

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>)	
UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
-against-)	No. 10 Civ. 9398 (TPG)
)	
\$7,206,157,717 ON DEPOSIT AT)	ECF CASE
JP MORGAN CHASE BANK, N.A.,)	
IN THE ACCOUNTS SET FORTH ON)	
SCHEDULE A,)	
)	
Defendant in rem.)	
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**MOTION TO INTERVENE AND TO AMEND, MODIFY OR
RESCIND STIPULATION AND SETTLEMENT ORDER AND
INCORPORATED SUPPORTING MEMORANDUM OF LAW**

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Adele Fox (“Fox”), through her undersigned attorneys, individually and on behalf of a similarly situated class of Madoff Ponzi scheme victims (“Fox Plaintiffs”), hereby moves pursuant to Fed. R. Civ. P. 24(a)-(b) and 59(e) to intervene in this action and modify or rescind the Stipulation and Order of Settlement (the “Forfeiture Settlement Stipulation”) entered in this case on December 17, 2010.

INTRODUCTION

The Forfeiture Settlement Stipulation is improper because it wrongly grants “victim” status to the Madoff bankruptcy trustee and permits the trustee to receive funds forfeited from the Picower estate far in excess of what he could legitimately recover in the bankruptcy court, all to the detriment of the vast majority of Madoff Ponzi scheme victims. Such victims will receive nothing from the approximately \$7.2 billion forfeited by the Picower Defendants (defined below) to the United States Attorney’s Office (the “Government”). Although not set forth in the Forfeiture Settlement Stipulation itself, the Government has agreed to give the Madoff bankruptcy trustee control over the distribution of all \$7.2 billion of the forfeiture funds. The bankruptcy trustee intends to distribute the \$7.2 billion only to the small minority of Madoff victims he deems to have valid claims under the Securities Investment Protection Act (“SIPA”). However, SIPA does not apply to the remission process in forfeiture cases, which, rather, is governed by other applicable statutes, regulation and Department of Justice Manual provisions. Under this applicable law, the Government is required to distribute the forfeited funds to *all* “victims,” not just the approximately 12% already selected by the trustee.

It appears that the Court and perhaps the Government were not made aware of all of the relevant facts and law at issue, or that the Government has in effect elevated the bankruptcy trustee’s preferred class of victims over the majority. As the Government has invoked this

Court's jurisdiction in seeking approval of the Forfeiture Settlement Stipulation, the Court should now examine whether the Settlement comports with applicable law and is otherwise equitable. In fact, the Settlement does not comport with applicable law and is not equitable.

FACTUAL AND PROCEDURAL BACKGROUND

The Majority Of Madoff Victims Have Been Denied Recovery In The Madoff Bankruptcy

Fox is a victim of the Madoff Ponzi scheme. Fox is an 86-year old retired New York City school secretary who had accounts at Bernard L. Madoff Investment Securities ("BLMIS"). Fox lost her life savings in the Madoff fraud. Fox originally invested in Madoff in the early 1990s, and she made numerous mandatory withdrawals from her accounts over time.¹

On December 15, 2008, the Trustee was appointed under the Securities Investor Protection Act of 1970, as amended ("SIPA"), in the consolidated liquidation of BLMIS and Bernard L. Madoff (the "SIPA Liquidation"). The Trustee denied Fox's claim in the SIPA Liquidation because Fox was determined to have no "net equity" in her BLMIS retirement accounts, because she withdrew more cash than she deposited.

As of December 31, 2010, the Trustee had considered 16,137 claims filed by Madoff victims. The Trustee only approved 2,372 of those claims.² The Trustee denied the claims of almost 14,000 Madoff victims, many of whom are Fox Plaintiffs. The Trustee has stated categorically that these victims will never receive any distribution from the SIPA Liquidation. In fact, the Trustee has written to Fox and others, many of whom have been rendered penniless, demanding repayment of the amount representing withdrawals in excess of deposits.

¹ The IRS requires IRA withdrawals beginning at age 70½, which are taxable income. See I.R.C. §§ 401(a)(9), 408(d)(1).

