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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

-----X
:

JEFFREY S. ARAJ, M.D., and On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

JML PORTFOLIO MANAGEMENT LTD.,
SWISS LIFE HOLDING AG, and :
NOMURA HOLDINGS, INC.

Defendants
-----X

Civil Action No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, individually and on behalf of all others similarly situated, by his attorneys, alleges the following upon information and belief, except for those allegations, as to himself, which are alleged upon personal knowledge. The allegations are based on counsel's investigation, complaints filed by the United States Government and Securities and Exchange Commission (the SEC), reports and interviews published in the press, and information obtained by Plaintiff.

NATURE OF THE ACTION

1. Plaintiff's claims arise from the massive fraud perpetrated by Bernard L. Madoff (Madoff) through his investment firm Bernard L. Madoff Investment Securities LLC (BMIS). It became public on December 11, 2008, that Madoff and BMIS operated the largest Ponzi scheme in financial history. Victims are believed to have lost \$50 billion.

2. Plaintiff invested with Madoff and BMIS indirectly through JML Portfolio

Management Ltd. (JML), Swiss Life AG (Swiss Life), and Nomura Holdings, Inc. (Nomura). On or about March 3, 2006, Plaintiff purchased a variable annuity sold by JML for 1,235,838 Swiss Francs or about \$926,000. The company issuing the variable annuity policy was Capital Leben. Capital Leben was later acquired by Swiss Life.

3. The investment portfolio of the variable annuity policy was supposed to be invested in a broadly diversified group of mutual funds. Swiss Life invested about 11% of the portfolio in the Platinum All Weather Fund (Fund) that was offered through Nomura. Shortly after the Madoff Ponzi scheme became public, Plaintiff received a letter from JML, a copy of which is attached as Exhibit A hereto, advising him that approximately 20% of the Normura All Weather Fund had been invested in something called the Santa Clara II Fund, and the remaining 80% in a Sub-Fund of Directors Fund SPC Ltd., both of which were invested with Bernard L. Madoff Securities LLC. The attached fact sheet, (Exhibit B) on the Directors Fund SPC suggests that it simply turned over all of its assets of \$433 million to Madoff. It claims to have followed the same split-strike conversion strategy and never reported a loss in seventeen years. As a result, the entire Nomura Platinum All Weather Fund was written down to zero; and 100% of Plaintiff's investment in the Fund was written down to zero. The loss to Plaintiff is 114,727 Swiss francs or about \$100,000.

4. Both JML and Swiss Life charged management fees. In addition, Nomura charged a fund fee. The fee charged by JML was .5% a year and the Swiss Life fee was 1%. JML, through its website, promised its investors asset protection, diversification, and professional Swiss portfolio management. According to its web site, JML provides:

Professional asset management - Traditional Swiss quality

With over 30 years of experience, JML acts in the best interests of our clients with unbiased and unrestricted advice and services, specializing in professionally managed investment strategies with unique advantages.

JML promised investment diversification and portfolio resiliency. JML represented that its Multi-Asset Strategy involved a portfolio that was invested in a combination of growth oriented and safety oriented funds and provided a solid basis for midterm capital growth.

5. Plaintiff Araj asserts securities law claims pursuant to Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the Exchange Act), 15 U.S.C. §§ 78j and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b5, promulgated thereunder by the SEC. Plaintiff also asserts common law claims and violations of the Florida Securities and Investor Protection Act.

6. Plaintiff brings this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all of all persons or entities who, (i) owned the Nomura All Weather Fund (Fund) on December 10, 2008, or (ii) or were sold variable annuity policies of Swiss Life through JML which invested in the Nomura All Weather Fund from January 3, 2006 to December 10, 2008 (the Class Period), and were damaged thereby (the Class). Excluded from the Class are the Defendants, any entity in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries and/or assigns of any such individual or entity.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the Exchange Act claims asserted here pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78 and 28 U.S.C. § 1331.

8. This Court has jurisdiction over the state law claims pursuant to its supplemental jurisdiction, 28 U.S.C. §1367(a), and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2)(CAFA). With respect to CAFA, (i) the amount in controversy exceeds the jurisdictional amount, (ii) the Class is believed to consist of hundreds of individuals and entities, and (iii) the Plaintiff is a citizen of Florida and the Defendants are citizens of foreign countries.

