IN THE UNITED STATES DICTRICT COURT
FOR THE WESTERN DICTRICT OF PENNSYLVANIA

Riwall P. Le Bars and
Cristina E. Le Bars

Case No. #

Plaintiff

V

Plaintiff's Complaint

UBS AG,

Defendant

Jury trial demanded

COMPLAINT

Plaintiffs, Riwall and Cristina Le Bars (hereinafter referred to as "Plaintiffs") by and through counsel, Alice L Stewart and G. Clinton Kelley, file this Complaint against UBS AG (hereinafter referred to as "Defendant") seeking damages for claims arising out of a Swiss bank account (hereinafter referred to as "Swiss Accounts") held by the Le Bars and aver the following:

I.

JURISDICTION AND VENUE

1. This is an action for breach of fiduciary duty, malpractice/negligence, disgorgement, breach of contract and fraud. This Court has jurisdiction of this action under 28 U.S.C. §§ 1332(d), 1453.

2. Venue is proper in this district under pursuant to 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to the claim occurred in this district.

3. This Court has personal jurisdiction over the Defendant. The Defendant has committed a tort in whole or in part in Pennsylvania or has otherwise done business in Pennsylvania.

4. In connection with the wrongs complained of herein, Defendant directly or indirectly, used the means and instructions of interstate commerce, including the United States mails and interstate telephone communications.

II.

PARTIES

5. Plaintiff, Riwall Le Bars, a/k/a Riwall Lebars, is a resident of the United States and a citizen of the Commonwealth of Pennsylvania.

6. Plaintiff, Cristina E. Le Bars, a/k/a Cristina Lebars, a/k/a C. Ruiz De Lebars, is a resident of the United States and a citizen of the Commonwealth of Pennsylvania.

7. Defendant UBS AG ("UBS") is, and at all relevant times was a foreign Swiss corporation doing business in the State of Pennsylvania and throughout the United States. UBS maintains branches in Pennsylvania and other states and the Board of Governors of the Federal Reserve System exercises examination and regulatory authority over UBS's state-licensed U.S. branches. On April 10, 2000, UBS was designated a "financial holding company" under the Bank Holding Company Act of 1956.

8. UBS is subject to regulation by the U.S. Department of Treasury.

III.

BACKGROUND FACTS

A. UBS Takes Aim at the United States Market.

9. UBS is one of the largest financial institutions in the world with one of the world's largest private banks catering to wealthy individuals.[1] Beginning in 1996 or earlier, UBS began a large-scale campaign to market to individuals in the U.S. By 2007, UBS's marketing efforts resulted in an estimated 19,000 U.S.-client "undeclared" accounts in Switzerland containing billions of dollars in assets that were not disclosed to U.S. tax authorities. UBS has estimated that, by 2008, these undeclared accounts contained assets with a combined value of approximately $17.9 billion. Obviously, UBS's efforts to lure U.S. clients were successful and lucrative and UBS was committed to ensuring that these accounts stayed UBS. As explained herein, this commitment to revenue, growth, and profit, and soon completely displayed any commitment to the U.S. clients as UBS ignored clear U.S. laws and regulations, failed to fulfill duties to the U.S. clients regarding the U.S. clients' responsibilities with respect to the UBS Swiss Accounts, and knowingly subjected the U.S. clients to enormous back-taxes, penalties, and interest by the IRS. UBS was eager to grow this business and revenue stream from U.S. citizens at any expense, including through unlawful and fraudulent means and methods which knowingly damaged its U.S. clients.

10. As part of these marketing efforts, UBS bankers would travel to the United States regularly to meet with prospective and current clients. These marketing efforts also included attending events that were also attended by U.S. individuals; organizing "VIP events"; sponsorship of U.S. events likely to attract wealthy prospective clients; performances in major U.S. cities by the UBS Vervier Orchestra; and yachting events in the U.S. attended by the elite

[1] Many of the facts alleged herein come from the July 17, 2008 Staff Report of the United States Senate Permanent Committee on Investigations entitled "Tax Haven Banks and U.S. Tax Compliance" (the UBS Senate Report".)

Swiss yachting team (which was sponsored by UBS). These UBS bankers employed several techniques to avoid having their violations of U.S. law detected, exceeding their licenses, or triggering 1099 reporting requirements including:

a. Complying with a UBS requirement that "no use of US mails, e-mail, courier delivery or facsimile regarding the client's securities portfolio";[2]

b. Designating their visits as travel for a non-business purpose on the I-94 Customs declaration forms that all foreign visitors must complete prior to entry into the U.S.;

c. Maintaining a "low profile" while in the U.S.;

d. Receiving explicit training from UBS on how to detect-and avoid surveillance by U.S. customs agents and law enforcement officers and how to react if confronted;

e. Using coded spreadsheets and notes; and

f. Using computers equipped to receive only highly encrypted information.

