships, thus eliminating the possibility of claw back claims against any
10 California investor. *Id.*

11 **II. THE LITIGATION**

12 **A. The Plaintiffs’ Allegations**

13 In 2009, the Plaintiffs filed the Derivative Actions on behalf of the California Limited
14 Partnerships against the Settling Defendants, seeking recovery of funds lost in the Madoff Ponzi
15 scheme, and alleging, among other things, breach of fiduciary duty, breach of contract,
16 negligence, fraud, unjust enrichment and fraudulent conveyance. Plaintiffs’ Counsel Decl., ¶ 2.

17 Plaintiffs’ allege that since the 1970s, the late Stanley Chais purported to be in the
18 business of managing private capital investments. As part of this business, Chais created the
19 California Limited Partnerships, for which he was the general partner, and instigated the creation
20 of the Sub-Partnerships whose sole purpose was investing in the California Limited Partnerships.
21 Chais induced investors to invest with the California Limited Partnerships and the Sub-
22 Partnerships by falsely representing that he was personally investing, managing, and overseeing
23 their capital through a tried-and-true, low risk method of “arbitrage trading” that earned

24 ///

25
26 _____
27 ⁸ The “Plaintiffs Representatives” are Douglas Hall, Steven Heimoff, Pearl Gardner, and Robert
28 Glusman. Settlement Agreement, ¶4.

1 consistent returns regardless of market fluctuations. He also received hundreds of millions of
2 dollars in the guise of “management fees.” Plaintiffs’ Counsel Decl., ¶ 3.

3 Unbeknownst to the investors, at the direction of Chais, the California Limited
4 Partnerships were “feeder funds” that placed all of the monies invested with Madoff and BLMIS.
5 Indeed, Chais was one of BLMIS’s earliest investors and opened more than 60 accounts with
6 BLMIS. As is now well-known, Madoff, acting through BLMIS, had been running a Ponzi
7 scheme for many years. As a result, the investors in the California Limited Partnerships have
8 lost their entire investments. Plaintiffs’ Counsel Decl., ¶ 4.

9 Chais was solely responsible for the management and investment strategy of the
10 California Limited Partnerships and Plaintiffs allege he knew, or should have known, that
11 BLMIS was based on a fraud. Furthermore, as the general partner of the California Limited
12 Partnerships and a purported investment professional, Chais owed the investors contractual and
13 fiduciary duties, which were breached when, without the knowledge of the investors, he invested
14 their contributions with BLMIS without undertaking any meaningful supervisory role over the
15 performance of the investments; instead he abdicated all responsibility to Madoff and BLMIS.
16 Plaintiffs’ Counsel Decl., ¶ 5.

17 Plaintiffs also allege that Chais created numerous sham entities, which were operated
18 solely under Chais’ direction and control, in an attempt to evade any potential judgment against
19 him. Hundreds of millions of dollars in cash has been distributed to these sham entities, and
20 other individuals related to Chais. Plaintiffs’ Counsel Decl., ¶ 6.

21 **B. Defendants’ Deny the Allegations**

22 The Defendants have denied the claims asserted against them and disclaim any liability
23 for damages and otherwise deny having engaged in any wrongdoing or violation of law of any
24 kind whatsoever. Their defenses have been asserted in demurrers before this Court. Plaintiffs’
25 Counsel Decl., ¶ 10.

26 ///

27 ///

1 **C. Motion Practice & Discovery**

2 Since Plaintiffs’ actions were filed in 2009, the parties to the Litigation have engaged in
3 extensive discovery and motion practice before the Court. Collectively, the parties produced
4 thousands of documents during the course of the Litigation. Plaintiffs also deposed Chais’
5 accountant, Francis X. Montavani and the Trustee of some of the Trusts established by Chais. In
6 addition, Plaintiffs took and defended other depositions, including Stanley Chais’ deposition
7 taken over the course of nine sessions in January, March, and April 2010, before he passed away
8 in the fall of 2010. Deposition testimony was also given by Individual Plaintiffs Hall and
9 Heimoff, and by Pearl Gardner as representative of Bottlebrush and by certain other investors in
10 the California Limited Partnerships. Plaintiffs’ Counsel Decl., ¶ 9.

11 Throughout the course of this action, certain Defendants argued, in demurrers filed with
12 the Court, that some of the claims brought by the Plaintiffs should be dismissed for various
13 reasons, including statute of limitations and other pleading related grounds, and because, under
14 the bankruptcy laws, any successful claim would belong exclusively to the Trustee. As such, it
15 was argued that Plaintiffs are barred from pursuing those claims in this Court pursuant to an
16 automatic stay imposed by the bankruptcy laws. Plaintiffs’ Counsel Decl., ¶ 11. Plaintiffs
17 opposed this argument. *Id.* On January 4, 2012, prior to the Court finally ruling on the pending
18 demurrer, the Trustee filed his Adversary Proceeding against Plaintiffs and the AG seeking to
19 preclude them from continuing to litigate the actions they filed in this Court, on the ground that
20 the automatic stay applied to both the Plaintiffs’ Actions and the CAAG Action. Plaintiffs’
21 Counsel Decl., ¶ 13. In addition to filing the Adversary Proceeding, the Trustee filed an
22 application with the Bankruptcy Court seeking to enforce the automatic stay and preclude both
23 Plaintiffs’ Actions and the AG Action from going forward. *See infra.* Plaintiffs’ Counsel Decl.,
24 ¶ 14.

25 ///
26 ///
27 ///

1 **D. The AG Action**

2 In 2009, the California Attorney General filed suit against Chais for wrongful conduct
3 arising from the investments in the Madoff Ponzi scheme (the “AG Action”). The AG Action
4 sought penalties from Chais for violating California Securities Laws, and restitution for investors
5 in the California Limited Partnerships. Plaintiffs’ Counsel Decl., ¶ 7. Unlike the Derivative
6 Actions, the AG Action named only a single defendant, Stanley Chais.⁹ *Id.* By contrast, the
7 Derivative Actions named numerous other individuals and entities, such as the Chais Related
8 Defendants. *Id.* The Derivative Actions, therefore, had the ability to recover assets from
9 individuals and entities who benefitted from the fraud but who were not sued by the AG. *Id.*

10 **E. The Avoidance Action**

11 In May 2009, the Trustee, in, as part of the BLMIS liquidation proceeding pending in the
12 Bankruptcy Court in New York, filed an adversary proceeding against Chais, his family
13 members, and entities related to Chais. Plaintiffs’ Counsel Decl., ¶ 8. In the Avoidance Action,
14 the Trustee sought to recover approximately \$1.32 billion in BLMIS transfers which the Trustee
15 alleges were made directly or indirectly to the Defendants and the California Limited
16 Partnerships over the lifetime of their BLMIS accounts. *Id.* The Trustee asserts that the
17 California Limited Partnerships’ accounts were credited with \$995 million of fictitious profits
18 from the Ponzi scheme. The Trustee alleged that Chais and certain related parties were complicit
19 in Madoffs’ scheme. *Id.*

20 **F. The Trustee’s Injunction Action**

21 In connection with the demurrers, Defendants, asserted defenses under the Bankruptcy
22 Laws that Plaintiffs argued could only be asserted by the Trustee. This Court requested that the
23 Trustee either intervene in this Action or file an appropriate action in Bankruptcy Court to allow
24 those Claims to be heard. Plaintiffs’ Counsel Decl., ¶ 12.

