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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:
	:
BERNARD L. MADOFF INVESTMENT	:
SECURITIES LLC,	:
	:
Debtor.	:
-----X	
IRVING H. PICARD, Trustee for the Liquidation	:
of Bernard L. Madoff Investment Securities LLC,	:
	:
Plaintiff,	:
	:
STANLEY SHAPIRO, <i>et al.</i> ,	:
	:
Defendants.	:
-----X	

Case No. 08-99000 (SMB)
Adv. Proc. No. 08-01789 (SMB)
SIPA LIQUIDATION

Adv. Proc. No. 10-05383 (SMB)

**MEMORANDUM DECISION GRANTING IN PART AND
DENYING IN PART DEFENDANTS' MOTION TO DISMISS
THE TRUSTEE'S SECOND AMENDED COMPLAINT**

A P P E A R A N C E S:

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Rachel Shapiro, David Shapiro 1989 Trust,*

*Leslie Shapiro Citron, Leslie Shapiro 1985 Trust,
Trust F/B/O [A.J.C.], [K.F.C.], and [L.L.C.],
Kenneth Citron, Trust F/B/O [W.P.S.] & [J.G.S.]*
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STUART M. BERNSTEIN
United States Bankruptcy Judge:

Defendant Stanley Shapiro and members of his family owned and/or controlled multiple accounts with Bernard L. Madoff Investment Securities LLC (“BLMIS”). For nearly thirty years before it collapsed, BLMIS made numerous transfers to the owners of these accounts. The BLMIS trustee, Irving H. Picard (the “Trustee”), has sued Stanley Shapiro, his family and their trusts (collectively, the “Defendants”) as initial transferees and subsequent transferees to avoid and recover these transfers. (*See* Second Amended Complaint, dated July 8, 2014 (“SAC”) (ECF Doc. # 33).)

The Defendants have moved to dismiss the SAC. For the reasons that follow, the Defendants’ motion is denied with respect to Count I, granted in part and denied in part with respect to Counts II through VII and granted with respect to Counts VIII through XI.

BACKGROUND

I. The Ponzi Scheme¹

The background information is taken from the well-pleaded factual allegations of the SAC and other information that the Court may consider on a motion to dismiss for failure to state a claim. Bernard L. Madoff, through BLMIS, operated a Ponzi scheme inducing investors to open discretionary trading accounts with BLMIS for the ostensible purpose of buying and selling securities. Madoff purported to invest in a basket of stocks within the Standard & Poor's 100 Index ("S&P 100 Index") that was intended to mimic the S&P 100 Index. (¶ 22.)² As a hedge, BLMIS would sell call options and buy put options on the S&P 100 Index. (*Id.*) Madoff supposedly timed the purchases and sales to maximize the strategic timing of trades, and at times, the funds would be out of the market and completely invested in U.S. Treasury securities. (¶ 23.) None of this actually happened. No securities were purchased, and instead, BLMIS used the money invested by BLMIS customers to make distributions to other BLMIS customers. (¶ 24.)

Madoff was arrested on December 11, 2008 (the "Filing Date"). (¶ 11.) Contemporaneously, the Securities and Exchange Commission initiated a fraud action against him. (*Id.*) Upon application by the Securities Investor Protection Corporation ("SIPC") made pursuant to the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. §§ 78aaa, *et seq.*, the District Court appointed the Trustee, and removed the case to this Court. (¶ 12.) Madoff

¹ Headings are derived from the SAC. They are descriptive only, and do not necessarily imply the Court's view of the allegations.

² The parenthetical citations to paragraph numbers refer to the paragraphs in the SAC.

pleaded guilty on March 12, 2009 to an 11-count criminal information, admitting he “operated a Ponzi scheme through the investment advisory side of [BLMIS].” (¶ 16.)

II. The Defendants

Stanley Shapiro (“Stanley”) and his wife Renee Shapiro (“Renee,” and together with Stanley, the “Shapiros”) are New York City residents. (¶ 30.) Leslie Shapiro Citron (“Leslie”) and David Shapiro (“David”) are the Shapiros’ daughter and son, respectively. (¶¶ 32-33.) Rachel Shapiro (“Rachel”) is David’s wife, (¶ 32), and Kenneth Citron (“Kenneth”) is Leslie’s husband. Kenneth and Leslie are sometimes referred to collectively as “Citrons”. (¶ 33.)

The Shapiros are general partners of S&R Investment Co. (“S&R”), a New York partnership, (¶ 31), and the trustees of (i) the LAD Trust, established for the benefit of their children, (¶ 34), (ii) the David Shapiro 1989 Trust (the “David Trust”) and (iii) the Leslie Shapiro 1985 Trust (the “Leslie Trust”). (¶ 35.) David is the sole trustee of Trust f/b/o [J.G.S.] and [W.P.S.], David’s and Rachel’s children (the “Shapiro Children’s Trust”), (¶ 36), and Kenneth is the trustee of the Trust f/b/o [A.J.C.], [K.F.C.], [L.C.C.], Kenneth’s and Leslie’s children (the “Citron Children’s Trust” and together with the “Shapiro Children’s Trust,” the “Children’s Trusts”). (¶ 37.)

S&R, the David Trust, the Leslie Trust, David, Leslie and Kenneth received transfers from BLMIS within the six years preceding the Filing Date, and are sometimes referred to collectively as the “Initial Transferees.” According to the SAC, Stanley, Renee and LAD Trust also received initial transfers from BLMIS, (*see* ¶ 106), presumably more than six years before the Filing Date, and the Trustee seeks to recover those transfers pursuant to Count VII of the

SAC. These three are sometimes referred to collectively in this context as the “Other Initial Transferees.”

The Defendant subsequent transferees include Stanley, Renee, the LAD Trust, David, Rachel, Leslie, Kenneth, the Leslie Trust, the David Trust and the Children’s Trusts.

III. The BLMIS Accounts

The SAC lists twenty-four accounts that the Defendants held over the years with BLMIS (collectively, the “Accounts”). (SAC, Ex. A.) The following accounts received initial transfers aggregating approximately \$41 million within six years of the Filing Date (the “Six Year Period”), of which \$39,939,486 constituted fictitious profits (¶ 108):

Defendants’ Accounts Table			
BLMIS Account No.	Description³	Addressed to:	6-year transfers
1C1251	Leslie Shapiro Citron Kenneth Citron J/T WROS	Citrons’ address	\$270,000
1S0306	David Shapiro	David’s address with copies of statements sent to Stanley’s home address	\$5,088,989
1SH014 (formerly 103013)	S&R Investment Co. Stanley Shapiro	Stanley’s home address	\$17,350,000
1SH028 (formerly 103065)	David Shapiro Trust	Stanley’s home address	\$1,420,000
1SH030 (formerly 103066)	Leslie Shapiro Citron Trust	Stanley’s home address	\$2,170,000
1SH171	Leslie S. Citron	Not specified	\$4,527,497
1SH172	S&R Investment and Co c/o Stanley Shapiro	Stanley’s home address	\$10,240,000

³ The names of the accounts are listed exactly as they appear in the SAC, Exhibit A.

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