11. As part of its concerted effort to generate business from the U.S. clients, UBS assigned its Swiss bankers specific performance goals for generating new business from the United States. Bradley Birkenfeld ("Birkenfeld"), a former UBS private banker, testified before the U.S. Senate that, during his tenure at UBS (which lasted from 1996 to 2008), that a specific monetary goal referred to as a "net new money" or NNM" target was assigned to each Swiss Client Advisor who dealt with U.S.-clients. A 2007 email from Mario Staggl, a former UBS

[2] Despite this internal UBS "requirement", many UBS private bankers communicated with their U.S. clients by telephone, fax, mail and email to market securities products and services, and to carry out securities transactions.

senior private banking official, reinforces this fact and reveals the tremendous amount of pressure that UBS placed on its private bankers to generate "new money" from the U.S.:

> "The markets are growing fast, and our competition is catching up....The answer to guarantee our future is GROWTH. We have grown up from CHF [*i.e.*, the Swiss Franc] 4 million per Client Advisors in 2004 to 17 million in 2006. We need to keep up with our ambitions and go to 60 million per client Advisor!...
>
> In the Chinese Horoscope, 2007 is the year of the pig. In many cultures, the pig is a symbol for 'luck'. While it's always good to have [a] bit of luck, it is not luck that leads to success. Success is the result of vision and purpose, hard work and passion....Together as a team I am convinced we will succeed!"[3]

12. Birkenfeld described UBS's efforts to attract new business in the U.S. as follows: "This was a massive machine. I had never seen such a large bank making such a dedicated effort to market to the U.S. market."[4]

B. <u>The Qualified Intermediary Program</u>

13. In 2001, the United States government established the Qualified Intermediary (QI") Program to encourage foreign financial institutions to report and withhold tax on U.S. source income paid to foreign bank accounts. The U.S. established the QI Program based on a concern that foreign financial institutions were structuring the foreign accounts of U.S. taxpayers in a manner that resulted in the under-reporting and underpayment of taxes to the U.S. Thousands of foreign financial situations have become voluntary QI participants, including UBS.

14. As a participant in the QI Program, UBS signed a 65-page standardized agreement with the IRS (the "QI Agreement"), under which UBS agreed to act as the U.S. withholding agent and comply with U.S. tax withholding obligations for covered clients. As a participant in the QI Program, UBS was required to have its customers fill out IRS Forms W-

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[3] Email from Martin Liechti re "Happy New Years"; addresses not specified (undated)(quoted in the UBS Senate Report at 13).
[4] UBS Senate Report at 14.

8BEN or W-9; each of these forms required that the beneficial owner of a UBS account be identified on the form if UBS believed or knew that person to be a U.S. citizen or resident. The purpose of this procedure was to ensure that the U.S. could identify its citizens' "offshore" account(s) for auditing and taxation purposes.

15. For accounts where the accountholder was identified as a U.S. person, UBS agreed to file an annual 1099 Form with the IRS that reported the client's name and taxpayer identification number, and all "reportable payments" made to the client's accounts. For accounts where the accountholder was identified as a non-U.S. person, however, UBS was not required to file an individualized form. Instead, UBS was permitted to file a single 1042 Form and to report and withhold U.S. taxes on an aggregate basis (rather than on an individualized client-by-client basis). These 1042 Forms for non-U.S. accountholders do not contain any client names or client-specific information and UBS simply remits the appropriate amount of aggregate taxes to the IRS without providing any client-specific information.

C. UBS Sidesteps the QI Reporting Requirements to Ensure that U.S. Money Continues to Flow to Switzerland.

16. UBS knew that compliance with the QI requirements would result in elimination of account secrecy, require taxation of its U.S. clients and almost certainly result in a significant reduction in the investment returns for its U.S. clients. UBS also knew that, if this happened, it would greatly reduce the attraction of wealthy individuals to UBS and U.S. clients would forego UBS in favor of U.S.-based banks. This would, in turn, strike a tremendous blow to UBS's bottom line and a blow to the compensation to its executives and directors, given that UBS is a publicly traded company relying on growth and positive results.

17. Not to be slowed down by the United States government's demands or UBS's obligations under the QI Agreement it voluntarily signed, UBS's executives and legal counsel devised an intricate scheme involving the executives within UBS's walls as well as outside people and professionals service companies to unlawfully avoid the terms and reporting

requirements of the QI Agreement, which placed its unsuspecting U.S. clients (*i.e.*, the Plaintiffs) in the cross-hairs of a multi-agency U.S. government investigation.