25 ///

26 _____
27 ⁹ The California AG also named Does 1-100, inclusive, on behalf of investors in the California Limited
Partnerships as defendants.

1 On January 4, 2012, the Trustee commenced proceedings in the Bankruptcy Court for an
2 injunction to stay the California Limited Partners' action and the AG Action (the "Injunction
3 Action") and otherwise enjoin the Plaintiffs in the Derivative Actions and the Attorney General
4 from litigating the actions or any other actions against any of the defendants in the Avoidance
5 Action pending the resolution of the Avoidance Action. Plaintiffs' Counsel Decl., ¶¶ 13-14. In
6 the Injunction Action, the Trustee alleged that recoveries sought in the Derivative Actions and
7 the AG Action were duplicative in substantial part of the recoveries sought by the Trustee in the
8 Avoidance Action, and the Defendants did not have sufficient assets to satisfy a judgment in the
9 Trustee's favor in the Avoidance Action, and thus any judgment obtained by the Plaintiffs or the
10 AG would necessarily diminish the Trustee's ability to recover from the defendants in the
11 Avoidance Action. Plaintiffs' Counsel Decl., ¶ 15.

12 The Trustee's proposed injunction would have barred the Plaintiffs and the Attorney
13 General from pursuing claims against and recovering from the defendants until after resolution
14 of the Avoidance Action. Plaintiffs' Counsel Decl., ¶ 16. The California Limited Partnerships
15 and the Attorney General opposed the Trustee's request for injunctive relief and otherwise
16 challenged the positions asserted by the Trustee in the Injunction Action. The motion for an
17 injunction was fully briefed. *Id.* During the argument on the merits in July, 2012, Bankruptcy
18 Judge Lifland invited the parties into chambers and proposed that they mediate their claims. *Id.*

19 **III. SETTLEMENT DISCUSSIONS**

20 On July 18, 2012, the parties to the Injunction Action and the Avoidance Action were
21 ordered to mediation. *Id.* Hon. James Garrity, Jr., a retired Bankruptcy Judge, was appointed as
22 mediator. Plaintiffs' Counsel Decl., ¶ 17. The Settlement is the result of negotiations and
23 mediation conferences conducted over nearly four years, including a number of face-to-face
24 meetings among counsel, multiple substantive teleconferences, multiple exchanges of numbers
25 and drafts between and among the parties to the Settlement, and clarifying developments in the
26 applicable case law. Plaintiffs' Counsel Decl., ¶ 18.

27 ///

1 **IV. SUMMARY OF TERMS OF THE SETTLEMENT AGREEMENT**

2 Pursuant to the terms of the Settlement Agreement, the Restitution Fund will be created
3 to compensate investors in the California Limited Partnerships and/or Sub-Partnerships and
4 administered under the terms of the AG Agreement. Plaintiffs’ Counsel Decl., ¶¶ 19-20. The
5 Restitution Fund, which will include amounts contributed pursuant to the Agreement in the
6 Litigation, will consist of a combined total of Twenty Million, Two Hundred Thousand Dollars
7 (\$20,200,000.00), less any amounts awarded by the Court for Plaintiffs’ counsels’ attorneys’ fees
8 and reimbursement of expenses, and any amounts awarded by the Court for incentive awards to
9 the Individuals Participants. Plaintiffs’ Counsel Decl., ¶ 19. Disbursements from the Restitution
10 Fund shall be made by the AG in accordance with the AG Settlement. Plaintiffs’ Counsel Decl.,
11 ¶ 20. Those investors in the California Limited Partnerships and/or Sub-Partnerships seeking to
12 recover monies from the Restitution Fund must submit a claim in accordance with the procedures
13 established by the AG Settlement Agreement. *Id.*

14 Those claimants who incurred either a “Net Loss” or a “Nominal Loss” in relation to his,
15 her or its investment(s) will be eligible to recover from the Restitution Fund in the proportion set
16 forth in the AG Agreement in Section 4 thereof. Plaintiffs’ Counsel Decl., ¶ 21. “Net Loss”
17 means, with respect to a Restitution Fund Claimant, the amount by which the aggregate of all
18 investments made by such Restitution Fund Claimant to the California Limited Partnerships
19 and/or Sub-Partnerships exceeds the aggregate amount of distributions received by such
20 Restitution Fund Claimant on account thereof. Plaintiffs’ Counsel Decl., ¶ 22. “Nominal Loss”
21 means, with respect to a Restitution Fund Claimant, the sum of such Restitution Fund Claimant’s
22 interests in the California Limited Partnerships’ account balances with BLMIS as of December
23 11, 2008. Plaintiffs’ Counsel Decl., ¶ 23. The actual amounts that a Restitution Fund Claimant
24 will actually receive will be determined in accordance with AG Agreement. Plaintiffs’ Counsel
25 Decl., ¶ 20.

26 In addition, under the Settlement Agreement, the parties seek to obtain from the Court the
27 judicial dissolution, wind down and termination of existence for all purposes of the California

1 Limited Partnerships in accordance with California law. Plaintiffs' Counsel Decl., ¶ 24 In
2 addition, the Parties will seek to obtain the injunctive relief in the form set forth in Section 7(b)
3 of the Agreement. Plaintiffs' Counsel Decl., ¶ 24.

4 In connection with the Court's approval of the Settlement Agreement, all claims asserted
5 by any of the Plaintiffs, including claims against Defendants, each Affiliate thereof, will be
6 dismissed with prejudice. Plaintiffs' Counsel Decl., ¶ 25. Finally, the Trustee shall release all
7 potential claims for clawback against the California Limited Partnerships and the investors. *Id.*

8 Plaintiffs and their counsel believe that the Settlement Agreements is fair, reasonable,
9 adequate, and in the best interests of California Limited Partnerships and the investors. The
10 settlements also avoid the risk, expense, uncertainty, and inherent delay of further litigation
11 against the settling parties. Plaintiffs' Counsel Decl., ¶ 19.

12 The Settlement Agreement also provides that Plaintiffs' counsel may seek an award of
13 attorneys' fees from the settlement amounts in an amount not to exceed \$4,000,000, as well as
14 reimbursement of actual out-of-pocket expenses incurred during this action and certain incentive
15 awards payable to the Individual Participants. Plaintiffs' Counsel Decl., ¶¶ 18-19, Exh. 1 at ¶¶ 4,
16 5. Plaintiffs' brief in support of an award of attorneys' fees, expenses, and incentive awards is
17 separately filed herewith.

18 **V. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

19 **A. Legal Standards for Granting Final Approval**

20 The settlement of a derivative action requires court approval, and the decision to approve
21 or reject a proposed settlement is committed to the trial court's sound discretion. *Wershba v.*
22 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (“[W]hether a settlement was fair and
23 reasonable, whether notice to the class was adequate, whether certification of the class was
24 proper, and whether the attorney fee award was proper are matters addressed to the trial court's
25 broad discretion.”). Although derivative actions are not subject to the rules for settlement of
26 class actions set forth in the California Rules of Court, courts have used the same general criteria
27 to ensure that derivative settlements also are fair and reasonable. *See, e.g., Robbins v. Alibrandi*

1 (2005) 127 Cal.App.4th 438, 449. Importantly, California public policy supports pretrial
2 settlement of lawsuits, particularly in complex cases such as this, in which substantial resources
3 can be conserved by avoiding the time, costs, and rigors of formal litigation. *Casa De Valley*
4 *View Owner's Assoc., v. Stevenson* (1985) 167 Cal.App.3d 1182, 1190 (citing *Phelps v. Kozakar*
5 (1983) 146 Cal.App.3d 1078, 1082); *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231,
6 236.