9. Venue in this judicial district is proper pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78 aa, and 28 U.S.C. § 1391(b), because substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District. Additionally, Defendants have conducted substantial business in this District.

THE PARTIES

10. Plaintiff Jeffrey Araj, M.D. is, and was at all times relevant hereto, an individual residing in the State of Florida. During the Class Period, Plaintiff invested over \$900,000 through JML and Swiss Life, of which \$100,000 was invested in the Fund, as set forth in the attached certification. Due to the activities alleged herein, Plaintiff has lost all of his investment in the Nomura All Weather Fund, and has paid substantial advisory fees for illusory services.

11. Defendant JML Portfolio Management Ltd., is an investment management company located at Baarerstrasse 53, Zug, Switzerland. According to its website, it has over 21,000 clients.

12. Defendant Swiss Life Holding AG is a corporation organized Swiss law having its main office at General Guisan Quai 40, Zurich, Switzerland.

13. Defendant Nomura Holdings, Inc. is a bank holding company organized under Japanese law having its main office at 9-1, Nihonbashi 1 -chome, Chuo-ku, Tokyo 103-8645, Japan.

SUBSTANTIVE ALLEGATIONS

14. On December 11, 2008, Bernard Madoff was arrested and charged with securities fraud after conceding that his business operation was a giant Ponzi scheme. Madoff used the principal investments of new clients to pay the fictitious returns of other clients. Madoff and BMIS were charged with securities fraud by the SEC. Madoff and BMIS were also criminally charged with securities fraud by the United States Attorney's office for the Southern District of New York.

15. Madoff was unable to perpetrate this fraud by himself. Feeder funds, investment advisors and affiliates, including Defendants, facilitated Madoff's fraud and committed their own violations of law by investing and allowing to be invested their clients' money with Madoff and his related entities. Among other things, they (a) made false and misleading statements to existing and potential investors regarding the investment strategy and security of the variable annuity policies and the Fund, (b) made false and misleading statements earning oversight, due diligence, risk allocation and portfolio management, (c) breached their fiduciary duties to do adequate due diligence on Madoff and BMIS despite the existence of many red flags, and (d) failed to adequately monitor the Madoff and BMIS investments.

16. The red flags which they ignored included, among other things, the abnormally high and stable positive investment results reported regardless of market conditions; inconsistencies between BMIS's publicly-available financial information concerning its assets

and the purported amounts that Madoff managed for his client; the lack of transparency into BMIS; and the inability of other funds using a “ split-strike conversion” strategy to generate return returns even remotely comparable to those of Madoff.

17. In May 2001, the article “Madoff Tops Charge; Skeptics Ask How” appeared in *MAR/Hedge*, a newsletter on the hedge fund industry. The article raised numerous questions about Madoff’s strategy. It noted that many industry participants were “baffled by the way the firm has obtained such consistent, nonvolatile returns month after month and year after year”. Further, another publicly traded mutual fund called Gateway which used a strategy similar to Madoff had not experienced comparable returns. In response to the article, Madoff said that he was not interested in educating the world on his strategy.

18. In May, 2001, an article appeared in *Barron’s* entitled “Don’t Ask, Don’t Tell: Bernie Madoff Is So Secretive, He Even Asks His Investors To Keep Mum”. It reported that option strategists for major investment banks could not understand the Madoff strategy. Once again, Madoff refused to answer questions about how he regularly achieved such positive returns.