18. UBS made a company-wide statement to its wealth management executives that it was committed to providing absolutely secret private banking services to U.S. citizens and residents ***notwithstanding the QI Agreement.*** The message that the private wealth management executives were directed to, and did, deliver to their U.S. clients was that they would continue to enjoy their privacy and secrecy the Swiss bank had promoted because it was assured by Swiss Law. UBS also (inaccurately) assured these U.S. clients that this privacy and secrecy was in compliance with U.S. law as well. UBS, through its Board of Directors and management, established written policies and guidelines to effectuate their dubious scheme in an effort to gain additional U.S. clients and investments without apprising these clients of their obligation to report these UBS Swiss Accounts to the IRS. The Account Executive for Plaintiff's in fact advised Plaintiffs that the money being transferred from France would remain in foreign currency and would not be subject to U.S. Tax laws.

19. Unbeknownst to the Le Bars, the advice and security that UBS promised them was false and illusory. Due to UBS's sheer size, purported expertise and respectable worldwide position, it was able to manipulate the Le Bars with a net of disinformation that left the Plaintiffs with the firm conviction that their money was in good hands and there was no obligation to disclose these foreign UBS Swiss Accounts on their United States tax returns. UBS was content to leave the Le Bars with this inaccurate understanding as it ensured that no "red flags" would cause the Le Bars to get insecure and move their substantial funds to a U.S.-based bank or, worse yet, expose UBS as the tax shelter when it had become (unbeknownst to the Plaintiffs .)

20. Beginning in 2001 and continuing for the next several years, UBS directors and management directly authorized, encouraged and instructed its Swiss private bankers and other wealth management executives to regularly travel to the U.S. to solicit new clients while

conducting banking for existing U.S. clients. UBS trained its bankers in techniques to avoid questioning by U.S. law enforcement by (i) falsely stating their purpose of travel to be recreational rather than business on U.S. Customs entry forms and (ii) encrypting and coding information so that the business motive for their visits could not be detected. Additionally, executives were instructed not to be tracked by authorities while in the U.S. and on how to conceal and transfer clients' account funds and assets overseas without detection. Importantly, UBS also trained its wealth management executives in how to present to, and swindle, prospective and existing clients into believing that UBS's handling of the UBS Swiss Accounts was legal and within IRS regulations and that the U.S. clients were under no obligation to disclose the UBS Swiss Accounts to the IRS. UBS directors and managers were aware of, encouraged, directed, authorized and commanded that UBS employees execute their fraudulent and unlawful scheme against U.S. citizens, including Plaintiffs.

21. All the while, UBS continued to feign compliance with the IRS QI Agreement, but failed to disclose this illegal activity to Plaintiffs or any of its clients. UBS made every effort to not raise any concerns on the part of its Plaintiffs.

22. Indeed, in or around November 6, 2008, the DOJ filed an indictment against UBS Chief Executive Officer Raoul Weil for his active role in the above-described activities. The indictment further identifies a multitude of involved, but yet-to-be named executives, managers, "desk heads," and bankers, and corroborates Plaintiffs' allegations. The indictment further notes that these personnel maintained positions on committees that oversaw legal, compliance, tax, risk, and regulatory issues related to the United States cross-border business. It further notes that the reporting chain traveled from the bankers to the desk heads to the managers to the executives.

23. Despite the fact that UBS signed a QI Agreement and knew that the accounts in question were owned and/or held by U.S. clients, UBS never filed 1099 Forms or otherwise reported these accounts to the IRS, contending that these U.S.-client accounts fell outside its QI

Reporting obligations. Moreover, UBS never informed the Le Bars that they were required to report the Swiss accounts to U.S. taxing authorities: indeed, they often represented the exact opposite upon inquiry—that **no** reporting was required.

24. Indeed, UBS informed the Le Bars that, so long as the client did not invest in U.S. securities or the account was held by a foreign corporate entity, the QI reporting obligations were not triggered. In so instance, UBS then assisted U.S. clients in selling their U.S. securities and reinvesting in other types of assets that purportedly did not trigger reporting obligations. In other instances, UBS suggest that and then assisted U.S. clients with creating and structuring offshore entities that would assume ownership over the account, resulting in the account being "owned" by a non-U.S. individual or entity. At no time, were these U.S. clients told that they were nonetheless required to disclose the UBS Swiss Account and to pay taxes on all income derived thereof.