7 The Court's focus during the final approval hearing stage is whether the proposed
8 settlement adequately serves the interests of the California Limited Partnerships, on whose
9 behalf the derivative action was instituted. *Fischer & Porter Co. v. Tolson*, 1993 WI. 319622, *4
10 (E.D.Pa. Aug. 18, 1993). "The court must therefore scrutinize the proposed settlement
11 agreement to the extent necessary to 'reach a reasoned judgment that the agreement is not the
12 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
13 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Wershba*, 91
14 Cal.App.4th at 245. A court determining whether to approve a derivative settlement should
15 consider and balance all of the relevant circumstances, including (1) whether the agreement is
16 the product of fraud or overreaching by, or collusion between, the negotiating parties; (2) the
17 probability of success on plaintiffs' claims; (3) the difficulty and expense of enforcing those
18 claims and likely duration of further litigation; (4) the stage of the litigation; (5) whether the
19 settlement, taken as a whole, is fair, reasonable and adequate to all concerned; (6) the amount
20 offered in settlement; (7) the number of objectors; and (8) the experience and views of competent
21 counsel. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Polk v. Good* (Del. 1986)
22 507 A.2d 531, 536. And, "[i]n finding that a settlement is fair, reasonable and adequate, not
23 every factor must weigh in favor of the settlement, but rather the court should consider the
24 totality of these factors in light of the particular circumstances." *In re Telik Inc Securities Litig.*
25 (S.D.N.Y. 2008) 576 F.Supp.2d 570, 575. "The relative degree of importance to be attached to
26 any particular factor will depend upon and be dictated by the nature of the claim(s) advanced,
27 the type(a) of relief sought, and the unique facts and circumstances presented by each individual

1 case” *Officers for Justice v. Civil Service Comm’n of the City and County of San Francisco* (9th
2 Cir. 1982) 688 F.2d 615, 625.

3 Generally, settlements are favored because “disputes are resolved; the resources of
4 litigants and courts are saved; and, in the case of a derivative action, management can return ‘its
5 attention and energy from the courtroom to the corporation itself.” *Zimmerman v. Bell* (4th Cir.
6 1986) 800 F.2d 386, 392. Indeed, settlements of “derivative actions are particularly favored
7 because such litigation is notoriously difficult and unpredictable.” *Maher v. Zapata* (5th Cir.
8 1983) 714 F.2d 436, 455. “[C]ourts therefore, do not lightly reject such settlements.” *Id.*

9 The Settlement Agreement satisfies all of these requirements. Plaintiffs’ Counsel
10 Decl., ¶ 35.

11 ***The Settlements Are the Product of Arms’-Length Negotiations***

12 The Settlement Agreement is presumptively fair because it was reached through arms’-
13 length bargaining between experienced attorneys highly familiar with the case’s issues during
14 formal negotiations with opposing counsel on a number of occasions. Plaintiffs’ Counsel Decl. ¶
15 26; *Wershba*, 91 Cal.App.4th at 245. As noted *supra*, at the direction of the Bankruptcy Court,
16 the Trustee, the Attorney General, the Plaintiffs, the Stanley Chais Defendants and the Chais
17 Related Defendants engaged in multiple mediation conferences and related mediation
18 communications with the Hon. James L. Garrity, Jr, as mediator. Plaintiffs’ Counsel Decl., ¶ 17,
19 Exh. 1 at Recital P.

20 ***Sufficient Investigation Has Occurred to Allow Counsel and the Court to*** 21 ***Intelligently Determine that the Settlements Are Fair***

22 Another factor weighing in favor of final approval is the status of discovery and
23 investigation at the time the settlement was formed. *See 7-Eleven Owners for Fair Franchising*
24 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. Prior to agreeing to the Settlement
25 Agreement, Plaintiffs’ counsel conducted a careful legal analysis, thoroughly examined the facts
26 relating to the allegation, and evaluated the strengths and weaknesses of Plaintiffs’ claims against
27 each of the settling parties. Plaintiffs’ Counsel Decl. ¶ 27.

1 ***The Monetary Value of the Proposed Settlements is Significant***

2 The monetary value of a settlement is among the most important factors to consider in
3 determining whether a settlement falls within the range of possible approval. “[T]he dollar
4 amount of the settlement by itself is not decisive in the fairness determination . . . Dollar amounts
5 are judged not in comparison with the possible recovery in the best of all possible worlds, but
6 rather in light of the strengths and weaknesses of plaintiffs’ case.” *Strougo v. Bassini* (S.D.N.Y.
7 2003) 258 F.Supp.2d 254, 260 (quoting *In re Union Carbide Corp. Consumer Prods. Bus. Secs.*
8 *Litig.* (S.D.N.Y.1989) 718 F.Supp. 1099, 1103). Thus, the adequacy of the monetary value
9 obtained through settlement must consider the risks of establishing liability and proving damages
10 in the event the case is not settled, in addition to the cost of prolonging the litigation, *Shlensky*,
11 574 F.2d at 147.

12 The Settlement provides for the creation of the Restitution Fund to compensate investors
13 in the California Limited Partnerships and/or Sub-Partnerships. Plaintiffs’ Counsel Decl., ¶ 19.
14 The Restitution Fund will consist of a combined total of Twenty Million, Two Hundred
15 Thousand Dollars (\$20,200,000.00), less not more than Four Million Dollars awarded by the
16 Court for Plaintiffs’ counsels’ attorneys’ fees and reimbursement of expenses, and any amounts
17 awarded by the Court for incentive awards to the Individual Participants (a minimum of
18 \$16,100,000 for investors). *Id.* The value of the Restitution Fund is reasonable in light of the
19 risks presented in this action and the potential delay, expense, and uncertainty of further pursuing
20 Plaintiffs’ claims. *Id.*

21 ***The Strength of Plaintiffs’ Case and the Risk, Expense, Complexity and***
22 ***Duration of Further Litigation***

23 The strength of the Plaintiffs’ case is another factor to evaluate in determining whether
24 final approval should be granted to the proposed settlements. A “proposed settlement is not to be
25 judged against a hypothetical or speculative measure of what might have been achieved had
26 plaintiffs prevailed at trial.” *Wershba*, 91 Cal.App.4th at 246. Also, the Court “should not reach
27 any conclusions on contested issues of law or fact, because it is the uncertainty of the future

28 ///

1 outcome of litigation that leads parties to resolve their disputes short of a final, litigated
2 resolution.” *7-Eleven*, 85 Cal.App.4th at 1145.