² See <http://www.madofftrustee.com/Status.aspx> (as viewed on December 31, 2010).

The Fox Plaintiffs have suffered substantial damages as a result of the Madoff fraud, even though they may have received the return of their principal investment. Madoff never invested the Fox Plaintiffs' principal in any securities. Therefore, these BLMIS investors paid substantial taxes on the fictitious profits that BLMIS reported in their accounts, which amounts can never be fully recovered.³ Moreover, the Fox Plaintiffs, many of whom had invested with BLMIS for a decade or more, lost the reasonable return on the principal they invested with Madoff.⁴

The Fox Plaintiffs' Class Action

On February 16, 2010, the Fox Plaintiffs filed a class action complaint against Jeffrey M. Picower and the many entities that he controlled (collectively, the "Picower Defendants") in the United States District Court for the Southern District of Florida styled *Fox v. Picower, et al.* (Case No. 10-cv-80252) (the "Fox Class Action"). The Fox class consists of the majority of Madoff victims that have no allowed claim in the SIPA Liquidation.

It is now common knowledge that Picower was an investor in BLMIS for at least 20

³ Members of the Fox class have lost money because, *inter alia*, they paid federal and state income taxes on non-existent income and gains (*i.e.*, "paper" gains) and in many cases will not be able to recoup all these losses. First, the IRS has permitted Madoff victims to deduct only 95% of their losses as a "theft loss." *See* Rev. R. 2009-9; Rev. Proc. 2009-20. Second, many of the class members, because of their individual circumstances, will not be able to recover all of their tax losses because the loss can only be carried back five years and forward twenty years, and some individuals, such as Fox, will not have sufficient future income and/or will not live long enough to recoup the remaining tax payments into the future. Third, certain Fox class members will not be able to recover substantial amounts of state income taxes they paid because, for among other reasons, some states do not recognize these losses as deductions against future income, others do not allow federal itemized theft deductions for state income tax purposes and yet others limit the amount of deductions that a taxpayer can take. *See, e.g.*, Connecticut Dep't of Revenue Services, Connecticut Announcement No. 2009(7); *New Jersey Tax Guide*, CCH (2009) at ¶ 201; *N.Y. Tax Law* § 615(f) (McKinney's 2009).

⁴ For example, if someone invested \$1 million in BLMIS ten years before Madoff's arrest in December 2008, the \$1 million was stolen that instant. In a civil action, the investor would be entitled to the return of principal plus statutorily mandated prejudgment interest. Depending on the applicable prejudgment interest rates, the investor's recoverable damages far exceed \$1 million (*i.e.*, the principal invested).

years and that Picower withdrew a net amount of at least \$7.2 billion from BLMIS. Fox has alleged that the Picower Defendants knowingly participated in the Madoff Ponzi scheme and conspired with Madoff and BLMIS to defraud members of the Fox Plaintiffs. A copy of the Fox Plaintiffs' Amended Complaint is attached as **Exhibit "A"**.

The Fox Plaintiffs allege individual damages, and that the Picower Defendants are liable for those damages based on claims of, or under, civil conspiracy, the Florida Civil Remedy For Criminal Practices Act ("Florida RICO"), for unjust enrichment and conversion. Based on the considerable size of the Fox Plaintiffs class and the damages they have suffered, the Picower Defendants' liability to the class is likely in excess of \$1 billion.

**The Trustee's Claims Against Picower Are Limited
In Scope And In Recovery As A Matter Of Law**

On May 13, 2009, the Trustee filed an adversary complaint against all of the Picower Defendants styled *Picard v. Picower, et al.*, Adv. Pro. No. 09-1197 (BRL). The only viable claims the Trustee asserted against the Picower Defendants are under the Bankruptcy Code for avoidance of preferential and fraudulent transfers. Because the Trustee stands in the shoes of the criminals, Madoff and BLMIS, the Trustee is barred by the doctrine of *in pari delicto* from suing the co-conspirator Picower Defendants for tort damages. *See, e.g., Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114 (2d Cir. 1991).