D. <u>UBS's Actions Result in Plaintiffs Failing to Report their Swiss UBS Accounts</u>

25. In 1992, Plaintiffs Riwall Le Bars was a U.S. resident living in Pennsylvania with his wife and working as a mechanic. Riwall was seeking a safe place to invest his savings from his work in France in preparation for retirement back to France, he opened his account with a modest $9,000.00. In 2005 he inherited a substantial sum from his father. This was the first time in his life that Riwall and Christina had accumulated this amount of money. Riwall and Christina were impressed with the size of UBS and its reputation as a safe and secure financial institution filled with expert banking, investment and tax professionals. The Plaintiffs did not have any education or experience in the securities market.

26. The Le Bars' desire to open an account at UBS was in no way motivated by tax considerations. In fact, the Le Bars paid all income taxes due to the IRS on monies earned in the United States.

27. The Le Bars opened their UBS Swiss Account in 1992 with a deposit of approximately $9,000.00. They were assigned a different account executive with each visit to UBS, the last two known account executives were Adriane Blochlinger and Patrick Ziegler. The investments in the account were initially limited to secure and stable money market investments, but around mid-2005, following the inheritance from his father, The Account Executive suggested additional investments to the Le Bars and their investments expanded accordingly.

28. UBS required the Le Bars to travel in person to a Swiss branch to review account documents or to discuss investment strategies. In early 2006, UBS contacted the Le Bars encouraging them to raise holdings in this account to over CHF1,000,000.00 in order to receive special investment treatments. UBS Account Executive convinced the Le Bars to secure a loan at 5% annum in the amount of CHF300,000.00 with UBS in order achieve this account balance. UBS never requested a W-9 from the Le Bars and never issued any yearly interest statements to the Le Bars.

29. In the summer of 2008, as the Le Bars began seeing articles and news reports regarding the U.S. government's efforts, Riwall contacted UBS and asked whether he had anything to worry about with respect to his UBS Swiss Account. They were assured that there was nothing to worry about and no action needed to be taken.

30. During all of their discussions with UBS employees Riwall and Christina were assured that there was nothing to be concerned about with respect to their UBS Swiss Account and boasted about their expertise in Swiss banking and tax laws. During their conversations with the Le Bars, these UBS bankers intentionally never mentioned anything about the QI Agreement they had signed with the Department of the Treasury and the tax reporting requirements therein. The Le Bars were certainly never told that not disclosing the account to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest. Instead, they were led to believe that this was perfectly legal and that they had no legal

obligation to disclose the UBS Swiss Account. In fact, in 2005, when the Ziegler advised the Le Bars to expand their investments into the security market, Ziegler and Blochinger specifically informed the Le Bars that all securities purchased in the UBS Swiss Account had to be non-U.S. securities. The Le Bars were told that the reason for this was that the UBS Swiss Account was not permitted to purchase U.S. securities because of tax reasons. UBS intentionally led the Le Bars to believe that this measure was intended to maintain the UBS Swiss Account in compliance with the U.S. tax law, not to avoid UBS's QI reporting obligations and subject the Le Bars to exposure to the IRS for back taxes, penalties, and interest.

31. The Le Bars first became aware that there was a reporting or tax obligation on the account in 2009 in connection with the IRS's announcement of the 2009 Offshore Voluntary Disclosure Program. The Le Bars elected to participate in the 2009 OVDP and as a result had to pay a penalty equal to 20% of the highest aggregate account balance during the period of 2003 to 2008. In the Le Bars' case, despite the fact a significant percentage of that balance included the amounts on which they had previously paid taxes: they were nonetheless required to pay the 20% penalty on the full highest aggregate account balance. The cost to the Le Bars was more than $275,000.00.

32. In 2009, a UBS agent contacted the Le Bars and insisted that they travel to Switzerland on an urgent basis. The Le Bars traveled to the Zurich, Switzerland branch and were informed that UBS was closing all international business in that branch and that all funds would be transferred to another branch. UBS transferred all of the funds to their Credit Agricole Account in Paris France, resulting in more than $200,000.00 in losses.

E. UBS Intentionally Fails to Disclose Material Information to Plaintiffs.

33. UBS never told Plaintiffs anything about the QI Agreement that UBS had signed with the Department of the Treasury and the tax reporting requirements therein. UBS also never

told Plaintiffs that Plaintiffs' failure to disclose the account to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest. Instead, Plaintiffs were told that the UBS Swiss Accounts were perfectly legal and that Plaintiffs had no legal obligation to disclose the UBS Swiss Accounts.