3 Based on Plaintiffs’ investigation, of the claims, review of documents, and extensive
4 analysis of the settling parties’ asserted defenses, Plaintiffs believe that their claims are all strong
5 on the merits particularly against Chais. Plaintiffs’ Counsel Decl. ¶ 29. The Defendants,
6 however, have denied the claims asserted against them and disclaim any liability or damages.
7 Plaintiffs’ Counsel Decl., ¶ 10. In addition the Trustee not only claimed priority over any of the
8 recoveries in this case but also asserted that he could seek to recoup any recovery by the
9 California Partnerships for the benefit of the general Madoff Bankruptcy Estate. Plaintiffs’
10 Counsel Decl., ¶ 30. The Trustee agreed to assign his claims to Defendants if they settled and
11 Plaintiffs did not. *Id.* Litigation relating to the proposed assignment by the Trustee to
12 Defendants would have been complex and increased the risk. *Id.*

13 ***The Reaction to the Settlement Agreement***

14 Any objections or other opposition to the Settlement Agreement must be filed, and served
15 or delivered to Plaintiffs’ counsel, on or before February 8, 2017. If any objections or
16 oppositions are submitted, they will be addressed in Plaintiffs’ responsive brief, to be filed by
17 February 22, 2017.

18 ***The Experience and Views of Counsel***

19 Plaintiffs’ attorneys have substantial experience litigating complex matters, including
20 shareholder derivative matters and class actions, and a long and successful record of prosecuting
21 such actions to favorable resolutions. Plaintiffs’ Counsel Decl. ¶ 28. Their view that the
22 Settlement Agreement is fair to the California Limited Partnerships weighs in favor of approving
23 the settlement. Plaintiffs’ Counsel Decl., ¶ 18, Exh. 1. *7-Eleven*, 85 Cal.App.4th at 1146; *see*
24 *also Ellis v. Naval Air Reworked Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d*, 661. F.2d 939
25 (9th Cir. 1981) (“The fact that experienced counsel involved in the case approved the settlement
26 after hard-fought negotiations is entitled to considerable weight.”).

1 **VI. THE NOTICE AND THE NOTICE PLAN FAIRLY APPRISED THE**
2 **LIMITED PARTNERS OF THE SETTLEMENT TERMS AND THE**
3 **RIGHT TO OBJECT TO THE AGREEMENTS**

4 In its November 29, 2016 Preliminary Approval Order, the Court approved the form and
5 content of the notice to be disseminated to the California Limited Partnerships' current limited
6 partners (the "Notice") and the notice plan. Plaintiffs' Counsel Decl., ¶ 33, Exh. 7 at ¶¶ 3, 4. On
7 December 21, 2016, Notice of the Settlement Agreement was mailed to the Limited Partners by
8 first-class mail, postage prepaid, to the last known addresses of the Limited Partners, and was
9 also mailed to the partners of any partnership (in addition to the Sub-Partnerships) that was a
10 limited partner of the California Limited Partnerships, to the extent that such partners' identities
11 and their last known addresses are identified. Plaintiffs' Counsel Decl., ¶ 34, Exh. 8, ¶ 7. On
12 December 28, 2016, a press release containing a direct link to the Notice of Settlement was
13 issued. Plaintiffs' Counsel Decl., ¶ 35, Exh. 8, ¶ 10. On December 20, 2016 the Notice of
14 Settlement and the Settlement Agreement was posted on Plaintiffs' counsel's websites.
15 Plaintiffs' Counsel Decl., ¶ 36. The Court-approved Notice summarized the terms of the
16 proposed derivative settlement and provided a link to two of Plaintiffs' counsel's firm websites
17 (www.milberg.com and www.weintraub.com), where a copy of the Settlement Agreement, the
18 Complaint, preliminary approval orders, and other documents are available for viewing.
19 Plaintiffs' Counsel Decl. ¶ 37. As indicated in the Notice, this final motion for approval of
20 settlement and for attorneys' fees, expenses, and incentive awards, and the supporting papers will
21 also be made available on the same website promptly after filing with the Court. Plaintiffs'
22 Counsel Decl., ¶ 38. *See Harris v. Vector Marketing Corp.*, 2011 WL 1627973, *1.8 (ND. Cal.
23 Apr. 29, 2011).

24 The method and content of a notice should be designed to fairly apprise the limited
25 partners of the California Limited Partners of the terms of the proposed settlements and the
26 options available to them, and the Court's discretion regarding both the content and the manner
27 of notice is "virtually complete." *Chavez v. Netflix, Inc.* (2008) 162 Ca1., App.4th 43, 57. Here,
28 the Notice adequately informed the limited partners of the California Limited Partners of the

1 terms of the three proposed derivative settlements and their rights with respect thereto.
2 Plaintiffs' Counsel Decl., ¶ 39. The Notice further advised the limited partners of (i) the
3 attorneys' fees, expenses, and incentive awards to be sought by Plaintiffs in connection with their
4 motion for final approval of the settlements; (ii) the date by which any objections must be filed
5 with the Court; and (iii) the date on which the Court will determine whether the settlements will
6 be granted final approval and whether Plaintiffs' motion for attorneys' fees, expenses, and
7 incentive awards should be approved. *Id.* An appropriate notice plan in this action is one which
8 has a "reasonable chance of reaching a substantial percentage" of the limited partners of the
9 California Limited Partnership. *Cara*, 50 Cal.App.3d at 974. Accordingly, the notice plan was
10 reasonably calculated to reach a substantial portion of the limited partners. *Id.*

11 The Notice and the notice plan fully satisfied any applicable due process requirements.
12 Plaintiffs' Counsel Decl., ¶ 40. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 57-58
13 (citing 7-Eleven, 85 Cal.App.4th at 1164); *Carta v. Superior Court* (1975) 50 Cal.App.3d 960,
14 973-74. Final approval therefore should be granted.

15 **VII. THE REQUESTED AWARD FOR ATTORNEYS' FEES IS**
16 **REASONABLE AND SHOULD BE APPROVED**

17 Plaintiffs' counsel seeks an award of \$4 million for their fees and expenses in these
18 actions. Pursuant to the Settlement Agreement expenses are paid out of the same fund as the
19 attorneys' fees and thus reduce the amount of attorneys' fees that can be applied for. Plaintiffs'
20 Counsel Decl., ¶ 42. Plaintiffs' counsel request an award of attorneys' fees for less than 20% of
21 the Restitution Fund established pursuant to this Action and the AG Action and that represent
22 only 43.26 % of Plaintiffs' counsel's lodestar herein. Plaintiffs' Counsel Decl., ¶ 18, Exh. 1, ¶¶
23 5, 11. As set forth below, the amount attorneys' fees requested is amply justified by application
24 of the substantial benefit doctrine, is fair and reasonable when cross-checked against Plaintiffs'
25 counsel's lodestar, and are consistent with attorneys' fees awards previously approved by Courts
26 in similar cases. Plaintiffs' Counsel Decl., ¶ 41, Exhs. 10-12.

27

1 **A. Standards Governing Attorneys’ Fees Awards**

2 Counsel who prosecute a derivative case which confers benefits on the corporation are
3 entitled to an award of attorneys’ fees and costs under the “substantial benefit doctrine.” *See,*
4 *e.g., In re Rainbus Inc. Derivative Litig.*, 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009); *see*
5 *also Mills v. Elec. Auto-Lite Co.* (1969) 396 U.S. 375, 395. Attorneys’ fees in substantial benefit
6 cases may be awarded using either a percentage or a “lodestar” method. *Wershba v. Apple*
7 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (“Courts recognize two methods for calculating
8 attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery
9 method”); *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 846 (“the predicate of
10 any attorney fee award, whether based on a percentage-of-the-benefit or a lodestar calculation, is
11 the necessity of and usefulness of the conduct for which the compensation is sought”).