19. Harry Markopolos, a Chartered Financial Analyst and a Certified Fraud Examiner, provided testimony to the United States House of Representatives Committee on Financial Services on February 4, 2009 detailing how he had provided evidence to the SEC as early as May 2000 about red flags concerning the Madoff Ponzi scheme. The numerous red flags that he identified included:

- a. The strategy returns could never be duplicated by quantitative analysts who were asked to do so. Markopolos sent a letter to the SEC in May 1999 describing how Madoff could not have generated the returns reported using the split-strike conversion strategy.
- b. Markopolos had knowledge of a product to what Madoff described, but it did not generate similar returns.
- c. Madoff claimed to be earning 82% of the S&P 500's return with less than 22% of the risk.
- d. Madoff's returns only had a 6% correlation to the S&P 500 stock-index when Markopolos would have expected a 50% correlation.
- e. There were not enough OEX index options in existence for Madoff to be managing the split-strike conversion strategy he claimed to be operating.
- f. Markopolos testified that he took him only four hours to be able to prove mathematically that BMIS was a fraud.
- g. Another serious red flag was BMIS's need for new money which is always a warning sign of a Ponzi scheme.
- h. Markopolos testified that on September 29, 2006, he had a telephone conversation with Matt Moran, Vice President of Marketing for the Chicago Board of Options Exchange and that Mr. Moran advised him that several OEX S&P 100 index options traders believed that BMIS was a fraud.
- i. Markopolos further testified that while Madoff had double-digit returns from 1991 to 2000, that in subsequent years, returns were in single digits which was a sign that

he needed to cut back payouts to original investors in order to save cash and keep the Ponzi scheme going.

j. Further, one of the major feeder funds for Madoff was Greenwich Sentry, L.P. Greenwich Sentry used three different auditors for the three-year period 2004, 2005 and 2006 which is a major red flag.

k. At year end, Madoff was always in United States Treasury Bills and there were no investment positions to mark to market which is another red flag.

l. Account statements showed a pattern of purchases close to the daily low and sales close to the daily highest which is almost impossible to achieve with regularity.

m. There was no stand alone hedge fund where fees would have been higher than the brokerage commissions being charged by Madoff. This is a red flag because stand alone hedge funds require annual audits.

n. There was no third-party custodian or administrator for BMIS and Madoff did not use an outside prime broker.

o. BMIS was audited by a three person accounting firm located in a 13 x 18 foot office in Munsey, New York. The auditing firm had three employees, one of whom was 78 years old and living in Florida, one was a secretary and the other was an accountant.

p. Audit reports on BMIS showed no evidence of customer activity with no accounts payable and no accounts receivable.

q. The key positions at BMIS were controlled by Madoff, a brother, two sons and a niece.

r. BMIS customers did not have electronic access to their accounts, but only

received paper documentation from Madoff.

20. On November 7, 2005, Markopolos sent a letter to the SEC entitled "The World's Largest Hedge Fund is a Fraud" in which he set forth in seventeen single spaced pages and a two page attachment how Madoff's returns could not be a real. He identified twenty-nine red flags including Madoff settling for charging only undisclosed commissions instead of standard hedge fund fees of 1% plus 20% of the profits, the overwhelming secrecy followed by the fund of funds that marketed Madoff, the mathematical impossibility of the performance numbers, the lack of outside performance audits, the fact that no other publicly traded option fund had returns like Madoff, the fact that Royal Bank of Canada and Societe Generale had remove Madoff from approved lists of managers, and that Goldman Sachs would not deal with Madoff because they did not think he was legitimate.

21. In 2007, hedge fund adviser Aksia LLC urged its clients not to invest in Madoff feeder funds because they concluded that, among other things, the S & P 100 options market that Madoff purported to trade could not handle the size of the combined feeder fund's assets. On the day that Madoff was arrested, Aksia sent out a letter to its clients explaining the numerous red flags that had led it to conclude that Madoff was operating a fraud. A copy of the letter is attached hereto as Exhibit "C".

22. Had Defendants conducted adequate due diligence into Madoff and BMIS, they would have uncovered many of the red flags referred to above. Like Aksia, they should have been able to detect the numerous warning signs. Instead, they simply relied on the reputation of Madoff without conducting an adequate inquiry into his operations, trading strategies and investment returns which remained consistently positive even during bad market conditions.

23. Defendants acted with gross negligence and violated their duties by failing to perform, or causing to be performed, appropriate due diligence that would have revealed the fraud being operated by Madoff.

24. JML owed fiduciary duties to its customers and investors. JML held itself out as an investment advisor. Swiss Life and Nomura had duties to their investors to conduct reasonable due diligence into the investments, especially since they were charging management fees.