F. The Numerous Admissions on the Part of UBS

34. It has been widely publicized over the past several years that UBS has been engaged in a heated battle with the IRS and DOJ regarding UBS's intentional acts dating back to the QI Agreement in 2001 and continuing through 2009. The following is a brief chronology of the events of UBS and/or its directors and officers, including the many admissions thereto;

a. In November 2008, the U.S. filed an indictment against Raoul Weil, the Chairman and CEO of UBS's Global Wealth Management & Business Banking Division, further outlining Executives, Managers, Desk Heads, and Bankers as knowing participants in the scheme to defraud the IRS of taxes due by its customers. Attached hereto as **Exhibit "A"** is a true and correct copy of the Weil Indictment;

b. On February 18, 2009, UBS and the U.S. entered a Deferred Prosecution Agreement ("DPA") in which UBS admitted, among other things, that beginning in 2000 and continuing until 2007 it had "participated in a scheme to defraud the United States and its agency, the IRS by actively assisting or otherwise facilitating a number of United States individual taxpayers in establishing accounts at UBS in a manner designed to conceal the United States taxpayers' ownership or beneficial interest in these accounts." Attached hereto as **Exhibit "B"** is a time and correct copy of said DPA, including Exhibits C and D to the DPA;

c. On or about February 18, 2009, UBS's acting Chairman, and former General Counsel during the 2000—2007 period, Peter Kurer publicly stated that "UBS sincerely regrets the compliance failures in its U.S. cross-border business that have been identified by the various government investigations in Switzerland and the U.S., as well as our own internal review. We accept full responsibility for these improper activities." Marcel Rohner, group chief executive of UBS AG added, "it is apparent that as an organization we made mistakes and that our control systems were inadequate." Attached hereto as **Exhibit "C"** is a true and correct copy of the NY Times article quoting Messrs. Kurer and Rohner;

d. On February 18, 2009 the Securities Exchange Commission ("SEC") filed a complaint against UBS for acting as an unregistered broker-dealer and investment adviser to thousands of U.S. cross-border clients. Attached hereto as **Exhibit "D"** is a true and correct copy of said complaint;

e. On February 19, 2009, the IRS filed a civil action against UBS to enforce a "John Doe" summons seeking names of UBS's U.S. customers. Attached hereto as **Exhibit "E"** are relevant portions of said summons;

f. On March 4, 2009, at a U.S. Senate Subcommittee hearing, UBS's Chief Financial Officer, Mark Branson, admitted UBS AG was intent on keeping wealthy investors with UBS while scheming to defraud the IRS of taxes. Attached hereto as **Exhibit "F"** is a true and correct copy of the relevant portion of the transcript of the Senate Hearing Dated March 4, 2009 re IRS Investigation of UBS's, at 1:43:08; Indictment of Raoul Weil;, pp. 4-7, paras. 1124;

g. Between April and July 2009, UBS and the DOJ, as well as U.S. and Swiss politicians, wrangled over the privacy/secrecy issues as trial approached in July 2009;

h. On June 30, 2009, the IRS filed a Memorandum of Law in Support of Petition to Enforce "John Doe" Summons that details UBS's violations and its acknowledgment that it would be subject to U.S. jurisdiction and the scheme as provided in the instant Complaint. Attached hereto as **Exhibit "G"** is a true and correct copy of the relevant portions of said Memorandum;

i. On July 12, 2009, the U.S. District Court in Miami suspended the July 13, 2009 hearing on the Motion to Enforce for 30 days, anticipating a settlement between UBS and the IRS/DOJ; and

j. On August 12, 2009, the U.S. and UBS reached an agreement in principle, the terms of which include the revelation approximately 4,435 UBS customer names.

35. On April 10, 2008, Birkenfeld (along with Mario Staggl, a former UBS senior private banking official) was indicted on charges of conspiracy to defraud the United Sates and the IRS in violation of Title 18, United States Code, Section 371. The indictment includes the following charges:

a. "It was part of the conspiracy that Birkenfeld…and others would and did market the advantages of Swiss…bank secrecy to United States clients by claiming that said secrecy was impenetrable";

b. That said marketing also took place via mail, emails and telephone calls to and from the United States;

c. That Birkenfeld and others would and did travel to the United States to conduct banking with United States clients;

d. That Birkenfeld and others would and did conduct banking with United States clients from Switzerland and elsewhere via mailing, emails, and telephone calls to and from the United States;

e. That Birkenfeld and others would and did prepare Swiss bank account applications, and IRS Forms W-8BEN, which falsely and fraudulently concealed that United States taxpayers were the beneficial owners of bank accounts maintained at foreign banking institutions;

f. That Birkenfeld and others would and did cause to be prepared and filed with the IRS income tax returns that purposefully and intentionally falsely and fraudulently omitted income earned by United States clients from their UBS Swiss Accounts; and

g. That Birkenfeld and others would and did cause to be prepared and filed with their IRS income tax returns that purposefully and intentionally falsely and fraudulently reported that United States clients did not have an interest in, and a signature and authority over, financial accounts located in a foreign country.