12 Under both the percentage and lodestar methods, courts consider the same basic factors in
13 determining whether a proposed fee award is appropriate. Here, the relevant factors are: (1) the
14 results obtained; (2) the contingent nature of the fee award, based on the uncertainty of
15 prevailing on the merits and of establishing eligibility for the award; (3) the novelty and
16 difficulty of the questions involved and the skill displayed in presenting them; (4) the reaction of
17 the California Limited Partners to the requested fees; and (5) the extent to which the nature of the
18 litigation precluded other employment by the attorneys. *See Gonzalez v. City of Maywood* (9th
19 Cir. 2013) 729 F.3d 1196; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Thayer v. Wells Fargo*
20 *Bank* (2001) 92 Cal.App.4th 819, 835; *Lealao v. Beneficial California, Inc.* (2000) 82
21 Cal.App.4th 19, 41. Each of these factors fully supports the proposed awards here. Plaintiffs’
22 Counsel Decl., ¶ 41, Exhs. 10-12.

23 **B. The Proposed Fee Awards Are Fractional Multipliers of**
24 **Plaintiffs’ Counsel’s Lodestar**

25 Under California law, “the starting point of every fee award, once it is recognized that the
26 court’s role in equity is to provide just compensation for the attorney, must be a calculation of
27 the attorney’s services in terms of the time he [or she] has expended on this case.” *Serrano*, 20

1 Cal.3d at 48 n.23. Consequently, the Court’s first inquiry into the reasonableness of the
2 requested fee award in a common fund case such as this should be an assessment of the
3 attorneys’ lodestar.

4 An attorney fee lodestar is produced by multiplying the number of hours reasonably
5 expended by counsel by a reasonable hourly rate. *See PLCM Group v. Drexler* (2000) 22
6 Ca1.4th 1084, 1095; *Wershba*, 91 Cal.App.4th at 254. Plaintiffs’ counsel have incurred a total
7 lodestar of \$8,982,416.80 to date in connection with prosecution of this action. Plaintiffs’
8 Counsel Decl., ¶ 41. Exhs. 10-12. These figures were all taken from Plaintiffs’ counsel’s
9 contemporaneous billing records. Plaintiffs’ Counsel Decl., ¶ 41 Exh. 10 at ¶ 8, Exh. 11 at ¶ 6,
10 and Exh. 12 at ¶ 6.

11 Plaintiffs’ counsel’s hourly rates are reasonable for complex litigation such as this limited
12 partnership derivative action in the California legal market. Plaintiffs’ Counsel Decl., ¶ 41, Exh.
13 10 at ¶ 6, Exh. 11 at ¶ 4, and Exh. 12 at ¶ 4. “[R]easonable hourly rates are determined by the
14 ‘prevailing market rates in the relevant community,’ which are the rates a lawyer of comparable
15 skill, experience and reputation could command in the relevant community.” *In re Animation*
16 *Workers Antitrust Litig.*, 2016 U.S. Dist. LEXIS 156720, 19-20 (N.D. Cal. Nov. 11, 2016). *See*
17 *also Armstrong v. Brown*, 2011 WL 3443922, *2 (N.D. Cal. Aug. 8, 2011); *Valdivia v. Brown*,
18 2011 WL 4344145, *2 (E.D. Cal. Sept. 14, 2011). An attorney’s actual billing rate is
19 presumptively appropriate to use as the lodestar market rate. *In re Animation Workers Antitrust*
20 *Litig.*, 2016 U.S. Dist. LEXIS 156720, 19-20 (N.D. Cal. Nov. 11, 2016). “To demonstrate
21 reasonableness, that party may rely on the affidavits of counsel and other attorneys regarding
22 prevailing fees in the community, and rate determinations in other cases, particularly those
23 setting a rate for the [party’s] attorney.” *Armstrong v. Brown* (N.D. Cal. 2011) 805 F.Supp. 2d
24 918, 920 (internal quotation marks omitted). “The party opposing the fee application has a
25 burden of rebuttal that requires submission of evidence to the district court challenging the
26 accuracy and reasonableness of the . . . facts asserted by the prevailing party in its submitted
27 affidavits.” *Id.* (citation and internal quotation marks omitted).

1 The combined requested fees of \$4 million therefore represents only 43.26% of
2 Plaintiffs' counsel's lodestar figure, thereby indicating the reasonableness of the requested sum.
3 Plaintiffs' Counsel Decl., ¶ 18, Exh. 1, ¶¶ 5, 11.

4 **C. The Proposed Fee Award is Reasonable Under the**
5 **Circumstances**

6 Although lodestar considerations are the first subject of inquiry in determining the
7 reasonableness of a requested fee award, a percentage-based fee may also be appropriate. Here,
8 Plaintiffs' counsel request fees of less than 20% of the total Restitution Fund. *Id. See Lealao v.*
9 *Beneficial Cal.* (2000) 82 Cal.App.4th 19, 49. "A fee award of 25 percent '[i]s the "benchmark"
10 award that should be given in common fund cases.'" *Consumer Privacy Cases* (2009) 175
11 Cal.App.4th 545 quoting *Lealao, supra*, 82 Cal.App.4th at p. 24, fn. 1. *See also Pincay Invs. Co.*
12 *v. Covad Communs. Group, Inc.* (9th Cir. 2004) 90 Fed.Appx. 510, 511-512 (The Ninth Circuit
13 "has established twenty-five percent as a benchmark in percentage-of-the-fund cases that can be
14 adjusted upward or downward to account for any unusual circumstances presented by a
15 particular case."); *see also In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379
16 ("twenty-five percent is the 'benchmark' that district courts should award in common fund
17 cases").

18 Indeed, this Court and others in California have routinely approved attorneys' fees
19 awards in common fund cases in excess of 25% of the common fund, often amounting to one-
20 third of the fund—or more. *See, e.g., In re Pacific Enterprises Secs. Litigation* (9th Cir. 1995)
21 47 F.3d 373 (award of attorney fees of \$4 million, representing 33% of recovery in derivative
22 lawsuit, was not an abuse of discretion); *Smokeless Tobacco Cases I-IV*, J.C.C.P. Nos. 4250,
23 4258, 4259 & 4262 (San Francisco Super. Ct. Mar. 12, 2008) (approving fees amounting to
24 33.3% of the common fund) (*See Request for Judicial Notice ("RJN")*, filed July 23, 2012, Ex.
25 I); *Abid v. Grosvenor Bus Lines, Inc.*, CGC-03-424619 (San Francisco Sup. Ct. Dec. 6, 2006)
26 (35% of common fund) (RJN, Ex. 2); *Carbon Fiber Cases*, J.C.C.P. Nos. 4212, 4216, 4222 (San
27 Francisco Super. Ct. Apr. 20, 2006) (33.3% of common fund) (RJN, Ex. 3); *In re Automotive*

1 *Refinishing Paint Cases*, J.C.C.P. 4199 (Alameda Super. Ct. Oct. 23, 2007) (33.3% of common
2 fund) (RJN, Ex. 4); *In re Laminates Cases*, J.C.C.P. 4129 (Alameda Super. Ct. Apr. 12, 2007)
3 (33% of common fund) (RJN, Ex. 5); *In re California Indirect Purchaser X-Ray Film Antitrust*
4 *Litigation*, No. 960886, 1998 WL 1031494, *9 (Alameda Super. Ct. Oct. 22, 1998) (citing
5 multiple California decisions awarding fees amounting to 33.3%, 35% and 45% of the common
6 fund) (RJN, Ex. 6).