The Trustee's recovery against the Picower Defendants is further limited to fraudulent transfers dating back six years from the filing of the bankruptcy under the applicable statutes of limitation (the "Six-Year Transfers"). According to the Trustee's Complaint against the Picower Defendants, the amount of the Six-Year Transfers is \$2.4 billion.⁵

⁵ The Trustee claims that he is entitled to recover more than the Six-Year Transfers under bankruptcy law. The Trustee is incorrect. *See* 7/31/09 Picower Defs. Memo. of Law in Supp. of Mot. to Dismiss at 25-43 (Adv. Pro. No. 09-1197 (BRL), Doc. No. 6.)

The Injunction Against The Fox Action

Upon application of the Trustee, the Bankruptcy Court entered a temporary injunction precluding Fox from prosecuting the Fox Class Action. Fox's appeal of the injunction is currently pending before the Honorable John G. Koeltl in the case styled *Picard v. Fox*, No. 10-CV-4652 (JGK) (S.D.N.Y). The main issue on appeal is whether Fox's claims against the Picower Defendants "belong to the Trustee." If they do not, as Fox contends, then the Fox Plaintiffs cannot be enjoined from pursuing their tort claims against the Picower Defendants.

**The Madoff Bankruptcy And Forfeiture Settlements
Exclude The Majority Of Madoff Victims From Any Recovery**

On December 17, 2010, the Government filed a verified complaint for forfeiture in this action in the amount of \$7,206,157,717 (the "Forfeited Funds"), which represents the total amount that the Picower Defendants allegedly received traceable to the Ponzi scheme. On the same day, the Government and the Picower Defendants signed the Forfeiture Settlement Stipulation, whereby the Picower Defendants agreed to turn over to the Government all of the Forfeited Funds.

Also, on or about December 17, 2010, the Picower Defendants entered into a settlement with the SIPA Trustee (the "Bankruptcy Settlement") for \$5,000,000,000 (the "Bankruptcy Settlement Amount"). A copy of the Trustee's Memorandum of Law in Support of the Trustee's Motion to approve the Bankruptcy Settlement is attached as **Exhibit "B"**. To fund the Bankruptcy Settlement, the Forfeiture Stipulation provides that the Government will transfer \$5,000,000,000 of the Forfeited Funds to the SIPA Trustee for distribution to BLMIS customers with allowable claims. Therefore, the majority of the Ponzi scheme victims, including the Fox Plaintiffs, will not receive any of these funds. The only beneficiaries will be 2,000 of the 16,000 victims.

The Forfeiture Settlement Stipulation does not discuss at all what is to happen with the remaining \$2.2 billion (approximately) of forfeited funds. However, the papers filed by the Trustee in the Bankruptcy Court disclose that the Government will retain the remaining \$2.2 billion (the “Government Settlement Funds”), which will be “distributed to customers of BLMIS through the process of remission, consistent with Department of Justice Regulations.” *See* Ex. B at 12-13. Neither the Trustee’s papers nor the Forfeiture Settlement Stipulation provide any details regarding how the Government Settlement Funds are to be distributed or who is to administer those distributions.

However, based on the Government’s December 17, 2010, press release, the Trustee has been appointed Special Master to administer the distribution of all \$7.2 billion, which he will only distribute to the approximately 12% of Madoff victims he has determined have allowable claims under SIPA.⁶ As discussed below, such a limited distribution is *not* “consistent with Department of Justice Regulations.”

MOTION TO INTERVENE

The Picower Defendants and the Trustee were well aware of the Fox Action at the time the Stipulation was signed. The Government was also likely aware of the Fox Action. However, Fox did not receive notice of the commencement of this forfeiture action or of the Forfeiture Settlement Stipulation. Fox would have objected had she been given notice and an opportunity

⁶ A copy of the Government’s press release is attached as **Exhibit “C”** hereto, and provides as follows:

The distribution of funds to victims will be administered by [the Trustee] in his dual capacity as the newly-appointed Department of Justice Special Master to assist the [Government] in connection with the victim remission proceedings and as the court-appointed trustee overseeing the liquidation of BLMIS under SIPA. . . .