25. Defendants knew, or, in the exercise of due care in discharging their duties, were reckless in not knowing that Madoff was engaged in a massive Ponzi scheme and purporting to achieve results that could not be verified or explained. Nevertheless, the Defendants knowingly and willfully invested in BMIS and Madoff managed investments. The Defendants had fiduciary obligations to protect the assets of the Fund, which they failed to fulfill.

26. Despite their failure to properly conduct due diligence and failing to ensure that assets were properly invested instead of put into a Ponzi scheme, Defendants nevertheless collected fees from Plaintiff and other investors.

27. As a direct and proximate result of the wrongful conduct alleged herein, Plaintiff and members of the Class have lost 100% of their investment in the Fund since it was fed into Madoff and BMIS. In addition, plaintiff and members of the Class have lost their share of the management fees, advisory fees and administrative fees that were paid to defendants. In addition, Plaintiff and members the Class lost the opportunity to make different investments and earn real returns on their investments.

CLASS ACTION ALLEGATIONS

28. This action is properly maintainable as a class action pursuant to Federal Rule of Civil Procedure 23 (a) and 23 (b) (3). The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through discovery, Plaintiff believes that Class members number in the hundreds.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff is a member of the Class, his claims are typical of the claims of all Class members, and he does not have interests antagonistic to, or in conflict with, those of the Class. In addition, plaintiff has retained competent counsel experienced in class action litigation.

30. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct in violation of federal and common law.

31. There are numerous questions of law and fact which are common to the Class and which predominate over any questions affecting individual members, including:

- (a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (b) Whether statements made by Defendant to Plaintiff and the class were false and misleading and failed to disclose material facts;
- (c) Whether Defendants acted knowingly or recklessly in making materially false and misleading statements during the Class Period;
- (d) Whether Defendants' conduct as alleged herein was intentional, reckless,

grossly negligent, or negligent in violation of fiduciary duties owed to Plaintiff and the Class and, therefore in violation of the common law;

(e) Whether Defendants' conduct as alleged herein was in violation of the statutory and common law of the State of Florida;

(f) Whether and to what extent plaintiff and the Class were damaged.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since a multiplicity of actions could result in an unwarranted burden on the judicial system and could create the possibility of inconsistent judgments. Moreover, a class action will allow redress for many persons whose claims would other but wise be too small to litigate individually. There will be no difficulty in the management of this action as a class action.

Count One - Violations of Section 10 (b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission Against All Defendants

33. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

34. During the Class Period, Defendants directly engaged in a common plan, scheme and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon Plaintiff and the Class, and made various deceptive and untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the Class. The purpose and effect of said scheme, plan and unlawful course of conduct was among other things, to induce Plaintiff and the Class to purchase shares in the Fund.

35. During the Class Period, Defendants, pursuant to said scheme, plan, and unlawful

course of conduct, knowingly and recklessly issued, caused to be issued, or participated in the preparation and issuance of deceptive and material false and misleading statements to Plaintiff and the Class.

36. Plaintiff and the Class, in ignorance of the false and misleading statements set forth about and the deceptive and manipulative devices and contrivances employed by Defendants, relied, to their detriment, on such misleading statements and omissions in purchasing shares in the Fund. Plaintiff and the Class have suffered substantial damages as a result of the wrongs alleged herein in an amount to be proved at trial.

37. By reason of the foregoing, Defendants directly violated section 10 (b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff and the Class in connection with their acquisition of shares in the Fund.

Count Two - Violation of Section 20(a) of the Exchange Act Against Nomura

38. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

39. Nomura acted as a controlling person within the meaning of Section 20(a) of the Exchange Act, as alleged herein.

40. Nomura had a control and exercised of the management and operation of the Fund at all relevant times.

41. As a direct result of the wrongful conduct, plaintiff and the Class sustained

economic losses and damages in connection with their purchases of shares in the Fund in an amount to be proved at trial.