7 **i. Plaintiffs' Counsel Obtained Excellent Results for the**
8 **California Limited Partners**

9 As a result of Plaintiffs' counsel's work, together with the AG, the settling parties have
10 collectively agreed to establish a Restitution Fund of \$20,200,000. Plaintiffs' Counsel Decl., ¶
11 18. Although Plaintiffs believe that their claims against each of the Settling Defendants are
12 strong on the merits and that they could have prevailed at trial, the unique circumstances of this
13 case, as a result of the Madoff bankruptcy proceeding, could have prevented a trial or gutted any
14 recovery. Plaintiffs' Counsel Decl., ¶29. The Settlement Agreement provides significant
15 benefits to the California Limited Partners at this stage of the litigation, thereby avoiding the
16 risk, expense, uncertainty, and inherent delay of further pursuing these claims. Plaintiffs'
17 Counsel Decl., ¶ 19. Further, as a result of Plaintiffs' counsel work, the Chais investors are
18 being released from potential clawback claims by the Madoff bankruptcy trustee. Plaintiffs'
19 Counsel Decl., ¶ 25. The excellent results obtained by Plaintiffs' counsel through the Settlement
20 Agreement more than support the requested awards under the substantial benefit doctrine.

21 **ii. Plaintiffs' Counsel Performed Their Work on a**
22 **Contingent Basis and Bore Risks that the Action Might be**
23 **Unsuccessful**

24 That the litigation was undertaken by Plaintiffs' counsel on a contingent basis is another
25 factor that supports the awards. Plaintiffs' Counsel Decl., ¶ 41. They devoted significant
26 resources in terms of their time, energy, and effort to prosecute the case, with no guarantee that
27 they would ever be paid. *Id.*

27 ///

1 Plaintiffs recognize that, the settling parties had legal or equitable defenses to the
2 underlying claims and allegations. Furthermore, throughout the course of this action, certain
3 Defendants argued, in a demurrer filed with the Court, that some of the claims brought by the
4 Plaintiffs should be dismissed because, under the bankruptcy laws, those claims belong to the
5 Trustee. Plaintiffs' Counsel Decl., ¶ 11. As such, it was argued that Plaintiffs are barred from
6 pursuing those claims in this Court pursuant to an automatic stay imposed by the bankruptcy
7 laws. *Id.* In fact, as noted above, the Trustee took action in Bankruptcy Court to prevent this
8 Action from proceeding and threatened to claw back any recovery. Plaintiffs' Counsel Decl., ¶
9 13.

10 Plaintiffs' counsel undertook the litigation in the face of these risks, without any
11 assurance of recovery. In short, the creation of the Restitution Fund was by no means certain
12 and a resolution was in the best interests of the California Limited Partners and investors.
13 Plaintiffs' Counsel Decl., ¶ 41.

14 **iii. Reaction of the California Limited Partners and Investors**

15 The California Limited Partners and the investors were notified that Plaintiffs' counsel
16 would seek awards of attorneys' fees of as well as reimbursements of their costs and expenses
17 not to exceed \$4,000,000, from the Restitution Fund to compensate them for their legal work and
18 to repay the expenses they incurred in pursuing this case and in obtaining the settlements for the
19 benefit of the California Limited Partners, and the investors. Plaintiffs' Counsel Decl., ¶ 39. If
20 any objections or oppositions are submitted, they will be addressed in Plaintiffs' response to be
21 filed by February 22, 2017.

22 **iv. Plaintiffs' Counsel Handled the Difficult Factual and** 23 **Legal issues in this Derivative Action With Skill and** 24 **Success**

25 This derivative action seeking recovery of losses in Madoff's notorious Ponzi scheme
26 certainly involved complex legal and factual issues. Plaintiffs' Counsel Decl., ¶ 41, Exh. 10 at ¶
27 2, Exh. 11 at ¶ 2, and Exh. 12 at ¶ 2. Plaintiffs' attorneys have special expertise in their areas of
28 practice. Milberg LLP and Weintraub Tobin Chediak Coleman Grodin, Inc. have extensive

1 experience handling complex plaintiff-side litigation, including shareholder derivative matters
2 and class actions. Plaintiffs' Counsel Decl., ¶ 28. Counsel competently, indeed skillfully,
3 performed extensive legal work necessary to pursue the derivative claims and ultimately
4 successfully negotiated the excellent settlement on behalf of California Limited Partners and the
5 investors. Plaintiffs' Counsel Decl., ¶ 41, Exh. 1. *See In re Warner Communications Sec. Litig.*
6 (S.D.N.Y. 1985) 618 F.Supp. 735, 748, *affd* 798 F.2d 35 ("The quality of work performed in a
7 case that settles before trial is perhaps best measured by the benefit obtained.").

8 **v. The Attorneys' Work on this Case Precluded Their**
9 **Employment on Other Matters**

10 As California law recognizes, Plaintiffs' counsel's commitment to this litigation should
11 not be assessed in a vacuum. A relevant factor in determining attorneys' fees is whether the
12 litigation required Plaintiffs' counsel to forego other employment. *See Serrano*, 20 Cal.3d at 49.
13 The litigation and negotiation required to achieve the Settlement Agreement prevented Plaintiffs'
14 counsel from pursuing other work that might well have been as or more rewarding than this
15 action. Plaintiffs' attorneys possess significant, unique experience and expertise in derivative
16 actions such as this one, and have the ability to handle complex matters throughout the United
17 States. Plaintiffs' Counsel Decl., ¶ 28. Undertaking complex derivative litigation of this nature
18 necessarily limited Plaintiffs' counsel's availability to undertake other cases. Consideration of
19 this factor demonstrates the reasonableness of the requested fees.

20 **vi. Approval of the Requested Fees Encourages Consensual**
21 **Resolution of Attorneys' Fees Issues**

22 A final factor demonstrating why the requested fee should be awarded is that the various
23 settling defendants do not object to the requested fee awards. *See* Plaintiffs' Counsel Decl., 18
24 Exh. 1, ¶¶ 5, 11. Generally, courts favor the consensual resolution of attorneys' fee issues in
25 derivative litigation. *In re M.D.C. Holdings Sec. Litig.* 1990 WL 454747, *4 (S.D. Cal. Aug. 30,
26 1990) (in class actions and derivative matters, "consensual resolution of attorneys' fee issues is
27 the *ideal* toward which litigants should strive.") (emphasis in original).

1 Given the totality of the circumstances, including the excellent results obtained for the
2 California Limited Partners and ultimately the investors, the risks borne by Plaintiffs' counsel,
3 the work they performed, and their actual lodestar figure, the requested sums are reasonable and
4 should be awarded in full.