The [Trustee] said: “Every penny of the \$7.2 billion settlement will be distributed to BLMIS customers *with valid claims*.”

(Ex. C at 1, 2.)

to be heard. Therefore Fox should be permitted to intervene in these proceedings in order to protect the Fox Plaintiffs' interest in the Forfeited Funds.

I. Fox May Intervene As A Matter of Right

Intervention as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2) is appropriate where: (1) made by "timely motion;" (2) the movant "claims an interest relating to the property or transaction that is the subject of the action;" (3) the movant "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest;" and (4) the parties to the action fail to "adequately represent [the movant's] interest."

Fox has satisfied each of the four elements for intervention as a matter of right. First, Fox's motion is timely. It has been filed less than one month after this Court issued its Stipulation and Order of Settlement, dated December 17, 2010. *See, e.g., Slaughter v. Uponor, Inc.*, 2010 WL 1994798, at *4 (D. Nev. May 18, 2010) (finding intervention filed within one month of dismissal timely). The motion is also made within the twenty-eight days required under Federal Rule of Civil Procedure 59(e) for filing a motion to alter or amend a judgment, and well within the sixty days after the first day of publication so ordered by this Court within which any person claiming an interest in the Forfeited Funds must file a claim.

Second, as a "victim" of the Madoff Ponzi scheme, Fox has a current and non-contingent interest in the forfeited funds. *See* 28 C.F.R. § 9.8(a) (discussed in detail below).

Third, if Fox is not permitted to intervene, her interest in the forfeited funds will, as a "practical matter," be impaired. Indeed, Fox's interest will be extinguished. Fox and the other Fox Plaintiffs will not receive any distribution from any of the forfeited funds under the current terms of the Forfeiture Settlement Stipulation and Bankruptcy Settlement. This is the case notwithstanding the fact that the Fox Plaintiffs represent the majority of Ponzi scheme victims.

The burden of establishing impairment is minimal, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997), and Fox has met that burden here.

Finally, the parties to this forfeiture proceeding do not adequately represent the Fox Plaintiffs' interest in the forfeited funds. The Picower Defendants, who have been sued by the Fox Plaintiffs, obviously do not represent the interest of the Fox Plaintiffs. At least at this point, the Government does not appear to be representing Fox Plaintiffs' interests. The Government has stipulated to a plan of remission that excludes the majority of Madoff Ponzi scheme victims. The Trustee certainly does not represent the interests of the Fox Plaintiffs.

II. Alternatively, Permissive Intervention Is Appropriate

Alternatively, this Court should permit Fox to intervene under Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention is granted when the request is made by "timely motion" and when the movant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B).

As set forth above, there is no question that Fox's motion is timely. Moreover, the Fox Plaintiffs' claims against the Picower Defendants share common questions of law and fact with the Government's claims underlying the forfeiture. The claims arise out of the same criminal conduct of Madoff and the Picower Defendants' participation in the scheme. The Fox Class Action against the Picower Defendants includes a civil conspiracy claim and a state RICO claim based on mail and wire fraud. Although the Government's Complaint in this action is unavailable on Pacer, making a detailed account of all of the questions of law and fact common to the Government's and the Fox class members' claims impossible, upon information and belief the overlap is likely to be substantial.

**OBJECTION AND REQUEST TO AMEND OR MODIFY
THE FORFEITURE SETTLEMENT STIPULATION**

The Forfeiture Settlement Stipulation does not clearly set forth the details of how the Forfeited Funds are to be distributed. But it is now clear that the plan of remission will exclude the majority of Madoff victims and the Fox Plaintiffs. The Court should grant the instant motion to amend, modify or rescind the Forfeiture Settlement Stipulation because it violates the pertinent statutes, provisions of the Code of Federal Regulations and sections of the United States Attorney Manual that address the disposition of forfeited funds. Specifically, the Forfeiture Settlement Stipulation (1) grants the SIPA trustee “victim” status when the trustee, as representative of the bankrupt Estate, stands in the shoes of the malefactor BLMIS and therefore, as a matter of law, is not a “victim” to which forfeited money should be remitted; and (2) favors those defined by the SIPA trustee as “victims” to the total exclusion of movants, who also meet the definition of “victim” under 28 C.F.R. § 9.2(v).

