

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (LGB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**APPLICATION OF KUGLER KANDESTIN, L.L.P. AS SPECIAL COUNSEL  
TO THE TRUSTEE FOR ALLOWANCE OF INTERIM COMPENSATION FOR  
SERVICES RENDERED FROM DECEMBER 1, 2023 THROUGH MARCH 31, 2024  
AND FOR RELEASE OF A PORTION OF FEES HELD BACK**

Jeremy Cuttler, together with other members and associates at the law firm of Kugler Kandestin, LLP, (collectively, “Kugler”), special counsel for Irving H. Picard (the “Trustee”), trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS” or “Debtor”) under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”), and Bernard L. Madoff, submits this Application for interim compensation of legal fees in the amount of \$62,895.65 (of which 20% is to be deferred until further order of the Court), reimbursement of actual and necessary expenses in the amount of \$1,018.42 for the period from December 1, 2023 through March 31, 2024 (the “Compensation Period”), and the release of \$16,135.76 (which represents a portion of fees held back). In support of the Application, Kugler respectfully submits as follows:

## **I. BACKGROUND**

1. On December 15, 2008, Judge Stanton of the United States District Court for the Southern District of New York, upon application filed on the same date by the Securities Investor Protection Corporation (“SIPC”), entered an order (the “Decree Order”) calling for the liquidation of the business of the Debtor in accordance with SIPA and by Paragraph II of the Decree Order, the Trustee was appointed as the trustee for the liquidation of the Debtor’s business.

2. The Debtor’s liquidation proceeding was removed to this Court pursuant to SIPA § 78eee(b)(4), and, to the extent consistent with the provisions of SIPA, is being conducted as though it were a case under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) pursuant to SIPA § 78fff(b).

3. Beginning on September 1, 2009, Kugler has served as special counsel for the Trustee.

4. On January 20, 2010, this Court entered an order approving the Trustee’s motion for authority to retain Kugler as special counsel to the Trustee with regard to the Trustee’s recovery of customer property located in Canada.

5. The Trustee’s motion to retain Kugler established a fee arrangement pursuant to which Kugler agreed to a fee reduction in the amount of 10% as well as an additional holdback of fees in the amount of 20%.

## **II. SERVICES RENDERED BY KUGLER KANDESTIN**

6. The legal services performed by Kugler on behalf of the Trustee during the time period covered by this Application are as follows:

7. During the Compensation Period, Kugler advised the Trustee and his U.S. counsel, Baker & Hostetler LLP, regarding service of documents and depositions in Canada.

### **III. COMPENSATION REQUESTED**

8. The Application demonstrates how Kugler has both added value to BLMIS's estate and advanced BLMIS's liquidation proceeding.

9. Kugler has been mindful of the need to avoid undue legal fees in this case and has taken all reasonable steps to provide cost-effective representation while rendering services with the highest degree of skill and professionalism. To that end, Kugler has endeavored to eliminate duplication of effort by giving responsibility for the day-to-day conduct of the case to Jeremy Cuttler, involving others only when necessary.

10. From December 1, 2023 through March 31, 2024, Kugler provided a total of 124.30 hours of legal services to the Trustee in this case. Prior to the 10% discount, the total amount of fees incurred in this time period was \$69,884.06 and the total blended rate for professional services was \$562.22/hour. After the 10% discount, the total amount of fees incurred is \$62,895.65 and the total blended rate is \$506.00/hour. Kugler has agreed to a further holdback of 20% of its fees in the amount of \$12,579.13 resulting in the present request for compensation in the amount of \$50,316.52.

11. A breakdown of the total number of hours performed by each Kugler timekeeper is provided in **Exhibit A** attached hereto

12. Kugler seeks reimbursement for out-of-pocket expenses incurred in connection with its representation of the Trustee during the Compensation Period in the amount of \$1,018.42. An itemized list of these expenses is detailed in **Exhibit B** attached hereto.

#### **IV. RELEASE OF THE HOLDBACK**

13. The Trustee's motion to retain Kugler established a Holdback fee arrangement in which 20% of the approved compensation is deferred until further order of the Court.

14. For the prior and current compensation periods, the amount of the Holdback for Kugler's fees is \$32,271.52. Kugler seeks a release of the Holdback in the amount of \$16,135.76 upon the support of SIPC.