5 **VIII. EXPENSES INCURRED IN PURSUING THIS LITIGATION ARE**
6 **REASONABLE AND SHOULD BE AWARDED**

7 Plaintiffs' counsel have incurred \$263,205.82 in unreimbursed expenses to date.
8 Plaintiffs' Counsel Decl., ¶ 41, Exh. 10 at ¶ 9, Exh. 11 at ¶ 8, and Exh. 12 at ¶ 8. These expenses
9 include: (1) filing fees; (2) mediation fees; (3) transcripts and court reporters; (4) photocopying;
10 (5) overnight delivery and postage; (6) telephone charges; (7) attorney service and courier fees
11 for delivery of filings; and (8) travel-related expenses. All of these expenses were reasonable in
12 amount and necessary for the prosecution of this action, and should be awarded. "Courts have
13 recognized that '[a]ttorneys who created a common fund are entitled to the reimbursement of
14 expenses they advanced for the benefit of the class.'" *In re Amgen Sec. Litig.*, 2016 U.S. Dist.
15 LEXIS 148577, *28 (C.D. Cal. Oct. 25, 2016) quoting *Vincent v. Reser*, C 11-3572 (CRB), 2013
16 U.S. Dist. LEXIS 22341, at *5 (N.D. Cal. Feb. 19, 2013). In assessing requests for
17 reimbursement of expenses, courts consider whether the expenses are of the type typically billed
18 by attorneys to paying clients in the marketplace. *In re Amgen Sec. Litig.*, 2016 U.S. Dist.
19 LEXIS 148577, *28. *See also Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 ("[plaintiff]
20 may recover as part of the award of attorneys' fees those out-of-pocket expenses that 'would
21 normally be charged to a fee paying client'"). Here, all of the expenses were normal for this type
22 of litigation and would have been billed to the clients if this had been an hourly case. Plaintiffs'
23 Counsel Decl., ¶ 41, Exh. 10 at ¶ 9, Exh. 11 at ¶ 9, and Exh. 12 at ¶ 9. The expenditures were
24 also reasonable and necessary. *Id.* The fact that Plaintiffs' Counsel were willing to spend their
25 own funds, as an investment whose reimbursement was entirely contingent upon the success of
26 this litigation, is perhaps the best indicator of this. Moreover, the settling parties do not object to
27 reimbursement of these litigation expenses, also weighing in favor of approval. Plaintiffs'

1 Counsel Decl., ¶ 18, Exh. 1, ¶¶ 5, 11. For all of these reasons, the requested expenses should be
2 awarded.

3 **IX. THE INCENTIVE AWARDS TO PLAINTIFFS SHOULD BE**
4 **APPROVED**

5 Plaintiffs’ attorneys also seek approval of incentive payments of \$25,000 to each of the
6 four representative plaintiffs, Douglas Hall, Steven Heimoff, Pearl Gardner, President of
7 Bottlebrush Financial, Inc., general partner of Bottlebrush, and Robert Glusman, general partner
8 of Leghorn (collectively, the “Representatives”). Plaintiffs’ Counsel Decl., ¶ 18, Exh. 1, ¶ 4.
9 These awards are reasonable given their extraordinary services on behalf the California Limited
10 Partners and the Investors. Plaintiffs’ Counsel Decl., ¶ 32, Exhs. 5 and 6.

11 Courts in derivative actions, as in class actions, grant incentive awards to reward the
12 public service performed by plaintiffs in contributing to the enforcement of the law. See, e.g., In
13 re Cendant Corp. Derivative Action (D.N.J. 2002) 232 F.Supp.2d 327, 344. These awards are
14 discretionary. *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 412. Courts
15 routinely permit such incentive awards to compensate named plaintiffs in representative actions
16 for the services they provided and risks incurred during the litigation; indeed “[i]ncentive awards
17 are fairly typical in class action cases.” *Cellphone Termination Fee Cases* (2010) 186
18 Cal.App.4th 1380, 1393-1394 (approving \$10,000 incentive award); *Galvez v. Salon*, 2016 Cal.
19 Super. LEXIS 349 (Cal. Super. Ct. Apr. 19, 2016 (approving \$10,000 incentive award); *Willner*
20 *v. Manpower Inc.*, 2015 U.S. Dist. LEXIS 80697, 29-30 (N.D. Cal. June 20, 2015) (approving
21 \$7,500 incentive award); *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal.
22 Jan. 2, 2014) (approving \$10,000 incentive award). [Find cases supporting \$25,000 or more.]

23 “[C]riteria courts may consider in determining whether to make an incentive award
24 include: 1) the risk to the class representative in commencing suit, both financial and otherwise;
25 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount
26 of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the
27 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”

1 Id. (internal quotations and citations omitted). Here, the proposed awards of \$25,000, for each of
2 the Representatives are amply justified. Mr. Hall, Mr. Heimoff, Ms. Gardner, and Mr. Glusman
3 performed hundreds of hours of work both before and after the action was filed and over the
4 course of seven years prosecuting this case for the benefit of other investors. Plaintiffs' Counsel
5 Decl., ¶, Exh. 5 at ¶ 9, and Exh. 6 at ¶ 6. In doing so, they each sacrificed a plethora of other
6 business, employment and financial opportunities. And like all victims of the notorious Madoff
7 Ponzi scheme, they will only recover a fraction of their losses. Furthermore, they endured
8 considerable personal anguish as a result of the loss of their respective life savings through the
9 California Limited Partnerships and Madoff. Accordingly, this Court should exercise its
10 discretion to compensate the Representatives and award them each \$25,000. Plaintiffs' Counsel
11 Decl., ¶ 32.

12 The Defendants do not object to the requested incentive awards, further weighing in favor
13 of their approval. Plaintiffs' Counsel Decl., ¶ 18, Exh. 1, ¶ 11. The proposed incentive awards
14 totaling \$25,000 each to will compensate them for their efforts in the case, are fully supported by
15 the law, and should be approved.

16 ///

17 ///

18 ///

19 ///

20 //

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

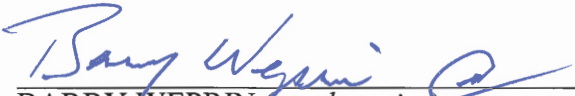
27 ///

1 **X. CONCLUSION**

2 For the reasons stated herein, Plaintiffs respectfully request the Court (i) grant Plaintiffs'
3 Plaintiffs' Motion For Final Approval Of the Derivative Settlement; (ii) approve attorneys' fees
4 and litigation costs and expenses awards in the amount of \$4,000,000; (iii) approve the requested
5 incentive awards totaling \$25,000 to each of the named representative plaintiffs; and (iv) enter
6 the proposed final order of approval of settlement and attorneys' fees and costs accordingly.
7 Plaintiffs' Counsel Decl., ¶ 43, Exh. 13.