36. As evidenced in the April 10, 2006 indictment and the June 19, 2008 plea agreement of Birkenfeld, and his August 21, 2009 sentencing, he has admitted to each of the above indictment charges stemming out of his activities as an agent of UBS on or about November 13, 2008, the DOJ indicted Weil his conduct as an executive of UBS AG in defrauding the IRS through the scheme alleged in this complaint.

IV.

DAMAGES

37. As a consequence of a UBS's conduct, Plaintiffs have sustained substantial losses in the form of, *inter alia*, unnecessary, exorbitant and excessive fees charged by UBS for the UBS Swiss Accounts, penalties and interest paid to the IRS as a result of not disclosing the UBS Swiss Accounts, and additional legal and accounting fees incurred as a result of dealing with the IRS and resolving their IRS situation. The amount of damages in this case exceed $750,000.00.

V.

FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS

38. Plaintiffs had no knowledge of UBS's unlawful scheme and could not have discovered UBS's unlawful conduct at an earlier date by the exercise of due diligence. As described above, UBS affirmatively concealed its illegal acts and these acts only recently became known to the public through the diligence of the United States government. As a result of Plaintiffs' lack of knowledge of the effects of UBS's unlawful scheme, Plaintiffs assert the tolling of any applicable statutes of limitations affecting the right of action by Plaintiffs.

39. Moreover, UBS's actions constitute a continuing violation in that UBS's unlawful scheme resulted in financial harm to Plaintiffs, and each and every occasion in each and every tax year on which UBS failed to comply with its QI obligations and failed to inform Plaintiffs that they were required to disclose their UBS Swiss Accounts to the U.S. is an overt act that injured Plaintiffs. Upon each and every instance that UBS failed to disclose their illegal conduct, UBS knew or should have known that the undisclosed information was material to Plaintiffs who reasonably believed that UBS's conduct was lawful. Therefore, each instance described above constitutes a continuing violation and operates to toll any applicable statutes of limitations. Furthermore, UBS is estopped from relaying on any statute of limitations defense because of its unfair and deceptive conduct.

VI.

FIRST CLAIM
BREACH OF FIDUCIARY DUTY

40. Plaintiffs re-allege and incorporate each and every allegation set forth in Paragraphs 1 through 39, inclusive, and incorporate them by reference herein as if fully set forth.

41. UBS, through its directors, managers, employees, and agents, held itself out to the public as experts with particular competence in tax matters, who were properly licensed to provide banking services to and for U.S. citizens.

42. In connection with the UBS Swiss Accounts, UBS was fiduciary of Plaintiffs and, thus owed Plaintiffs the duties of loyalty, honesty, care and compliance with the applicable codes of professional responsibility. Plaintiffs relied upon UBS as a fiduciary as to the legality of the handling of the UBS Swiss Accounts any tax disclosure and reporting requirements.

43. UBS breached the fiduciary duties owed to Plaintiffs by, *inter alia*, the following acts and omissions:

a. Failing to inform Plaintiffs about the QI Agreement that UBS had signed with the Department of the Treasury and the tax reporting requirements therein; and

b. Failing to inform Plaintiffs that Plaintiffs' failure to disclose the account to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest.

44. Based on information and belief, the acts and/or omissions set forth above in Paragraph 33 are representative of acts and/or omissions UBS committed with respect to the Class Members. As a result of UBS's conduct set forth herein, Plaintiffs and the Class Members have suffered injury *inter alia* in that they have been assessed and have paid back-taxes,

penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; and have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

45. As a proximate cause of the foregoing, Plaintiffs have been injured in an actual amount in excess of $750,000.00, and should be awarded be awarded punitive damages in accordance with the evidence, plus attorneys' fees, costs and allowable interest.

VII.

SECOND CLAIM
MALPRACTICE/NEGLIGENCE

46. Plaintiffs re-allege and incorporate each and every allegation set forth in Paragraphs 1 through 45, inclusive, and incorporate them by reference herein as if fully set forth.

47. As Plaintiffs' investment and tax adviser, UBS owed Plaintiffs duties of care, loyalty and honesty, a duty to comply with the applicable standards of care, and a duty to comply with the applicable provisions of their code of professional responsibility.

48. UBS failed to meet those duties. USB's failure to meet the standard of care caused damages to Plaintiffs as set forth elsewhere in this Complaint.