15. SIPC has advised Kugler that it will file a recommendation in support of the fees and expenses in this Application and the release of the Holdback in the amount of \$16,135.76 for Kugler.

16. Hence, Kugler respectfully requests that this Court authorize the release of the Holdback payment to Kugler in the amount of \$16,135.76, as supported by SIPC.

#### **V. GENERAL MATTERS**

17. All of the professional services for which compensation is requested herein were performed by Kugler for and on behalf of the Trustee and not on behalf of any other person or entity.

18. No agreement or understanding exists between Kugler and any other person for sharing compensation received in connection with this case, nor has any other person or entity agreed to provide Kugler with compensation for the legal services described herein.

19. SIPA § 78eee(b)(5)(A) provides in pertinent part that, upon appropriate application and after a hearing, "[t]he court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred . . . by a trustee, and by the attorney for such a trustee." SIPA § 78eee(b)(5)(C) specifically establishes SIPC's role in connection with applications for compensation and the consideration the Court should give to SIPC's recommendation concerning fees, providing as follows:

In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

SIPA § 78eee(b)(5)(C).

20. To the extent the general estate is insufficient to pay such allowances as an expense of administration, SIPA § 78eee(b)(5)(E) requires SIPC to advance the funds necessary to pay the compensation of Kugler. *See* also SIPA § 78fff-3(b)(2).

21. At this time, the Trustee has determined that he has no reasonable expectation that the general estate will be sufficient to make a distribution to general creditors or pay administrative expenses. SIPC has advised the Trustee that it concurs with this determination. Accordingly, any fees and expenses allowed by this Court will be paid from advances by SIPC without any reasonable expectation by SIPC of recoupment thereof.

22. Therefore, with respect to this Application, Kugler requests that, consistent with SIPA § 78eee(b)(5)(C), the Court “shall award the amounts recommended by SIPC.” *See McGraw v. Betz (In re Bell & Beckwith)*, 112 B.R. 876 (Bankr. N.D. Ohio 1990). Kugler expects that SIPC’s recommendation in support of the relief sought by this Application will be filed with this Court separately.

**WHEREFORE**, Kugler respectfully requests that this Court enter an Order:

- a. Granting this Application; and
- b. Allowing and awarding \$62,895.65, of which \$50,316.52 is to be paid currently and \$12,579.13 is to be held back through the conclusion of the liquidation period or until further order of the Court, as an interim payment for professional services

rendered by Kugler to the Trustee from December 1, 2023 through March 31, 2024; and

- c. Allowing payment to Kugler in the amount of \$1,018.42 for reimbursement of expenses incurred by Kugler from December 1, 2023 through March 31, 2024; and
- d. Releasing \$16,135.76 to Kugler from the Holdback for prior and current compensation periods; and
- e. Granting Kugler such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2024

KUGLER KANDESTIN, L.L.P.

By: /s/ Jeremy Cuttler

Jeremy Cuttler

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**EXHIBIT A**

**SUMMARY OF INTERIM FEE APPLICATION  
OF KUGLER KANDESTIN, L.L.P. FOR SERVICES RENDERED  
FOR THE PERIOD FROM DECEMBER 1, 2023 THROUGH MARCH 31, 2024**

	HOURLY RATE	TOTAL HOURS BILLED	TOTAL COMPENSATION
Jeremy Cuttler	\$618.04	78.10	\$48,268.92
Claudia Giroux	\$467.86	46.20	\$21,615.13
Total	\$562.22	124.30	\$69,884.06
Total minus 10% Discount	\$506.00		\$62,895.65
			\$50,316.52
Total Net of 20% Holdback:			
			\$32,271.52
Holdback for Prior and Current Compensation Periods			
Release of the Holdback			\$16,135.76
<b>Total to be Paid</b>			<b>\$66,452.28</b>

**EXHIBIT B**

**EXPENSE SUMMARY OF KUGLER KANDESTIN, L.L.P. FOR THE  
INTERIM PERIOD OF DECEMBER 1, 2023 THROUGH MARCH 31, 2024**

<b>EXPENSES</b>	<b>AMOUNTS</b>
Bailiff	\$999
Transportation	\$19.42
<b>Total Expenses Requested:</b>	<b>\$1,018.42</b>