Count Three - Breach of Fiduciary Duty Against JML

42. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

43. JML breached its fiduciary duties to plaintiff and other Class members, and acted in reckless disregard of those duties:

(a) By failing to exercise generally the degree of prudence, caution and good business practices that would be expected of reasonable investment professionals managing client funds;

(b) By failing to take reasonable steps to oversee that the investment of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;

(c) By failing to perform reasonable and adequate due diligence in the selection and continuing selection of investments for plaintiff and the Class.

44. As a direct and proximate result of JML's breach of fiduciary duties, Plaintiff and other Class members have sustained damages, losing all or substantially all of their investments in the Fund in an amount yet to be determined and to be proved at trial.

Count Four - Gross Negligence Against All Defendants

45. Plaintiff repeats and realleges the foregoing allegations as if set forth herein.

46. As investment managers with discretionary control over the assets entrusted to them by Plaintiff and the class, Defendants owed Plaintiff and the Class a duty to manage and monitor the investments of Plaintiff and the Class with reasonable care. Defendants breached this duty by failing to take all reasonable steps to insure that the investments of the assets of

Plaintiff and the Class were made and maintained in a prudent and professional manner; by failing to take all reasonable steps to preserve the value of Plaintiff and the Class' investments; by failing to perform all necessary and adequate due diligence; and by failing to exercise the degree of prudence, caution and good business practices that would be expected of any reasonable investment professional.

47. As a direct result and proximate result of Defendant's gross negligence, Plaintiff and that Class have suffered damages and entitled to such damages from Defendants, jointly and severally, as well as a return of all fees paid to Defendants.

Count Five - Unjust Enrichment Against All Defendants

48. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

49. Defendants financially benefited from their unlawful acts which caused Plaintiff and the Class to suffer injury and monetary loss.

50. As a result of the foregoing, it is unjust and inequitable for Defendants to have enriched themselves in this manner and each Defendant should pay its own unjust enrichment to Plaintiff and the Class.

51. Plaintiff and the Class are entitled to the establishment of a constructive trust impressed on the benefits to Defendants from their unjust enrichment and inequitable conduct.

**Count Six - Violation of Florida Securities and Investor Protection Act
Against All Defendants**

52. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

53. The Florida Act makes it illegal to employ any device, scheme or artifice to defraud, or to obtain money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading, or to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a person.

54. By virtue of the acts alleged above, Defendants violated the Act.

55. Plaintiff on behalf of himself and the Class demands rescission of his investment in the Fund.

56. Under the Act, Plaintiff and the Class are entitled to rescission, and/or damages plus interest and legal fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other members of the Class demands judgment against Defendants as follows:

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

(b) Awarding damages suffered by Plaintiff and the Class as a result of the wrongs complained of herein, together with appropriate pre-and post-judgment interest;

(c) Declaring that Defendants have been unjustly enriched and imposing a constructive trust to recoup Defendant's fees, unjust benefits, and other assets for the benefit of Plaintiff and the class;

(d) Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiff's and Class counsel and expert, and reimbursement of expenses; and,


(e) Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial of all claims and issues so triable.

Dated 28 of May, 2009.

By _____


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CERTIFICATION

I, Jeffrey S. Araj, M.D., hereby certify as follows:

1. I am fully authorized to enter into and execute this Certification. I have reviewed a complaint prepared against JML Portfolio Management Ltd. et al. in this action.

2. I did not invest through JML, purchase a variable annuity policy through Swiss Life or invest in the Nomura All Weather Fund which are the subject of this action at the direction of counsel or in order to participate in any private action arising under the Private Securities Litigation Reform Act (the PSLRA).

3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.


4. I purchased a variable annuity which is the subject of this litigation by purchasing a policy on January 3, 2006 in the amount of 1,235,838.00 Swiss francs. Of that amount, slightly over 10% was put in the Nomura All Weather Fund and my loss in the Fund is about \$100,000 and today's exchange rates.

5. I have not sought to serve as a representative party on behalf of a class during the last three years.

6. I will not accept any payment for serving as a representative party except to receive a pro rata share of any recovery or settlement as ordered or approved by the Court or any award by the Court of reasonable costs and expenses (including lost wages) directly relating to representation of the class.



I declare under penalty of perjury, under the laws of the United States that the foregoing is true and correct this 10 day of March, 2009.


Jeffrey S. Araj, M.D.