8
9 DATED: January 19, 2017

MILBERG LLP

10
11 By: 
12 BARRY WEPRIN (*pro hac vice*)
13 bweprin@milberg.com
14 One Pennsylvania Plaza, 50th Floor
15 New York, NY 10119
16 Telephone: (212) 594-5300
17 Facsimile: (212) 868-1229

MILBERG LLP
2850 Ocean park Boulevard, Suite 300
Santa Monica, CA 90405
Telephone: (213) 617-1200
Facsimile: (213) 868-1229

18 SEEGER WEISS LLP
19 STEPHEN A. WEISS (*pro hac vice*)
20 sweiss@seegerweiss.com
21 CHRISTOPHER M. VANDE KIEFT (*pro hac vice*)
22 cvandekieft@seegerweiss.com
23 One William Street
24 New York, NY 10004
25 Telephone: (212) 584-0700
26 Facsimile: (212) 584-0799

Attorneys for Plaintiffs Douglas Hall and Steven Heimoff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**WEINTRAUB TOBIN CHEDIAK COLEMAN
GRODIN LAW CORPORATION**



By:

MARVIN GELFAND (SBN 53586)
mgelfand@weintraub.com
10250 Constellation Boulevard, Suite 2900
Los Angeles, CA 90067
Telephone: (310) 858-7888
Facsimile: (310) 550-7191

*Attorneys for Plaintiff and Cross Defendant
Bottlebrush Investments, L.P. and Leghorn
Investments, Ltd.*

1 **PROOF OF SERVICE**

2 I am a citizen of the United States, employed in the City and County of Los
3 Angeles, California. My business address is 10250 Constellation Blvd., Suite 2900, Los
4 Angeles, California 90067. I am over the age of 18 years and not a party to the within
5 action. On today's date, I caused to be served the following:

6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
7 PLAINTIFFS' MOTION FOR FINAL APPROVAL OF DERIVATIVE
8 SETTLEMENT AND FOR PLAINTIFFS' ATTORNEYS' FEES AND INCENTIVE
9 AWARDS IN CONNECTION WITH THE DERIVATIVE SETTLEMENT**

10 I am readily familiar with the firm's practice of collection and processing
11 correspondence for mailing in the ordinary course of business. Under this practice,
12 correspondence is collected, sealed, postage thereon fully prepaid, and deposited the same
13 day with the U. S. Postal Service.

14 I caused the above documents to be served on the parties in this action by placing them
15 in a sealed envelope in the designated area for outgoing mail, addressed as shown below.

16 I caused the above documents to be personally delivered to the addressee(s) set forth
17 below.

18 I caused the above documents to be served on the parties in this action by causing them
19 to be delivered via Federal Express, for next-day delivery to the addressee(s) set forth
20 below.

21 I caused the above documents to be served on the parties in this action by transmitting
22 them via facsimile to the addressee(s) indicated below.

23 I transmitted a copy of the document(s) to be sent from e-mail address
24 jandre@weintraub.com to the persons at the e-mail addresses listed in the Service List. I
25 did not receive, within a reasonable time after the transmission, any electronic message or
26 other indication that the transmission was unsuccessful.

27 **SEE ATTACHED SERVICE LIST**

28 I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on January 20, 2017, in Los Angeles, California.

29 
30 _____
31 Janet Andre

SERVICE LIST

1 Jerry L. Marks
2 Milbank Tweed, Hadley & McCloy LLP
3 601 S. Figueroa Street, 30th Floor
4 Los Angeles, CA 90017
5 Tel: 213.892.4000
6 Fax: 213.629.5063
7 jmarks@milbank.com

Attorneys for Defendant Pamela Chais, as executor to the estate of Stanley Chais, Pamela Chais, personally, Appleby Productions, Ltd, Appleby Productions, Ltd Defined Contribution Plan, Appleby Productions, Ltd Money Purchase Plan, Appleby Productions, Ltd Profit Sharing Plan and 1991 Chais Family Trust

6 Michael L. Hirschfeld
7 Andrea G. Hood
8 Milbank Tweed, Hadley & McCloy LLP
9 One Chase Manhattan Plaza
10 New York, NY 10005
11 Tel: 212.530.5000
12 Fax: 212.530.5210
13 mhirschfeld@milbank.com
14 ahood@milbank.com

Attorneys for Defendant Pamela Chais, as executor to the estate of Stanley Chais, Pamela Chais, personally, Appleby Productions, Ltd, Appleby Productions, Ltd Defined Contribution Plan, Appleby Productions, Ltd Money Purchase Plan, Appleby Productions, Ltd Profit Sharing Plan and 1991 Chais Family Trust

11 Steven Jay Katzman
12 Anthony Bisconti
13 Bienert Miller & Katzman, PLC
14 903 Calle Amanecer, Suite 350
15 San Clemente, CA 92673
16 Tel: 949.369.3700
17 Fax: 949.369.3701
18 skatzman@bmkattorneys.com
19 tbisconti@bmkattorneys.com

Attorneys for Defendants The Chais-Related Entities

16 Andrew H. Sherman
17 Sills Cummins & Gross LLP
18 The Legal Center
19 One Riverfront Plaza
20 Newark, New Jersey 07102
21 Tel: 973.643.7000
22 Fax: 973.643.6500
23 asherman@sillscummins.com

Attorneys for Defendants The Chais-Related Entities

21 William K. Mills
22 Theodore Frank
23 Justin D. Denlinger
24 Parker Mills LLP
25 801 South Figueroa Street, Suite 1200
26 Los Angeles, CA 90017
27 Tel: 213.622.4441
28 Fax: 213.622.1444
29 mills@psmlawyers.com
30 frank@psmlawyers.com
31 denlinger@psmlawyers.com

Attorneys for Defendants Brighton Investments, The Popham Company, and the Lambeth Company

27 Allan E. Ceran
28 Burke Williams & Sorensen LLP
444 South Flower Street
Los Angeles, CA 90071
Tel: 213.236.0600
aceran@bwslaw.com

Attorneys for Defendants Francis X. Mantovani and Halpern & Mantovani

1 Barry Weprin
2 Leigh Smith
3 Milberg LLP
4 One Pennsylvania Plaza
5 New York, NY 10119
6 Tel: 212.594.5300
7 Fax: 212.868.1229
8 bweprin@milberg.com
9 ismith@milberg.com

Attorneys for Plaintiffs Douglas Hall and
Steven Heimoff

6 Seeger Weiss LLP
7 Stephen A. Weiss
8 Christopher M. Van de Kieft
9 Seeger Weiss, LLP
10 One William Street
11 New York, NY 10004
12 Tel: 212.584.0700
13 sweiss@seegerweiss.com
14 cvandekieft@seegerweiss.com

Attorneys for Plaintiffs Douglas Hall and
Steven Heimoff

11 Monte S. Gordon
12 Attorney at Law
13 11355 West Olympic Boulevard
14 Suite 300
15 Los Angeles, CA 90064
16 Tel: 310.914.9500
17 msg@gordonlawoffice.net

Attorneys for Plaintiff Helen Epstein Living
Trust

15 Frances T. Grunder
16 Kathrin Sears
17 Alexandra Robert Gordon
18 Deputy Attorney General
19 455 Golden Gate Avenue, Suite 11000
20 San Francisco, CA 94102
21 Tel: 415.703.5500
22 Fax: 415.703.5480
23 alexandra.robertgordon@doj.ca.gov

Attorneys for Plaintiff, The People of the
State of California

20 Martin R. Cramer
21 623 Maitland Avenue
22 Teaneck, NJ 07666
23 martcramer@gmail.com

Attorneys for Plaintiff

22 Marvin Gelfand
23 Weintraub Tobin Chediak Coleman Grodin
24 10250 Constellation Blvd., Suite 2900
25 Los Angeles, CA 90067
26 Tel: 310.858.7888
27 Fax: 310.550.7191
28 mgelfand@weintraub.com

Attorneys for Plaintiff and Cross-Defendant
Bottlebrush Investments, L.P.