49. During the course of their representation of Plaintiffs, UBS, through its employees and agents, made numerous knowingly or negligently false affirmative representations, and intentional or negligently misleading omissions of material fact, and gave numerous recommendations, advice, instructions, and opinions to Plaintiffs, including but not limited to:

a. Failing to inform Plaintiffs about the QI Agreement that UBS had signed with the Department of the Treasury and the tax reporting requirements therein;

b. Failing to inform Plaintiffs that Plaintiffs' and the Class Members' failure to disclose the account to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest;

c. Informing Plaintiffs that investing only in non-U.S. securities would permit the UBS Swiss Accounts to lawfully remain private and undisclosed; and

d. Informing Plaintiffs that investing only in non-U.S. securities would result in Plaintiffs and the Class Members not being required to disclose the UBS Swiss Accounts to the IRS or to pay U.S. taxes on the income derived from the investments in the UBS Swiss Accounts.

50. UBS either knew or reasonably should have known its representations, recommendations, advice, instructions, and opinions to be false. In addition, the rendering of such representations, recommendations, advice, instructions and opinions, as well as the failure to advise Plaintiffs of the omissions set forth above, was negligent, grossly negligent, and reckless. Accordingly, UBS failed to exercise the standard of care required of it as investment and tax advisor.

51. Based on information and belief, the acts and/or omissions set forth above in Paragraph 49 are representative of the acts and/or omissions UBS committed with respect to the Plaintiffs. In reasonable reliance on UBS's advice, Plaintiffs opened their UBS Swiss Accounts and/or continued to keep their UBS Swiss Accounts open; agree to allow UBS to manage the funds and assets in the UBS Swiss Accounts; paid excessive fees, commission, and premiums

to UBS for sham services and transactions that brought no value or benefits to Plaintiffs; and failed to disclose their UBS Swiss Accounts on their U.S. tax returns or pay tax on the income derived from the assets and transactions in the UBS Swiss Accounts.

52. But for UBS's failure to meet the applicable standard of care and the intentional and/or negligent misrepresentations and material omissions described above, Plaintiffs would have disclosed their UBS Swiss Accounts on their U.S. tax returns and paid tax on the income derived from the assets and transactions. The UBS Swiss Accounts would not have been assessed and would not have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; would not have paid excessive fees, commissions, and premiums to UBS for sham services and transactions that brought no value or benefit to Plaintiffs; and would not have incurred and continue to incur legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

53. UBS's conduct set forth above proximately caused injury and damages to Plaintiffs in that *inter alia* they have been assessed and paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; paid excessive fees, commissions, and premiums UBS for sham services and transactions that brought no value or benefit to Plaintiffs; and have incurred and continue to incur legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

54. As a proximate result of the foregoing, Plaintiffs have been injured in an amount to be proven at tin excess of $750,000.00, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fees and costs.

VIII.

THIRD CLAIM
DISGORGEMENT OF UNETHICAL AND EXCESSIVE FEES

55. Plaintiffs re-allege and incorporate each and every allegation set forth in Paragraphs 1 through 54, inclusive, and incorporate them by reference herein as if fully set forth.

56. UBS charged Plaintiffs for "management" of the UBS Swiss Accounts and other purported services and transactions that had no true value to Plaintiffs and expended little, if any, additional time or effort in providing necessary, useful and/or productive advice, products, opinions and/or services to Plaintiffs. These charges were not customary, but were excessive, particularly in light of UBS's scheme to obtain the assets of U.S. clients and keep them in Switzerland by any means possible—whether legal or illegal.

57. The fees charged by UBS to Plaintiffs are unethically excessive and illegal. Moreover, because UBS did not disclose information it was required to disclose, its fee and/or compensation agreements with Plaintiffs are not enforceable.

58. Accordingly, all fees, profits, or commission received by UBS either directly or indirectly from Plaintiffs must be disgorged.

IX.

FOURTH CLAIM
BREACH OF CONTRACT

59. Plaintiffs re-allege and incorporate each and every allegation set forth in Paragraphs 1 through 58, inclusive, and incorporate them by reference herein as if fully set forth.

60. Plaintiffs entered into implied, oral and/or written contracts with UBS to provide Plaintiffs with professionally competent tax advice and services and investment advice and services. In connection therewith, UBS was required and expected to meet all applicable

standards of care, to meet the fiduciary duties of loyalty and honesty, and to comply with all applicable rules of professional conduct.

61. Plaintiffs fully performed their obligations to UBS under these contracts and thus did not contribute to UBS's breaches in any way.