I. Statutory And Administrative Framework

18 U.S.C. § 981(e)(6) authorizes the Attorney General and certain named others to transfer forfeited property “as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.” Pursuant to 28 C.F.R. § 9.8(a), “A victim, as defined in § 9.2(v), of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property” if such person satisfies the requirements otherwise set forth in this same section. As relevant here, § 9.2(v) defines “victim” as “a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture.”

Unquestionably, the Fox Plaintiffs are “victims” because each suffered “a pecuniary loss

as a direct result” of Madoff’s fraud, that is, Madoff took their money under the pretext that it would be lawfully invested and then stole it. Each movant also satisfies the five additional requirements set forth in § 9.8(a), in that each can demonstrate:

- (1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;
- (2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;
- (3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;
- (4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and
- (5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

Further, none of the listed reasons to deny remission exist with respect to movants, since:

(1) the victims’ losses may reasonably be calculated; (2) the total amount of remission is not unreasonably small compared with the government’s administrative offenses; and (3) the amount of remission compared to the number of victims does not make granting remission impracticable. *See* § 9.8(d)(1)-(3).

Finally, “In accordance with the Crime Victims’ Rights Act (18 U.S.C. § 3771) and the Attorney General’s authority, the Department of Justice gives priority distribution of forfeited

assets to valid owners, lienholders, federal financial regulatory agencies, and victims (in that order) through remission or restoration.” U.S. Attorney’s Manual, § 9-121.100. Recovery among victims is, generally, pro rata pursuant to 28 C.F.R. § 9.8(e), with possible exceptions set out in the margin.⁷

II. The Stipulation Violates The Applicable Statutes, Regulations And DOJ Manual Sections

A. **The Trustee is not a “victim” entitled to remission but rather stands in the unworthy shoes of the Bankrupt Estate**

The Government is authorized to remit forfeited funds to “valid owners, lienholders, federal financial regulatory agencies, and victims.” U.S. Attorney’s Manual, § 9-121.100 (citing 18 U.S.C. § 3771). The BLMIS Trustee is none of these. Although BLMIS’s clients were surely “victims” of the bankrupt’s thievery, the Trustee does not stand in the shoes of BLMIS’s *clients*; rather, the Trustee “stands in the shoes of the debtor and can only assert claims that the debtor could have asserted prior to filing for bankruptcy.” *Wornick v. Gaffney*, 544 F.3d 486 (2d Cir. 2008) (citing *In re CBI Holding Co.*, 529 F.3d 432, 447 (2d Cir. 2008)). Since BLMIS surely could not have asserted a claim as a “victim” of its own wrongdoing, neither can the Trustee. For this reason, the Stipulation and Settlement Order wrongly remits forfeited funds to the

⁷ 28 U.S.C. § 9.8(e) provides that the following factors may be considered in “establishing appropriate priorities in individual cases”

- (1) The specificity and reliability of the evidence establishing a loss;
- (2) The fact that a particular victim is suffering an extreme financial hardship;
- (3) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related persecution or civil action; and
- (4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

Trustee. Instead, an independent party should be appointed who can assure that remitted funds are fairly distributed to all victims rather than to the favored sub-class of victims designated by the Trustee.

Additionally, the Trustee, standing in the shoes of BLMIS, cannot satisfy the third requirement for victim status enumerated under 28 C.F.R. § 9.8(a), *i.e.* that “The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture.”

In a very real sense the Forfeiture Settlement Stipulation attempts, improperly, an end-run around the limitation upon the Trustee’s recovery to preferential and fraudulent transfers, and seeks to remit to the Trustee moneys obtained by Picower through tortious conduct. The Trustee has no standing to claim such recovery. *See supra* at 4.