62. Plaintiffs allege, on behalf of themselves that these contracts are unenforceable and void due to lack of mutuality and unreasonable and oppressive terms. However, to the extent that these contracts are enforceable, UBS ignored its obligations and instead provided Plaintiffs with advice, opinions, recommendations, representations and instructions that UBS either knew or reasonably should have known to be wrong. In addition, the rendering of such representations, recommendations, advice, instructions and opinions, as well as the failure to advise Plaintiffs of the omissions set forth above, was negligent, grossly negligent, and reckless. Accordingly, UBS failed to exercise the standard of care required of them and breached its contracts with Plaintiffs.

63. As a result of the Defendant's conduct set forth herein, Plaintiffs have suffered injury in that *inter alia* they have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; paid excessive fees, commissions, and premiums to UBS for sham services and transactions that brought no value or benefit to Plaintiffs; and have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

64. As a proximate cause thereof, Plaintiffs have been injured in an amount in excess of $750,000.00, and should be awarded punitive damages in accordance with the evidence, plus attorney's fee and costs.

X.

FIFTH CLAIM
FRAUD

65. Plaintiffs re-allege and incorporate each and every allegation set forth in Paragraph 1 and 64, inclusive, and incorporate them by reference herein as if fully set forth.

66. In order to induce Plaintiffs to open their UBS Swiss Accounts and/or continue to keep their UBS Swiss Accounts open and fail to disclose their UBS Swiss Accounts on their U.S. tax returns or pay tax on the income derived from the assets and transactions in the UBS Swiss Accounts (which allowed UBS to remain off the U.S. radar, continue bringing in billions of dollars of assets from U.S.-clients, and continue being a haven for tax evasion), UBS made numerous knowingly false affirmative representations and intentional omissions of material facts to Plaintiffs, including but not limited to:

a. Failing to inform Plaintiffs about the QI Agreement that UBS had signed with the Department of the Treasury and the tax reporting requirements therein; and

b. Failing to inform Plaintiffs that Plaintiffs' failure to disclose the account to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest.

67. Based on information and belief, the acts and/or omissions set forth above in paragraph 86 are representative of the acts and/or omissions UBS committed with respect to the Plaintiffs'. The above intentional omissions of material fact and/or affirmative representations made by UBS were false when made and UBS knew these representations to be false when made with the intention that Plaintiffs rely upon them.

68. In reasonable reliance on UBS's false affirmative representations and intentional omissions of material facts, Plaintiffs opened their UBS Swiss Accounts and/or continued to keep their UBS Swiss Accounts open and failed to disclose their UBS Swiss Accounts on their

U.S. tax returns or pay tax on the income derived from the assets and transactions in the UBS Swiss Accounts.

69. But for Defendants' intentional misrepresentations and material omissions described above, Plaintiffs would have disclosed their UBS Swiss Accounts on their U.S. tax returns and paid tax on the income derived from the assets and transactions in the UBS Swiss Accounts; would not have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; and would not have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

70. As a result of Defendant's conduct set forth herein, Plaintiffs have suffered injury in that *inter alia* they have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts and have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

71. As a proximate cause of the foregoing, Plaintiffs have been injured in an amount in excess of $750,000, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fee and costs.

XI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf, demand judgment against Defendant as follows:

A. Awarding monetary damages against Defendant in favor of Plaintiffs for all losses and damages suffered as a result of the acts and transactions complained of

herein, together with prejudgment interest from the date of the wrongs to the date of the judgment herein;

B. That Plaintiffs be awarded punitive, enhanced, and exemplary damages against Defendant;

C. That Plaintiffs have judgment against Defendant for their costs, attorneys' fees, and pre-judgment interest on all sums recovered; and

D. That the Court grants such other, further, and different relief as the Court deems just and proper under the circumstances.

Dated: APRIL 3, 2012

COUNSEL FOR PLAINTIFFS

Respectfully submitted,

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TABLE OF EXHIBITS

Exhibit A – November 2008, Raoul Weil Indictment

Exhibit B – February 18, 2009, Deferred Prosecution Agreement ("DPA")

Exhibit C – February 18, 2009, NY Times article quoting Peter Kurer and Marcel Rohner

Exhibit D – February 18, 2009, Securities Exchange Commission Complaint

Exhibit E – Relevant portions of the United States' February 19, 2009, Petition against UBS to enforce a "John Doe" summons

Exhibit F – Relevant portions of the transcript of the March 4, 2009, Senate Hearing

Exhibit G – Relevant portions of the United States' June 30, 2009, Memorandum of Law in Support of Petition to Enforce "John Doe" Summons

CERTIFICATE OF SERVICE

I hereby certify that on APRIL 3, 2012, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Western District of Pennsylvania, using the electronic case filing system of the Court.

/s/ G. CLINTON KELLEY