For these reasons, the Forfeiture Settlement Stipulation wrongly remits forfeited funds to the Trustee.

B. The Stipulation violates 28 C.F.R. § 9.8

The Forfeiture Settlement Stipulation violates 28 C.F.R. § 9.8(e), which provides that the “Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property.” 28 C.F.R. § 9.8(e).⁸ Here, there is no question but that the Picower Estate is insufficient to compensate all Madoff/Picower victims for their losses (estimated at over \$50 billion). Equally true is that the SIPA Trustee does not represent and has no intention of distributing Estate funds to all victims of

⁸ Under 28 C.F.R. 9.2(t), “[t]he term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to § 9.1(b).” Under 28 C.F.R. § 9.1(b)(2), “[r]emission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice,” and within the Criminal Division, said functions are delegated to the AFMLS chief. Accordingly, there can be no dispute but that the DOJ should have followed 28 C.F.R. § 9.8(e) in negotiating and executing the Stipulation and Settlement Order.

the BLMIS fraud. As such, the Forfeiture Settlement Stipulation, which designates \$5 billion from the Picower Estate to the Trustee for distribution to SIPA Trustee-recognized victims *only*, violates 28 C.F.R. § 9.8(e) by failing to “grant remission on a pro rata basis to recognized victims” of the BLMIS fraud, given that “petitions cannot be granted in full.” Because the Forfeiture Settlement Stipulation does not take into account any of these other victims of the BLMIS fraud, the Stipulation and Settlement Order must be modified, amended or rescinded.

Moreover, the Trustee should not be permitted to administer distribution of the Forfeiture Funds. The Trustee has predetermined that the Fox Plaintiffs are not entitled to any distributions from funds under his control. The Trustee has threatened many of the Fox class members with “claw back” actions, thereby placing him in an adversarial position with respect to Fox herself and many Fox Plaintiffs.

In addition, the Trustee has been attempting to permanently extinguish the Fox Plaintiffs’ claims. But he cannot do so as a matter of law because he does not own them. *See, e.g., In re Johns-Manville*, 517 F.3d 52 (2d Cir. 2008). The Trustee is attempting to do indirectly what he may not do directly. Based on the undisputed facts, it is reasonable to conclude that the Trustee has negotiated a settlement far in excess of the amount he is entitled to receive from Picower Defendants in order to divest the Picower Defendants of the assets that should be available to satisfy the valid and independent claims asserted by the Fox Plaintiffs. The Trustee seeks to use the Forfeiture Settlement Stipulation to make an end-run around the *in pari delicto* doctrine and to take more than he is entitled to from the Picower Defendants, all in order to deprive the Fox Plaintiffs of their rightful share of the Forfeiture Funds.

Any plan of remission should be administered by the Government or Government designee who can impartially determine whether all Ponzi scheme victims, including the Fox

Plaintiffs, should receive a distribution of the Forfeited Funds.

Finally, the Forfeiture Settlement Stipulation has the effect of denying the Fox Plaintiffs' due process of law under the Constitution and violating Constitutional separation of powers. At the eleventh hour, the Government has stepped in and stripped the Picower Defendants of assets that should be available to satisfy the valid and pending claims of the Fox Plaintiffs (and any other creditors of the Picower Defendants). The Government has in effect taken power away from the civil justice system and the court to adjudicate disputes and provide the appropriate remedy to aggrieved parties.

WHEREFORE, Fox, on her own behalf and on behalf of those similarly situated, respectfully requests that this Court enter an Order as follows: (1) requiring the Government to more fully disclose the details of its plan of remission; (2) thereafter provide Fox with notice of the detailed plan of remission and an opportunity to be heard; (3) stay any further proceedings relating to the remission of the Forfeiture Funds; and thereafter (4) modify, amend, or vacate the current Forfeiture Settlement Stipulation to include terms consistent with Fox's objections set forth herein.

Dated: New York, New York
January 14, 2011

Respectively submitted,

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